

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 10 July 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, G.B.S.,
J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION,
SECRETARY FOR HOUSING, PLANNING AND LANDS, AND
SECRETARY FOR HOME AFFAIRS

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

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

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE AND
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE FREDERICK MA SI-HANG
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

CLERKS IN ATTENDANCE:

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Airport Authority (Permitted Airport-related Activities) Order	127/2002

Other Papers

No. 100 — Hong Kong Trade Development Council
Annual Report 2001/02

No. 101 — Report of the Public Accounts Committee on Report No. 38 of the Director of Audit on the Results of Value for Money Audits and Supplemental Report of the Public Accounts Committee on Report No. 37 of the Director of Audit on the Results of Value for Money Audits (July 2002 - P.A.C. Report No. 38)

No. 102 — Clothing Industry Training Authority
Annual Report 2001

Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region
Progress Report for the period July 2001 to June 2002

Report of the Panel on Administration of Justice and Legal Services
2001/2002

Report of the Panel on Transport 2001/2002

Report of the Panel on Planning, Lands and Works 2001/2002

Report of the Panel on Economic Services 2001/2002

Report of the Panel on Environmental Affairs 2001/2002

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Report of the Bills Committee on Import and Export (Electronic Transactions) Bill 2001

Report of the Bills Committee on Public Officers Pay Adjustment Bill

Report of the Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000

Report of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill

Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2002

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mr Eric LI, Chairman of the Public Accounts Committee, will address the Council on the Committee's Report on Report No. 38 of the Director of Audit on the Results of Value for Money Audits and Supplemental Report No. 37 of the Director of Audit on the Results of Value for Money Audits.

Report of the Public Accounts Committee on Report No. 38 of the Director of Audit on the Results of Value for Money Audits and Supplemental Report of the Public Accounts Committee on Report No. 37 of the Director of Audit on the Results of Value for Money Audits (July 2002 - P.A.C. Report No. 38)

MR ERIC LI: Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 38 today.

The Director of Audit's Report No. 38 was submitted to you on 3 April 2002 and tabled in the Legislative Council on 24 April 2002. The Report tabled today contains the conclusions reached by the PAC on the Director of Audit's Report.

At the time when PAC Report No. 37 was finalized, the PAC's deliberations on the subject of "Mechanized street cleansing services" were continuing. A full report on this chapter was therefore deferred. The PAC has now concluded our deliberations and the supplemental report on this chapter is also tabled together with our Report No. 38 today.

In line with our usual practice, we have selected for detailed examination only those chapters in the Director of Audit's Report No. 38 which, in our view, referred to more serious irregularities or shortcomings. The Report tabled today covers our deliberations on four of the five subjects selected. We have decided to defer a full report on the subject "Residential services for the elderly" to allow ourselves more time to examine the complex issues involved, such as the provision of infirmary services and the allocation of financial resources between the Hospital Authority and the Social Welfare Department following any delineation of their responsibilities in this regard. The PAC will endeavour to finalize our report to the Council at the earliest opportunity.

Pursuant to the implementation of the accountability system for principal officials, the statutory functions exercisable by the Bureau Secretaries who had appeared before the PAC at the public hearings were transferred to the relevant new Directors of Bureaux with effect from 1 July 2002. In our Report, the titles of the Bureau Secretaries current at the time of the public hearings are used. To facilitate readers of the Report, we have added a footnote against the title of the Bureau Secretary when it first appeared in a chapter, to highlight the transfer of statutory functions under the accountability system.

I now turn to the substantive issues covered in this Report.

The PAC's report on the subject of "Mechanized street cleansing services" had been deferred as we needed time to examine the many tiers of staff in the chain of command in the Environmental Hygiene (EH) Branch of the Food and Environmental Hygiene Department (FEHD) involved in providing mechanized street cleansing services, and how such a bloated structure operated in the provision of the services.

Having deliberated the issues, the PAC is gravely concerned and finds it unjustified that a hierarchy of 10 tiers of staff, from the Director of Food and Environmental Hygiene to Ganger, is involved in supervisory duties over the delivery of mechanized street cleansing services. Despite the elaborate system of supervision in its EH Branch, the FEHD still found it necessary to set up an additional Quality Assurance Section. We consider the present multi-layered bureaucratic structure of the EH Branch an obstacle to the provision of efficient mechanized street cleansing services.

We are seriously dismayed that although the Secretary for the Civil Service had issued a circular in November 1998 urging all Heads of Departments to review immediately the existing systems on staff supervision, there is still slackness in the FEHD's management of outdoor staff. The cleansing staff of the mechanized gully cleansing teams and street washing teams have scheduled idle time, other than normal rest time, in their daily work, resulting in under-utilization of their capacity. When a street is being flushed, only the Special Driver of the street washing team operating the street washing vehicle is working while other team members are idle. Besides, significant portions of the mechanized street sweeping and mechanized gully cleansing services in the day shift were suspended in 2000 for various reasons.

We are astonished that, immediately after the Audit review, the FEHD was able to reduce six mechanized street sweeping routes and six mechanized gully cleansing routes, thus achieving annual savings of about \$2.83 million and about \$4.33 million respectively.

When considering the subject of "Liberalization of the local fixed telecommunications market", the PAC is seriously concerned that six years after the introduction of competition to the local fixed telecommunications network services (FTNS) market, the new operators have achieved a market share of only 10%. In particular, their market share in the residential sector is only 5%. Compared to its counterparts in some advanced countries, the Office of the Telecommunications Authority (OFTA) provides much fewer performance indicators for gauging whether competition is working effectively in the local FTNS market.

Regarding the availability of consumer choice, the PAC is concerned that, according to the results of Audit's survey conducted in November 2001, not all customers served by the co-located exchanges had a choice of switching to the service provided by the new operators.

We are also seriously concerned over the lack of actions by the OFTA, in respect of the cases identified in Audit's survey, to enforce the licence conditions which require operators to provide service to customers served by the co-located exchanges. We urge the Director-General of Telecommunications to ensure that the operators will maintain as far as possible the achievement of 100% service availability to customers in the co-located areas at all times, and to take vigorous actions against those operators not achieving this target.

Having examined the subject of "Financial performance of the Post Office", the PAC considers that the Post Office's mode of operation has been very inflexible in terms of the number and location of branch post offices, manpower provision, service hours and pricing structure, and this goes against commercial principles. This appears to be the root cause of the Post Office's being less competitive than private operators, and explains why an overseas postal administration and some overseas mailers are able to exploit the subsidized local postage rates and selectively give the Post Office only those mail items which are costly to deliver.

We are seriously concerned that, with the exception of 1996-97 and 1997-98 when the Post Office had substantial windfall profits from philatelic products, the Post Office had not achieved the target return of 10.5% per annum on fixed assets in the past seven years. Moreover, the Post Office has still not drawn up any plan that can help it achieve the target return in the foreseeable future.

We note the Postmaster General's view that the profitability of the three new ancillary services, *viz* the postshop service, the e-post service and the remittance service, should be assessed on marginal cost basis (that is, excluding the fixed costs). However, we consider that it will be more appropriate for the Post Office, being a trading fund that operates along commercial principles, to assess the profitability of its services on full cost basis. We, therefore, urge the Postmaster General to expeditiously review these three ancillary services and set target dates for them to achieve a reasonable rate of return, taking into account the full cost of providing the services. If a reasonable rate of return cannot be achieved, the Postmaster General should consider ceasing the provision of these three services.

In addition, we are seriously dismayed that the estimated annual overtime allowance claimed by delivery postmen of all the 1 690 delivery beats which

could not be justified by workload, would amount to \$21.3 million at 2001-02 prices. We urge the Postmaster General to review the Post Office's system of controlling and monitoring the overtime work of delivery postmen to ensure that the guidelines laid down in the relevant Civil Service Bureau circular are fully complied with.

In examining this chapter, we observe that some government officials tend to be parochial and are keen to protect their resources without realizing the full cost of their doing so. In this connection, we note that many branch post offices are occupying valuable government premises at prime location, involving a high economic opportunity cost.

Regarding the subject of "Management of construction and demolition materials", the PAC is gravely concerned that the Administration has not given due consideration and attached importance to the concept of environmental protection, as evidenced by the cases relating to the implementation of the Penny's Bay Reclamation Stage 1 (PBR1) works and the entrustment works of the Container Terminal No. 9 (CT9) project.

We are seriously concerned that due to the collapse of the newly constructed seawall in Area W30 of the Tseung Kwan O reclamation contract (TKO Contract), the planned delivery of 3.6 million tonnes of public fill from the TKO Contract to the PBR1 Contract could not be made. Instead, marine sand had to be used in the PBR1 Contract. We are dismayed that an additional cost of \$7.7 million will be incurred in order to make arrangements to remedy the loss of opportunity to use the planned public fill in the PBR1 Contract. This is not yet the full cost. The site in TKO Area 137 will have to be occupied for stockpiling and sorting 3.6 million tonnes of public fill for about two years, which involves a notional land opportunity cost in the region of \$6 million to \$7 million per annum.

As regards the entrustment works of the CT9 project, we are concerned that in the land grant of CT9, there was no provision requiring the developer to use public fill in the Government's entrustment works. As a result, the Government was unable to use 1.8 million tonnes of construction and demolition materials in the CT9 project. The surplus construction and demolition materials would have to be stockpiled in fill banks with a notional handling cost of \$50 million.

Turning to the subject of "Slope safety and landslip preventive measures", the PAC is seriously concerned that the coverage of the New Catalogue of Slopes is still incomplete, as about 4% of the registrable man-made slopes (that is, about 2 000 slopes) might not have been identified and registered, and the number of landslips involving "missed" slopes, as revealed by the systematic studies of landslips from 1998 to 2000, was 62, or 6.5% of the total number of landslips, indicating that these slopes may still pose a threat to public safety.

We are concerned that, up to the end of November 2001, the Works Bureau had not yet formulated any detailed work plan for the slope maintenance departments to achieve the target of improving 2 400 slopes by 2010, and for the works departments to achieve the target of upgrading 900 slopes by 2010. We are also concerned that, by March 2010, there will still be 16 000 old government slopes to be dealt with. In this connection, we acknowledge that the Director of Civil Engineering will commence in the end of 2002 a review to formulate a long-term strategy for tackling these remaining substandard slopes, with a view to formulating the strategy by 2004.

Furthermore, we are concerned that there was a significant number of slope failures involving new slopes which had not been subject to proper geotechnical control, and the practice of allowing the works departments the discretion of not making geotechnical submissions is at variance with the stated intention of the Geotechnical Engineering Office (GEO) that all the new slopes are subject to its geotechnical control.

We, therefore, urge the Director of Civil Engineering to take up a co-ordinating role to ensure that the geotechnical designs of slope works will be submitted by the works departments to the GEO for checking.

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

I wish to record my appreciation of the contributions made by members of the PAC. Our gratitude also goes to the representatives of the Administration and other organizations who have attended before the PAC.

We are grateful to the Director of Audit and his colleagues as well as the staff of the Legislative Council Secretariat for their unfailing support and hard work.

Thank you.

PRESIDENT (in Cantonese): Miss Margaret NG will address the Council on the Report of the Panel on Administration of Justice and Legal Services 2001/2002.

Report of the Panel on Administration of Justice and Legal Services 2001/2002

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

Regarding legal education and training, the Panel noted that the Steering Committee on Review of Legal Education and Training had endorsed the recommendation of the Consultants that the Bachelor of Laws (LLB) degree be extended from three to four years, and had recommended to the University Grants Committee that funding be provided for the four-year LLB programme commencing in the 2004-05 academic year. As regards the Consultants' recommendation that the Postgraduate Certificate in Laws (PCLL) should be replaced by a 16-weeks Legal Practice Course and a free-standing institution be established to conduct the course, the Steering Committee, after lengthy discussion, considered that the PCLL should not be discontinued, but that it should be subject to major reforms. The Panel was also advised that a standing umbrella body would be established to oversee the implementation of reform of legal education and training and to monitor future direction of legal education. The body would be established by legislation and would replace the current Advisory Committee on Legal Education.

The Panel was advised of the ways that the Administration would promote Hong Kong as a legal services centre, an important initiative highlighted in the Chief Executive's 2001 policy address. As part of the

promotion, a mechanism was required to be established for the reciprocal enforcement of certain judgements delivered in the Courts of the Hong Kong Special Administrative Region (SAR) and the Mainland. In May 2002, the Administration sought the Panel's views on the proposal to establish a mechanism for reciprocal enforcement of judgements in commercial matters between the SAR and the Mainland. The Panel noted that once a mutually satisfactory arrangement with the mainland authorities had been reached, the Administration would introduce legislation to give it the requisite legislative backing. The Panel requested the Administration to keep members posted of further developments.

Arising from discussions of the Panel in June 2000 on how the Legislative Council should discharge its constitutional duty under Article 73(7) of the Basic Law to endorse the appointment of judges, the Panel formed a working group to consider the relevant issues involved. The Panel had published the Consultation Paper on Process of Appointment of Judges in December 2001. On the procedure for the Legislative Council to endorse judicial appointment under the Basic Law, the Consultation Paper had set out three options. As the Panel considered that it was also necessary to review the existing system of appointment of judges not confining to those appointments which required the Legislative Council's endorsement, the Consultation Paper had also invited views on the membership, accountability and operation of the Judicial Officers Recommendation Commission (JORC). The Panel will further consider the views received during the consultation exercise and prepare a final report for the endorsement of the Panel. The Judiciary had advised the Panel that it would conduct a review of the operation of the JORC after the Panel had issued the final report.

One of the major issues of concern of the Panel in the current Legislative Session was the provision of legal aid services. Following discussions by a working group formed under the Panel to review the provision of legal aid services, a preliminary list of issues for review was prepared for consultation with the relevant parties. The Panel held a special meeting in April 2002 to receive views from the relevant organizations. On the basis of the views received, the Panel will prepare a final list of issues for review by the Administration. The Panel will monitor further developments in the next Legislative Session.

The Administration had sought the views of the Panel on a proposal made by the Law Society of Hong Kong (Law Society) to amend section 23 of the

Conveyancing and Property Ordinance (Cap. 219) to rectify a problem concerning the execution of conveyancing documents by corporations, following the Court's decision on the Grand Trade case. The Panel sought the views of the relevant parties on the amendment proposed by the Law Society. While the parties concerned agreed that legislative changes were necessary to address the situation, the major concern was that the scope of the amendment proposed by the Law Society was too wide. The Law Society had subsequently submitted a revised proposal which was jointly worked out with the Hong Kong Bar Association and the Hong Kong Conveyancing and Property Law Association Limited. However, the Administration had suggested certain amendments to the Law Society's revised proposal. The Panel considered that there was urgency in resolving the matter, and requested the Administration to continue discussion with the legal profession with a view to introducing a bill in the first half of the next Legislative Session.

Following amendments to the Legal Practitioners Ordinance through the Legal Services (Miscellaneous Amendments) Bill which was enacted at the end of June 1997, the Law Society may approve or refuse to approve an application for the approval of a company as a solicitor corporation in accordance with its rules. The Panel noted that the Law Society had drafted the relevant rules, and the main outstanding issue concerned the insurance of solicitor corporations for the protection of consumers. The Administration considered it essential for the protection of consumers that there should be adequate indemnity insurance taken out by a solicitor corporation to cover civil claims made by its clients. However, it was the initial view of the Law Society that the cover provided by the existing Hong Kong Solicitors Professional Indemnity Scheme was sufficient protection for the public. The Panel requested the Administration and the Law Society to continue discussion and revert to the Panel in due course.

Regarding the drafting of the eight sets of rules on notarial practice, the Panel noted that there were two outstanding issues which had yet to be resolved, namely, notarial examination and professional indemnity for notarial practice. According to the Hong Kong Society of Notaries, it would seek the services of the Scriveners Company in England to assist in drawing up the examination syllabus and providing examiners to set and mark the papers. It would also approach the author of the authoritative textbook *Brooke's Notary* to compile a Hong Kong supplement to his work to assist candidates to prepare for the examination. As regards professional indemnity rules, the Society advised the Panel that there was a practical difficulty in making appropriate insurance indemnity arrangements for the small number of its members who were not

covered by the Solicitors' Indemnity Scheme, especially after the September 11 incident in New York. In view of the no claim situation in Hong Kong, the Panel had no objection to the Society's intention to leave the issue of mandatory professional indemnity aside at the moment, and to proceed with the implementation of the other necessary rules.

Madam President, these are my short remarks on the Panel's Report.

PRESIDENT (in Cantonese): Ms Miriam LAU will address the Council on the Report of the Panel on Transport 2001/2002.

Report of the Panel on Transport 2001/2002

MS MIRIAM LAU (in Cantonese): Madam President, I speak in my capacity as Chairman of the Panel on Transport. Since the Report already gives a detailed account of the work of the Panel, I would only highlight a few points here.

The Panel had reviewed with the Administration the need, alignment and implementation timetable for the Shenzhen Western Corridor (SWC), Deep Bay Link (DBL) and Route 10. It also invited views from various bodies and members of the public, and organized a series of public hearings together with the relevant parties to discuss the three projects.

The Panel agreed to an early implementation of the SWC to alleviate the nearly saturated land boundary crossings at Lok Ma Chau, Man Kam To and Sha Tau Kok.

The Panel was aware of the fact that there were divergent views in the community over the need, alignment and timing for Route 10, particularly the Northern Section (section between Yuen Long Highway and So Kwun Wat). For this reason, the Panel had also examined various issues, including the traffic projections, maximizing the utilization of Route 3 and the provision of alternative road links.

The Panel had also held public hearings on Route 7. The Panel urged the Administration to investigate various possible alignments linking Kennedy

Town to Aberdeen and the extent to which the project could be in tunnel. On the proposal to replace Route 7 with a railway, the Panel agreed that roads and railway were complementary to each other rather than mutually exclusive.

The Panel would continue to monitor the railway development in Hong Kong. A Subcommittee was also formed under the Panel to monitor the related issues.

The Subcommittee expressed grave concern for the Kowloon-Canton Railway Corporation's (KCRC) agreement to pay Siemens the sum of \$100 million for variations, settlement of claims and recovery of time lost for the West Rail contract DB-1500 — Telecommunications Systems. The Subcommittee had reviewed with the Administration and KCRC the tender evaluation and contractual performance monitoring systems. Subsequent to the release of the investigation report on the Review of Payments to Contractors for the West Rail Project compiled by Ernst & Young, the Subcommittee passed a motion urging the KCRC to implement the recommendations in the investigation report as soon as possible and brief the Panel on the relevant progress on a regular basis.

The Subcommittee had closely monitored the implementation of the Sha Tin to Central Link programme and reviewed the assessment criteria employed in the comparison of the bidding proposals from the two railway corporations. The Subcommittee also urged the Administration to speed up the delivery of the project and explore the feasibility of providing additional stations at Hin Keng, Tsz Wan Shan and Whampoa to meet the transport needs of commuters.

The Panel was pleased to be informed that with concerted effort from all parties, the Environmental Permit for the Lok Ma Chau Spur Line was issued in April 2002. Works on the Spur Line were expected to complete by mid-2007.

The Panel had examined the implications of the commissioning of Tseung Kwan O Extension and the proposed public transport service plan, and called on the Administration to maintain healthy competition among different modes of public transport services to ensure commuters' choice.

The Panel welcomed the two railway corporations' decision to postpone the increase in fares originally scheduled for 1 April 2002. The Panel had also reviewed the future development of domestic passenger ferry services and

existing policy on Public Light Buses (PLB) in Hong Kong. Furthermore, the Panel had also discussed the proposed renewal of the existing franchises for the Citybus Limited (Airport and North Lantau routes), the Long Win Bus Company Limited, and the New World First Bus Services Limited, and made various suggestions to refine the proposed terms of the franchises with a view to further enhancing protection for the interest of bus passengers.

For details of the work of the Panel, Honourable Members may wish to refer to the Report tabled by the Panel. Thank you, Madam President.

PRESIDENT (in Cantonese): Dr TANG Siu-tong will address the Council on the Report of the Panel on Planning, Lands and Works 2001/2002.

Report of the Panel on Planning, Lands and Works 2001/2002

DR TANG SIU-TONG (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Planning, Lands and Works (the Panel), I now present to the Legislative Council a report on the work of the Panel during the period between October 2001 and June 2002.

The report contains the major areas of work of the Panel in the past year. I will now highlight some of them.

For territory-wide planning, the Panel welcomed the Administration's initiative to establish urban design guidelines for Hong Kong to preserve and improve the urban scene. Members agreed that there is a need to preserve views to the ridgelines and to achieve a well-designed waterfront along the Victoria Harbour. The Panel supported the study on "Hong Kong 2030: Planning Vision and Strategy" to provide a long-term planning framework to guide the development of Hong Kong over the next 30 years. Members noted that the population of Hong Kong was becoming more mobile as a result of the increasing socio-economic integration with the Mainland. They supported the study on the mobile population and its implications on the demand for housing and other facilities.

As regards the planning study and development proposals for specific districts, the Panel had discussed with the Administration the following: the

Focus Study on Aberdeen Harbour, the Study on the South East New Territories Development Strategy Review, the integrated planning and engineering study for the further development of Tseung Kwan O, the restructuring studies on Ngau Tau Kok, Shek Kip Mei, Cheung Sha Wan and Ho Man Tin districts and the development proposals for Central and Wan Chai districts (including the Tamar Site) and the South East Kowloon and West Kowloon. Members were pleased to note that the reclamation areas under the Central Reclamation Phase III Project and South East Kowloon Development had been scaled down. Members welcomed the Administration's proposal to earmark the Tamar Site for the development of a new Central Government Complex together with a new Legislative Council Building.

Apart from town planning, urban renewal is another major area of concern of the Panel. To address the problem of urban decay and to improve the living conditions of residents in dilapidated urban areas, the Panel urged the Administration to implement urban renewal projects at an early date. In the current Legislative Session, members continued to monitor the situation closely and had discussions with the Administration on issues relating to urban renewal, including the Urban Renewal Strategy, the first five-year corporate plan of the Urban Renewal Authority (URA) and the Government's proposed capital injection of \$10 billion into the URA.

As regards public works, in the light of the contractual disputes relating to the Strategic Sewage Disposal Scheme Stage I tunnelling contracts and the delay in the river training works for the Upper River Indus, the Panel urged the Administration to put in place concrete improvement measures to ensure smooth and timely implementation of public works contracts. In response to the concerns of members, the Administration had completed a comprehensive review and implemented a series of improvement measures. Members urged the Administration to monitor the effectiveness of the measures.

To speed up public works projects, the Administration intended to reduce the preconstruction lead time for an average medium-sized civil engineering project from six years to four years. This, the Panel welcomed. However, members opposed the Administration's proposal to introduce legislative amendments to shorten the period for the public to lodge objections from two months to one month. Members pointed out that the original two-month

objection period was very tight and considered it unreasonable to shorten it to one month. Members therefore urged the Administration to withdraw the proposed legislative amendments and to explore other alternatives to expedite the delivery of public works projects, such as shortening the time for internal consultation within the Administration.

As regards building safety, maintenance and control, the Panel continued to monitor the progress of the implementation of the "Comprehensive Strategy for Building Safety and Timely Maintenance", including the pilot Coordinated Maintenance of Buildings Scheme. On the Administration's proposed amendments to the Building Ordinance, members noted that the Administration had proposed to introduce a new category of relatively simple and small-scale building works, that is "minor works". Registered contractors for this type of works might carry out such works on their own or under the supervision of an Authorized Person and a Registered Structural Engineer without submitting the building plans to the Building Authority for approval. In the absence of a clear definition of "minor works", members expressed grave concern about the impact of the proposed amendment on the quality of building works.

The Panel deliberated on the legislative proposal to introduce a charging and penalty system for road opening works. To streamline the application procedures of excavation permits (EPs), members urged the Administration to establish a one-stop service mechanism to process the relevant applications. As regards the Administration's proposal that government departments, unlike other road works promoters, would not be prosecuted for breach of EP conditions, members maintained that government departments should not be above the law and requested the Administration to reconsider its proposal.

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

Madam President, I so submit.

PRESIDENT (in Cantonese): Mr James TIEN will address the Council on the Report of the Panel on Economic Services 2001/2002.

Report of the Panel on Economic Services 2001/2002

MR JAMES TIEN: Madam President, I speak in my capacity as Chairman of the Panel on Economic Services (the Panel). As the Report has already given a detailed account of the work of the Panel, I would only highlight a few points here.

Hong Kong's logistics industry enjoys many advantages. Hong Kong is at the centre of Asia. Our hinterland, the Mainland, is the fastest-growing economy in the world. We have an excellent transportation system. We, therefore, see the merit of further promoting the development of an inter-modal system, and other supporting facilities to enhance connectivity with our hinterland.

During the Session, apart from examining the institutional arrangements in support of the work of "Logistics Hong Kong", the Panel has also reviewed the development of physical infrastructure in Hong Kong. The Panel welcomes the proposed construction of Shenzhen Western Corridor to increase the capacity for vehicular cross-boundary trips. Since our costs are higher than those of our neighbours, the Panel has explored various means to lower the transportation cost. The Panel has also reviewed various measures to facilitate the development of high value-added logistics services in Hong Kong. The Panel has requested the Administration to re-engineer the customs process to speed up clearance for trucks crossing the control points.

The Panel has reviewed the Master Plan 2020 of Hong Kong International Airport, which includes recommendations on key facilities and services required for the next 20 years. The Panel has also examined the port cargo forecasts up to the year 2020, taking into account a series of factors. These include the past port traffic pattern, macro-economic context, impact of the Mainland's accession to the World Trade Organization, development in the Pearl River Delta Region, direct trade link between the Mainland and Taiwan, determinants of cargo routing and Hong Kong's port competitiveness. As there are inherent uncertainties of the future development, the Panel has requested the Administration to regularly update and review the port cargo forecasts in planning for future cargo handling and other port-related facilities.

Tourism is another Hong Kong's key economic driver. Promoting inbound tourism certainly brings benefits to our economy and creates employment. The Panel has placed great emphasis on the development of new tourist attractions and enhancement of existing tourist facilities. To ensure the timely delivery of tourism infrastructure, facilities and products, the Panel has asked the Administration to review the associated planning processes.

The Panel continues to monitor the progress of the Hong Kong Disneyland project. We are pleased to note that phase 1 of the Hong Kong Disneyland project is progressing on schedule. However, the existence of hazardous substances, *inter alia*, dioxins in the soil at the Cheoy Lee Shipyard site and the substantial increase in the decommissioning cost of Cheoy Lee Shipyard from \$22 million to \$450 million are of great concern to the Panel. Given that the extent of contamination at the shipyard site is much higher than expected, we cast doubt on whether Cheoy Lee Shipyard was operated in accordance with the approved conditions. We are also concerned whether it should be held responsible for the decontamination cost under the "polluter pays" principle. We would continue to examine the possible legal avenues which might be pursued in relation to the contamination of the site in due course.

The Panel welcomes the one-off rebate of \$220 and the reduction of fuel clause charges of 0.3 cents per unit offered by the CLP Power Hong Kong Limited. We, however, are concerned about the Hongkong Electric Company Limited's decision to raise its tariff at a time when the community is still facing economic hardship. We have called on the Administration to encourage the company to explore ways to lower the tariff increase as much as possible. We have also urged the Administration to review the need to construct the proposed Lamma Power Plant Extension, which would have a bearing on future tariff charges of the company.

The Panel recognizes the benefits associated with increasing interconnection and enhancing competition in the electricity supply market. The Panel would keep a close watch on the progress of the review of the electricity market in Hong Kong.

We continue to monitor the retail prices of oil products. To ensure consumer protection, the Panel has urged the Administration to introduce a mechanism to monitor oil prices and take positive action to encourage competition in the fuel market.

During the session, the Panel has also reviewed the need for additional regulatory measures for beauty products and services to enhance consumer protection.

Madam President, as we undergo economic restructuring, we must consider what our strengths are and how to play to the best of them. We will continue to monitor the Government's work on the promotion of the development of logistics and tourism industries in Hong Kong with a view to revitalizing our economy. We will also closely monitor the energy market and ensure the timely provision of economic infrastructure in Hong Kong.

Thank you.

PRESIDENT (in Cantonese): Miss CHOY So-yuk will address the Council on the Report of the Panel on Environmental Affairs 2001/2002.

Report of the Panel on Environmental Affairs 2001/2002

MISS CHOY SO-YUK (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Environmental Affairs (the Panel), I now present the 2001-02 Report on the work of the Panel and give a brief account of several major issues contained therein.

The dioxins-contaminated Cheoy Lee Shipyard site in Penny's Bay had aroused wide public concern. To restore the site to a state suitable for development, the Environmental Impact Assessment (EIA) report recommended that the 30 000 cu m dioxin-contaminated soil be treated by thermal desorption. About 600 cu m of organic residue generated from the process would then be collected and dispatched in batches to the Chemical Waste Treatment Centre in Tsing Yi for incineration. The treatment of dioxin-contaminated soil had caused a substantial rise in the decommissioning cost from \$22 million quoted in November 1999 to \$550 million. The Panel held the view that the situation could have been avoided had the decommissioning project been included in the original EIA for Hong Kong Disneyland.

On the recommended treatment of dioxin-contaminated soil, the Panel agreed that the use of thermal desorption in separating and concentrating the

dioxin from the contaminated soil was feasible. However, it had reservations about the use of incineration to treat the residue from thermal desorption. In this connection, the Administration undertook to consider other alternatives proposed by the bidders, but the alternatives must be more cost-effective, in conformity to the technical and programming requirements of the project and in compliance with various statutory requirements under the Environmental Impact Assessment Ordinance.

The Panel has been closely monitoring the Harbour Area Treatment Scheme (HATS), formerly known as the Strategic Sewage Disposal Scheme. Since the joint venture corporation unilaterally suspended works in all six tunnels, the outstanding works were regrouped and re-let afterward. The Administration had subsequently pursued a claim for losses arising from re-entry of the two contracts. In October 2001, the Government announced that it had reached a settlement with the joint venture corporations. Given that the Government had won its case in the arbitration hearings, the Panel doubted whether the settlement of \$750 million was a good one since less than 60% of the additional expenditure of \$1,300 million would be recovered. The Panel also pointed out that the lack of transparency on the mediation process had hampered the role of the legislature in monitoring the work of the Administration. In this connection, the Panel on Planning, Lands and Works was requested to follow up issues arising from discussions at the joint meeting, including the tendering system, management of contracts and mechanisms for resolving contractual claims and disputes.

According to the new International Review Panel (IRP) which was appointed to re-examine subsequent stages of HATS, Hong Kong should pursue a higher level of wastewater treatment and build a short and low dilution outfall, and that Biological Aerated Filters (BAF) treatment should be provided to all HATS flows. In determining the technical and economic viability of the options put forward by the IRP, tests and studies would be carried out before a final configuration for the subsequent stages of HATS was selected. Given the delay caused to the project works, the Panel held the view that the Administration should endeavour to complete all the studies as soon as practicable and report to the Panel in due course.

The Director of Environmental Protection rejected the EIA report of the KCRC Lok Ma Chau Spur Line (Spur Line) in October 2000 on environmental grounds. The KCRC then proposed a bored tunnel option, which involved

replacing the viaduct section of the proposed Spur Line in Long Valley with a bored tunnel. The option would incur an additional cost of about \$2 billion. The Panel noted the concern of green groups that the tunnel option would impact on the hydrology of Long Valley. They held the view that the option had failed to address the need for long-term conservation of Long Valley, and that the additional \$2 billion expenditure would not be worth if the wetland character of Long Valley could not be preserved. Representatives from the engineering profession, however, pointed out that the tunnel option was feasible with the use of advanced tunnelling technology to tackle the hydrogeological problems. The Panel stressed that a balance should be struck between environmental protection and development. In view of the delay of the Spur Line project from 2004 to 2007, the Administration was urged to expedite the entire process and report to the Panel as soon as practicable.

On the issue of improving air quality, the Administration has proposed to launch an incentive scheme to encourage owners of diesel light buses to replace their vehicles early with liquefied petroleum gas (LPG) or electric ones. Under the scheme, owners of diesel public light buses who replace their vehicles with an LPG or electric model before end-2004 will be offered a one-off grant of \$60,000 or \$80,000 respectively, while owners of private light buses will be granted First Registration Tax exemption. The Panel was concerned about the limited supply of LPG light bus models in the market that could meet the specifications laid down by the Government. To prevent possible monopolization by any vehicle manufacturer, the Panel urged the Administration to take proactive measures to enable the supply of a wider choice of LPG light bus models. The Panel also passed two motions to urge the Administration to incorporate private school light buses into the incentive scheme and to extend the deadline for applications under the scheme.

With regard to waste management, the Administration plans to adopt a phased landfill charge scheme. In the first phase, it would only target construction and demolition (C&D) waste. A direct settlement system for major C&D waste producers would be implemented so waste haulers would not be required to pay the charges for waste producers. An account billing system would be put in place for waste haulers who handled C&D waste arising from ad hoc renovation works. Waste haulers would be billed on a monthly basis and given a credit period of 30 days with a view to allaying their concern about cash flow problems. While the Panel supported the introduction of a landfill

charge according to the "user pays" principle, there remained industry concerns about the charging arrangement. Given that a liaison group comprising trade representatives, particularly from waste haulers and the Government would be set up to sort out operational issues relating to the charging scheme, the Panel urged the Administration to seize this opportunity to reach a consensus with the waste haulers on the charging arrangement.

The other key areas of the work of the Panel have been summarized in the Report tabled. Madam President, I would like to take this opportunity to thank members of the Panel for their participation in and support for the work of the Panel in the past year. Moreover, I should also like to thank the staff of the Secretariat for their support. I so submit. Thank you.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Fire Safety of Internet Cafes

1. **MR JASPER TSANG** (in Cantonese): *Madam President, regarding establishments which mainly engage in the business of renting out computers with Internet access on a time charge basis (commonly known as "Internet cafes"), will the Government inform this Council:*

- (a) *of the estimated number of such establishments at present;*
- (b) *of the number of fire outbreaks in such establishments over the past three years and, among them, the number which involved contravention of fire safety legislation by the persons-in-charge of the establishments concerned; and*
- (c) *whether, given the usually large number of customers in such establishments, the authorities concerned have assessed the necessity to stipulate more stringent requirements on fire safety measures for such establishments; if the assessment is in the affirmative, of the legislative timetable; if not, the justifications for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, my reply to the Honourable Member's question is as follows:

- (a) According to police records, there are about 290 Internet cafes in Hong Kong.
- (b) Over the past three years, there was only one outbreak of fire involving Internet cafes. The fire was caused by a small coffee heater, which accidentally caught fire while it was being fuelled. As the fire occurred in an establishment issued with a Light Refreshment Restaurant Licence, the Food and Environmental Hygiene Department as well as the Labour Department were asked to take follow-up action.
- (c) Internet cafes have to comply with the existing fire safety requirements applicable to the buildings in which they are located. The Fire Services Department (FSD) regularly inspects the existing 200-plus Internet cafes. In view of the disaster in the Beijing Internet cafes in May, we have subsequently requested the FSD to conduct another inspection on the fire safety installations of the Internet cafes. Slight obstructions to fire safety installations such as blocking of sprinkler head nozzles by ornaments and of hose reels by miscellaneous items were found in only 18 of them. There was no contravention of fire safety regulations in the other Internet cafes. The FSD has issued Fire Hazard Abatement Notices or warning letters to the persons-in-charge of these 18 Internet cafes requiring them to rectify the irregularities within a specified period.

The Home Affairs Bureau is now considering the need to regulate Internet cafes by legislation. In formulating relevant policies, the Administration has to take into account various factors such as the policy to promote the development and wider application of information technology, prevention of the operation of such establishments from making negative impacts on youngsters, as well as building and fire safety issues. Several options on the regulation of Internet cafes will be put forward to the Legislative Council Panel on Home Affairs this Friday. We will brief and consult the Panel on such options. Consultations with the District Councils and the trade will also be conducted afterwards.

MR JASPER TSANG (in Cantonese): *Madam President, as noticed from the Secretary's main reply, the Government seems to know exactly how many operating Internet cafes there are. It says that the FSD regularly inspects the existing Internet cafes, that there has even been an additional round of inspections recently, and it can also tell very precisely that only 18 Internet cafes had been found to have minor problems. How can the Government be so sure that there are no other operating Internet cafes except the 290 or so it has mentioned? What mechanism is there to enable the Government to know the exact number of operating Internet cafes?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Madam President, as I mentioned in the main reply, the information we have is compiled from police records. I am not saying that the information we have is exhaustive; it is just compiled from police records. Where do the police get the records? Since the police regularly inspect commercial buildings and receive public complaints from time to time, they are able to know the information about these 290 or so Internet cafes. We do not think that we have gained a full picture of the situation, which explains why the Government has put forward the proposal of enacting legislation to regulate Internet cafes, in the hope that the imposition of regulation can enable it to gain a fuller picture of the situation. We will discuss a paper on the proposal at the meeting of the Panel on Home Affairs this coming Friday, and the paper, which sets out a number of options in detail, has already been circularized to the Members concerned this morning. I do not intend to dwell on these options here, as we will have an opportunity of formally looking at them on Friday.*

MR JAMES TO (in Cantonese): *Madam President, it is mentioned in part (c) of the Secretary's main reply that Internet cafes have to comply with the existing fire safety requirements applicable to the buildings in which they are located. In other words, if a certain Internet cafe is located in a commercial building, it must comply with the fire safety requirements applicable to commercial buildings and install sprinklers; but if it is located in a residential building, the fire safety requirements it has to meet will not be very stringent. As far as I am aware, the Administration is conducting studies on enacting legislation to regulate rave parties and the like. But I know that even before the implementation of any formal legislative control, the Administration has successfully worked out a code of practice with the industry for the latter's voluntary compliance, and most people in the industry are prepared to comply,*

probably because they hope that this can help them publicize the safety of their venues and thus induce more people to join their parties. Is the Secretary going to copy this practice? Will he work out a code of practice for voluntary compliance by the industry in the six to nine months required for completing the necessary legislative procedures, so as to raise the safety standards of Internet cafes immediately, in the meantime?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, this is one of the proposals we will consider. The paper to which I have referred sets out three options; some of them are relatively complex, while others are simpler. Under one of these options, modelled after the reporting system adopted in Korea, when the person-in-charge of an Internet cafe reports to the relevant authorities, the latter will inform the former of the minimum safety standards that must be met. This is a better way to balance the interests of all sides. It can enable us to know the locations of Internet cafes more quickly, and it is also conducive to the form of regulation mentioned by the Honourable James TO just now. The relevant meeting will be held this Friday, and if the meeting agrees to adopt this option, we will consult the District Councils and the industry as soon as possible. If all sides agree to adopt this form of regulation, we believe legislation can be enacted to implement the option early next year at the soonest. At this stage, we still have to listen to the views of the Panel on Home Affairs, District Councils and the industry on our proposals. Actually, we already have an option in mind, one which is similar to that mentioned by Mr James TO.

MR JAMES TO (in Cantonese): *Madam President, I do not know whether the Secretary has misunderstood my supplementary question. The Secretary's reply seems to be about the enactment of legislation on a reporting system, but my supplementary question is: Regardless of the method to be adopted in the legislation at the end of the day, will the relevant authorities work out a code of practice with the industry for voluntary industry compliance, so that the safety standards of Internet cafes can be raised immediately, in the run-up to the implementation of legislative control?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, since we will have to discuss with the industry, we can of course make use of the opportunity to raise the proposal on a code of practice for its voluntary

compliance. But Members must note that a code of practice is not legally-binding. We will definitely raise the proposal with the industry. If the industry can comply voluntarily, Members will feel more comfortable.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, of the 290 or so Internet cafes, how many are licensed to sell snacks? How many are ordinary Internet cafes? And, how many are vice Internet cafes?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not have the relevant information to hand. With your permission, I should answer the Honourable Member's supplementary question in writing later. (Annex I)

We note the recent emergence of vice Internet cafes, but we do not think that there are many of them. Vice Internet cafes are something new, but we still have to work out some ways to deal with them, one example being legislative control. Actually, we can also impose control by invoking existing ordinances, such as the Control of Obscene and Indecent Articles Ordinance, under which the police are empowered to take appropriate actions in these establishments. Although some Internet cafes are not directly linked to vice establishments, the youngsters patronizing them can still access pornographic websites via the Internet. We are also concerned about such problems and we will hold discussions with the industry, requesting it, for example, to install softwares preventing unauthorized access to pornographic websites or even illegal gambling websites. In the process of drawing up the relevant legislation, the Government will consider all these. We are now conducting negotiations with the industry. As pointed out by Mr James TO, if the industry can comply with a code of practice voluntarily, we will be able to implement effective measures to protect our youngsters at an earlier time.

MR WONG SING-CHI (in Cantonese): *Madam President, it is mentioned in the Secretary's main reply that the authorities concerned will consider the implementation of various measures to prevent the operation of such establishments from making negative impacts on youngsters. Have the authorities concerned conducted any studies to ascertain the impacts of Internet cafes on youngsters? Which government department will deal with the impacts of Internet cafes on youngsters?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we are also very concerned about this problem. We have already discussed this problem at the meetings of the Fight Crime Committee, and the police are very concerned that Internet cafes are frequented by many unruly youngsters who regard these establishments as "meeting places". That is why the police will conduct regular inspections of Internet cafes with a view to getting more information. Besides the police, the Social Welfare Department is also very concerned about this particular problem of youngsters. The Government has conducted internal discussions on how best to regulate Internet cafes, which is why we are now able to put forward the relevant options to the Panel on Home Affairs for its consideration on regulation.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, may I ask the Secretary whether government authorities other than the FSD, such as the police, the Home Affairs Bureau and the Secretary himself, will also inspect Internet cafes?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, yes, other government departments will also conduct inspections. As I pointed out just now, government departments can get the information they need only through inspections. On my part, I am doubling across the duties of the Secretary for Home Affairs for the time being, and over the past few days, I have not had any chance to conduct an inspection. If I were to double across the duties of Secretary for Home Affairs on a long-term basis, I would probably have a chance to conduct an inspection. *(Laughter)*

MR IP KWOK-HIM (in Cantonese): *Madam President, as we can see from the Secretary's main reply, the number of Internet cafes, around 290, is actually based on the records of the police. For places frequented by youngsters, such as electronic games centres, legislative control may provide us with more accurate information. Are the 290 or so Internet cafes mentioned by the Secretary mostly located on the second floor or mezzanine floor of buildings? I very much wish to know the answer, because the safety of customers is at stake. Do the authorities concerned have any statistics in this respect?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not have any detailed statistics on this, but I am sure there must be some Internet cafes which are located on the second floor or third floor of buildings. This is directly related to operating costs, because the rents of ground floor shops are certainly higher. Internet cafes are, however, not the only places where youngsters can access the Internet. Internet facilities can be found in government offices such as the Home Affairs Bureau and District Offices, and they are also provided in public libraries. So, the Government has to a certain extent contributed to the promotion of Internet access. The Government cannot of course provide such facilities on a very large scale, which explains the emergence of Internet cafes. If the Honourable Member wishes to obtain information about this, I shall submit a written reply later. (Annex II)

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

MISS CHOY SO-YUK (in Cantonese): *Madam President, according to the Secretary, the Government is considering making legislation on this. But the fact is that there is still quite a long time to go before any legislation can be enacted. In the meantime, Internet cafes have aroused concern over many issues such as fire safety and access to pornographic websites. May I ask the Secretary what measures the Government will adopt before the enactment of legislation, apart from the Secretary's occasional inspections?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I pointed out when replying to Mr James TO's supplementary questions, we will continue our discussions with the industry. It is hoped that the industry can, before the enactment of legislation, do what Mr James TO suggests or follow what we set out in the relevant paper. We hope that the industry can do as much as it can between now and the enactment of legislation. Well, even if some in the industry may now be unable to meet the requirements due to one reason or another, they must still meet the requirements after the enactment of legislation. I am confident that as long as the requirements are reasonable, the industry will try to comply with them as far as possible.

PRESIDENT (in Cantonese): Second question.

Arrangements for Public Housing

2. **MR JAMES TO** (in Cantonese): *Madam President, last month, the Chief Secretary for Administration announced a drastic reduction in the number of Home Ownership Scheme (HOS) units to be put up for sale in the coming few years. It is learnt that the authorities are considering converting several HOS sites, which involve about 12 000 units in total, for other purposes and decelerating the progress of some public housing under construction. In this connection, will the Government inform this Council whether:*

- (a) *it will consider allocating all the 20 000 HOS units to be completed in the three fiscal years between 2004-05 and 2006-07 for use as public rental housing, so as to further shorten the waiting time for public rental housing, and to relax the standard on living area per person stipulated for applications for transfer by overcrowded households; if not, of the reasons for that; and*
- (b) *the proposals to convert HOS sites for other purposes and to decelerate the progress of public housing construction will bring about financial losses for the Housing Authority (HA); if so, of the amount?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, my reply to the question just raised by the Member is as follows:

- (a) According to the updated Public Housing Development Programme of the HA, it is estimated that 18 400 HOS flats will be completed during the period from 2004-05 to 2006-07, we have not yet decided whether any of these flats will be converted into public rental housing.

There are at present 85 200 applicants on the Waiting List for public housing, a level much lower than that of previous years. When compared with the total number of Waiting List applicants in

1997, which was over 150 000, the existing rate has already dropped, representing only 56% of the previous figure. At the same time, the average waiting time of general household applicants has been shortened by half from six years to three years. We are confident that in the coming few years, there will be an adequate supply of public rental flats to keep the average waiting time at the level of around three years.

As to the prevailing criterion for overcrowding relief transfer, which is less than 5.5 sq m of internal floor area per person, it is considered that since enormous housing resources will be involved, any change must be examined thoroughly before a decision is made.

- (b) As we have yet to determine whether any HOS flats should be converted into public rental housing (PRH) and if so, how many, as well as how the Public Housing Development Programme should be adjusted accordingly, it is difficult at this stage to assess the financial implication for the HA.

MR JAMES TO (in Cantonese): *Madam President, according to the main reply, it actually means the Government has not yet made a decision on the relevant matter. I wish to ask the Secretary on what grounds he is going to make the decision, so that the community may know about them and express their views. The Secretary has stated that the prevailing criterion for overcrowding relief transfer is less than 5.5 sq m of internal floor area per person, and enormous housing resources will be involved if the criterion is relaxed in one go. However, should the Secretary give priority to seriously overcrowding households when he takes resources into consideration?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the major factor for consideration is certainly the total number of Waiting List applicants. I have mentioned in my main reply that the total number of Waiting List applicants was at a high level in the past, and there were more than 100 000 households per year, but the number has dropped to 85 200 households now (the latest figure up to the end of last month).

I would like to give some background information on the number of public housing flats allocated to households in need in the past few years to allow Members and the public to understand the situation. In the year 1997-98, we allocated a total of 34 500 flats; in the year 1998-99, we allocated 36 000 flats; in the year 1999-2000, the number increased to 46 400; in the year 2000-01, the number increased to 56 000; and in the year 2001-02, the number further increased to 64 700. Evidently, there was a substantial rate of increase in the past five years and the waiting time was shortened from six years to three years as a result.

In future, we will build 23 000-odd PRH flats per year, and adding to this other flats that can be refurbished, the number would at least be maintained at 40 000 to 50 000 per year. I think the number would be sufficient to meet people's demand for PRH flats in the next few years and the average waiting time for public housing would be maintained at the level of three years. As to overcrowding households, I have just given the average number and if seriously overcrowding households are not too picky, they would be allocated public housing flats very quickly.

Another question today is about the vacant public housing flats in Tuen Mun. Since the existing supply is quite abundant, therefore, the Waiting List applicants would be pickier. Some households would rather wait for half a year or a few months more in order to rent more satisfactory flats. Thus, if seriously overcrowding households are not too picky, they will be able to improve their living environment very soon.

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

MR JAMES TO (in Cantonese): *Madam President, the Secretary said that the overcrowding households would be able to improve their living environment very soon. Can he tell us more clearly how soon would it be? It might be*

PRESIDENT (in Cantonese): Mr James TO, it is another supplementary.

MR JAMES TO (in Cantonese): *Is it considered as another supplementary?*

PRESIDENT (in Cantonese): Yes, Mr James TO, I am sorry.

MR FREDERICK FUNG (in Cantonese): *Madam President, I have a strange feeling after reading the Secretary's main reply. I believe the President would recall that a Member raised a similar question two weeks ago and the Acting Secretary gave a reply then. I asked as a follow-up if the Government would use the HOS flats or sites intended to be left vacant for other purposes, such as for use as homes for the elderly, and the Acting Secretary told me that they would be used for building schools, and so on. However, the Secretary has said in part (b) of his main reply that no decision has been reached on whether any HOS flats should be converted into PRH and if so, how many, as well as how the Public Housing Development Programme should be adjusted accordingly. It seems that the reply given two weeks ago was clearer than the reply given today. May I ask the Secretary what the reasons are?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, two weeks ago, I was busy handling other affairs, therefore, I had not heard the reply given by the Acting Secretary. However, my reply earlier is mainly related to PRH. Concerning the part of Mr James TO's question about HOS flats, a certain quantity of HOS flats would be completed in the coming few years. At present, around 11 000 HOS flats have been completed and around 13 000 HOS flats are under construction. Apart from these 24 000 HOS flats, there are 5 000 HOS flats with pile driving in progress and there are 7 000 HOS flats with pile driving completed and the construction of the superstructure in progress. Moreover, the construction of 6 400 HOS flats is being planned. Certainly, we have not started planning for some HOS flats and there are 10 000-odd such flats in our blueprint. This is the latest situation of the Public Housing Development Programme announced by us.

In the light of the latest situation, newly completed flats and flats under construction cannot be converted for other purposes, but flats with pile driving completed or the construction of the superstructure in progress can be converted for other purposes. However, we have not yet determined the alternative

purposes of these flats. Ms Elaine CHUNG gave the reply two weeks ago and she said that some HOS flats might be converted for other purposes, but we have not made an official decision yet. Therefore, I have just explained that we have not yet made an official decision in this respect.

MR FREDERICK FUNG (in Cantonese): *Madam President, do you mind if I cite the reply given by Ms Elaine CHUNG from memory? I wish to prove that the Secretary has not answered my supplementary.*

PRESIDENT (in Cantonese): Mr FUNG, I hope this will not develop into a debate.

MR FREDERICK FUNG (in Cantonese): *Madam President, I am not seeking a debate.*

PRESIDENT (in Cantonese): Mr FUNG, the Secretary gave a reply after you had raised the supplementary and it is another matter if you are not satisfied with the Secretary's reply. But if you think the Secretary has not answered part of your supplementary, please specify which part of your supplementary has not been answered.

MR FREDERICK FUNG (in Cantonese): *Madam President, I think the Secretary has not answered my supplementary because the main question raised by Mr James TO has actually cited the reply given by the Acting Secretary, that is, "the authorities are considering converting several HOS sites, which involve about 12 000 units in total, for other purposes". Part (b) of the main question asks "whether it will bring about financial losses for the HA". We already know that the authorities should have certain data. Even though the Secretary has said that the purposes have not yet been determined, there is no reason why he cannot give us the relevant figures. Therefore, I have said that I have a strange feeling about part (b) of the main reply. Why could the Acting Secretary give explicit figures two week ago while the Secretary has given a less explicit reply? I think the Secretary has not answered my supplementary yet.*

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

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I have just said that there are 5 000 HOS flats with pile driving in progress and there are 7 000 HOS flats with pile driving completed and the construction of superstructure in progress. These flats can be converted for other purposes but we have not yet determined how to convert them for other purposes. Mr FUNG has just asked whether it will bring about financial losses for the HA. At this stage, I can only tell Members that, if the HOS flats were converted for other purposes in future, from the perspective of the HA, the losses would involve pile driving expenses or monetary losses in terms of interest payment. Yet, we are not sure about the decision that would be made in the future, therefore, we cannot specifically tell Members what losses would actually be incurred at this stage.

MR FRED LI (in Cantonese): *Madam President, the Secretary has said that he does not have time to visit cyber cafes but I wonder if he has time to take a look at some small flats. Madam President, some flats have been completed for more than 15 years and there would often be four adult residents in each of these flats. Each person has 5.6 sq m of internal floor area, slightly above the 5.5 sq m level. Therefore, the residents cannot apply for transfer on the ground of overcrowding. However, they moved in a decade or so ago when they were kids but they are now adults. Now that so many flats can be converted for rental purposes, would the authorities consider the transfer of these households whose internal floor area per person is slightly above the 5.5 sq m level but are actually overcrowding households so as to improve their living environment?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, in the pretty obvious case of realistic need just cited by Mr LI, the authorities seem to have failed in thorough consideration. However, we must understand that Mr LI has just referred to the situation of some households, and there are many other cases that may be slightly different and in which the situation of the households is not that bad. If we really adopt it as a uniform standard, we have to take care of not only the type of households mentioned by Mr LI, but all households in substandard condition. If we do so, it would require more housing resources. We are not saying that

we would not do so but we have to be prudent and look carefully at the relevant resources and demand situation. I think that we should not make a decision rashly, but I am not saying that we would not consider it or make a decision in future. The waiting time for public housing is being continuously shortened and the authorities are going to build a certain number of public housing flats, therefore, after some time, the flats we have built may be sufficient to meet the relevant demand despite the fact that enormous resources would be utilized. I have just said that we need time to consider carefully when it would be more appropriate to relax the standard of overcrowding households. We are not sure if now is the right time and we still need more time to consider the matter carefully.

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

MISS EMILY LAU (in Cantonese): *Madam President, I am very pleased to hear the Secretary say that he would consider the matter because the quantity and quality of public housing supply are equally important. In the past decade, has the Government relaxed the 5.5 sq m standard, or has it not changed it for a decade?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, although I have studied hard for a few days, I still do not have the information at hand, thus, I am going to give a written reply. (Annex III) (*Laughter*)

PRESIDENT (in Cantonese): Third question.

Gambling Activities Between People in Hong Kong and Offshore Gambling Companies

3. **MR ANDREW CHENG** (in Cantonese): *Madam President, the Gambling (Amendment) Ordinance 2000 (the Amendment Ordinance), which is targeted at gambling activities between people in Hong Kong and offshore*

gambling companies, came into operation on 31 May this year. However, it has been reported that some offshore gambling companies are still accepting bets from Hong Kong through various means. In this connection, will the Government inform this Council of:

- (a) the respective numbers of offshore bookmakers, intermediaries and punters arrested by the police for involvement in the above gambling activities since the commencement of the Amendment Ordinance;*
- (b) the number of offshore gambling companies which have stopped accepting bets from Hong Kong since the commencement of the Amendment Ordinance; and*
- (c) the number of offshore gambling companies which are still accepting bets from Hong Kong, their means of accepting such bets and the measures taken by the police to combat such gambling activities?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, my reply is as follows:

- (a) Since the commencement of operation of the Amendment Ordinance, all unauthorized gambling activities conducted by way of trade or business are illegal, regardless of whether the bet is received within or outside Hong Kong. The police's enforcement actions against illegal gambling activities are targeted at bookmakers, including intermediaries and bankers. From the commencement of operation of the Amendment Ordinance until 2 July, a total of 81 persons suspected to be intermediaries and bankers were arrested by the police. The betting slips and other exhibits seized by the police have so far offered no clues as to whether these 81 people were involved in receiving outside Hong Kong bets which were placed from Hong Kong. As for punters, so far no one has been arrested for engaging in cross-boundary betting activities.
- (b) Since the commencement of operation of the Amendment Ordinance, we have noted that some offshore gambling companies that used to target Hong Kong as a market had ceased promoting

their business and providing betting-related services in Hong Kong. They have also indicated that they would not receive bets placed from Hong Kong. As we have not kept a record of the number of gambling companies that accept cross-boundary bets in the world, we do not have statistics on how many of them have stopped receiving bets placed from Hong Kong since the commencement of operation of the Amendment Ordinance.

- (c) As we have not kept a record of the number of gambling companies that accept cross-boundary bets in the world, we do not have statistics on how many of them have continued to receive bets from Hong Kong since the commencement of operation of the Amendment Ordinance.

We do not have comprehensive information on the means adopted by offshore gambling companies to receive bets. As far as we know, most of them take bets through telephone and the Internet. Dividends are transferred into the deposit or credit card accounts designated by the punters, or paid by sending cheques to the winners by mail.

The police will closely monitor the development trend of illegal cross-boundary gambling activities. Action will be taken where appropriate to suppress illegal gambling activities based on intelligence received. Furthermore, the police have maintained close liaison with the law enforcement agencies in the Mainland and other jurisdictions to exchange intelligence and join hands in combating illegal cross-boundary gambling activities. During the 2002 World Cup Finals, the police have worked closely with the law enforcement agencies in Malaysia, Singapore and the Mainland. Their concerted efforts led to the raids on 11 bookmaking centres in these three places and the seizure of betting slips totalling more than HK\$20 million.

A particular point that I would like to make is that the effectiveness of the Amendment Ordinance should not be assessed merely by the number of law enforcement actions taken. We should also take account of the overall effectiveness of the Amendment Ordinance in deterring illegal cross-boundary gambling activities and other related services, and in educating the public against involvement in

such illegal activities. In fact, apart from the fact that some offshore gambling companies have stopped receiving bets placed from Hong Kong since the commencement of operation of the Amendment Ordinance, many local banks and credit card issuing institutions have adopted proactive measures such as preventing the use of bank accounts for illegal gambling purposes and prohibiting the use of credit cards in illegal gambling activities. These measures have made the participation in such illegal gambling less convenient and the transaction cost higher, which in turn will help reduce illegal cross-boundary gambling activities. We therefore consider that the Amendment Ordinance has initially achieved the purpose of reducing and suppressing cross-boundary gambling activities.

MR ANDREW CHENG (in Cantonese): *Madam President, although it seems like Secretary Michael SUEN is an "all-rounder" today for he has answered all questions, regardless of the policy areas they fall into, but I am greatly disappointed insofar as this question is concerned. This is because we can see from the main reply that the Government has kept no relevant records, statistics and information. Bearing in mind this "nil" reply, I really doubt how the Government can possibly evaluate the effectiveness of the enforcement of the Amendment Ordinance, given that no statistics are available. Such being the case, how can the Government consider regularizing football gambling, as it has always been advocating?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I think we should accept the fact that it is impossible for us to ascertain the number of gambling institutions that accept cross-boundary bets in the world. It is not easy to know the exact number even if we browse all information available on the Internet, not to mention we have not asked our staff to do so. As far as we know, such gambling companies will generally stop providing gambling activities if it has been explicitly provided that people residing in a certain region are not allowed to take part in such gambling activities. Hong Kong was newly added to the list since the relevant law was not enacted until recently.

We are still not clear about the effectiveness of the Amendment Ordinance. However, we can refer to the experience of the United States

since such activities were outlawed in the United States a long time ago. We can clearly see that such gambling companies have made it clear in their web pages that American citizens may not place bets. I think this will happen to Hong Kong too. Even if the exact number is still unknown, it is very difficult to engage in such illegal activities on the Internet in Hong Kong as this is a generally accepted fact. In addition, as I said earlier, other institutions in Hong Kong, such as banks and credit card issuing institutions, have taken proactive measures following the enactment of the Amendment Ordinance to disallow their account holders to engage in such activities. For these reasons, such activities are subject to great limitations at the moment. A punter cannot draw dividends direct even if he wins. As I pointed out earlier, he can only do so through other inconvenient and costly means. It is therefore believed that these measures have been effective in combating such activities. Furthermore, I have also mentioned education and other measures. Through the concerted efforts of all parties, we hope to achieve results in combating illegal cross-boundary gambling. We can already see some effects initially though the Amendment Ordinance came into operation not long ago. We hope to see greater effects after some time.

MR ANDREW CHENG (in Cantonese): *Madam President, I feel that the Secretary has only outlined the crux and background of the problem. My supplementary is actually focused on what objective standards the Administration has adopted for the purpose of evaluating the effectiveness of enforcement and examining the need to regularize football gambling, a proposal frequently mentioned by the Government, since it is pointed out in the main reply that no records and information are available. Declining to state what objective standards have been adopted, the Secretary has only pointed out the relevant background and problem and then cited one or two examples.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, it will be relatively difficult for me to answer the Honourable Andrew CHENG's question if it is about the objective standards adopted for the purpose of evaluating illegal gambling activities on the Internet. This is because it is impossible for us to arrest the people involved since the activities were conducted on the Internet. However, it will be a different picture if Mr CHENG was referring to football gambling or illegal gambling activities conducted within Hong Kong. This is because the police have actually

acquired the figures on the relevant crimes. As we know what the situation was like in Hong Kong in the past, we can make a comparison. For these reasons, I think the two cases are different. The key point of the supplementary reply given by me earlier is that we all agree that it is not easy for us to acquire information on illegal gambling activities conducted on the Internet. However, we have acquired a great deal of concrete information on criminal activities conducted in Hong Kong. Should Members wish to know some of the objective standards adopted in this respect, I believe it is not difficult to provide the relevant information.

MISS CYD HO (in Cantonese): *Madam President, the Amendment Ordinance was passed just before the World Cup Finals started. The Government insisted at that time that a provision stipulating the imposition of a heavy penalty on bettors must be included. One of the arguments cited was that if there is not sufficient evidence to institute prosecution because no intermediaries have been arrested, the provision can be invoked for the purpose of arresting and prosecuting bettors. However, according to the figures available now, there is not a single bettor among the 81 arrested persons, whom are suspected to be intermediaries or bankers. Does it imply the Government has failed to arrest "bettors" and all of them have thus managed to get away with it? Or is it because the Government has not apply the law, or it had unnecessarily given itself excessive power when the Amendment Ordinance was enacted? Is it necessary for the Government to exercise more caution and refrain from behaving so "greedily" when enacting law in future?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the police have definitely tried every possible means to combat such illegal gambling activities. The persons arrested for involving in such activities happen to be intermediaries. As for those taking part in betting activities on the Internet or at their own homes, if we do not receive intelligence at the very beginning, it will be difficult for us to gather criminal evidence, and even harder to make arrests. Nevertheless, as explained before, if the Government finds it necessary to do so, it can trace the telephone numbers dialled by the suspects or their Internet records to examine if they have taken part in such activities, though it might take a longer time to do so. Nevertheless, according to the information on hand, none of the 81 persons arrested are associated with betting.

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

MISS CYD HO (in Cantonese): *Madam President, the Secretary has failed to answer my supplementary entirely. My supplementary question is: Given that no arrests have been made, was it because all the bettors have managed to escape or the Administration has failed to enforce the law? Can we thus conclude that the law enacted previously was too strict? I have originally expected the Secretary to at least tell us whether it is because not a single bettor was spotted during the arrest actions since all of the bettors had managed to escape, or the police have failed to enforce the law and arrest the bettors found on the spot. Even if the Secretary cannot provide these objective figures today, he should be able to give us a reply later.*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not have anything to add insofar as those figures are concerned. Nevertheless, I can affirm Honourable Members that the police will definitely enforce the law, and arrest bettors if they are found on the spot. However, as I pointed out earlier, all of those arrested soon after bets were placed were either intermediaries or bankers.

MR MICHAEL MAK (in Cantonese): *Madam President, after referring back to the main reply provided by the Secretary, I am still not sure whether football gambling has worsened or become more active after the commencement of the Amendment Ordinance and the staging of the World Cup matches. Given that such a large number of people took part in football gambling, and the public opinions tend to support the legalization of football gambling, what will the Secretary do to grasp the public opinions to enable the legislation to be amended one more time to permit football gambling?*

PRESIDENT (in Cantonese): Mr Michael MAK, the supplementary question you raised in connection with football gambling is not relevant to the main

question. You should perhaps reconsider how your question should be put. I will invite Mr SIN Chung-kai to raise his supplementary first.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I greatly admire the Secretary for being an "all-rounder". The police have actually indicated repeatedly in the Bills Committee that the enactment of the Bill is targetted at bankers, and bettors will not be arrested. In this connection, I hope the Secretary can clarify the following points: First, is it the Government's policy that bettors will not be arrested for the time being, or is it simply impossible for the Government to arrest bettors? Second, are bettors not targetted by the Government? At the meetings held by the Bills Committee, the police have clearly indicated and stressed repeatedly that the passage of the Amendment Ordinance is mainly targetted at bankers, including offshore bankers, rather than bettors. Furthermore, the Secretary stated that it was impossible for the Government to arrest bettors who placed bets on the Internet. However, this is not really the case. Actually, the police can arrest bettors. The problem only lies in the collection of evidence since Internet surveillance by the police will be required. However, the police undertook at that time that they would not monitor Internet activities. I therefore hope the Secretary can clarify these two points made by him in reply to the supplementary question raised by Miss Cyd HO earlier.*

PRESIDENT (in Cantonese): Secretary, I have allowed Mr SIN to raise these two supplementaries for they are related to arrest of bettors. You may wish to answer them.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I hope the Honourable SIN Chung-kai can appreciate that I am not too sure as to whether the enforcement actions are focused in nature. I will inform the Honourable Member in writing as to whether the Government's policies are focused. (Annex IV) As regards the Internet, I have already explained, when answering the supplementary question raised by Miss Cyd HO, that we do have means to collect relevant evidence. However, we do not necessarily need to resort to frequent surveillance and interception for the purpose of convicting a bettor. We can check afterwards to see if he has dialled a certain telephone number or whether he has placed bets because these will be recorded. In this respect, we can acquire valid information through lawful channels. During

this short period, we have not encountered such cases in the course of enforcement. As regards whether the absence of such cases amounts to a focused approach, I need to clarify it before giving a written reply in due course.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Nevertheless, I have to give Mr Michael MAK a chance to see if he can put his supplementary in another way.

MR MICHAEL MAK (in Cantonese): *Madam President, I believe I can. The Secretary mentioned in part (c) of the main reply that during the 2002 World Cup Finals, the police had worked closely with the law enforcement agencies in Malaysia, Singapore and the Mainland, and their concerted efforts had led to the raids on 11 bookmaking centres. In this connection, may I ask the Secretary whether the problem of offshore betting has worsened or has been ameliorated after the commencement of the Amendment Ordinance?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as far as I understand it, attention has been focused on whether the World Cup Finals will lead to an increase in illegal gambling activities. Of course, Honourable Members can see that the police have strengthened enforcement actions in this area. It has also been indicated in newspaper reports and the main reply that actions have been taken by the police in this respect. However, we do not have comparative figures on whether such actions have shown there has been an increase or decrease in cross-boundary gambling activities. I am afraid I cannot give a definite answer on this. Nonetheless, I can assure Members that actions have been taken, and these actions have been fruitful, in that we have instituted prosecutions.

PRESIDENT (in Cantonese): Fourth question.

Use of Mobile Phones Within Petrol Filling Stations

4. **MR NG LEUNG-SING** (in Cantonese): *Madam President, the question I am going to ask does not require a sophisticated answer like the kind which*

Mr Michael SUEN gave earlier in which he employed all sorts of tactics like the monkey king. I would like the Secretary for Security to answer my question.

Madam President, it was reported that, in order to reduce the chance of a gaseous explosion, the authorities in the Philippines had recently promulgated new measures banning the use of mobile phones within petrol filling stations, and requesting operators of petrol filling stations to post notices at prominent positions within their stations to ask motorists to switch off their mobile phones before entering petrol filling stations. In this connection, will the Government inform this Council whether:

- (a) it has ever heard of any incident of gaseous explosion triggered by mobile phones within petrol filling stations; if it has, of the details of the incidents;*
- (b) it has assessed the possibility of a gaseous explosion caused by the use of mobile phones; if it has, of the details of the assessment; and*
- (c) local oil companies currently implement measures to restrict or prohibit the use of mobile phones within petrol filling stations; if they do, of the details; whether it has assessed if such measures are adequate and effective, and whether it will consider issuing guidelines to oil companies or introducing legislation to ban the use of mobile phones within petrol filling stations?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) There is no record of fire or explosion caused by the use of mobile phones within petrol filling stations in Hong Kong. In 1999, local media reported that incidents of explosion possibly caused by the use of mobile phones within petrol filling stations had happened in Australia and Malaysia. Clarification was sought by the Administration with the fire services of the two countries, which confirmed that the reports were not true. According to the information obtained by the Fire Services Department (FSD) from the fire services of other countries, mobile phone manufacturers

and overseas oil companies, no such incident has ever occurred in any petrol filling stations overseas.

- (b) An inter-departmental working group comprising representatives from the FSD, the Electrical and Mechanical Services Department (EMSD) and the Office of the Telecommunications Authority (OFTA) was set up in 1999. It was tasked to examine the potential risks associated with the use of mobile phones within petrol filling stations, to find out whether or not any incidents of explosion caused by the use of mobile phones within petrol filling stations had occurred locally and overseas, and, based on the findings of the study, to advise whether it is necessary to introduce legislative measures to regulate the use of mobile phones within petrol filling stations.

The study was completed in early 2000. The working group confirmed that as the maximum power of the radio frequency emitted from mobile phones is well below the threshold power to ignite fuel vapour or liquefied petroleum gas, there is only a minimal possibility of causing fire hazards by the use of mobile phones within petrol filling stations, and concluded that it is not necessary to impose control by legislation. However, the industry should adopt good practices by displaying warning signs in conspicuous places of petrol filling stations to remind drivers and passengers not to use mobile phones while they are in the stations.

- (c) Local oil companies have already implemented the recommendation of the above study to display warning signs in conspicuous places of petrol filling stations. In addition, fire safety guidelines on the prohibition of parking within petrol filling stations, station staff's responsibilities to remind drivers to switch off engine, and so on, are distributed to petrol filling stations by the FSD to enhance the industry's awareness of fire safety. As there is only a minimal possibility of causing fire hazards by the use of mobile phones within petrol filling stations, the Administration considers that the measures taken by the industry are adequate and effective, and that there is no need to impose control by legislation.

MR NG LEUNG-SING (in Cantonese): *Madam President, part (b) of the main reply points out that the working group tasked to compile this study report was formed in 1999 and the report was completed in 2000. In other words, that was already two years ago. At that time, the report pointed out that the maximum power of the radio frequency emitted from mobile phones is well below the threshold power to ignite fuel vapour or liquefied petroleum gas. As new models of mobile phones come on to the market continuously, would the Government consider making a frequent inspection of the power of the radio frequency emitted from these new mobile phones to ascertain if they meet the safety standards? And with regard to new mobile phones marketed at any particular period of time, has the power of these mobile phones exceeded the safety standards? How will the Government handle and solve the problems promptly?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I am grateful to the Honourable NG Leung-sing for raising this supplementary question. Experts from the FSD are of the view that in order for a gaseous explosion to be triggered, the site must have been filled with a sufficient amount of combustible gases and that there must be a sufficient amount of energy to ignite these gases. In order to prevent such a situation from occurring, when granting approval to petrol filling stations, the FSD will issue safety specifications for compliance by the applicants. Such include those on mandatory safety measures to prevent the leakage of fuels, the accumulation of fuel gases, energy within the precincts of the station from reaching dangerous levels, and prohibition of smoking and the use of naked fire. According to the findings of this inter-departmental working group, once a mobile phone is turned on, radio frequency is indeed received and emitted, but the maximum power emitted is far below the threshold power needed to ignite fuel gases.

Of course, we are also aware that, as Mr NG Leung-sing has mentioned, it appears the Philippines has adopted legislative measures on this. We have enquired with the Philippines authorities, including the fire service there and the Philippines Consulate in Hong Kong. The information we have obtained shows that the Philippines has not enacted any national law on this. It is only sometime earlier this year that in the Makati district in the city of Manila, a district which I think Honourable Members are very familiar with, the City Council passed a piece of legislation on this. As to what information on which this piece of legislation is based to make the authorities there feel convinced that the radio frequency emitted from a mobile phone after it is turned on is dangerous, that we do not know. Our FSD has also got information that the

United Kingdom may prohibit the use of mobile phones in petrol filling stations. We are checking this out with the United Kingdom authorities. We will revisit this issue once we have further information on that. We will examine if some of the new mobile phones will emit greater radio frequencies and hence increase the risk of triggering an explosion. In other words, we are keeping the matter under constant review.

MR BERNARD CHAN (in Cantonese): *Madam President, as a matter of fact, the Secretary has already answered half of the supplementary question I am about to ask. Are there similar measures in place in other countries or places regulating the use of mobile phones in the precincts of petrol filling stations? The Secretary has mentioned the example of the United Kingdom, but apart from the United Kingdom and Makati, are there any special measures in place in other cities with a greater density of population than Hong Kong, such as New York?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we have enquired with many countries, including Australia, Malaysia, the United Kingdom, Belgium, Finland, Singapore, Canada, the United States, Japan, and so on. But to date, apart from the Makati City Council in Manila, there is no clear information showing that any place has passed any relevant legislation. As to whether legislation will be passed in the United Kingdom, we are still looking into this. Countries like Australia, Canada, the United States and Japan do not have any particular laws or standards regulating such activities for the time being, as they think that there is no need for control.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, part (b) of the main reply points out that a working group comprising representatives from the FSD, the EMSD and the OFTA was set up in 1999, and it was tasked to examine the potential risks associated with the use of mobile phones within petrol filling stations. Would the Government inform this Council whether the study also included the effect of the use of mobile phones on human health? Madam President, I do not know if such a supplementary question can be raised.*

PRESIDENT (in Cantonese): Mr LAU, your supplementary question has deviated from the theme of the question. *(Laughter)*

MR LAU PING-CHEUNG (in Cantonese): *Madam President, you think that this supplementary question has deviated from the theme of the question. (Laughter) In fact, this supplementary question is related to two aspects, one is mobile phones and the other petrol filling stations. I would like to raise a question on mobile phones.*

PRESIDENT (in Cantonese): Mr LAU, the main question is about explosions caused by the use of mobile phones. *(Laughter)*

MR LAU PING-CHEUNG (in Cantonese): *Madam President, then I will withdraw my supplementary question. (Laughter)*

PRESIDENT (in Cantonese): I am sorry, Mr LAU.

MR MICHAEL MAK (in Cantonese): *Madam President, I hope my supplementary will not deviate from the theme of the main question. The Secretary pointed out that since there is only minimal possibility of causing fire hazards by the use of mobile phones within petrol filling stations, so it is not necessary to impose control by legislation. However, I notice that there are many warnings posted in petrol filling stations requesting people not to use mobile phones there. With respect to this, the users and the petrol filling staff are at a loss as to whether they should heed these warnings or not. And I often see people using mobile phones in petrol filling stations. In such circumstances, what can be done to put the users and the staff at ease? Besides, are there any cases in which conflicts with respect to compliance with these warnings have happened?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, about the question why on the one hand the Government does not think there is any need to prohibit the use of mobile phones in petrol filling stations, but on the other the stations have posted warnings to request people not to use mobile phones there, the reason is that we are aware of some manufacturers of mobile phones have stated in the manuals of their products that users are advised not to use mobile phones in petrol filling stations or places where there are potential

hazards in the air. I think that is a kind of precautionary measure proposed by the manufacturers, and that will help reduce their product liability, that is, the risk of these manufacturers being sued as a result of their products. And so a code of practice is formulated. But that does not imply that the manufacturers are convinced that the use of mobile phones in petrol filling stations will cause explosions. Our conclusion is, since the manufacturers have placed such instructions in their manual, we have required petrol filling stations to put up warnings in the precincts of the stations. Having said that, we do not think that the risks are so high as to warrant legislation.

MR NG LEUNG-SING (in Cantonese): *Madam President, the Government seems to think that the measures taken by the trade are adequate and effective, but as the Honourable Michael MAK has pointed out, we often see people using mobile phones non-stop in petrol filling stations. Would it be true to say that the Government thinks that putting up warnings is already effective enough, not withstanding the possibility that people still use mobile phones after seeing these warnings? Does the Government think that a proper assessment should be made to see if there is no need to impose regulation on petrol filling stations which have already put up warnings? Would the Government suggest at some appropriate point in time that there is no need to put up warnings in petrol filling stations any more so that in a way the public will know that advice has been given and that is considered adequate, so some resources can be saved on the part of the Government?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the posting of warnings in petrol filling stations does not involve any use of government resources. The reason we require petrol filling stations to do so is due to our respect for the advice given by the manufacturers. As to whether there is any need to impose control by legislation on the use of mobile phones in petrol filling stations, I would say that the most important point is, as Mr NG Leung-sing said in his supplementary question in the beginning, that we should examine if the new mobile phones will emit greater power of radio frequency, hence increasing the risks. These new mobile phones include those which have all kinds of functions like access to the Internet, converting into small television sets or PDAs, and so on. I think more information should be collected in the technical context. If it is found that the great changes in the

functions of mobile phones have posed greater risks, then the Government will consider legislation.

PRESIDENT (in Cantonese): Fifth question.

Container Pre-screening Measure

5. **MS MIRIAM LAU** (in Cantonese): *Madam President, the Government of the United States of America announced the Container Security Initiative (CSI) in February this year to prevent terrorists from smuggling illegal items, including explosives and nuclear weapons, into the United States by using containers. The measures under the CSI include the stationing of custom officers in various ports worldwide to pre-screen containers before they are shipped to the United States. In this connection, will the Government inform this Council:*

- (a) *of the details of the container pre-screening measure, and the latest development of the discussion between the Administration and the United States Government in this regard;*
- (b) *whether it has assessed the impact of the container pre-screening measure on Hong Kong's logistics industry and, in particular, the efficiency and costs of port operation; if it has, of the outcome of the assessment; and*
- (c) *whether it will widely consult consignors and other affected parties in Hong Kong and assist them in meeting the requirement of the container pre-screening measure; if so, of the consultation timetable and details of the assistance that the Administration will provide; if not, the reasons for that?*

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

- (a) Since the September 11 incident, the Government of the Hong Kong Special Administrative Region (SAR) has taken various steps

to demonstrate its commitment to the global efforts to fight against terrorism. The concern of the United States about the potential risk of terrorists making use of the United States-bound containers to make attacks is understandable.

As a counter-measure to the potential risk mentioned above, the United States Customs proposed the CSI in January 2002 and issued in February a fact sheet conceptually outlining the four core elements of the CSI as: (1) establishing security criteria to identify high-risk containers; (2) identifying high-risk containers; (3) using technology to quickly scan high-risk containers; and (4) developing and using smart and secure containers. In short, the United States Government hopes that the United States-bound containers would be pre-screened at the ports of origin so as to ensure the security of United States ports and homeland. The United States Government also considers the CSI useful in minimizing the possibility that the global container traffic would be disrupted by terrorist attacks. The United States Government however has not provided details of the CSI until recently.

In late April this year, the United States Government, through the United States Consulate General in Hong Kong, approached the SAR Government to initiate a dialogue on the CSI. In early June, the acting Assistant Commissioner of the United States Customs, Mr Donald SHRUHAN, led a delegation to visit Hong Kong and provided us with more details of the CSI, including information on the pilot runs of the CSI carried out by the United States and Canadian Customs at a number of Canadian ports. Because of time constraint and the fact that it was until then that Hong Kong was given more details of the CSI, the two sides only had a preliminary exchange on the possible implementation of a CSI pilot run in Hong Kong. The two sides however agreed to find ways to strengthen information sharing. At the invitation of the United States delegation, in late June the SAR Government sent an inter-departmental delegation to visit the ports of Newark, Montreal and Vancouver, where pilot runs of the CSI were being carried out by the United States and Canadian Customs.

Following the discussion with the United States and the visit to a few CSI pilot ports in June, we now have a better understanding of the mode of operation of the CSI. Under the CSI, the customs authority of the participating port will obtain cargo information of the United States-bound ocean-going containers prior to the departure of the containers from the port. The United States Customs and the customs authority of the participating port will then conduct risk assessment to identify containers that carry a high risk of being exploited for terrorist attacks. Containers identified as high-risk will be scanned with high-technology equipment such as mobile X-ray scanning machine, and if necessary, they will be unloaded and subjected to detailed examination. Under normal circumstances, containers that have been classified as low-risk or have been examined will not be examined again by the United States Customs when entering the United States. In short, the container pre-screening measures under the CSI take place at three levels: (1) scrutinizing of United States-bound cargo information to identify high-risk containers; (2) quickly scanning the identified high-risk containers using inspection equipment; and (3) detailed examination of the high-risk containers where necessary.

The SAR Government supports the goal of the CSI, that is, to enhance the security of ocean-going containers. In considering whether or how Hong Kong should participate in the CSI, it is important to balance container security against a host of factors, such as the impact on trade, practicability, impact on the efficiency and competitiveness of Hong Kong's container port, as well as the response of other major ports to the CSI. I wish to point out that if Hong Kong eventually decides to participate in the CSI, the United States Customs officers to be stationed in Hong Kong will not have any inspection or enforcement powers. All inspections will be done by the Hong Kong Customs in accordance with Hong Kong law. Hong Kong's jurisdiction will not be affected.

In the light of the information recently obtained, the Commerce, Industry and Technology Bureau, together with other relevant departments, are carefully studying the possible mode of operation, feasibility and impact of implementing a CSI pilot run in Hong

Kong. The Government will widely consult the industry, and will continue to actively discuss the matter with the United States Government.

- (b) The extent to which the implementation of the CSI will affect the logistics industry and the operation of the container port in Hong Kong depends mainly on the mode of operation and details that would ultimately be agreed between Hong Kong and the United States. At present, we can only roughly assess the possible impact on the basis of the mode of operation suggested by the United States.

According to the pre-screening mechanism proposed by the United States Government, the Hong Kong Customs and the United States Customs will conduct risk assessment and inspections on the basis of advance information on United States-bound cargoes prior to the departure of the containers from Hong Kong. Currently, carriers however are allowed to submit cargo manifests to the Hong Kong Customs within seven days after the cargoes have been exported. Shipping liners usually only request the freight forwarders or shippers to provide cargo information for the preparation of the manifest after the vessel concerned has departed. As such, the implementation of the CSI and any requirement on advance submission of cargo information/manifests will, to a certain extent, affect the long-standing mode of operation of the shippers, freight forwarders and shipping liners. To be able to submit advance cargo information, those companies may also need to upgrade their information systems.

Besides, cargoes which have not been assessed due to the unavailability of advance cargo information may be subject to inspection upon arrival at the United States port; this might cause delays in delivery to the consignees. Depending on the number of containers that are identified as high risk and that have to be inspected, the operations of the shipping liners and the container port in Hong Kong might be affected.

- (c) In considering whether or how Hong Kong should participate in the CSI, the SAR Government will widely consult the industry,

including shippers, freight forwarders, shipping liners, as well as container port operators. The Hong Kong Customs has already made preliminary contact with some organizations with a view to studying whether it is feasible for the industry to provide cargo information prior to the departure of the containers from Hong Kong. We will be meeting shortly with representatives of the relevant industrial associations to seek their views. We hope to be able to make a decision on whether Hong Kong should participate in the CSI and if so, in what practicable way.

MS MIRIAM LAU (in Cantonese): *Madam President, to work out an effective mode of operation that can best suit the situations in Hong Kong to implement the CSI proposed by the United States, it is necessary that the Government solicits opinions extensively from the industry and negotiates with the United States Government. However, all such work takes time. Could the Secretary inform this Council what methods does the Government have to persuade the United States Government to not deliberately create difficulties for the United States-bound containers from Hong Kong, in the meantime when negotiations are underway before a final decision is made?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I thank the Honourable Miriam LAU for her supplementary question. So far we have not received any complaints or information indicating that the United States would deliberately create difficulties for the United States-bound containers from Hong Kong in the interim. The United States Government have made it clear several times that the objective of the CSI is to safeguard their port safety, and that they sincerely hoped to discuss the matter with us actively. Hence, during the interim when we are negotiating with the United States Government, we will ensure that they will not deliberately create difficulties for the United States-bound containers from Hong Kong.

MS MIRIAM LAU (in Cantonese): *Madam President, my supplementary was asking what methods the Government had, but it seems that the Secretary has not answered whether or not the Government has any methods. He only said he would ensure that the United States Government would not deliberately create difficulties, without mentioning the methods to be adopted.*

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the containers have to undergo customs clearance in the United States and this is beyond the control of Hong Kong. If we participate in the proposed CSI, our containers will not be examined again by the United States Customs on entering the United States. If we do not participate in the CSI, the United States cannot assure that the containers will not be singled out for further examination when they enter the United States, and the examination to be conducted then may be second level, which involves the use of X-ray scanning machines, or third level, which means that the containers will be unloaded and subjected to detailed examination. For this reason, we hope to waste no time in expeditiously negotiating with the United States Government to let them know how the sincerity of the Hong Kong Government in negotiating with them, so that they will not deliberately create difficulties for us.

MR LAU WONG-FAT (in Cantonese): *Madam President, could the Secretary inform this Council how much additional cost Hong Kong would incur if we should comply with the CSI proposed by the United States? Will the Hong Kong Government request the United States Government to reimburse to us the relevant additional expenses?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have no way to assess the amount of additional expenses involved before we are provided with the detailed information on the implementation of the CSI. However, I believe chances are slim that the United States Government will agree to subsidize the additional expenses incurred. Hence, we will fully consult the industry during our negotiation process with the United States Government and before any agreement is reached in this respect, with a view to enabling the both sides to come up with a more accurate estimation of the additional expenses required.

MR KENNETH TING (in Cantonese): *Madam President, if the industry should hold a dissenting view on the agreement drafted by the Hong Kong*

Government and the United States Government, would the Hong Kong Government give up signing the agreement with the United States until the industry has reached a consensus regarding this new initiative?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we hope to waste no time in negotiating with the United States Government rather than procrastinating because it was out of legitimate concern that the United States had proposed this new initiative in the wake of the September 11 incident. The concern of the United States in this regard is understandable. Besides, since some 1.7 million-odd containers are shipped from Hong Kong to the United States annually, it is just possible that some weapons of massive destruction may be shipped to the United States in batches this way. That is why we hope to try our best to actively negotiate with the United States and gain a better understanding of the mode of operation before deciding on whether or not to participate in the CSI and, if so, the manner in which we should participate.

At present, only four ports across the world have signed a memorandum of understanding and undertaken to discuss the matter. These four ports, namely, Singapore, Belgium, France and Netherlands, have signed a declaration — not really a memorandum of understanding, but not significantly different either (*laughter*) — indicating that they agree to negotiate further with the United States Government the details and particulars of the implementation of a pilot CSI. However, so far an implementation timetable has yet to be formulated.

MR HUI CHEUNG-CHING (in Cantonese): *Madam President, according to part (a) of the Secretary's main reply, the United States Customs officers to be stationed in Hong Kong will not have any inspection or enforcement powers. In this connection, may I ask the Secretary whether these officers have a list of container services companies the containers of which must be examined?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I thank the Honourable HUI Cheung-ching for his supplementary question. We have already sent an inter-departmental delegation to visit a number of ports in North America towards the end of June. The proposal put forward by the United States at present is not necessarily

based on the information of the consignors. To begin with, the identification process will be conducted 100% on basis of information in the relevant documents. The United States Customs will identify the containers for pre-screening on basis of information on the consignors, cargo descriptions or other reasons, or even intelligence gathered. If necessary, second level screening will be conducted to scan the containers with X-ray scanning machine. And if the relevant container is suspected of containing suspicious cargoes, the screening process will be raised to the third level, which means that the container will be unloaded and subjected to detailed examination. After the said inspection visit, we have come to the view that the proposal currently put forward to Hong Kong by the United States Government is basically a similar mode.

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

MR AMBROSE LAU (in Cantonese): *Madam President, part (b) of the main question raised by Ms Miriam LAU was on whether or not the Government had assessed the impact of the container pre-screening measure on Hong Kong's logistics industry and the outcome of the assessment. In this connection, the Secretary mentioned in the main reply that at present, the Government could only initially and roughly assess the possible impact on basis of the mode of operation suggested by the United States. From this we can see that the Government has indeed assessed the impact, only that the Secretary has not informed this Council of the outcome of the assessment. May I ask the Secretary to supplement some information on that?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, since we have only obtained some very crude information, we can only make some rather rough assessment. As indicated in the information obtained by the inter-departmental delegation during their visit to North America, consignors must submit cargo manifests prior to the departure of the containers from the port. This requirement is different from the existing mode of operation of our shippers. Currently, if the Hong Kong Customs has not made any specific requests, consignors are allowed to submit cargo manifests within seven days after the cargoes have been exported. As such, this requirement of advance submission of cargo manifests will, to a certain extent, affect our existing mode of operation. Nevertheless, since we

have no idea how Hong Kong will be affected by the risk assessment, we cannot assess at this stage the extent of impact the pre-screening measure may have on Hong Kong's logistics industry.

PRESIDENT (in Cantonese): Last question seeking an oral reply.

Granting Tax Relief for Divorced Persons Paying Maintenance to Ex-spouses

6. **MISS MARGARET NG** (in Cantonese): *Madam President, in May 2002, the Court of Appeal of the High Court ruled that although an appellant was paying monthly maintenance to his ex-wife under a court order, he was nonetheless not entitled to the Married Person's Allowance (MPA) because "ex-wife" does not fall within the definition of a "spouse" in the Inland Revenue Ordinance. However, in giving the ruling, the Court commented that "the position under the legislation as it stands seems unfair and inequitable". In this connection, will the Government inform this Council whether, in the light of the Court's comment, it will consider amending the Ordinance to permit a divorced taxpayer paying his or her ex-spouse maintenance pursuant to a court order to claim the MPA or to provide other tax relief, such as the introduction of a tax allowance for maintenance payments; if it will not, why not?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I wish to thank the Member for her question, as it gives the Government the opportunity to explain its policy on tax relief for maintenance payments.

- (a) It has been our taxation policy to provide tax relief for taxpayers on payments made contributing to the maintenance or support of a relative. "Relative" means a person who has a relationship with the taxpayer established either by blood or by law. Examples include spouse, child, parent, grandparent, brother and sister, and so on.

"Spouse" is defined as a husband or wife. Where the husband and wife are living apart and the divorce has not yet become absolute, a

taxpayer may still claim the MPA for contributions to the maintenance or support of his or her estranged spouse.

Although a taxpayer may not claim the MPA when a divorce has become absolute, the alimony payments received by a former spouse are exempt from tax. Also, the taxpayer may continue to claim the Child Allowance for payments made contributing to the maintenance or support of his or her children after divorce.

- (b) Referring to the United Kingdom's tax legislation, the Court of Appeal in its judgement on a recent case pointed out that some overseas tax jurisdictions do provide tax relief on maintenance payments and remarked that it seemed to be unfair and inequitable not to allow divorcees in Hong Kong to claim tax allowance for maintenance payments made to former spouses. However, I wish to point out that in April 2000, the Government of the United Kingdom has changed this system of providing tax relief on maintenance payments. It abolished the tax relief for divorcees, except for a small number of old-aged taxpayers, while retaining the tax exemption for maintenance payments received by former spouses. This is exactly the system being practised in Hong Kong and indeed in other overseas jurisdictions such as Australia and New Zealand.
- (c) I understand that there are cases in which the divorcees have not made maintenance payments in accordance with court order or have delayed making such payments. But I wish to point out that a tax allowance is unlikely to be an effective solution to such problems. Divorcees may fail to make maintenance payments as required by court order for various reasons, such as financial problem, being out of employment, or a bitter relationship with their former spouse. We think that introducing a tax allowance will hardly help in such situations.

Those who are not required by the Court to make maintenance payments would probably still not pay even if there is a tax allowance for these, as the benefits from a tax allowance are certainly less than the payment itself. Also, people who pay no

tax and taxpayers who are already paying at the standard tax rate will derive no benefit from such a tax allowance.

- (d) Also, such a tax allowance would involve many operational problems. It is administratively cumbersome to prevent double benefits due to tax exemption for maintenance payments received by the former spouse and to verify that a person has actually made alimony payments to his or her former spouse. This would be difficult to implement effectively and prone to abuse.
- (e) As a responsible Government, we encourage people to fulfil their obligations to their ex-spouses. However, we do not consider it appropriate or the most effective means to achieve this goal through tax incentives.

MISS MARGARET NG (in Cantonese): *Madam President, I think the Secretary's reply is totally irrelevant. My question actually asked whether this is unfair, and why this is unfair. In part (a) of the main reply, the Secretary only stated the existing definition in law. A married person can claim an allowance for his spouse; and although he is divorced, we must bear in mind that he is required by a court order to pay his ex-wife alimony. Can the Secretary explain to us why he cannot claim an allowance for such payments? Is this coincidental, or does the Secretary consider this inequitable? If the Secretary does not see any inequity in it, can he give us an explanation? If there is inequity, will the Secretary look into whether such stipulations in the existing law are wrong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for her question. In part (a) of the main reply, I already mentioned that under the definition in law, taxpayers may be given tax relief for payments made in contribution to the maintenance or support of a relative. But after a person is divorced, he will no longer enjoy this tax relief. Yet, I wish to reiterate that even if a taxpayer is divorced, he can still claim an allowance for payments made in contribution to the maintenance or support of his children, and the alimony payments received by his former spouse is also exempt from tax. If tax reduction is

allowed for one party on such payments or income, and the other party is also exempted from tax, is it not tantamount to double benefits?

MR MARTIN LEE (in Cantonese): *Madam President, does the Secretary mean that the Government actually discourages divorces and therefore adopts this measure? (Laughter)*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *Madam President, I thank the Member for his question. Being the Government, we certainly hope that the community fares well and that each and every citizen has a happy family. However, I do not think that the Inland Revenue Ordinance was enacted for this purpose. If it is because of this tax rule that people do not divorce, I think the Hong Kong Government will be very happy.*

MR ALBERT CHAN (in Cantonese): *Madam President, first of all, I thank the Secretary and the other two Secretaries for treating Members to cakes and coconut tarts today. Having said that, Madam President, my supplementary question will still be a sharp one.*

Madam President, in part (c) of the main reply, the Secretary mentioned that those people who are not required by the Court to make maintenance payments would probably still not pay even if there is a tax allowance for such payments. I believe people who are well-versed in and knowledgeable about this issue are aware of this point, and will not be convinced that the provision of this tax allowance would encourage divorcees to pay alimony. The Secretary, in giving such a reply, is virtually giving no reply at all. Earlier on, the Honourable Margaret NG also mentioned in her supplementary question that the thrust of the question is the existence of inequity. In some cases, even though the Court has ruled that one party must pay alimony, the amount of maintenance payments may not necessarily be enough to cover all the living expenses of the children and therefore, the tax allowance pertaining to the children may not be claimed by the party paying the alimony and so, the payer cannot benefit from the Child Allowance. In that case, while he is made to pay alimony, he cannot enjoy the Child Allowance, and this is unfair to the maintenance payer and may give rise to many disputes. In view of such

inequity, will the Government consider reviewing the taxation arrangements, in order to do justice to the maintenance payers?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. First of all, if the maintenance payments are ordered by the Court, I believe the Judge should have given consideration to various aspects, and he should be aware of the situation before making a decision. So, I think we must respect the decision of the Court. However, it is certainly most desirable that people do not divorce, as suggested by Mr LEE earlier on.

MR ALBERT CHAN (in Cantonese): *Madam President, the Secretary has not answered my supplementary question at all. I brought to his attention the problem in reality. If the Secretary does not understand it, he can go back to further look into it. Indeed, an unfair scenario has now arisen. Madam President, please allow me to further explain it to the Secretary. The Secretary may not have frequently come across problems relating to divorce.*

The situation is very simple. Some people are required to pay alimony pursuant to a court order, but they cannot benefit from any tax allowance. They have to shoulder the responsibility but very often, they cannot even claim the Child Allowance. They have, to a certain extent, taken the responsibility and made the payments, but are given utterly unfair treatment in, among other things, taxation. Will the Secretary consider this problem, review whether this arrangement has created gross inequity, and make reasonable taxation arrangements to rectify this inequitable situation?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. My view is that if the Government really allows divorcees to enjoy all tax allowances, then it would be unfair to those who are married with a happy family from another point of view.

MR ALBERT HO (in Cantonese): *Madam President, I have read carefully the main question and the main reply, and listened to the supplementary question*

asked by Miss Margaret NG and the Secretary's reply to it earlier. I cannot see why the Government would think that maintenance payers should not be entitled to a tax allowance. Earlier on, the Secretary seemed to be suggesting that this would contravene the existing law and so it would be unfair and would constitute double benefits. If it is all because of possible violation of the law that such situation is resulted, then making amendments to the law may rationalize the situation. Madam President, the Secretary mentioned in part (d) of the main reply cumbersome administrative procedures. But how would this be more cumbersome than dealing with expenses related to the computation of profits tax?

PRESIDENT (in Cantonese): Mr HO, I know that you have very strong feelings about this. But please state your supplementary question directly. *(Laughter)*

MR ALBERT HO (in Cantonese): *Yes, Madam President. (Laughter) I do not have particularly strong feelings about this, but I know that some people do have very strong feelings about this.*

Can the Secretary further explain why it is inappropriate and why it is administratively impossible to do so? Indeed, profits tax is very complicated; and since we can still make it despite the many deductions involved and the many expenses involved, why can we not make it for maintenance payments? Why can we not make amendments to the law?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. I am sorry that I lack experience in this regard.

As I have just said, we must define in law the person being referred to as spouse. It is provided in law that spouse means the person with whom a person is married; and when a divorce has become absolute, a spousal relationship will no longer exist. Although the spousal relationship no longer exists after divorce, the divorcees are required to take care of their children and so, the divorcees can enjoy a tax allowance if they have children. We also have to take care of the divorced spouses. For instance, if the man has to pay

his ex-wife alimony, then the alimony received by the woman will be exempt from tax. From the angle of taxation, this is a fair arrangement which involves no question of double benefits. Administratively speaking, if, for instance, a divorced taxpayer who has not paid any alimony to his divorced spouse colluded with his former spouse, because they have a good relationship, and filled in the tax return that he had paid maintenance in a bid to claim an allowance by deception, it would be impossible for the Government to verify the case and the Government would eventually suffer loss in tax revenue. Therefore, many problems would be involved administratively, and it also involves the definition in law. As I have said earlier, many other jurisdictions elsewhere in the world adopt the same system as ours in Hong Kong. Hong Kong has not departed from the relevant legislation in the United Kingdom, Australia and New Zealand. In this connection, our statutes are similar to theirs.

MS AUDREY EU (in Cantonese): *Madam President, I wish to ask the Secretary a question on double benefits, the problem mentioned by the Secretary in part (d) of his main reply. Indeed, if, in a marriage, only the husband has worked, the husband will enjoy a tax allowance and the wife obviously cannot consider the money given to her by her husband as an income and so, there is naturally no tax deduction for that. This is an obvious fact. If the couple divorced, the husband would be required to pay his wife alimony pursuant to a court order. The wife would not be given tax deductions for the alimony received, just as the case when she was married. But since the husband has to pay alimony to his ex-wife after divorce, why can he not enjoy a tax allowance for such payments? Why did the Secretary say in his explanation that it will constitute double benefits if the maintenance payer is given a tax allowance? If we compare this with the situation when the marriage was still effective, since the wife did not have to pay tax for the money she received from her husband, then why would it constitute double benefits?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for her question. This is because the taxpayer concerned is no longer a married person; but insofar as taxation is concerned, the alimony from her ex-spouse is considered an income. Yet, we have not imposed any tax on this income, for the receiver is provided

with tax relief for such income. But if we further exempt the other party from tax on such payments, then the situation would be that this amount of income will be totally untaxed.

PRESIDENT (in Cantonese): Secretary, have you finished answering the question? *(Laughter)*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Thank you, Madam President.

PRESIDENT (in Cantonese): We have spent over 17 minutes on this question. But since there are still many Members waiting to ask their questions, I will allow one last supplementary question from Members.

Miss Margaret NG, if I do not let you ask your question, I believe you will feel very uncomfortable tonight. *(Laughter)* Miss NG, you may ask your question now.

MISS MARGARET NG (in Cantonese): *Madam President, maybe I shall follow up this issue in the Panel in future. However, since the Secretary had stressed the need to respect the judgement of the Court, may I ask whether the Secretary has made reference to the judgement of the Court of Appeal? The Court of Appeal stated that there was inequity in the existing law. The Secretary needs not tell us time and again the relevant legislation, because the Court has already examined the relevant legislation. Under the existing legislation, it is impossible for the Court not to make this judgement, but the Court also considered the situation unfair. Does the Secretary think that the Court is sensible or otherwise? If the Secretary thinks otherwise, can he explain why he would think so?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank Miss NG for her question. First of all,

I must say that I definitely do not have the nerve to say that the Court is senseless, because the Court works independently. I must also admit that I do not have the time to read the relevant case. But if I have not interpreted it wrongly, the Court had said that there might be inequity and pointed out that there is such legislation in other jurisdictions overseas. As I have explained earlier on, in April 2000, the United Kingdom already amended this legislation. I dare not comment on whether the Court was fair, because the Court is the Court. On the question of whether this is fair, I think we must look at it from many angles. For instance, whether a glass of water is considered half full or half empty depends on the perspective. So, in this regard, all I can say is that from the taxation point of view, I think the existing system in Hong Kong is entirely fair and reasonable.

PRESIDENT (in Cantonese): Question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Statistics Concerning Certificate of Absence of Marriage Record

7. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the Certificate of Absence of Marriage Record issued by the Immigration Department, will the Government inform this Council:*

- (a) *of the number of applications for the Certificate received and the number of Certificates issued in each of the past three years;*
- (b) *whether it has compiled statistics on the sex and age distribution of the applicants in the past three years; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has analysed the trends in the number of applications for the Certificate and in the demographic characteristics of the applicants over the years; if it has, of the outcome, and whether it has, in formulating various social policies, made reference to the*

outcome of the analysis; if it has not made such an analysis, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) The number of applications for the Certificate of Absence of Marriage Record received and the number of Certificates issued by the Immigration Department between 1999 and 2001 are set out in Table I. About 80% of the Certificates issued are for the purpose of marriage application outside Hong Kong.
- (b) The Census and Statistics Department compiles on a regular basis statistical analyses on the applicants issued with the Certificate for the purpose of marriage application outside Hong Kong. These analyses are conducive to the study of the trend of Hong Kong people getting married outside Hong Kong, particularly in the Mainland. Table II sets out the number of applicants issued with the Certificate for the purpose of marriage application outside Hong Kong between 1999 and 2001 by age group and sex.
- (c) In each of the past three years, approximately 15 000 to 16 000 applicants were issued with the Certificate for the purpose of marriage application outside Hong Kong. There have not been any significant changes to the demographic characteristics of the successful applicants over the past three years. Of the successful applicants, about 90% intended to get married in the Mainland. Over 80% were male applicants and about 60% were aged between 25 and 39.

The Administration will take into account the analyses in formulating social policies. For instance, the Housing Department and the Social Welfare Department take account of the statistics and analyses provided by the Census and Statistics Department when they devise new housing supply programmes and social welfare measures.

Table I

Number of Applications for the Certificate of Absence of Marriage Record and
Number of Certificates Issued
(1999-2001)

<i>Year</i>	<i>Number of Applications</i>	<i>Number of Certificates Issued</i>		<i>Total</i>
		<i>For Marriage Application Outside Hong Kong</i>	<i>Other Purposes*</i>	
1999	28 724	16 836	4 967	21 803
2000	27 155	15 840	4 062	19 902
2001	27 528	15 578	4 435	20 013

* Such as for adopting children and applying for public housing.

Table II

Number of Applicants Issued with the Certificate of Absence of Marriage
Record for Marriage Application outside Hong Kong by Age Group and Sex
(1999-2001)

<i>Age Group</i>	<i>1999</i>			<i>2000</i>			<i>2001</i>		
	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
15-34	7 003	1 016	8 019	6 765	1 034	7 799	6 328	1 350	7 678
35-64	7 350	431	7 781	6 791	418	7 209	6 456	568	7 024
65+	958	78	1 036	783	49	832	812	64	876
Total	15 311	1 525	16 836	14 339	1 501	15 840	13 596	1 982	15 578

Information on Government Properties

8. **MR ALBERT HO** (in Chinese): *Madam President, regarding government properties, will the Government inform this Council of:*

- (a) *the amount and percentage of rental income derived from each category of government properties (including commercial premises, canteens, advertisement spaces, car-parks and automatic teller machines) for this fiscal year, and, based on the latest estimation, the aggregate market values of each category of properties;*
- (b) *the respective percentages of government-constructed and purchased properties in the total number of office buildings currently owned by the Government; the total amount of public money spent on the purchase of properties in each of the past three fiscal years, together with a list of information on those properties costing over \$10 million, including the purchase dates and prices, locations and present uses;*
- (c) *the criteria adopted for purchase-or-lease decisions; and*
- (d) *the information on those non-governmental organizations currently leasing government properties on concessionary terms, including the names of the organizations, districts in which the properties are located, brief accounts of the concessionary terms, and the rents currently paid by these organizations as percentages of the market rentals?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, the information requested is as follows:

- (a) The estimated rental income in 2002-03 from different categories of government properties, in dollars and in percentages, is set out below:

<i>Category</i>	<i>Estimated Rental Income 02-03</i>	
	<i>\$ Million</i>	<i>Percentage</i>
Automatic teller machines	2	0.1
Car parking spaces	38	2.3
Advertisement spaces	47	2.8
Restaurants, canteens and catering kiosks	79	4.7
Commercial premises	187	11.2
Offices	255	15.3
Market stalls	365	21.8
Government quarters	669	40.1
Miscellaneous	29	1.7
Total:	1,671	100

Most of them are located on "Government, Institution and Community" sites. We have not conducted an assessment and do not have the aggregate market value of the properties as requested.

- (b) Approximately 91% of government-owned offices under the purview of the Government Property Agency were constructed by the Government and the remaining 9% were purchased from the private sector.

Over the last three financial years from 1999-2000 to 2001-02, the Government Property Agency purchased two properties for government office accommodation. Details of these transactions and the present use of the properties are as follows:

- (i) Location : Rue D'Arlon 118, B1-1040 Brussels
Date of purchase : 31 March 2000
Price : Belgian Franc 85 million (approximately HK\$15.6 million)
Present use : Hong Kong Economic and Trade Office in Brussels
- (ii) Location : 26/F (part), Wu Chung House, Wan Chai
Date of purchase : 29 May 2001
Price : HK\$35.5 million
Present use : Office of the Telecommunications Authority

- (c) In general, the Government takes into account departmental operational requirements, economy, cost-effectiveness of provision and, as appropriate, security of tenure in deciding whether to purchase or to lease its office accommodation.
- (d) A list of non-government organizations currently leasing government properties at concessionary rent from the Government Property Agency and the Lands Department is at Annex A. It may be noted that all these tenancies are granted at nominal rent of \$1 per annum and it is not appropriate to compare them to market rents.

Other government departments may also allow non-government organizations to use their premises on concessionary terms in furtherance of the Government's policy objectives. For example, the Leisure and Cultural Services Department leases some of its premises to local sports associations. In continuation of the policy established by the former Urban Council, these premises are let at 25% of market rent. A list of these tenancies is at Annex B.

Annex A

List of non-government organizations leasing government property
at nominal rent from the Government Property Agency
and the Lands Department

Central and Western District

Alcoholics Anonymous & the AAFG
C&W District Association
Caritas - Hong Kong
Chinese Anglican Church in Hong Kong
Chung Ying Theatre Company
Church Body of the Hong Kong Sheng Kung Hui
Evangelical Lutheran Church Social Service - Hong Kong
Helping Hand Limited
Hong Kong Cancer Fund Friends of the EORTC
Hong Kong Catholic Marriage Advisory Council
Hong Kong Design Centre Limited
Hong Kong Family Welfare Society

Hong Kong Festival Fringe Limited
Hong Kong International Arbitration Centre
Hong Kong Museum - Medical Sciences Society
Hong Kong Society for the Protection of Children
Hong Kong West Point Baptist Church
Hong Kong Young Women's Christian Association
KELY Support Group Limited
Mother's Choice
New Life Psychiatric Rehabilitation Association
Po Leung Kuk
Pre-school Playgroups Association (Hong Kong)
Sai Ying Pun Kaifong Welfare Association
Salesian Society, Society of St. Francis of Sales
Scout Association of Hong Kong
SKH Diocesan Welfare Council
St. James' Settlement
St. Paul's College Council
St. Stephen's Girls' College Council
The American Community Theatre
The Boys' & Girls' Clubs Association of Hong Kong
The Carmel School Association Limited
The Council of St. Paul's Co-educational College
The Hong Kong Committee on Children's Rights Limited
The Hong Kong Vocational Centre Charitable Trust
The Hong Kong Women Foundation Limited
The Neighbourhood Advice - Action Council
Tung Sin Tan Limited
Watchdog Limited
Wu Oi Christian Centre Limited
Yan Chai Hospital
Youth with a Mission (Hong Kong) Limited

Eastern District

Aids Concern Foundation Limited
Arts with the disabled Association Hong Kong
Caritas - Hong Kong

Chinese Young Men's Christian Association of Hong Kong

Eastern District Arts Council

Fu Hong Society

Heung Hoi Ching Kok Lin Association

Hong Kong & Kowloon Kaifong Women's Association

Hong Chi Association

Hong Kong Aids Foundation Limited

Hong Kong Christian Service

Hong Kong Playground Association

Hop Yat Church The Church of Christ in China

International Social Service (Hong Kong Branch)

Mother's Choice

Playright Children's Association Limited

Procurator in Hong Kong of Salesian Society

Project Care Social Centre for the Elderly

Richmond Fellowship of Hong Kong Limited

St. Christopher's Home

The Boys' & Girls' Clubs Association of Hong Kong

The Endeavourers Hong Kong

The Hong Kong Federation of Youth Groups

The Hong Kong Society for Rehabilitation

The Hong Kong Society for the Aged

The Lutheran Church Hong Kong Synod Limited

The Methodist Church, Hong Kong

The Pre-school Playgroups Association Hong Kong

The General of the Salvation Army

The Samaritans

The Trustees of the Church of Christ in China

The Women's Welfare Club (Eastern District Hong Kong)

TREATS

Tung Wah Group of Hospitals

Tung Wah Group of Hospitals Fong Shu Chuen Day Nursery

Yan Chai Hospital

Islands District

Christian Zheng Sheng Association Limited

Kowloon City District

Academy of Chinese Studies
Caritas - Hong Kong
Chung Sing Benevolent Society
Church United Brethren in Christ
Crossroad International
Eternal Flame Foundation Limited
Heung Hoi Ching Kok Lin Association
Hong Kong Air Cadet Corporations
Hong Kong Arts Festival
Hong Kong Cancer Fund Friends of the EORTC
Hong Kong Children & Youth Services
Hong Kong Mutual Encouragement Association Limited
Hong Kong Society for the Protection of Children
International Buddhist Progress Society (HK) Limited
Occupational Safety and Health Council
Po Leung Kuk
Sik Sik Yuen
SKH Diocesan Welfare Council
The Homantin Kaifong Association Limited
The Hong Kong Family Welfare Society
The Hong Kong Federation of Youth Groups
Tsung Tsin Mission of Hong Kong
Yan Chai Hospital
YMCA of Hong Kong

Kwai Tsing District

Fu Hong Society
Hong Kong Lutheran Social Service, The Lutheran Church Hong Kong Synod
Limited
Hong Kong SKH Lady Macle hose Centre
Hong Kong Young Women's Christian Association
KC & TY District Culture & Arts
Lok Chi Association Limited

New Territories Women & Juveniles Welfare Association
Po Leung Kuk
Pok Oi Hospital
SHK Diocesan Welfare Council
The Evangelical Lutheran Church of Hong Kong
The General of the Salvation Army
The Hong Kong Playground Association
The Hong Kong Society for the Aged

Kwun Tong District

Christian & Missionary Alliance Church Union Hong Kong Limited
Christian Action
HK & MACAU Lutheran Church
Hong Chi Association
Hong Kong Christian Service
Hong Kong Federation of the Blind
Hong Kong Society for the Protection of Children
Hong Kong Young Women's Christian Association
Kwun Tong Sports Promotion Association
Lok Chi Association Limited
New Kowloon Women Association Limited
Po Leung Kuk
Society of St. Vincent de Paul
The Boys' & Girls' Clubs Association of Hong Kong
The EC of the Alice Ho Miu Ling Nethersole Hospital
The Evangelical Lutheran Church of Hong Kong
The General of the Salvation Army
The Hong Kong Christian Council
The Hong Kong Federation of Youth Groups
The Hong Kong Playground Association
The Lutheran Church - Hong Kong Synod Limited
The Mental Health Association of Hong Kong
United Christian Medical Service
Kwun Tong Youth Services Corporation
Zion Youth Service Centre Limited

North District

Heep Hong Society
Hong Kong Children & Youth Services
Lo Wu Saddle Club Limited
New Territories Women & Juveniles Welfare Association
The Neighbourhood Advice - Action Council
Tsung Tsin Mission of Hong Kong

Sai Kung District

Caritas - Hong Kong
Christian Family Service Centre
Hong Kong Family Welfare Society
Management Committee Sai Kung Primary School Limited
Po Leung Kuk
SKH St. Simon's Social Services
The Association of Evangelical Free Churches Hong Kong
The Christian & Missionary Alliance Church Union - Hong Kong Limited
The Hong Kong Federation of Youth Groups
The Hong Kong Independent Battalion of the Dongjiang Column
The Lutheran Church - Hong Kong Synod Limited

Sha Tin District

Alliance of the Promotion of Information Technology in Education
Caritas - Hong Kong
Fu Hong Society
Harmony House Limited
Hong Kong - Macao Conference of Seventh-day Adventists
Hong Kong PHAB Association
Hong Kong Playground Association
Hong Kong Young Women's Christian Association
International Church of the Four-square Gospel - Hong Kong District Limited
Lutheran Philip House Limited
Pok Oi Hospital
Shatin Church Limited

The Boys' & Girl's Clubs Association of Hong Kong
The Hong Kong Children & Youth Services
The Hong Kong Federation of Youth Groups
The Mental Health Association of Hong Kong
The Neighbourhood Advice - Action Council
The Sha Tin Arts Association Limited
Yan Oi Tong Limited
Youth Outreach

Sham Shui Po District

Association of Evangelical Free Churches of Hong Kong
Caritas - Hong Kong
Fu Hong Society
Heep Hong Society
Hong Kong Christian Service
Hong Kong LEP Trust
Hong Kong Society for the Protection of Children
Pentecostal Church of Hong Kong Limited
Sik Sik Yuen
SKH Diocesan Welfare Council
Society of Boys' Centres
The Bishop of the Roman Catholic Church in Hong Kong Incorporated
The Boys' & Girl's Clubs Association of Hong Kong
The English Schools Foundation
The Filipino Workers Development Centre
The Hong Kong Society for the Aged
Tsung Tsin Mission of Hong Kong
Wai Ji Christian Service

Southern District

Aberdeen Kai Fong Welfare Association
Caritas - Hong Kong
Christian & Missionary Alliance Church Union Hong Kong Limited
Fu Hong Society

Hong Kong Cancer Fund Friends of the EORTC
Hong Kong Lan Lai Bay Five Villages Mutual Aid Committee
Po Leung Kuk
Sister Mary Rose Chan (Chee Sing Kok Social Centre of the Humanity Love)
South District Recreational & Sports Association Limited
Springboard School Limited
St. Stephen's Society
Stanley Sports Association
The Boys' & Girls' Clubs Association of Hong Kong
The Cheshire Home
The Hong Kong PHAB Association
The Hong Kong Society for the Aged
The Warehouse Teenage Club
Tung Wah Group of Hospitals

Tai Po District

Alice Ho M. L. Nethersole Hospital
Fung Ying Seen Koon
Ha Hang Government Quarters Mutual Aid Committee
Hong Chi Association
Hong Kong Family Welfare Society
Neighbourhood Advice-action
Norwegian Lutheran Mission
Pentecostal Church of Hong Kong Limited
The Boys' & Girls' Association of Hong Kong
The Christian & Missionary Alliance
The Hong Kong Society for the Protection of Children
The General of the Salvation Army
The Tai Po Baptist Church Baptist Oi Kwan Social Service
The Tai Po District Arts Advancement Association
Tung Wah Group of Hospitals
United Christian Medical Service
World Wild Fund for Nature Hong Kong
Wu Oi Christian Centre Limited
Yan Chai Hospital
Yan Oi Tong Limited

Tsuen Wan District

Association of Baptists for World Evangelism, Incorporated
Chinese Young Men's Christian Association of Hong Kong
Consumer Council
Fu Hong Society
Hong Kong Children & Youth Services
Hong Kong Christian Service
Hong Kong Young Women's Christian Association
Lok Sin Tong Benevolent Society, Kowloon
Mental Health Association of Hong Kong
Po Leung Kuk
The Christian & Missionary Alliance Church Union Hong Kong Limited
The Cultural & Association of Music and Arts
The Federation of Tsuen Wan District Sports & Recreation Association Limited
The Hong Kong Federation of Youth Groups
The Liu Po Shan Education Foundation Limited
The Lutheran Church - Hong Kong Synod Limited
The Superioress of the Sisters of the Precious Blood
The Yuen Yuen Institute
Tsuen Wan C&R Co-ordinating Association Limited
Tsuen Wan Chiu Chow Welfare Association Limited
Tsuen Wan Kai Fong Welfare Association Limited
Tsuen Wan Northern Chinese Welfare Association Limited
Tsuen Wan Town Area Committee on Welfare Services for the Aged
Tung Wah Group of Hospitals
Yin Ngai Societies Limited
Yuen Hai Artise Troupe

Tuen Mun District

Baptist Mid-missions
Free Methodist Church of Hong Kong
Fu Hong Society
Hong Kong Lutheran Social Service, The Lutheran Church - Hong Kong Synod
Limited

Hong Kong Young Women's Christian Association
International Social Service (Hong Kong Branch)
New Life Psychiatric Rehabilitation Association
Pentecostal Church of Hong Kong Limited
Po Leung Kuk
Pok Oi Hospital
The Boys' & Girls' Clubs Association of Hong Kong
The Hong Kong Christian Service
Trailwalker Charitable Limited
Tuen Mun Arts Promotion Association
Tuen Mun District Women's Association
Tuen Mun Sports Association Limited
Tung Wah Group of Hospitals
Yan Oi Tong Limited

Wan Chai District

Caritas Lok Heep Club
Chinese Anglican Church in Hong Kong
Hong Chi Association
Hong Kong Children & Youth Services
Hong Kong Examinations Authority
Hong Kong Family Welfare Society
Hong Kong Red Cross
International Social Service (Hong Kong Branch)
Life Education Activities Programme Limited
Lingnan Education Organization Limited
Lok Sin Tong Benevolent Society, Kowloon
Pamela Youde Nethersole Eastern Hospital
Society for the Aid and Rehabilitation of Drug Abusers
St. James' Settlement
The Family Planning Association of Hong Kong
The Hong Kong Buddhist Association
The Hong Kong Christian Service
The Hong Kong PHAB Association
The Hong Kong Sports Development Board

The Incorporated Trustees of Heep Hong Society for Handicapped
The Methodist Church, Hong Kong
The Neighbourhood Advice - Action Council
The Society of Rehabilitation and Crime Prevention, Hong Kong
Wanchai Kaifong Welfare Association (Hong Kong) Limited
Yan Chai Hospital
Yan Oi Tong Limited
Zuni Icosahedron

Wong Tai Sin District

American Baptist Foreign Mission Society
Caritas - Hong Kong
Hong Kong Christian Service
Hong Kong Mutual Encouragement Association Limited
Industrial Evangelistic Fellowship
Po Leung Kuk
Pok Oi Hospital
Project Concern Hong Kong
Sisters of the Immaculate Heart of Mary
The Chinese Rhenish Church Hong Kong Synod
The General of the Salvation Army
The Hong Kong - Macao Conference
The Neighbourhood Advice - Action Council
The Society of Rehabilitation and Crime Prevention, Hong Kong
Tsung Tsin Mission of Hong Kong
Wong Tai Sin Children's Choir

Yau Tsim Mong District

Agency for Volunteer Services
Baptist Oi Kwan Social Service
Baptists for World Evangelism
Chinese Young Men's Christian Association of Hong Kong
Christian Family Service Centre

Chung Sing Benevolent Society
Hong Kong Arts Development Council
Hong Kong Christian Service
Hong Kong Oratorio Society
Hong Kong Red Cross
Hong Kong Sinfonietta
International Organization for Migration
International Women's League Limited
Lok Sin Tong Benevolent Society, Kowloon
Po Leung Kuk
Sik Sik Yuen
Street Sleepers Shelter Society Trustees Incorporated
The General of the Salvation Army
The Hong Kong Federation of Youth Groups
The Mental Health Association of Hong Kong
TST District Kai Fong Welfare Association
United Nations High Commissioner for Refugees
YMT & TST Culture & Arts Association

Yuen Long District

Caritas - Hong Kong
Hong Kong Society for the Protection of Children
Hong Kong Young Women's Christian Association
Po Leung Kuk
Pok Oi Hospital
Richmond Fellowship of Hong Kong Limited
SKH Diocesan Welfare Council
Society for the Aid and Rehabilitation of Drug Abusers
The Hong Kong Federation of Youth Groups
The Neighbourhood Advice - Action Council
The United Muslim Association of Hong Kong
Yan Chai Hospital
Yan Oi Tong Limited
Yuen Long Town Hall Mrs Leung Hok-chiu Social Centre for the Elderly

Annex B

List of sports associations leasing government property on concessionary terms
from the Leisure and Cultural Services Department

<i>District</i>	<i>Name of organization</i>	<i>Monthly rental (\$)</i>	<i>Percentage of market rent</i>
Central and Western	Hong Kong Squash	2,500	25
Eastern	Hong Kong Tennis Association	3,050	25
Sham Shui Po	Hong Kong Squash	1,000	25
	Hong Kong Table Tennis Association	1,000	25
Southern	Southern District Recreation & Sports Council	1,130	25
Wan Chai	Hong Kong Amateur Swimming Association	3,410	25
	HongKong Miniature Fooball Association	850	25
	Hong Kong Tenpin Bowling Congress Limited	1,430	25
	Sports Federation and Olympic Committee of Hong Kong, China	10,240	25
Yau Tsim Mong	Hong Kong Hockey Association	1,300	25
	Kowloon Miniature Football Association	850	25

Protecting Patent Rights of Hong Kong Businessmen

9. **MR KENNETH TING** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the number of complaints the authorities concerned received in the past two years from Hong Kong businessmen about*

infringement of their patent rights in Hong Kong and in the Mainland respectively;

- (b) how the authorities concerned have assisted these complainants, and the number of cases in which the complainants successfully claimed damages and obtained injunctions against the persons infringing their rights in the past two years; and*
- (c) whether it will draw up measures and policies to further protect the patent rights of Hong Kong businessmen?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): Madam President,

- (a) In the past two years, the Government received a total of two complaints from Hong Kong businessmen about infringement of their patent rights in Hong Kong. We have not received any complaint about infringement of Hong Kong businessmen's patent rights in the Mainland.
- (b) Hong Kong's patent protection law provides that a patent owner can protect his rights through civil proceedings. For instance, he may apply to the Court for an injunction order and claim damages from the person infringing his rights. In the light of this, the Government has suggested to the complainants that they should consider the civil remedies mentioned above to deal with the infringing acts concerned.

The complainants of the above two cases have not applied to court for injunction orders against the infringing acts concerned or claimed damages from the persons infringing their rights.

- (c) Hong Kong's patent protection law complies fully with the international standard laid down in the Agreement on Trade-Related Aspects of Intellectual Property Rights under the World Trade Organization. It is broadly comparable to relevant legislation in countries such as the United States, the United Kingdom and Singapore.

At present, infringing acts involving patent rights are not rampant in Hong Kong. In general, civil protection is considered adequate. We will monitor closely the situation concerned and if necessary, consider drawing up further protective measures.

FEHD Staff Assaulted While Discharging Duties

10. **MR FREDERICK FUNG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *Of the number of Food and Environmental Hygiene Department (FEHD) staff attacked while discharging duties in each of the past three years, and provide a breakdown by the type of duties they were discharging when being assaulted;*
- (b) *Of the equipment currently provided and guidelines issued by the FEHD to its staff for safeguarding themselves; and*
- (c) *Whether it regularly assesses the effectiveness of the aforesaid equipment and guidelines, and the risk of FEHD's staff being assaulted while discharging duties; if it has, of the outcome of the last assessment; if not, the reasons for that?*

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

- (a) The number of assault cases on the staff of FEHD while discharging duties since its establishment on 1 January 2000 is as follows:

<i>Year</i>	<i>No. of assault cases</i>
2000	115
2001	128
2002 (up to June)	73

A breakdown of these assault cases is at Annex. These assault cases are mainly associated with hawker control. The vast

majority is minor in nature, such as abrasions and bruises caused by body contacts.

- (b) To ensure staff safety while discharging their duties, the FEHD provides them with necessary equipment according to the nature of the duties involved, including communication equipment, safety helmets, reflective vests, safety shoes, gloves, masks, shields and dog repellent spray. The Department is currently procuring personal alarms for staff on enforcement duties. The alarms will be distributed to staff by mid-July.

The FEHD runs a series of training courses for staff charged with enforcement duties on how to handle confrontation. These include prevention of acts of violence, self-defence, and skills in handling conflicts such as communication skills in handling angry clients and management of emotions in difficult situations, when taking enforcement action.

The Department has also drawn up and distributed to all staff clear safety guidelines on all work areas.

- (c) The FEHD has all along accorded much emphasis to personal safety of its staff while on duty. A Departmental Safety Management Committee, chaired by Assistant Director (Administration) of the Department with members of relevant grades' representatives, has been set up since early 2000 to review regularly and improve the safety standard of their staff at work. At the meeting in April 2002, the Committee reviewed the equipment and safety guidelines provided to staff. The Committee recommended that the training provided for staff on handling conflicts and violent behaviour should be strengthened, and their work gear and communication equipment should be upgraded. The recommendations are being followed up. As mentioned in our reply to the Legislative Council question last week, its staff involved in enforcement action on the fixed penalty system have been so equipped already. The FEHD will continue to assess the risks involved in their respective areas of work and take appropriate measures to protect themselves while on duty.

Annex

Breakdown of Assault Cases on FEHD Staff while Discharging their Duties

(1) Year 2000

Type of Duties Performed	Rank/grade of staff assaulted						Total
	Hawker			Special			
	Health Inspector	Control Officer	Foreman	Driver	Workman I	Workman II	
1. hawker control	-	71	-	-	3	-	74
2. anti-littering	-	9	6	-	-	-	15
3. general patrol/inspection/ cleansing	1	18	1	-	1	5	26
Total	1	98	7	-	4	5	115

(2) Year 2001

Type of Duties Performed	Rank/grade of staff assaulted						Total
	Hawker			Special			
	Health Inspector	Control Officer	Foreman	Driver	Workman I	Workman II	
1. hawker control	-	84	-	-	1	-	85
2. anti-littering	-	15	4	-	-	-	19
3. general patrol/inspection/ cleansing	1	13	2	1	1	6	24
Total	1	112	6	1	2	6	128

(3) January to June 2002

Type of Duties Performed	Rank/grade of staff assaulted						Total
	Hawker			Special			
	Health Inspector	Control Officer	Foreman	Driver	Workman I	Workman II	
1. hawker control	-	55	-	-	-	-	55
2. anti-littering	-	11	2	-	-	-	13
3. general patrol/inspection/ cleansing	-	4	-	1	-	-	5
Total	-	70	2	1	-	-	73

Female/Male Ratio of Kindergarten Teachers

11. **MR HENRY WU** (in Chinese): *Madam President, will the Government inform this Council of the respective numbers of male and female serving kindergarten teachers (KTs), as well as the prospective male and female KTs currently enrolled in training programmes for Qualified KTs; and if male KTs account for a very low percentage in the total number of KTs, whether it knows the reasons for that, and whether it has formulated a policy to encourage more men to become KTs?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President, for the 2001-02 school year, the numbers of male and female serving KTs are 41 and 8 737 respectively, while those of prospective KTs undertaking various approved training programmes are nine and 1 480 respectively.

Kindergarten teaching is mainly staffed by woman. It is presumed that the nature, environment and targeted groups of the work itself which is more appealing to women, may have attracted more women to join the profession.

Based on the principle of equal opportunity, we do not have any policy to encourage a particular gender to join kindergarten teaching or to receive training for such purpose. Any eligible candidates, irrespective of their gender, may apply for KT training, and kindergartens also have the discretion to appoint any qualified person as KT.

Special Measures at Boundary Control Points During Mainland's National Day Holidays

12. **MR HOWARD YOUNG** (in Chinese): *Madam President, in the light of the incident on 1 May this year, the first day of the Mainland's Labour Day Holidays, in which passengers waiting for immigration and customs clearance were congested at the Lok Ma Chau Control Point, caused by an unexpectedly high number of visitors from the Mainland, will the Government inform this Council of the special measures it will adopt during the Mainland's National Day Holidays in October to avoid chaos or prolonged waiting time for immigration and customs clearance at various control points?*

SECRETARY FOR SECURITY (in Chinese): Madam President, the congestion at the Lok Ma Chau Control Point on 1 May, Labour Day, was mainly caused by large numbers of passengers entering Hong Kong at the same time at the peak hours around mid-day. In addition, the number of mainland tour groups turned out to be more than expected on that day, amounted to 111 tour groups comprising 2 688 tourists. Among them, 15 tour groups had not submitted complete name lists to the Immigration Department (ImmD) in advance as required. Another 36 groups even passed through the Lok Ma Chau Control Point without any prior notification. Since ImmD staff had to manually input the personal information of these passengers, which had not been provided beforehand, this slowed down clearance work and caused delay to other cross-boundary passengers as well.

Learning from the experience of 1 May, we will strengthen our liaison with the travel industry and urge them to observe the requirement of submitting information on tour groups to the ImmD for pre-arrival processing in order to expedite immigration clearance. Furthermore, on the basis of information collected we will adopt appropriate early measures. For example, if our information reveals that too many tour groups will arrive at a control point at the same time, we will divert some to other control points or stagger their arrival time. In addition, inbound travel agents have undertaken to arrange more tour groups to use the Lo Wu Control Point, which has a greater capacity, as far as possible.

We will also strengthen co-ordination and communication with the relevant mainland authorities (including the China National Tourism Administration, the immigration and the customs authorities), and request them to remind travel agents in the Mainland to make better preparation and observe the relevant requirements. Prior to the National Day Holidays, we will, within the context of the "Joint Working Sub-group on Festival Passenger Arrangements", meet with the relevant departments of the Guangdong side responsible for port management to ensure that appropriate measures are put in place in time to cope with the large numbers of cross-boundary passengers. Relevant front-line departments will, on a need basis, redeploy adequate staff in a timely manner to cope with increase in passenger traffic. If circumstances so warrant, the front-line departments will also activate the "Joint Operation Centre" arrangement and carry out various contingency measures to cope with the passenger flow.

In addition to the above measure, the Hong Kong Tourism Board will strengthen its service at some cross-boundary control points, including the deployment of "Tourism Hosts" to provide value-added services to tourists. The Tourism Commission will also co-ordinate a series of minor improvement works to enhance services to tourists and improve the environment at control points. For example, we will install air-conditioning systems along the temporary pedestrian walkway and, as far as practicable, provide temporary cover in the open queuing area at the Lok Ma Chau Control Point. Vending machines will also be installed at some control points. These measures, except the installation of vending machines at the Lok Ma Chau Control Point which will be deferred due to works there, are expected to be implemented before the National Day Holidays. We believe that they will provide a better environment for the large numbers of cross-boundary passengers at our control points and help improve their impression of Hong Kong.

With the above measures, we are confident that we will be able to cope with substantial increases in passenger traffic during the National Day Holidays and minimize inconvenience to them.

Vacancy Rate of PRH Units in Tuen Mun

13. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the vacancy rate of public rental housing (PRH) units in Tuen Mun, will the Government inform this Council:*

- (a) of the vacancy rate and number of vacant units in the district at the end of each of the past three years;*
- (b) whether the vacancy rate of PRH units in the district is higher than those in Tin Shui Wai and Yuen Long; if so, of the reasons for that;*
- (c) whether more proactive measures, such as speeding up the allocation of PRH units to prospective tenants and arranging for the transfer of overcrowded families, will be introduced to reduce the vacancy rate of PRH units in the district; and*
- (d) whether it will reduce the rent of the PRH units in the district and other estates with high vacancy rates, with a view to attracting more prospective tenants to choose to move into these estates?*

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

- (a) The vacancy rates and number of vacant units in Tuen Mun District at the end of each of the past three years were as follows:

	<i>1999-2000</i>	<i>2000-01</i>	<i>2001-02</i>
Number of vacant units	321	1 465	2 124
Vacancy rate	0.6%	2.6%	4.0%

- (b) The vacancy rate of PRH units in Tuen Mun District is higher than that in Tin Shui Wai and Yuen Long. This is mainly due to a large number of families in Tuen Mun District moving to newer types of housing accommodation in Tin Shui Wai or other districts through the transfer scheme and the Home Ownership Scheme. Although the vacated flats in Tuen Mun are less attractive in terms of building age, estate facilities and internal layout of the flats, their rental is relatively low.
- (c) To reduce the vacancy rate in Tuen Mun District, the Housing Authority has already taken the following measures:
- relaxing the allocation standard;
 - arranging more relief of overcrowding and transfer exercises;
 - putting up these vacated flats under the new Express Flat Allocation Scheme for selection by eligible applicants;
 - as a one-off special exercise, relaxing the Residence Rule so as to allow eligible applicants having less than seven-year residence in Hong Kong the chance for flat selection.
- (d) The average PRH rent for a four-person flat in the older estates in Tuen Mun is about \$1,200 per month inclusive of rates and management fee. The rent is well affordable to the eligible applicants. In general, prospective tenants prefer newer types of

PRH flats in other districts than vacated flats in Tuen Mun and are quite prepared to pay higher rents for better types of housing accommodation. The Housing Authority has no intention at the moment to reduce the rent of PRH units in Tuen Mun.

Bankruptcies Among Teachers

14. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the number of teachers who were declared bankrupt by the Court, and its percentage in the total number of bankruptcy cases, in each of the past five years;*
- (b) *the follow-up actions taken by the schools concerned and the Education Department (ED) on those teachers who have been declared bankrupt; and*
- (c) *the measures it will adopt to enhance financial prudence among teachers and to help them grasp financial management knowledge?*

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

- (a) Except for the case of civil servants, the Official Receiver's Office (ORO) will not inform employers of the bankruptcy of their employees. Besides, the ORO does not have any statistics of the bankruptcy cases with breakdown by occupation. As teachers are not required to report such cases to their schools, the Government is unable to provide information on the number of teachers who are declared bankrupt by the Court every year and its percentage in the total number of bankruptcy cases.
- (b) No specific provision has been drawn up by the Government in handling bankruptcy of teachers. In the event of government school teachers being declared bankrupt by the Court, the ED will deal with their cases as that of a civil servant in accordance with

the Civil Service Regulations. The ED will examine the duties of the teacher concerned to ensure that they do not involve the handling of public money or sensitive information, or are not corruption prone. If it is confirmed that such financial problems have led to undesirable performance, impairment in efficiency or misconduct, the ED may take administrative action or disciplinary proceedings where appropriate.

- (c) Since financial prudence and knowledge of financial management are purely personal matters that bear no direct relation to competency in teaching, the Government will not adopt particular measures in this respect.

For government schools, circulars and government regulations concerning management of personal finance will be circulated to teachers by the ED on a regular basis with a view to reminding them of the importance of financial prudence.

Provision of Recreational Facilities in Shek O for the Elderly

15. **MISS CHOY SO-YUK** (in Chinese): *Madam President, residents in Shek O have told me that the district does not have any recreational facilities and activity centres for the elderly. In this connection, will the Government inform this Council whether:*

- (a) *it plans to provide recreational facilities for the elderly in the district; and*
- (b) *it will consider constructing an activity centre for the elderly in the district (for instance, on a piece of vacant land adjacent to the Shek O Bus Terminus); if it will, of the details, if not, the reasons for that?*

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

- (a) Most of the recreational facilities in Shek O are suitable for the use of elders, such as Shek O Village Sitting-out Area, Shek O Road

Sitting-out Area, Shek O Beach Sitting-out Area, Shek O Headland Picnic Area, Shek O Road Lookout, Shek O Beach and Shek O Beach Obstacle Golf Course. To promote physical exercise for elders, the Leisure and Cultural Services Department (LCSD) plans to install outdoor fitness equipment specifically designed for elders at Shek O Road Sitting-out Area.

In terms of activities, the relevant area committee organizes community building activities for residents, such as outings. The District Council also sponsors activities organized by local groups. The LCSD has arranged land excursions for the elders in Shek O and has plans to organize more programmes in the area which are suitable for elders such as Tai Chi, Ba Duan Jin and fitness exercises.

- (b) In considering whether to build facilities in a district, the Government draws reference to the district population, the local characteristics and circumstances, and existing facilities and services available.

According to 2001 Population Census, there are less than 300 elders (aged 65 or above) living in Shek O and Big Wave Bay area. At present, in addition to the social and recreational facilities and services outlined in (a) above, non-governmental organizations are providing a range of care, support and welfare services to meet the various needs of elders in Shek O. These include centre-based services; outreaching services; social and recreational services; home help services; and enhanced home and community care services which is a package of home and centre based services tailor made to meet the individual needs of frail elders. In addition, the Government has kept in close contact with and provided support to the Shek O Residents' Association, which runs a health centre providing out-patient services and organizes social and recreational activities for local residents, including elders.

At this stage, the Government has no plan to construct an activity centre for the elderly in Shek O. However, the Government will continue to keep the provision of various services to elders in Shek O under regular review, and maintain close liaison with the local

organizations, service providers and service users to better meet the needs of older persons.

Railway Alignment of Sha Tin to Central Link

16. **MR FRED LI** (in Chinese): *Madam President, when the Government invited tenders for the Sha Tin to Central Link (SCL), the Government stated that, to ensure a level playing field, it would consider only those bidding proposals which fully conformed to all the requirements, including railway alignment, specified in the Project Brief (Conforming Proposals), and that only after the operator had been selected would it evaluate the non-Conforming Proposals, if any, submitted by the winning corporation. The Kowloon-Canton Railway Corporation (KCRC) was awarded the SCL project on 25th of last month. In this connection, will the Government inform this Council:*

- (a) *of the reasons for not providing, when the railway alignment in the Project Brief was being drawn up, stations at densely populated areas not being served by any mass transit system (such as Tsz Wan Shan);*
- (b) *of the optimized options proposed in the non-Conforming Proposal submitted by the KCRC and whether they include additional stations at Tsz Wan Shan and Whampoa; if so, of the impact of building the two stations on the construction costs and opening date of the railway; if not, whether it will request the KCRC to provide the two stations in the railway alignment; if no such request will be made, of the reasons for that; and*
- (c) *whether it will conduct public consultations on the optimized options in the non-Conforming Proposal submitted by the KCRC; if not, of the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): *Madam President, to ensure a level playing field, the selection of the operator of the SCL was made on the basis of proposals which fully conformed to all the requirements, including corridor alignment, specified in the Project Brief (Conforming Proposals). This corridor alignment followed*

the one in the Railway Development Strategy 2000 (RDS-2000) which sought to provide, subject to technical feasibility, the most direct railway corridor from Tai Wai to Hong Kong Island via Diamond Hill, South East Kowloon and Hung Hom. Therefore, the alignment recommended by RDS-2000 did not include stations at Whampoa and Tsz Wan Shan.

In its Non-Conforming SCL Proposal, the KCRC has only suggested an additional station at Queen's Road Central. Following the award of SCL to the KCRC, we have already asked the Corporation to consider the feasibility and viability of extending its rail service to Whampoa and Tsz Wan Shan.

Before the KCRC presents its detailed scheme to the Government later this year, it will conduct appropriate public consultations.

Persons Taking up Employment Illegally in Hong Kong after Entering Territory on Visit Visas

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding persons who take up employment illegally in Hong Kong after entering the territory on visit visas, will the Government inform this Council:*

- (a) *of the number of such illegal workers arrested in each of the past three years, together with a breakdown by the trades in which they were employed as well as their countries of origin;*
- (b) *of the leads and procedures usually followed by the authorities in arresting such illegal workers;*
- (c) *whether it has examined why more such illegal workers are found in certain trades;*
- (d) *whether those persons who have been convicted of working illegally in Hong Kong are put on a blacklist of persons to be refused future re-entry into Hong Kong; and*
- (e) *of the further measures to tackle the problem of such persons taking up employment illegally?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) In 1999, 2000 and 2001, the numbers of visitors arrested for suspected illegal employment in Hong Kong are 3 728, 5 045 and 5 876 respectively. The number for the first five months of this year is 3 475. The majority of the people so arrested are suspected of engaging in prostitution. Others who take up illegal employment in Hong Kong are mainly arrested at construction sites, in cooked food stalls, shops, restaurants, cafes and factories. Relevant figures are shown in Annex.
- (b) The Immigration Department (ImmD) and the police gather intelligence on activities violating immigration legislation through various channels. Reports by the public also provide important leads on illegal employment. Upon receiving reports on cases of illegal employment, law enforcement departments will carry out investigation into the persons or establishments concerned and effect arrests promptly.
- (c) Generally speaking, illegal workers arrested are mainly engaged in manual work, low-skilled and low-wage jobs as well as jobs of relatively high mobility.
- (d) Convicted illegal workers will, after being removed to their place of origin, be put on a watch list by the ImmD so as to facilitate the conduct of detailed arrival clearance on them upon their re-entry into Hong Kong. As for convicted illegal workers from the Mainland, the ImmD will send their information to mainland entry/exit authorities on a regular basis to enable these authorities to take follow-up action and conduct careful examination on their future applications to visit Hong Kong.
- (e) Relevant departments will continue to adopt stringent measures to combat and suppress illegal employment. These include:
 - (i) The ImmD will work in close collaboration with the relevant law enforcement departments to intercept illegal immigrants.

It will also exercise stringent controls at the various immigration control points to identify dubious visitors intending to work illegally in Hong Kong so as to prevent people who may become illegal workers from entering Hong Kong. The police has established a liaison mechanism with the relevant mainland authorities for exchanging intelligence on activities of illegal immigrants in Hong Kong and the Mainland;

- (ii) The Task Force of the ImmD will continue to inspect construction sites, factories, restaurants, business establishments and domestic premises from time to time to stage special operations against illegal employment. It will also conduct joint operations with the police and the Labour Department to carry out spot checks at black spots of illegal employment;
- (iii) Labour Inspectors of the Labour Department will pay frequent visits to various establishments to inspect employee records kept by the employers and proof of identity carried by the employees. Cases involving suspected illegal employment are referred to the ImmD for follow-up actions to help combat the problem;
- (iv) To enhance the deterrent effect, visitors found working illegally in Hong Kong are subject to prosecution. Employers and construction site controllers found employing persons not lawfully employable are also subject to prosecution. Construction site controllers are liable on conviction to a maximum fine of \$350,000 and employers to a fine of \$350,000 and imprisonment for three years;
- (v) All visitors who enter Hong Kong on the strength of Two-way Permits are given a leaflet in Chinese stating that visitors are not allowed to engage in employment (either paid or unpaid), and offenders may be prosecuted and subject to

repatriation. The conditions of stay endorsed on the Two-way Permits also spell out such restrictions;

- (vi) Apart from enforcement actions, the Administration also undertakes a proactive publicity campaign against illegal employment through television advertisements, the ImmD's Homepage, posters and leaflets so as to enhance the understanding of the public and employers about the relevant legislation and policies and to remind them not to employ illegal workers;
- (vii) The Administration also encourages the public to report cases of illegal employment to the ImmD by calling its hotline, fax, mail or e-mail. Employers who have doubts about the identity cards of job seekers may also make enquiries through the ImmD's hotline.

Annex

Breakdown of Visitors Arrested for Illegal Employment by Nationality (1999)

<i>Nationality</i>	<i>No. of visitors suspected of No. of illegal workers of engaging in prostitution other categories ⁽¹⁾</i>	
Foreigners		
	Thailand	255
	Korea	5
	Russia	5
	India	4
	Vietnam	4
	Other	20
	nationalities	
Total no. of foreigners	293	
Mainlanders	1 409	
Total no. of persons arrested	1 702	
		Bengal
		25
		Pakistan
		20
		Thailand
		19
		Indonesia
		7
		India
		6
		Other
		44
		nationalities
		121
		1 905
		2 026

Total no. of persons arrested within the year: 3 728

Breakdown of Visitors Arrested for Illegal Employment by Nationality (2000)

<i>Nationality</i>	<i>No. of visitors suspected of engaging in prostitution</i>		<i>No. of illegal workers of other categories ⁽¹⁾</i>	
Foreigners				
	Thailand	332	South Korea	8
	Vietnam	21	Pakistan	6
	Korea	6	Sri Lanka	6
	Indonesia	5	Vietnam	6
	Malaysia	4	India	5
	Other nationalities	27	Other nationalities	26
Total no. of foreigners		395		57
Mainlanders		2 740		1 853
Total no. of persons arrested		3 135		1 910

Total no. of persons arrested within the year: 5 045

Breakdown of Visitors Arrested for Illegal Employment by Nationality (2001)

<i>Nationality</i>	<i>No. of visitors suspected of engaging in prostitution</i>		<i>No. of illegal workers of other categories ⁽¹⁾</i>	
Foreigners				
	Thailand	429	South Korea	6
	Vietnam	93	Vietnam	5
	Mongolia	8	Bengal	4
	Uzbekistan	7	Philippines	3
	Korea	5	Sri Lanka	3
	Other nationalities	21	Other nationalities	25
Total no. of foreigners		563		46
Mainlanders		3 057		2 210
Total no. of persons arrested		3 620		2 256

Total no. of persons arrested within the year: 5 876

Breakdown of Visitors Arrested for Illegal Employment by Nationality
(January to May 2002)

<i>Nationality</i>	<i>No. of visitors suspected of No. of illegal workers of engaging in prostitution other categories*</i>	
Foreigners		
	Thailand	94
	Vietnam	21
	Uzbekistan	8
	Russia	6
	India	3
	Other	8
	nationalities	
Total no. of foreigners	140	
Mainlanders		30
		India
		Sri Lanka
		Bengal
		Nepal
		Philippines
		Other
		nationalities
Total no. of persons	2 244	1 061
arrested	2 384	1 091

Total no. of persons arrested within the year: 3 475

* including visitors who work illegally at construction sites, cooked food stalls, in shops, restaurants, cafes and factories. The ImmD does not maintain a detailed breakdown by trade.

Reappointment of Member of Culture and Heritage Commission with Low Meeting Attendance Rate

18. **MISS EMILY LAU:** *Madam President, on 30 April this year, the Administration announced the reappointment of a member of the Culture and Heritage Commission for another year, who attended only four of the Commission's 21 meetings in the last financial year. In this connection, will the executive authorities inform this Council:*

- (a) *of the justifications for reappointing the member who was absent at the Commission's meetings for many times;*
- (b) *whether the member's capacity as a member of the 800-member Election Committee has any bearing on her reappointment; and*

- (c) *of the respective numbers of members of other advisory bodies reappointed since 1 January this year, whose attendance rates at meetings in the year before reappointment were below 25%?*

SECRETARY FOR HOME AFFAIRS: Madam President, my reply to the Honourable Emily LAU's question is as follows:

- (a) In general, appointments to advisory boards/committees are made having regard to the personal expertise of the individuals concerned and the need for a balanced membership line-up. While we expect individual appointees would make the effort to avail themselves to attend the board/committee meetings, we do not impose a specific requirement on attendance rate. The reappointment of all the 17 first-term members of the Culture and Heritage Commission would provide good continuity bearing in mind the present work plan of the Commission, particularly that it would conduct its second round of public consultation later this year.
- (b) No.
- (c) Of all reappointments to the other advisory bodies since 1 January 2002, 19 attained an attendance rate of below 25% during the year preceding the relevant reappointment dates.

Contents of Employment Contracts Signed with Principal Officials Under Accountability System

19. **MR ALBERT CHAN** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the contents of the latest employment contracts signed between the Government and the Chief Secretary for Administration, Financial Secretary, Secretary for Justice, various Directors of Bureaux and Director of the Chief Executive's Office, as well as information on the investments and interests declared by them;*
- (b) *the differences between the contents of the above employment contracts, as well as the requirements on declaration of interests,*

and those as contained in the papers in this regard submitted to the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues of this Council; and

- (c) *the information on the declarations made, in accordance with the Code for Principal Officials under the Accountability System, by the above officials to the Chief Executive, including whether they have links in any form with any political party, whether they are members of any political party and whether they hold any positions in political parties?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): Madam President,

- (a) The main provisions in the employment contract for principal officials under the accountability system are as follows:
- (i) the term of employment will be for a period of not more than five years;
 - (ii) the principal official will be entitled to a fixed monthly salary, provident fund contribution by the Government, paid vacation leave of 22 working days per annum, and the same medical and dental benefits and treatment available to civil servants but not any pension or end of contract gratuity payment;
 - (iii) during the term of office, the principal official will be provided with the use of a car and driver;
 - (iv) the principal official will be required to observe all ordinances and regulations applicable to public officers and public servants;
 - (v) the principal official will be required to declare his investments and interests in a similar manner as members of the Executive Council and senior civil servants;
 - (vi) the principal official will not be allowed to undertake any service, task or job or do anything which may reasonably be

considered to conflict or compete with his official duties as a principal official;

- (vii) the principal official will be required to observe the Government's Security Regulations and will be prohibited from using, divulging or communicating to any person, unless with the prior written consent of the Chief Executive, any sensitive information which may come to his knowledge in the course of performing his duties. Such prohibition will continue to apply after expiry of office;
- (viii) the principal official will be required not to use his official position to benefit himself or any other persons, or to provide assistance, advice or information to any person other than for the proper performance of his official duties as a principal official. Such prohibition will continue to apply after expiry of office;
- (ix) the principal official will also be subject to other prohibitions which include:
 - prohibition on soliciting or accepting advantages as defined in the Prevention of Bribery Ordinance except for those for which general or special permission of the Chief Executive has been given under section 3 of the Prevention of Bribery Ordinance;
 - prohibition on accepting entertainment which may cause embarrassment or bring disrepute to the Government;
 - prohibition on lending money at interest (but they are not precluded from placing money on interest bearing deposits with a recognized bank or deposit-taking company);
 - prohibition on using a subordinate officer as a guarantor for a loan or hire purchase agreement;

-
- prohibition on borrowing money at interest other than from licensed money-lenders;
 - prohibition on being involved in the production of publication in which paid advertisements are made unless with the consent of the Chief Executive;
 - prohibition on collecting donations other than for *bona fide* reasons;
 - prohibition on disclosing sensitive information. Such prohibition will continue to apply after expiry of office; and
 - prohibition on paid outside work unless with the written consent of the Chief Executive;
- (x) subject to the relevant provisions of the Basic Law, the principal official may resign by giving one month's prior notice or by paying the Government one month's salary in lieu of such notice;
- (xi) subject to the relevant provisions of the Basic Law, the Government may terminate the employment of the principal official at any time by giving one month's prior notice or by paying the principal official one month's salary in lieu of such notice;
- (xii) subject to the relevant provisions of the Basic Law, the Government and the principal official may resolve the employment contract at any time by mutual agreement;
- (xiii) within one year after termination of employment, the principal official will be required to seek advice from a committee appointed by the Chief Executive for the purpose if he intends to commence any employment or start any business or profession; and

- (xiv) within one year after termination of employment, the principal official will be barred from representing any person in connection with any claim or negotiation with the Government and from lobbying the Government.

The employment contract for the Director of Chief Executive's Office contains similar provisions.

Under the relevant employment contracts and the Code for Principal Officials under the Accountability System, principal officials and the Director of Chief Executive's Office are required to declare their investments and interests. The relevant information will be available for public inspection around the end of July.

- (b) The provisions set out above are basically the same as those contained in the paper we prepared for the Legislative Council Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues (LC Paper No. CB(2)1952/01-02(01)). In the light of suggestions made by members at the Subcommittee, we have also included a requirement for principal officials under the accountability system and the Director of Chief Executive's Office to declare their affiliation with political parties.
- (c) The Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Directors of Bureaux and Director of Chief Executive's Office are required to declare to the Chief Executive any affiliation they have with political parties in accordance with relevant requirements. The relevant information will be available for public inspection around the end of July.

Traffic Safety of Motorcycles Inside Tubes of Cross-harbour Tunnels

20. **DR RAYMOND HO** (in Chinese): *Madam President, regarding traffic safety of motorcycles inside the tubes of cross-harbour tunnels, will the Government inform this Council:*

- (a) *of the respective numbers of traffic accidents which took place inside various tunnel tubes in the past three years, and the number of these accidents which involved motorcycles;*

- (b) *of the differences between the provisions applicable to motorcycles and to other vehicles as laid down in the traffic control regulations for cross-harbour tunnels; and*
- (c) *whether motorcycles are prohibited from overtaking in cross-harbour tunnels (except at the time of traffic congestion and slow traffic movement) under the existing legislation; if so, of the penalties stipulated in and other relevant details of such provisions; if not, whether it will consider making such a provision?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, in the past three years, out of a gross tunnel throughput of 254 million vehicles, a total of 387 traffic accidents happened inside the tubes of the three cross-harbour road tunnels, of which 37 involved motorcycles. A breakdown of the accident statistics by tunnel is set out in the table below:

	<i>Total No. of Accidents</i>	<i>No. of Accidents Involving Motorcycles</i>			
		<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>Total</i>
Cross-Harbour Tunnel	275	5	7	7	19
Western Harbour Crossing	12	1	0	0	1
Eastern Harbour Crossing	100	5	6	6	17
Total	387	11	13	13	37

When passing through a cross-harbour road tunnel, motorcyclists are required to observe traffic signs and road markings as motorists of other classes of vehicles, except where a traffic sign or road marking expressly states otherwise.

All motorists including motorcyclists are required to keep in lane whilst driving through a tunnel tube and not to cross any double-white lines. However, during traffic congestion or in heavy and slow moving traffic, a motorist may overtake a vehicle if he can safely pass between the vehicle in front of him and the double-white lines. When doing so, he has to ensure that the driver in front of him knows that he is coming through. If a motorcyclist does not follow the above rules during overtaking and causes any accident, the

motorcyclist will have committed a traffic offence. Tunnel staff are required to monitor closely the traffic movements inside tunnels and will take appropriate follow-up action to prosecute those who have committed traffic offences.

Overall, we consider the present traffic regulations and traffic monitoring system inside cross-harbour tunnels to be adequate. To enhance public awareness of the importance of safe driving inside tunnel tubes, we will step up our education and publicity programmes and work with the transport trade and motor associations to promote the message amongst their members. The Tunnel Safety Week lasting from 28 June 2002 to 5 July 2002 involving tunnel, public transport operators and the media is an example. We will monitor the situation closely and introduce further legislative measures to enhance safety inside tunnel tubes where necessary.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): Bill. We will resume the Second Reading debate on the Statute Law (Miscellaneous Provisions) Bill 2001.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001

Resumption of debate on Second Reading which was moved on 4 July 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 Statute Law (Miscellaneous Provisions) Bill 2001, I would like to highlight some of the major deliberations of the Bills Committee.

The Bill proposes miscellaneous amendments to various ordinances and subsidiary legislation. Most parts of the Bill introduce improvements to the law which only involve minor or technical amendments. The remaining parts contain provisions introducing reforms to the existing law. These include Part V of the Bill on marital rape, Part VII on the proposed discretion of the Court to order repayment of deposit to a purchaser, and Part XIV on the power of the Council of the Law Society of Hong Kong (Law Society) to make rules or impose conditions on practice.

In considering the scope of Part V of the Bill, the Bills Committee takes the view that the most immediate issue for the amendment exercise is to make it clear that marital rape is an offence. Under the old common law interpretation, "unlawful sexual intercourse" could be interpreted as sexual intercourse outside marriage, and there was a presumption of consent in marriage to sexual intercourse. Therefore, it was sometimes thought that a husband could not be convicted of the rape of his wife. Although the decision of the House of Lords in an English case has clarified that a husband may be guilty of rape of his wife if the wife does not consent to the sexual intercourse, the Bills Committee and the Administration agree that there is a need to amend the legislation to remove the misconception about marital rape, and this should be done immediately.

The Bills Committee strongly supports reviewing the law of sexual offences and amending it as necessary to give greater protection to women in marriage, and to reflect the modern view of sexual equality. However, it considers that to amend the sexual offence provisions in Part XII of the Crimes Ordinance as originally proposed in the Bill would cause delay to the passage of the proposed amendment regarding marital rape because of the scope of the review that it requires. In its view, a minimalist approach primarily to deal with the offence of rape is the more prudent approach, but a full-scale review of the other non-rape sexual offences should be conducted thereafter as soon as possible. The Bills Committee notes that this proposal is in line with the views expressed at previous meetings of the Panel on Administration of Justice and Legal Services when the issue of marital rape was discussed. The Administration agrees to this minimalist approach proposed by the Bills Committee.

In pursuing the course of a minimalist approach, the Bills Committee accepts the Administration's proposed Committee stage amendments to delete

all the clauses in Part V of the Bill except clause 11, and to replace clause 11 by a proposed new section 117(1B) of the Crimes Ordinance. The proposed section 117(1B) declares that for the purposes of the sexual offence sections 118, 119, 120 and 121 and without affecting the generality of any other provisions, "unlawful sexual intercourse" does not exclude sexual intercourse that a man has with his wife. The Bills Committee and the Administration are satisfied that the proposed new amendment, which gives statutory expression to the principle expounded in the House of Lords judgement, removes the outdated marital immunity under common law, and enables alternative conviction of an accused husband acquitted of the offence of rape. Moreover, the restriction of the scope of the proposed amendment would not limit or reduce the protection of women provided under the other sexual offence provisions in the Crimes Ordinance.

The Bills Committee has requested the Secretary for Justice to clarify, on resumption of the Second Reading debate on the Bill, the legislative intent and effect of the legislative amendment. The Bills Committee has urged the Administration to conduct a comprehensive review of the sexual offence provisions in Part XII of the Crimes Ordinance in the context of a law reform without delay. The Bills Committee has also asked the Panel on Administration of Justice and Legal Services to follow up the progress of the review.

Part VII of the Bill proposes to introduce a new section 12(1A) to the Conveyancing and Property Ordinance to empower the Court, where it refuses to grant specific performance of a contract or in any action for the return of a deposit, to order the repayment of any deposit to a purchaser if it sees fit. According to the Administration, the legislative intent is to fill a gap in the law by providing the Court the ability to do justice where the circumstances of the case require.

The views of members of the Bills Committee on the proposed amendment are largely divided. Some members are opposed to the proposal, saying that it favours the purchaser at the expense of the vendor. Some members consider that an unfettered discretion of the Court to return a deposit would affect the sanctity of contract. The proposed amendment may also create an uncertainty in the law which would encourage purchasers to seek to rescind transactions and make unmeritorious claims for relief against forfeiture of their deposit, particularly in a falling market. A member considers that if a judicial discretion is to be provided at all, the exercise of the discretion should be limited to cases where there is a genuine dispute on title.

Some members, on the other hand, support the proposal. They are of the view that the exercise of the proposed discretion necessarily involves a careful consideration by the Court of all the relevant factors, including the sanctity of contract and the rights of the vendor, and the Court is unlikely to order the return of any deposit except when it is plainly inequitable not to do so. The concern that the proposed discretion of the Court would lead to unmeritorious litigation is not warranted.

The views of the two legal professional bodies and the Consumer Council on the amendment proposal are also varied. The Hong Kong Bar Association does not support the proposal. The Law Society prefers an amendment along the lines of the New South Wales model. The Consumer Council supports a judicial discretion but suggests that the circumstances under which the Court should not exercise such discretion be specified.

The Administration has accepted that there is a need to further consider the proposal in view of members' comments. The Administration decides to propose a Committee stage amendment to withdraw Part VII from the Bill.

During the deliberations of the Bills Committee, some members have suggested that the Administration should examine ways to improve the execution of vendor and purchaser summons as a means to facilitate disputes to be resolved before the completion date of transaction, and hence to reduce unnecessary litigation. The Bills Committee has requested the Panel on Administration of Justice and Legal Services to follow up the proposal.

I would also like to highlight some issues in Part XIV of the Bill. Clauses 108 and 109 relate to the proposed implementation of a new disciplinary mechanism for the summary disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal by way of a fixed penalty imposed on solicitors who admit having committed breaches of a relatively minor nature. During its discussion, the Bills Committee has expressed concern about the drafting of the proposed provisions, which does not seem to safely preclude breaches committed with a dishonest intent from being dealt with by means of the proposed fixed penalty system. In response to the suggestion of the Bills Committee, the Administration, after consulting the Law Society, has agreed to propose a Committee stage amendment to introduce an express statutory provision to address the issue.

The Bills Committee has noted that the matters which can be dealt with under the proposed fixed penalty system would be specified in rules to be made by the Council of the Law Society. Such rules would be subject to negative vetting by the Legislative Council. The Bills Committee considers that if a subcommittee is formed by the House Committee to study the rules when they are finalized, the subcommittee should take into account the matter concerning dishonest intent in its deliberation.

Under the Legal Practitioners Ordinance, the Law Society may issue a practising certificate subject to such conditions as may be prescribed by the Chief Justice. To date, the Chief Justice has not prescribed any conditions for such purpose. In the views of the Administration, this creates a loophole in the law which has been exploited by some solicitors. Clause 105 of the Bill seeks to transfer to the Council of the Law Society the rule-making power of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached to a certificate. Such rule-making power would be subject to the Chief Justice's prior approval. The Chief Justice has agreed to the proposed transfer of power.

In considering the proposal, the Bills Committee is satisfied that there is urgency to implement the amendment to enable the Law Society to better manage the practice of solicitors and improve professional conduct for greater protection of public interest.

Lastly, I would like to add that the Bills Committee has also considered the other Parts of the Bill in detail and has no objection to the technical amendments proposed by the Administration.

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)

SECRETARY FOR JUSTICE (in Cantonese): As I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill 2001 into this

Council in June 2001, this Bill proposes to amend certain obsolete, inconsistent or anomalous provisions; to adapt "non-immunity" provisions in various Ordinances; and to make relatively minor amendments to various Ordinances.

Since the introduction of the Bill, the Bills Committee, chaired by Miss Margaret NG, has thoroughly examined the clauses, which relate to a wide variety of issues in different areas of the law. I am most grateful to the Chairman and members of the Bills Committee, namely, Miss Cyd HO, Mr James TO, Mrs Sophie LEUNG, Mr Jasper TSANG, Mr Ambrose LAU, Miss Emily LAU and Ms Audrey EU for their hard work and helpful contributions. Some changes to the Bill have been proposed and agreed. As a result, I will be moving a number of Committee stage amendments later this afternoon. I will now give a brief outline of the more important of these amendments.

Commencement

The commencement of the various provisions of the Bill is provided for in clause 2. It is proposed to defer the commencement of provisions relating to the summary disposal of certain complaints against solicitors in order to allow time for the Law Society Council to prepare the relevant rules.

Amendments to clause 2 will provide for this, and will rectify an error in relation to the commencement of clause 7 of the Bill.

Marital rape

The Bills Committee has given detailed consideration to the provisions in the Bill relating to marital rape. Following the decision of the House of Lords in *Regina v R* in 1991, a husband may be guilty of rape of his wife if, in the circumstances of the case, the wife does not consent to sexual intercourse. This decision was reached despite the fact that the offence of rape must involve "unlawful sexual intercourse" and that expression originally excluded marital intercourse.

The proposed amendment to the statutory offence of rape is intended to remove any doubt there may be on this point by making it clear that marital intercourse is not excluded. The Bill also proposed to amend certain other sexual offences by making it clear that they too could apply in respect of marital intercourse. There were, however, concerns raised by Bills Committee members in respect of those other amendments.

After detailed discussion and consultation, the Bills Committee suggested that a minimalist approach should be adopted, and that the scope of the proposed clarification of the law should be limited to the offence of rape, and to three other offences of which a person charged with rape may be convicted. The Administration has agreed to this suggestion. I will therefore move an amendment, which is stated to be for the avoidance of doubt. The amendment declares that, for the purposes of sections 118, 119, 120 and 121, that is, the four relevant offences, the expression "unlawful sexual intercourse" does not exclude sexual intercourse that a man has with his wife. The original clause 11 will be amended, clauses 12 to 17 will be deleted.

Although the proposed clarification of the law is limited to four offences, I wish to make it clear that this is not intended to prevent or limit the application of the principles established in *Regina v R* to other sexual offences. It is not intended that the protection offered to women under Part XII of the Crimes Ordinance will be reduced in any way as a result of the proposed Committee stage amendments.

Review of sexual offence

In agreeing to this minimalist approach, the Bills Committee emphasized that other problems need to be addressed at a later stage. Members asked that a full-scale review of the sexual offences in Part XII of the Crimes Ordinance be conducted without delay. The Administration appreciates that there is a need to revise and update the law relating to sexual offences, for the protection of women, when there is an identified inadequacy in a particular area or offence. To address members' concerns in this respect, I would like to describe the specific areas of work that the Administration is already undertaking.

The first area relates to the rules of evidence which apply where a person is charged with an offence against his or her spouse. At present, the rules are such that the evidence of the spouse may not be available in particular cases. This can lead to marital violence going unpunished. A Bill to reform this area of law, namely the Evidence (Miscellaneous Amendments) Bill 2002, was introduced into this Council in May this year. The Bill deals with competence and compellability of spouses in criminal proceedings. I urge Members to support this Bill.

A second area of work relates to persistent sexual abuse of a child. The victims of such abuse may not be able to recall precisely details such as the

number of times they have been abused, the dates of each occasion of abuse and the acts performed on each occasion. As a result, there can be difficulty in prosecuting offenders for the full range of offences committed. My department is therefore considering a possible amendment to the Crimes Ordinance to create a specific offence relating to such conduct.

The third area is child pornography. The Prevention of Child Pornography Bill aims at prohibiting child pornography and child sex tourism so as to protect children from sexual exploitation and sexual abuse. The Bill was introduced into this Council in January this year and is now being scrutinized by a Bills Committee.

In addition to undertaking these three reform projects, in October 2001 the Administration established a Working Group on Combating Violence. The objectives of this Working Group are to examine the problem of violence in Hong Kong (with a particular focus on spouse battering and sexual violence); to map out strategies and approaches in handling the problem; to examine the existing procedures and guidelines on handling the problem; and to recommend improvement measures.

The Working Group, chaired by the Director of Social Welfare, comprises representatives of non-governmental organizations and various government bureaux and departments, including the Security Bureau, the Social Welfare Department, the Health, Welfare and Food Bureau, the Legal Aid Department, the Department of Health, the Hong Kong Police Force, the Education Department, and the Department of Justice. Meetings are held on a regular basis.

It is clear, therefore, that the Administration is taking active steps to ensure that our sexual offences are revised where necessary, and that women are fully protected from sexual abuse. This is a continuing process and, if the need arises, other aspects of the law relating to sexual offences will be reviewed.

Refund of deposits

Returning to the current Bill, I wish to comment on the proposal to allow the Courts to order a refund of deposit in a property transaction where the justice of the case so requires. Although similar powers exist in other common law jurisdictions, members of the Bills Committee were concerned about the application of such a power in the context of Hong Kong's property

market. Some members considered that the power could be abused by some purchasers, and could lead to uncertainty. Others would prefer the power to be exercisable only in limited, and specified, circumstances.

In the time available, it was not possible to devise an amendment that might be acceptable to members. The Administration has therefore decided to withdraw this proposal for the time being by deleting Part VII of the Bill. However, my department will continue to explore the possibility of granting a more limited discretion to the Courts to order a refund of a deposit.

"Non-immunity" provisions

As I mentioned earlier, the Bill adapts a provision in a number of Ordinances to the effect that a particular body is not a servant or agent of the Crown. The adaptation replaces the reference to the "Crown" by the "Government". I will be moving a Committee stage amendment to adapt one further provision of this kind, namely the one in the Occupational Deafness (Compensation) Ordinance (Cap. 469).

Solicitors Disciplinary Tribunal

Clause 108 of the Bill seeks to amend the Legal Practitioners Ordinance to implement a new disciplinary procedure for the summary disposal of certain complaints against solicitors. The Tribunal Convenor of the Solicitors Disciplinary Tribunal is empowered to impose a fixed penalty on a solicitor who admits liability for the breach of a provision, practice direction or principle of professional conduct prescribed in rules made by the Council of the Law Society.

The Bill provides that the Council may take into account specified matters in considering whether a matter is suitable for disposal in this manner. At the suggestion of the Bills Committee, I will move an amendment to provide that the Council of the Law Society may also take into account one further matter, that is, whether the alleged breach by a solicitor involves a dishonest intent. It is agreed that an element of dishonesty may mean that the allegation is not suitable for summary disposal.

Other matters

I will also be moving amendments to items 3, 8 and 11 in the Schedule to the Bill in order to give effect to the change in post titles resulting from the

accountability system for principal officials. Other minor and technical issues will also be dealt with in the agreed Committee stage amendments.

Conclusion

Madam President, with these remarks and subject to the Committee stage amendments proposed by the Administration, I commend the Bill to Honourable Members. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Statute Law (Miscellaneous Provisions) 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): Statute Law (Miscellaneous Provisions) Bill 2001.

Council went into Committee.

Committee Stage

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Statute Law (Miscellaneous Provisions) Bill 2001.

CLERK (in Cantonese): Clauses 1, 3 to 6, 8, 9, 10, 18, 20 to 52, 54 to 106, 109 to 125 and 127 to 131.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 7, 11 to 17, heading before clause 19, clauses 19, 53, 107, 108 and 126.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 7, 11, 53, 107, 108 and 126 and the deletion of clauses 12 to 17, the heading before clause 19 and clause 19, as set out in the paper circularized to Members.

I explained the purpose of most of these amendments and deletions earlier this afternoon. In addition:

- (1) the amendment to clause 7 is to clarify who may enforce payment of compensation under the proposed section 73(5) of the Criminal Procedure Ordinance.

- (2) the amendment to clause 53 is to achieve consistency in the use of terms in sections 8(1)(d) and (e) of The Hong Kong Institute of Education Ordinance.
- (3) the amendment to clause 107 makes it clear that the Law Society is not obliged to remunerate the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.
- (4) the amendment to clause 126 transfers certain powers relating to day-to-day administration from the Chief Justice to the Chief Judge.

Madam Chairman, I beg to move.

Proposed amendments

Clause 2 (see Annex V)

Clause 7 (see Annex V)

Clause 11 (see Annex V)

Clause 12 (see Annex V)

Clause 13 (see Annex V)

Clause 14 (see Annex V)

Clause 15 (see Annex V)

Clause 16 (see Annex V)

Clause 17 (see Annex V)

Heading before clause 19 (see Annex V)

Clause 19 (see Annex V)

Clause 53 (see Annex V)

Clause 107 (see Annex V)

Clause 108 (see Annex V)

Clause 126 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 12 to 17, heading before clause 19 and clause 19, which deal with deletion, have been passed, clauses 12 to 17, heading before clause 19 and clause 19 are deleted from the Bill.

CLERK (in Cantonese): Clauses 2, 7, 11, 53, 107, 108 and 126 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 44A	Occupational Deafness (Compensation) Ordinance
New clause 44A	Provisions with respect to the Board and members thereof
New clause 75A	The powers of the University.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move that the heading before new clause 44A, and new clauses 44A and 75A, as set out in the paper circularized to Members, be read the Second time.

I explained the purpose of new clause 44A in my speech earlier this afternoon.

The addition of clause 75A is to achieve consistency in the use of terms in the City University of Hong Kong Ordinance.

Madam Chairman, I beg to move.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the heading before new clause 44A, new clauses 44A and 75A 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 44A, new clauses 44A and 75A.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move that the heading before new clause 44A, new clauses 44A and 75A be added to the Bill.

Proposed additions

Heading before new clause 44A (see Annex V)

New clause 44A (see Annex V)

New clause 75A (see annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the heading before new clause 44A, new clauses 44A and 75A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to the Schedule, as set out under my name in the paper circularized to Members.

As explained earlier this afternoon, the purpose of these amendments is to give effect to the change in post titles resulting from the accountability system for principal officials.

Madam Chairman, I beg to move.

Proposed amendment

Schedule (see Annex V)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Justice 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): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the

Statute Law (Miscellaneous Provisions) 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 Statute Law (Miscellaneous Provisions) 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): Statute Law (Miscellaneous Provisions) Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Import and Export (Electronic Transactions) Bill 2001.

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001**Resumption of debate on Second Reading which was moved on 13 June 2001**

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

MR KENNETH TING (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Import and Export (Electronic Transactions) Bill 2001 (the Bills Committee), I would like to report on the deliberations of the Bills Committee. The Import and Export (Electronic Transactions) Bill 2001 (the Bill) seeks to provide the legal framework for processing submission of cargo manifests by electronic means under the Import and Export Ordinance (Cap. 60), Reserved Commodities Ordinance (Cap. 296), Industrial Training (Clothing Industry) Ordinance (Cap. 318) and Protection of Non-Government Certificates of Origin Ordinance (Cap. 324).

In the course of deliberations, the Bills Committee notes that the industry generally supports the electronic collection, submission, distribution and sharing of data to improve efficiency, cost-effectiveness and quality of cargo operations. However, reservations have been expressed about the proposal of possessing cargo manifests by way of Electronic Data Interchange (EDI) provided by the Tradelink Electronic Commerce Limited (Tradelink). It has been pointed out that the current practice of submitting cargo manifests in paper form does not involve charges, but the charge imposed by Tradelink is too high. Furthermore, the industry will be required to upgrade their computer systems to ensure compatibility with the system of Tradelink, the cost of which will inevitably have impact on the industry. The air cargo industry is particularly concerned about whether the proven Customs' Air Cargo Clearance System (ACCS) will be replaced by the implementation of EDI service for cargo manifests (EMAN). On the other hand, the river trade has urged the Administration to tackle the interface between Hong Kong and the Pearl River

Delta Region in respect of submission of export manifests in electronic form to prevent double handling of cargo data.

The Administration's explanation is that it is only fair for Tradelink to charge a service fee in order to recover the cost in developing the front-end system and providing the package of services to carriers. Given that Tradelink's exclusive franchise will expire in end 2003, effort will be made then to introduce competition to increase efficiency, lower prices and improve service quality. Meanwhile, Tradelink is still discussing with carriers on the EMAN fee to be charged. To allay the air cargo trade's concern, the Secretary for Commerce, Industry and Technology undertakes to include in the speech at the resumption of the Second Reading debate of the Bill that EMAN will not replace the existing ACCS. On the other hand, the Guangzhou Customs is conducting trial runs on a new scheme under which carriers are required to submit manifests electronically in advance. To this end, consideration is being given for Tradelink to co-operate with the mainland service provider to put in place a one-stop service for electronic submission of manifests. Notwithstanding this, members hold the view that the Administration should assume a proactive role and make use of all available channels to discuss with the decision-making authorities in the Mainland with a view to expediting the interface process.

The Bill proposes that a manifest shall be furnished to the Director General of Trade and Industry (the Director) using an electronic service provided by a specified body within 14 days after the arrival or departure of every vessel, aircraft or vehicle. Failure to do so without reasonable excuse constitutes an offence. Members questioned the propriety of imposing such a sanction which is at variance with the current practice whereby failure to deliver a copy of every cargo manifest to the Director for trade control purposes will not attract any penalty. In view of this, the Administration agrees to move a Committee stage amendment to empower the Director to have access to information contained in a manifest lodged with the Commissioner of Customs and Excise (the Commissioner), thereby dispensing with the need for creation of any new offence.

To allow the industry to adapt to the change, the Bill provides for a transitional period during which both paper and electronic submission of cargo manifests are allowed. The Bills Committee considers that the industry should be given ample time to adapt to the change. At the request of the Bills

Committee, the Administration undertakes that this Council will be informed of the outcome of the review to be conducted to ascertain when the transitional period should end.

The Bills Committee is concerned that where the front-end system breaks down completely or partially for an extended period, the Administration is empowered to reverse to the use of paper submission. The Administration has undertaken to move a Committee stage amendment to stipulate that the exercise of the Commissioner's power is limited to cases where it is not practicable for information to be given using services provided by a specified body.

Insofar as road mode carriers are concerned, the Bills Committee notes that, due to the stringent time requirements of cargo clearance for this mode of transport and the huge traffic throughput involved, coupled with the fact that most of the carriers in the road mode transport are small operators who are not ready to switch to electronic submission of manifests, the road mode of transport is not included in the EMAN system. However, as it remains the Government's long-term goal to promote electronic exchange of information, a separate feasibility study on electronic submission of road mode manifests is underway. The Administration undertakes that if a decision is made to implement electronic submission of road mode manifests, it will be made optional initially. Any decision to make electronic submission of road mode manifests mandatory will be subject to the scrutiny of this Council.

To reflect such a policy intent, Committee stage amendments will be introduced to empower the Commissioner to, by notice published in the Gazette, specify that manifest information in relation to the road mode shall be given in paper form only. Such a notice shall come into force at the same time as the commencement of the Bill so that road mode carriers may continue submitting manifests in paper form only. In the event that a decision is made to implement an electronic system for road mode manifests, the notice will be revoked and the transitional provision allowing the information to be given either in paper form or by using services provided by a specified body during the transitional period will then apply.

Madam President, given the fact that the Administration has acceded to the recommendations made by the Bills Committee and undertaken to move Committee stage amendments, I proposed that the Second Reading debate be resumed.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance, I speak in support of the passage of the Import and Export (Electronic Transactions) Bill 2001 (the Bill) and the amendments to be moved by the Government at the Committee stage. The Bill seeks to provide a legal framework for processing submission of cargo manifests by electronic means. Transmission of business data by electronic means is worth promoting for it helps raise efficiency. It is also consistent with global trend too. The trade is generally supportive of the proposal on processing data electronically. However, in promoting the relevant measures, the Government must accommodate the opinions of the trade as far as possible to ensure the needs of users are genuinely met. At the same time, effective measures should be introduced to lower operating costs.

In the course of discussion, the trade expressed great concern over the interface between various places in the Pearl River Delta in respect of submission of cargo manifests in electronic form. As carriers will be required to submit cargo manifests electronically under a scheme to be launched by the mainland Customs, the Government of the Hong Kong Special Administrative Region and the relevant electronic service providers should work in collaboration with mainland authorities with a view to standardizing the electronic manifest data requested by the governments of the Pearl River Delta and Hong Kong. This will facilitate exchange and utilization of the data as well as preventing double submission of cargo data. To this end, the Government should more proactively engage in discussions with mainland authorities and resolve the problems involved expeditiously, with a view to providing a one-stop service to businesses.

In addition to the problem pertaining to interface between the systems of different places, the trade has expressed grave concern over the level of fee charged by the electronic service provider. Actually, it will cost enterprises an extra sum of money in upgrading their computer systems. It is not easy for small and medium enterprises to make such an investment in times of an economic depression. Furthermore, the present practice of submitting cargo manifests in paper form is completely free. Therefore, the fee charged by the electronic service provider must be kept as low as possible to reduce the burden on the trade. At the same time, the Government must endeavour to open up the market and introduce more service providers with a view to lowering charges and improving services through competition among providers.

Lastly, the Government should give the trade ample time to make preparations for adaptation to the new cargo manifest system before the transitional period comes to an end. I so submit.

MR CHAN KAM-LAM (in Cantonese): Madam President, with the continuous advances in technology and closer trade ties between places all over the world, the freight transport industry is putting more and more emphasis on efficiency. For these reasons, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the implementation of the electronic submission of cargo manifests scheme so as to add value to the industry in Hong Kong and better equip Hong Kong as a logistics hub in the Region. The major direction of the Import and Export (Electronic Transactions) Bill 2001 (the Bill) therefore merits support. Nevertheless, we have to take into account the operating costs of the industry, and try every possible means to minimize capital and manpower costs, without affecting the business environment.

To develop an electronic system requires a lot of manpower, resources and money. The Government decided not to recover the sum of \$110 million it has invested because the Government of the Hong Kong Special Administrative Region (SAR) is duty-bound to promote the territory's development. From the commercial angle, however, the Tradelink Electronic Commerce Limited (Tradelink) cannot do business without charging a penny. The levying of service charges is therefore understandable. While I do not oppose the levying of service charges by Tradelink, whether the fee charged is reasonable is still open to discussion. Faced with a sluggish economy, the freight transport industry has found survival very difficult already. If Tradelink insists on its proposed charging level, carriers will have to pay an extra sum of at least several thousand dollars monthly. This will undoubtedly increase their operating costs. Being a franchised operator, Tradelink should bear part of the social responsibility in addition to operating business from the commercial angle. After the passage of the Bill, carriers will have no other choices in making customs declaration because of the new statutory requirements. The new law will deprive them of their bargaining power over the fee charged. For these reasons, the Government is duty-bound to request Tradelink to adjust its exorbitant fee to avoid jeopardizing the business environment.

Determined to make Hong Kong the logistics hub in the Region, the Government has often stressed the need to develop the territory's logistics

industry in recent years. In particular, Hong Kong must strengthen its ties with the Mainland and fight for a bigger share in the logistics market in the Pearl River Delta. Nevertheless, the Administration lacks both initiative and proactiveness in terms of specific implementation. I recall we have, during the scrutiny of the Bill, more than once asked the Government about Hong Kong's interface with the Mainland's customs declaration procedures, and urged the Government to strengthen communication with the relevant authorities in the Mainland. We were really disappointed that the answer we got every time was that the matter would be closely monitored. Following China's accession to the World Trade Organization, the prospects of the territory's shipping and logistics industries will depend on whether we can grasp the opportunities of doing business with the Mainland. I believe Honourable Members are well aware of this too. The Government did not even realize there was a need to enquire with the Mainland until it was told by the shipping industry associations that the Guangzhou Customs had planned to launch an electronic surveillance platform. It was thus evident that the Government had lacked communication with the Mainland in respect of the promotion of electronic customs declaration, let alone comprehensive and sound planning on long-term development. Logistics development has been underway in Hong Kong for a considerable period of time. We cannot say we are still at the preliminary stage. Electronic customs declaration is part of logistics development. A lot of work needs to be done in future. In this connection, the DAB would like to urge the SAR Government to start by looking into the electronic customs declaration systems of Hong Kong and the Mainland and work with the Mainland to resolve the interface problems in respect of the freight transport market in the two places.

The award of franchise for the provision of EMAN services has been another controversial issue in addition to the charging of fees. Maintaining its decision of appointing Tradelink as the sole service provider, the Government has instead opted for the proposal of introducing two new competitors two years after. In addition, the industry's proposal of setting up its own system in accordance with the Government's specifications was vetoed on the grounds that the existing back-end system would have to be revamped and extra manpower deployed to provide support. It was stressed that charges would possibly be lowered and the standard of service improved after the introduction of competition in 2004. I definitely hope the Government's smart calculations can fall into places. However, judging from Tradelink's charging scheme whereby low charges are offered to lure carriers to sign contracts lasting five or even seven years with a view to locking them to the scheme, it is feared that we

might not be able to see the benefits brought about by healthy competition even if new service providers are introduced in two years' time. Although the Government has indicated that the initial response to the tender exercise is satisfactory and it is hopeful new competitors can be introduced, I think a meticulous and cautious government must prepare for the worst case scenario. To ensure the normal development of the market, it must be able to put in place a new mechanism immediately should its attempt to introduce competition into the market fail. Furthermore, the Government must, as opposed to what some government officials have suggested, formulate contingency plans in advance. The DAB would like to urge the Government to put in place a back-up mechanism expeditiously in the event that no new service providers are willing to provide the electronic customs declaration service. At the same time, the Government should reconsider the proposal of allowing the industry to design its own system in accordance with the Government's specifications.

I so submit. Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, with the rapid development of electronic commerce in the world and the growth in the logistics supply chain, there is a need for Hong Kong to launch Electronic Data Interchange (EDI) service in order to stay competitive. The Bill proposes to require the electronic submission of cargo manifests by carriers in the ocean, river, air and rail modes of transport to enable Hong Kong to move ahead in electronic commerce.

It is not a problem to require most of the carriers of non-land modes of transport to make cargo declaration in electronic form, but the problems which carriers of river trade would face are greater. For if the river trade carriers in Hong Kong are required to undertake electronic cargo declaration, while cargo declaration in most of the ports on the Mainland is still made in paper form, these carriers from Hong Kong will have to repeat their efforts in inputting cargo data. Not only will this not help improve efficiency, but also cause inconvenience to the trade and increase the costs involved. In respect of the interface between Hong Kong and the Pearl River Delta Region, Hong Kong Customs has liaised with the Guangdong Customs Sub-Administration and it is learned that Guangdong Customs has launched a pilot scheme to require carriers to complete advance customs declaration electronically. But the scheme is after all only a pilot scheme, and it is only confined to a few ports in the Pearl River Delta Region, not yet implemented across the entire Region.

It would be meaningless if full-scale electronic cargo declaration is not launched in all the ports in the Pearl River Delta Region while Hong Kong is doing so. However, it is learned that the mainland authorities are taking a very positive stand on the issue and the SAR Government should take a similar positive approach, make the best use of all available channels to discuss the matter with the mainland counterparts and speed up the process of interface. As to when electronic declaration should be put in force in Hong Kong, the Government should consider the progress in electronic declaration in our mainland counterparts to ensure sound interface before full-scale electronic declaration can be carried out in Hong Kong.

As for the fees, the exclusive franchise of the Tradelink Electronic Commerce Limited (Tradelink) will expire only in end 2003 and by that time two more service providers will be added to provide front-end EDI services together with Tradelink. The idea is to foster competition that will reduce the fees and improve service quality. But as there is still some time before end 2003 and in order that the trade can adapt to the EDI service in submitting cargo manifests, the fees charged by Tradelink should be set at a reasonable level towards the lower end. I am aware that Tradelink is presently discussing the issue of fees with the trade, but no agreement has been reached yet. The Government should keep a close watch on the relevant developments in order that the issue of fees will not pose any obstruction to the implementation of the scheme.

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

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

(No Member responded)

PRESIDENT (in Cantonese): I now call on the Secretary for Commerce, Industry and Technology to speak in reply.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the Import and Export (Electronic Transactions)

Bill 2001 seeks to provide a legal basis for the use of electronic means by carriers in submitting cargo manifests to the Government.

The Bills Committee has scrutinized the Bill in detail and made invaluable suggestions. I would like to take this opportunity to thank the Honourable Kenneth TING, Chairman of the Bills Committee, and the other participating members for their efforts. Having discussed and agreed with the Bills Committee, I will move certain amendments to the Bill at the Committee stage.

There are a number of benefits in submitting cargo manifests by electronic means. Electronic submission enables simultaneous transmission to different government departments. As such, it is no longer necessary for carriers to submit manifests to different government departments separately. This saves manpower, improves efficiency and reduces the use of papers. Through the introduction of the electronic cargo manifests (EMAN) system, the Government also hopes to promote the general application of electronic commerce in Hong Kong.

The Government has completed its establishment of the EMAN system which is ready for use. According to the franchise agreement signed between the Government and Tradelink Electronic Commerce Limited (Tradelink), Tradelink will be responsible for the front-end processing service and customer service support. The Government will be responsible for the back-end processing service.

The Government has invested over \$100 million in developing the relevant computer system. But it is regarded as an infrastructure facility. The Government has no plan to recover the cost from users. As regards the services provided by Tradelink, Tradelink will charge a fee to recover the costs incurred and make a reasonable commercial return. Tradelink has consulted the views of the industry on the issue of charges. In view of the present economic condition and having regard to the views of the industry, Tradelink has adjusted the price structure and lowered the fee levels, with substantial discounts to long-term customers and high volume users. At present, good progress has been made in the discussion between Tradelink and carriers, with agreements broadly reached. The Government will continue to closely monitor the discussion between both sides, with a view to resolving the fee issue before the EMAN service is launched.

To introduce market competition, we also plan to engage two additional service providers upon the expiry of Tradlink's franchise by the end of 2003. The relevant tender invitation was closed in late June. We are evaluating the three proposals received. All three tenderers propose to provide electronic services for cargo manifests.

To ensure a smooth migration from the use of paper to electronic means in submitting cargo manifests, the law will provide for a transitional period whereby carriers can choose to submit cargo manifests in paper or electronic form. In determining the end date of the transitional period, we will take into account the take-up rate by users and the smooth operation of the computer system. The Commissioner of Customs and Excise will end the transitional period by publishing a notice in the Gazette, which is subject to the scrutiny and approval of the Legislative Council.

Madam President, in the course of scrutinizing the Bill, Mr Kenneth TING and some other Members raised three issues of greater concern. I would like to elaborate on these three issues one by one.

The first concerns the electronic service for road mode manifests. Given the stringent time requirements for cargo clearance of the road mode transport, the huge traffic throughput involved and the current *modus operandi* of the industry, we have to carefully examine the feasibility and the cost-effectiveness of electronic submission of road mode manifests. As such, we have not provided such service for the time being. The relevant study will be completed soon. We will consult the Legislative Council Panel on Commerce and Industry on whether we should implement electronic submission of road mode manifests.

The second concerns the air carriers' view that the Air Cargo Clearance System (ACCS) presently in operation should not be replaced by EMAN system. At present, air carriers submit cargo data to the Customs and Excise Department through the ACCS to facilitate cargo clearance. The system commenced operation in 1998 and has since significantly improved the speed of cargo clearance. As the function of ACCS is different from the EMAN system, we have no plan to replace the ACCS by the EMAN system.

The third relates to river carriers. When river carriers carry goods from Hong Kong to the Mainland or the other way round, they will be required to submit cargo manifests electronically in both places. They have sought

assistance from the Government on resolving possible duplication of input. We have arranged Tradelink to discuss with the electronic service provider designated by the Mainland Customs for Tradelink to provide a one-stop service by sending on behalf of river carriers the electronic manifest submitted in Hong Kong to the designated service provider.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Import and Export (Electronic Transaction) 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): Import and Export (Electronic Transactions) Bill 2001.

Council went into Committee.

Committee Stage

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

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Import and Export (Electronic Transactions) Bill 2001.

CLERK (in Cantonese): Clauses 2 to 5.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 1.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move the amendment to clause 1 as set out in the paper circularized to Members. The resolution on the accountability system was passed on 19 June 2002. In accordance with the resolution, the statutory functions of the Secretary for Commerce and Industry have been transferred to the Secretary for Commerce, Industry and Technology. This motion amends clause 1 by making corresponding changes, replacing "Secretary for Commerce and Industry" by "Secretary for Commerce, Industry and Technology". Thank you, Madam Chairman.

Proposed amendment

Clause 1 (see Annex VI)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Commerce, Industry and Technology 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 1 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): Schedule 4.

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): Schedules 1 to 3.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move the amendments to Schedules 1, 2 and 3 as set out in the paper circularized to Members. The amendments are technical in nature.

We propose adding a new section 6A in Schedule 1 and deleting section 9 of Schedule 1 to empower the Director General of Trade and Industry (the Director) to have access to information contained in a manifest lodged with the Commissioner of Customs and Excise (the Commissioner). This will dispense with the need for a new provision to require submission of manifests by carriers to the Director. As section 9 has been deleted, we have made consequential amendments to sections 4(2), 5(2) and 6(2) of Schedule 1. To provide flexibility for carriers, we propose to amend section 7(2) of Schedule 1. This will allow carriers to furnish, on demand of Customs, a manifest in paper or electronic form upon the goods entering or leaving Hong Kong. If it is in electronic form, the manner and format must comply with the requirements specified under section 11(2) of the Electronic Transactions Ordinance in relation to the Import and Export Ordinance. Carriers may also submit manifests by using the electronic services provided by a specified body. In addition, we have inserted a new provision stipulating that the particulars contained in the manifests submitted by carriers must comply with the relevant requirements to the satisfaction of Customs and Excise Department for cargo clearance purposes. We propose deleting section 8 of Schedule 1 to enable the owner of a vessel to furnish a list showing ports of call either in paper or electronic form. We propose amending section 12 of Schedule 1 to provide that the Commissioner can exercise his power to require carriers to revert to submitting manifests in paper mode only under certain specified circumstances, such as system breakdown for an extended period. We also propose inserting

a new provision to section 12 of Schedule 1. This will empower the Commissioner to specify by a notice published in the Gazette that road mode manifests shall be given in paper form only. Such a notice will come into force on the same day the Bill is commenced so that road mode carriers will continue to submit manifests in paper form. Should the Government decide to introduce electronic road mode manifests in the future, the above notice will be revoked. By then, we will make use of the transitional provision in the Bill to allow carriers to submit manifests either in paper or electronic form during the transitional period. The minor amendment to section 13 of Schedule 1 aims at putting it beyond doubt that the above new sections 32A(2)(a) and 32B(2) of the Import and Export Ordinance should prevail over the transitional provision of this Bill. Thus the Commissioner can exercise the power under those two sections to determine the giving of information in paper form only during the transitional period.

We propose amending section 1 of Schedule 2. In addition, we propose to insert a new section 7 to present the names of the specified electronic services providers and specified electronic services agents in the form of schedules in the Reserved Commodities Ordinance. Under the amended section 1(2) of Schedule 2, the Secretary for Commerce, Industry and Technology may amend the schedules by a notice published in the Gazette. As the notice is subsidiary legislation, the appointments and revocation of appointments of the relevant service providers and agents are subject to the scrutiny of the Legislative Council. We have also made consequential amendments to sections 1(1) and (2), and 2 of Schedule 2. We propose to amend section 6 of Schedule 2. The content of the amendment is similar to the proposed amendment to section 12 of Schedule 1. We have also made consequential amendment to sections 1(1) and 3 of Schedule 2 to include the definition of a manifest. The amendments made to the Chinese text of section 2 of Schedule 3 are minor and technical in nature. Madam Chairman, the above amendments have been examined and agreed by the Bills Committee. With these remarks, I beg to move.

Proposed amendments

Schedule 1 (see Annex VI)

Schedule 2 (see Annex VI)

Schedule 3 (see Annex VI)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 3 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001

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

Import and Export (Electronic Transactions) 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 Import and Export (Electronic Transactions) 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): Import and Export (Electronic Transactions) Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Public Officers Pay Adjustment Bill.

PUBLIC OFFICERS PAY ADJUSTMENT BILL**Resumption of debate on Second Reading which was moved on 5 June 2002**

PRESIDENT (in Cantonese): Mrs Selina CHOW, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MRS SELINA CHOW (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Public Officers Pay Adjustment Bill (the Bills Committee), I would like to submit the report of the Bills Committee. As the deliberations of the Bills Committee have been set out in detail in the report, I would only speak on the key deliberations.

The Bill aims to implement the Government's decision to reduce civil service pay with effect from 1 October 2002. In view of the wide implications of the Bill on the Civil Service and subvented sector, the Bills Committee has met with major civil service unions (staff sides), and deputations from the subvented sector. It has also exchanged views with the Law Society of Hong Kong on the legal issues involved in the Bill.

While the Bills Committee has in general no objection to the Government's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism, members are concerned whether the existing mechanism allows for pay reduction. Although the Government has made it clear that both pay increase and reduction are allowed under the existing mechanism, there is no precedent for effecting the pay reduction by way of legislation. In this connection, the Bills Committee has carefully studied the following issues:

- (1) the legal basis for the Government to reduce civil service pay unilaterally;

- (2) the necessity of effecting the pay reduction by way of legislation;
- (3) the possibility of depriving civil servants of their existing rights as a result of the decision to effect the pay reduction by way of legislation;
- (4) the possibility of contravening the Basic Law;
- (5) the scope of application of the Bill; and
- (6) the implications of the Bill on the subvented sector.

On the legal basis for the Government to reduce civil service pay unilaterally, the Bills Committee notes that the standard Memorandum on Conditions of Service (MOCS) applicable to civil servants provides a variation clause that the Government reserves the right to alter any of the officer's terms of appointment and conditions of service should the Government at any time consider this to be necessary. An express provision authorizing pay reduction by the Government has also been added in the employment contracts of civil servants recruited since June 2000.

In view of the presence of the variation clause in MOCS applicable to civil servants, some members question the decision to implement civil service pay reduction by way legislation. According to the legal advice given to the Government, on the basis of decided cases, the Courts are unlikely to accept that this general power of variation could apply to such a fundamental term as salary. It is therefore possible that the Government would face legal challenges if it relies solely on the general variation clause to implement the decision on a civil service pay reduction. The legal advice obtained by the Government is that it should seek the enactment of legislation to provide for an express reduction of civil service pay and to provide that each officer's contract shall be modified to the extent of the statutory variation. For this reason, the Government considers that legislation is the only way to soundly implement the decision to reduce civil service pay.

The Bills Committee notes the view of the Legal Adviser of this Council that this method of implementing the decision is not imperative in law; because civil service pay is not regulated by legislation, there is no legal requirement for the Government to effect the pay reduction by way of legislation. As far as

general legal policy is concerned, if a matter is purely one of contractual dispute, it should be left to the Court instead of the legislature to deal with. However, the Legal Adviser points out that the proposal to legislate on the proposed civil service pay adjustment involves not only legal considerations, but also considerations of public interest.

The Bills Committee also notes the strong objection raised by the staff sides to the Government's legislative approach to implement the pay reduction. The staff sides are concerned that the Bill might set a precedent for the Government to further lower the conditions of service of civil servants in future. In this connection, the Senior Civil Service Council has requested the Chief Executive to set up an independent Committee of Inquiry under the 1968 Agreement between the Hong Kong Government and the Main Staff Associations (the 1968 Agreement) to deal with the dispute over this year's civil service pay adjustment. This request was supported by a total of 67 civil service unions. In their joint statement, the 67 civil service unions undertook that they would accept the outcome of the inquiry and, irrespective of the outcome, they would not sue the Government. Nevertheless, the Chief Executive decided on 11 June 2002 that there was no case to set up a Committee of Inquiry as this year's civil service pay adjustment had been determined on the basis of a settled public policy.

Having considered the views of the Administration, Legal Adviser and the staff sides, some members are not convinced of the legislative approach to implement civil service pay reduction. In their view, the fact that the Government pursues the legislative approach demonstrates that there is no sufficient legal basis for it to reduce civil service pay. To rectify the situation once and for all, members have requested the Administration to consider introducing a general enabling legislation on civil service pay adjustment mechanism, providing for the legal framework to implement upward and downward pay adjustments. Members are of the view that this general enabling legislation can deal with civil service pay adjustment in a more comprehensive manner. While the Administration is prepared to give further thought to the suggestion, it considers the implementation of the pay reduction for this year the priority task.

As regards whether the Bill would deprive civil servants of their existing rights, the Bills Committee notes the Legal Adviser's view that if the pay reduction could not be effected lawfully without the proposed legislation, implementation of the legislation would appear to have the effect of depriving

civil servants of the rights that they would otherwise be able to exercise originally under their contract. Some members and the staff sides point out that the contractual rights of civil servants employed on or before 30 June 1997 are protected by Article 160 of the Basic Law. The Administration however considers that the pay of those who remain in government employment has been increased since 30 June 1997 and as the pay reduction would not lower their salaries to a level below that on that date, their right to the salary as at that date would be fully protected. The Administration also does not share the view that the rights protected by Article 160 include a right not to have any legislative interference with a subsisting contract. In the Administration's view, Article 160 is primarily a savings provision to ensure that contractual rights do not fall away as a result of the reunification. Given that amendments consistent with the Basic Law can be made to laws previously in force, it would be difficult to argue that contractual rights cannot be modified by legislation.

Some members and the staff sides query that the Bill would contravene Articles 100 and 103 of the Basic Law. The Administration's advice is that since the proposed pay reduction would not reduce the level of pay, in cash terms, and conditions of service of the civil servants employed before 1 July 1997 to a level below that they were receiving on 30 June 1997, there would be no question of breaching Article 100. The Administration is of the view that the proposed pay reduction is consistent with Article 103.

While some members and the staff sides are of the view that the Bill would contravene Articles 6 and 105, the Administration points out that the reference to "private ownership of property" in the two articles does not include future salary under a contract of employment. In the Administration's view, "future salary" is an amount of money that an officer will receive in the future, based on the work that he has already done under the contract. It would not be construed as property.

Some members and the staff sides consider that the Bill would contravene Article 39 and the Labour Relations (Public Service) Convention 1978 (the Convention), as the Government has not fully utilized the mechanism for negotiation of the terms and conditions of employment as required under Article 7 of the Convention, and has not sought to settle the pay adjustment disputes through an independent and impartial mechanism as required under Article 8 of the Convention. The Administration points out that once the pay adjustment has been determined in accordance with a mechanism which is

consistent with Article 7, a dispute over the method to implement the decision is not within the terms of Article 8. The Administration is therefore of the view that the proposed implementation of civil service pay reduction by legislation would not contravene the Convention, or Article 39 of the Basic Law.

Concerning the scope of application of the Bill, the Bills Committee notes that the Bill applies to civil servants, officers of the Independent Commission Against Corruption (ICAC), certain public officers who are not civil servants or ICAC officers, and the Director of Audit. For the sake of clarity, some members suggest that a definition of "civil servants" be provided in clause 2 (Interpretation). In this connection, the Administration has proposed a Committee stage amendment to clause 2 to provide that "civil servant" means a public officer employed by the Government on civil service terms of appointment at a civil service rank.

The Bills Committee notes that clause 4(3) applies only to those ICAC officers who are remunerated on the ICAC Pay Scale. To ensure that the Bill covers all ICAC officers, including those who are remunerated according to the civil service pay scales, the Administration would move a Committee stage amendment to clause 4(3) to this effect.

Clause 10 provides that the Bill does not apply to officers specified in Schedule 3, that is, officers who are remunerated on starting salaries that are not linked to the annual civil service pay adjustment, and judges and judicial officers. Some members consider that this policy intent should be set out in the main body of the Bill and therefore propose that a new clause on "Application" be added to specify that the Bill does not apply to these two categories of officers.

The Bills Committee also notes that clause 11 provides that the Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3. Some members are concerned about the circumstances under which the Chief Executive in Council may exercise that power. In view of the policy intent that the Bill caters for this year's civil service pay adjustment which is intended to take effect from 1 October 2002 and the Administration does not envisage that the Chief Executive in Council will exercise the power to amend Schedule 3 before or after 1 October 2002, members do not see the need to give the Chief Executive in Council this power.

To address members' concern, the Administration agrees to add a new clause 2A on "Application", and to delete clauses 10 and 11 and Schedule 3.

The Bills Committee notes the purpose of clause 9 is to modify the contracts between the Government and public officers to authorize the adjustments to pay and the amounts of the allowances made by the Bill. Some members consider that the drafting of clause 9 should be amended to reflect this purpose more directly. The Administration has accepted members' view and agreed to move a Committee stage amendment to this effect.

As regards the implications of the Bill on the subvented sector, the Bills Committee notes that about 1 423 subvented organizations receive current government subvention which is price adjusted annually according to a formula including a factor of civil service pay adjustment. If civil service pay is reduced with effect from 1 October 2002, government subventions will be reduced accordingly. While the Government claims that it will not require the subvented organizations to make similar adjustments to the pay of their staff, subvented organizations will have to review, in line with the general subvention principle, whether the remuneration packages for subvented staff remain no better than those for comparable civil service grades after an adjustment of civil service pay. In this connection, members express grave concern about how subvented organizations could adhere to the "no better than" principle if they fail to obtain the consent of their staff for pay reduction, and how the subvented organizations could meet the claims for compensation from staff who resort to exercising their rights under the Employment Ordinance.

The Bills Committee notes the Administration's advice that where subvention has been reduced, the subvented organizations wishing to grandfather the remuneration of any of their publicly-funded employees for the remaining duration of these employees' existing contracts will have to absorb the costs of grandfathering within the reduced subvention or with their accumulated reserves. There will be no conflict with the "no better than" principle if the subvented organizations use private funds to support the "excess" cost in a package which is better than that for a comparable civil service ranks, both for existing and new contracts. In the event that a subvented organization has to terminate the employment of individual employees who refuse to give consent to a pay cut, it will have to assess the amount of termination compensation with reference to statutory provisions in the Employment Ordinance and the terms of the employment contracts. The

Administration does not preclude the possibility of offering some short-term tide-over financial assistance if individual organizations have genuine difficulties in shouldering the termination compensation, subject to the merits of each case and the Government's budgetary considerations.

Lastly, the Bills Committee supports the Committee stage amendments to be introduced by the Government.

Madam President, I would like to express my views on the Bill as follows.

I remember Members of the Liberal Party volunteered to have their remuneration reduced by 10% last year in a bid to arouse the Government's attention to the fact that civil service pay has far exceeded the general pay levels. They also appealed to the Government to try every possible means to improve the situation, respond to the aspirations of the community, and alleviate the serious fiscal deficits facing the Government.

For the same reasons, we absolutely support the Government's latest decision to reduce civil service pay. Indeed, the proposed pay reduction has made full reference to the Pay Trend Survey adopted by the Government all along. The rate of reduction is extremely mild too.

We can certainly anticipate the resentment felt by civil service unions since cutting pay is like raising fare. It can almost be said that it is impossible to expect all the affected people to give support willingly. From their viewpoint, people proposing to cut their benefits must be harbouring a vicious intention. This sort of comments can indeed be found in this Chamber as well as in public forums.

At the very beginning, members of civil service unions fiercely criticized the pay reduction. Their target was later shifted. Instead, they refuted the 4.75% assumption made by the Financial Secretary, and finally opposed the proposal of effecting pay reduction by way of legislation. After listening to all of their points, we finally realized they were just trying to oppose the Government's pay cut decision.

In the course of scrutinizing the Bill, I have pondered over the matter again and again. I asked myself this question: Should I support the Government's decision to legislate?

At the end, I got the answer. For many years, the Government has followed the mechanism and given civil servants pay rises. It can actually be considered fair for the Government to reduce civil service pay this year according to the mechanism. In addition, the rate of adjustment has been affirmed by all parties. So why can the adjustment not be effected?

The civil service employment contracts have made it clear that the provisions therein are amendable, though it is not stated clearly that pay can be adjusted as well. Feeling insecure, the Government, as an employer, has approached this Council for a clear explanation. Is there anything wrong with this? I am afraid I cannot concur with some Honourable colleagues who accused the Government of "getting" this Council "involved".

Some people have criticized the Government for violently depriving the civil servants of their rights by way of legislation. While I do not deny that the purpose of legislation is to give greater clarity to the rights of civil servants which are otherwise opaque, why is it unjustifiable to do so if the change is fair? I disagree that the Government can only raise, not reduce, civil service pay, because this will be tantamount to giving civil servants the right to "hold only those cards to their advantage". As members of the Finance Committee (that is, every Member of this Council), we will be forgetting our responsibilities to safeguard the public money contributed by taxpayers if we do so.

Civil servants have been told by their unions that the precedent of legislation must not be allowed for fear that their pensions might be affected in future. I really do not understand the rationales behind this argument for Members of this Council will scrutinize every piece of legislation seriously and in great detail. I have served on this Council for two decades. Never have I seen Members acting in such a perfunctory manner. To put it in a pleasing manner, people making such a speculation are worrying too much; conversely, they are trying to raise alarmist talk.

I absolutely support the move to effect the pay reduction by way of legislation for it is reasonable and consistent with public interest. Moreover, it can provide against endless lawsuits.

Notwithstanding this, I believe a lot of people will, like me, question the Government for failing to act wisely by sufficiently communicating with civil servants over this matter. Given that the Government's decision is justifiable

and is supported by the public, why should it be afraid of engaging in more dialogue with civil servants and explaining to them? I did raise this question to some officials. I was told that they had indeed met with some representatives of civil service unions for a number of times. As those meetings were not held publicly, uninformed members of the public were given the wrong impression that the policy was implemented without prior consultation and discussion. I hope the Secretary can clarify if this is really the case. Had the negotiations been conducted in a more open manner and in greater transparency, the Government might have prevented the public from mistaking that the Government had acted tyrannically or arbitrarily. It might have also prevented hundreds of thousands of people from taking to the streets.

Madam President, I believe no one is willing to see the disputes arisen as a result of the pay reduction. Regardless of the voting result today, I sincerely hope civil servants can bear in mind the importance of upholding the overall interest of Hong Kong. I also hope civil servants will not sue the Government for this will only deal a greater blow to the image of civil servants. Finally, the three parties involved should endeavour to prevent the emergence of a situation in which all parties lose altogether. As for the Government, it should draw on the lesson learned in this incident and re-establish a good relationship of mutual trust with the Civil Service, whereby concerted efforts can be made to effect administration smoothly in a bid to lead Hong Kong out of the present plight. Otherwise, the general public will be greatly disappointed.

Madam President, I so submit.

MR LAU CHIN-SHEK (in Cantonese): Madam President, I believe the 180 000-odd civil servants and 150 000-odd employees of the subvented sector would feel very much like I do, and face the present pay reduction, to be effected by legislation, with a laden heart.

After the debate today, there will be a general conclusion on the matter with the outcome of voting on the Bill. However, I would like to point out to Honourable colleagues seated here clearly and sincerely that since the Government has adopted a legislative approach to force a pay reduction, even though the Bill may be read the Third time, and passes through this Council, I believe that no one will emerge as the winner in the whole incident, be they the civil servants, employees of the subvented sector, the senior management of the

Government, Honourable colleagues of this Council, or even society as a whole. They all are losers. I also believe that all of us seated here, including Secretary Joseph WONG, would not applaud the passage of this Bill on pay reduction. There is definitely no cause for celebration for this incident of pay reduction by legislative approach to come to this state.

I say that this incident will end up as a tragedy in which there are only losers but no winners because the forced pay reduction by legislative means carried out by the Government has not only severely damaged its contractual relationship with civil servants, but also destroyed the mechanism of negotiations with civil servants hammered out over many years. This has resulted in further damage to the morale of civil servants and the mutual trust between civil servants and the Government, as well as the stability of society as a whole. Furthermore, the forced reduction in pay will only do the already feeble economy and consumer market all harm and no good. I must state my views here clearly to put them on record.

There is a clear contractual relationship between the Government and civil servants and the terms of employment and conditions of service of civil servants are protected by contract, established practices and the Basic Law. As the Government, and a party to the contract, even if the contract is an ordinary contract entered between the Government and other individuals or organizations, it is already unacceptable if the Government changes the terms of the contract high-handedly by a legislative means and injures the interests of the other party to the contract. It is even more so if the terms of employment of civil servants and the contractual relationship with them, which are stipulated in and protected by the Basic Law, are involved.

I do not mean that the terms of contract and conditions of service agreed between the Government and civil servants can in no way be changed, and on the issue of pay reduction, civil service unions have all along stressed that they are willing to ride out the storm together with the public, therefore, it is the logical and the most feasible approach to deal with the rates of adjustment and the changes to the terms of contract of civil servants this year through negotiations. In fact, for many years, the overall adjustments to civil service pay and changes to the civil service conditions of service were arrived at through negotiations between the Government and civil service unions. In 1968, the Government reached an agreement on the mechanism for negotiation and arbitration with major civil service unions, thus establishing a binding norm

for the entire collective bargaining system. I believe civil service unions and the great majority of civil servants cannot understand, and are not convinced, even today why the Government must insist on unilaterally reducing the pay by way of legislation and refuse to continue to conduct negotiations or to establish an independent committee for arbitration.

The Government says that the only way to effect a pay reduction is legislation, otherwise a series of legal actions will follow. However, it is very clear that the Government is not afraid of litigations but rather, of losing, because a legislative approach cannot stop civil servants from taking legal actions at all, rather, the legal actions that could have been avoided would turn into a reality. The only intention of a legislative approach is to ensure the Government will have a total victory and enable it to pretend to be a strong government.

The Government wants to reduce civil service pay on the one hand, and it has departed on the other from the established practice of negotiating with civil service unions. Furthermore, it has even refused to submit the dispute for arbitration according to the terms of the agreement reached then and introduced legislation unilaterally in the hope of putting the Government in an indefectible position. I believe such an approach untenable in terms of law, reason or compassion. To breach the contract unilaterally is to breach the law, to refuse any arbitration is being unreasonable and to be unwilling to further negotiate with civil service unions is being incompassionate.

Madam President, the Honourable LEE Cheuk-yan of the Hong Kong Confederation of Trade Unions (CTU) will later on give an in-depth analysis on the spirit of contract, the mechanism for collective bargaining and the question of whether legislation is the only feasible approach. Here I will elaborate on the morale of civil servants and the effects of a pay reduction on society.

As far as I can remember, of the many rallies and demonstrations that have taken place in Hong Kong after the reunification, a greater number of people have participated in those staged by civil servants. Protests staged in the past include those against civil service reform, the effects of privatization of public services on employment, and on this occasion, against the legislative approach to forcedly reduce civil service pay. What does this show? This shows that the present employment situation and conditions of service of civil servants are very unstable and that serious problems in communication have arisen between the Government and civil servants. I believe that civil servants

are so strongly opposed to the legislative approach to forcedly reduce their pay is definitely not simply because of the pay reduction itself, but the discontents accumulated over the past few years against government policies on civil servant and a reaction to further blows to their severely beaten morale, as well as a response of amounting doubts about their trust in the Government.

After this incident of adopting a legislative approach to forcedly reduce pay, I believe civil servants will surely be even more worried. If the Government can unilaterally destroy the mechanism for negotiations and injure their interests in terms of their pay today, then what protection can they expect in the future? Although the Chief Executive issued a letter to all civil servants last week, guaranteeing that the Government would not use the Bill today as the excuse for any plans or attempts to reduce civil service pension, the Chief Executive did not undertake not to reduce the pay and fringe benefits of civil servants further by way of legislation. Given this, how can the worries of civil servants be dispelled?

The Chief Executive is lauding the merits of "showing true hearts in riding out the storms together" and Secretary Joseph WONG has also begun to emphasize that he will enhance communication with civil service unions these days. This clearly shows that the senior management of the Government is beginning to recognize that the morale of civil servants has suffered a serious blow and the relationship of trust between civil servants and the Government has suffered a serious setback. The problem is, despite sensing the gravity of the problem, The Government still persistently refuses to defer voting on this Bill designed to reduce pay. How can such an attitude effectively restore the confidence of civil servants?

If the relationship between civil servants and the Government is tense and a serious blow is dealt to the morale of officers, not only are both sides losers, over 6 million people in Hong Kong will also be affected, since the effective provision of service to the public relies on the efforts of civil servants and furthermore, the relationship of trust and co-operation between the management and the staff side.

Madam President, over 30 000 to 40 000 civil servants and employees of the subvented sector and their family members took part in the rally of civil servants on 7 July. I found, in the course of taking part in the rally, that many members of the public cheered the procession on and applauded them. I

believe that not only do members of the public approve the right of civil servants to stage protests and rallies, they also wholeheartedly feel that civil servants are sitting in the same boat with them and are really riding out the storm together with the public. Some opinions consider that since there are 180 000 civil servants and 150 000 employees of the subvented sector, the turnout of only some 30 000 was low. I totally disagree with such an evaluation. Let us come to think of it. It is very rare to be able to mobilize 30 000 people to take part in a rally in Hong Kong. I must warn the Government that if it does not take the strong views of civil servants seriously and misjudged the degree of support from the public, the voices of protest will definitely grow louder and louder.

Madam President, let me reiterate that under the present persistently sagging economy and high unemployment rate, to maintain the stability of the Civil Service and the subvented sector is to maintain the stability of society and the economy. If the measures adopted by the Government injure civil servants and employees of the subvented sector, unsettling a relatively stable group of people in Hong Kong society and making them feel aggrieved, then Hong Kong economy will deteriorate even further and Hong Kong society will become even more unstable.

With these remarks, Madam President, Mr LEE Cheuk-yan and I will represent the CTU in opposing the Second and Third Readings of the Bill.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, the Democratic Party supports that the pay of civil servants should be reduced according to the mechanism of Pay Trend Survey (PTS), but objects to the Public Officers Pay Adjustment Bill for it is a draconian law. The Democratic Party always thinks that law-making must be prudent and solemn, taking account of the consequences. Legislation is just like a knife that cannot be casually waved. In making laws, we formulate certain widely applicable principles and policies or standing systems or mechanisms of operation and provide for their authority and operational procedures. Therefore, the Democratic Party is of the view that a complete bill should be formulated and a mechanism for determination of civil service pay should be established after sufficiently consulting civil service bodies. Besides incorporating this mechanism into the original PTS, we also have to firmly establish an advisory and consultative mechanism as well as the most important arbitration mechanism for ultimate resolution of disputes. The pay increase and reduction of the Civil Service should be determined under the mechanism, effecting a

long-term solution to the pay disputes of the Civil Service. However, the Public Officers Pay Adjustment Bill is a draconian law in reality and in name. It has violated the due legislative principle and spirit, and it is a one-off, "instant noodle" piece of legislation to support a single and specific administrative decision of the executive authorities, which reduces the rights of other people and specifies the rate of pay reduction. The administrative measure of the Government has intensified into a legal and political controversy that aroused a street demonstration by 35 000 civil servants. In the administrative context, the Government has boorishly and rashly handled the pay reduction; while in the political context, the Government has been hopelessly stupid. 35 000 civil servants "applauded" the implementation of the Principal Officials Accountability System by holding a street demonstration. Is that sarcasm or a warning? Is that an ill omen or a crisis? The TUNG Chee-hwa government must ponder over it carefully, otherwise, a single spark can burn its backyard at any time, and civil servants would become the most organized and powerful opposition faction within the Government that would unsettle the foundation of the TUNG Chee-hwa administration.

A single mistake would ruin everything. The TUNG Chee-hwa government is the biggest loser in the civil service pay reduction incident. From the beginning to end, Mr TUNG Chee-hwa and his senior officials kept making mistakes and provoking, finally, they made a serious mistake. In March this year, Mr Antony LEUNG announced in advance in high profile that the Civil Service and subvented organizations might be given a 4.75% pay reduction, deviating from the mechanism for pay adjustment. Miss Denise YUE also failed to observe the established method of calculating civil service pay adjustment and said that civil servants had an additional 12% pay increase as a result of deflation. She stirred up social discontent and made civil servants the scapegoat of the Government's fiscal deficit. After the introduction of the Bill on public officers pay adjustment, the trade unions of civil servants asked to meet Mr TUNG Chee-hwa and requested for the establishment of an arbitration committee under the 1968 agreement to solve the problem peacefully, yet, Mr TUNG Chee-hwa rejected their request flatly. On the eve of the street demonstration by civil servants, Mr Antony LEUNG added fuel to the flames and called upon civil servants not to allow themselves to degenerate from public servants into public enemies. Mr Joseph WONG followed suit and remarked that the leaders of civil servants were exaggerating things to scare other people and had irresponsibly elevated the proposed legislation on a pay reduction to the plane of principle. He also said that street demonstration was utterly unnecessary, and it would ruin the image of civil servants.

Madam President, supercilious and opinionated accountability officials like Mr Joseph WONG, Mr Antony LEUNG and the Chief Executive TUNG Chee-hwa still continued to use the old method that has been adopted for five years since the reunification to deal with the pay reduction of the Civil Service. They had incited people to struggle against one another, discredited civil servants and described them as public enemies, and even rejected any conciliatory negotiations. After all, 35 000 civil servants were compelled to take to the streets by the TUNG Chee-hwa government, who had given up chances to solve the problem peacefully and forced civil servants to resort to a demonstration. They also induced confrontation between the public and civil servants, causing yet another internal bleeding to the community. Such internal bleeding has become commonplace in the five years since the reunification. Yet, we are extremely puzzled about why Mr TUNG Chee-hwa always insists on reforms that have destructive effects. He has not only cleaned up the stain of the SAR purple sand teapot but also smashed the teapot into small pieces. Now, even civil servants who used to be faithful to the Government are opposed to the Government. Even though Mr TUNG Chee-hwa may not be a commander without soldiers, he would become a hollow Chief Executive and he has severed one arm for his failure to get the support of civil servants.

The trouble has been brewing for quite some time. Having suffered for five years, civil servants are discontented today and no longer of one mind and heart. While civil servants were discredited and blamed for declining to accept a pay reduction and tide over the difficulties together with the community, they were frustrated to find that the accountability officials of the SAR Government had double standards and contradictory behaviour and policies. Recently, some former Policy Secretaries have been promoted as accountable Bureau Directors. The same secretary performs the same duties with only a change in title. For instance, after a D8 grade Policy Secretary has become an accountability official, his remuneration would substantially increase by more than \$1 million. He would also be given a housing allowance and education allowance for his children in cash. Moreover, he would receive monthly payment of pensions earlier against the convention. Furthermore, he would receive a commuted payment in lieu of leave of approximately \$1 million in cash. Thus, he would get three-fold benefits. These principal officials who have been promoted and who have received increased remuneration and benefits are precisely those people who are responsible for making the draconian law on pay reduction, turning their subordinates into scapegoats under the fiscal deficit and public enemies. How

can civil servants be convinced? Could they not hold the street demonstration? Would they not fail to have one mind and heart or high morale?

Today, the "government party" and the "U-turn party" would jointly pass the draconian Public Officers Pay Adjustment Bill introduced by the Government. It proves once again that an undemocratic political system would only result in executive dictatorship. We hope the public will understand that the application of a draconian law to deprive others of their rights, with civil servants being the first hit, would ultimately blemish the laws of Hong Kong. Even though we support the pay reduction of the Civil Service, we do not think the Government should seek to achieve this by means of a draconian law and executive dictatorship. Nor should it discredit civil servants and incite people to struggle against one another. Besides, it should not induce social confrontation and cause internal bleeding to the SAR. It would stir up trouble, ultimately drawing fire onto itself. The Democratic Party supports a pay reduction but refuses to set fire to it.

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

With these remarks, Madam Deputy, I oppose the Second and Third Readings of the Bill and refuse voting on any amendments. Members of the Democratic Party would withdraw from the Chamber when it comes to the vote and we shall return to the Chamber to vote against the Third Reading.

MISS LI FUNG-YING (in Cantonese): Madam Deputy, the street demonstration staged by more than 30 000 civil servants has failed to shake the Government's determination to effect pay reduction by way of legislation. With support from just more than half of the Members of this Council, the Government insists to resume the Second Reading debate on the Public Officers Pay Adjustment Bill today. Even if the Bill may be passed, no one is going to be the winner. Though it is the wish of the community and the desire of the Government for civil servants to accept the pay cut, and civil servants have also given their consent, why are the Government and the civil servants still confronting each other and arguments continuing endlessly in the community, finally making all three parties losers?

Numerous discussions have been held both in this Council and among members of the community as to whether the Government should reduce civil service pay by way of legislation and whether legislation is the only means. As a unionist, my concern is the Government's approach to its relationship with civil service unions in the whole course of devising the pay cut package, announcing it and submitting it to this Council for scrutiny and passage today. I feel sorry that the Government has adopted a one-way approach in dealing with the matter. No matter how artful the Government's rhetoric may be, civil service unions have always been seen, on its agenda, as playing a negative role in impeding the efforts to effect a cut pay. The Government therefore sees it necessary to consolidate forces from within and outside the establishment to launch an attack. Last week, we even saw the Financial Secretary criticizing the civil servants who staged a protest as public enemies, thus intensifying public attacks against civil servants. I am extremely furious that the Government has adopted a confrontational attitude, instead of working in partnership with civil service unions and seeing them as a bridge between the Government and civil servants.

Civil service pay adjustment is governed by a proven mechanism agreed upon by the Government and the staff side. If the existing mechanism is considered flawed, the Government should negotiate with staff unions and carry out a review. Given that the Government finds it difficult to effect its pay cut proposal according to the contract, and it has failed to reach a consensus with staff unions, it should not forcibly enforce the proposal by way of legislation in haste in a bid to settle the disputes between the management and labour side. Has the Government, being the biggest employer in the territory, thought of the possible chain effects on the community? Given that the management and labour side differ so greatly in terms of their power, I can say the labour side will still not be convinced despite government suppression by way of legislation. I definitely cannot accept the Government's approach for it has totally failed to respect the contractual spirit, the mechanism and the consensus reached with civil service unions. Moreover, it has made the relationship between the management and labour side even worse. Civil servants even worry that once this precedent is set, adverse consequences will follow one after another. In a statement made the day before civil servants took to the streets, Mr TUNG undertook that the enactment of legislation to cut pay would be one-off. Why had Mr TUNG not directly met with civil service unions earlier to give this undertaking? If this move is effective in dispelling worries, why were the civil service unions' requests to meet with the Government and Mr TUNG turned

down? It can be said that civil servants have lost faith in some government officials who have eaten their own words.

The Secretary for the Civil Service has likened the Government's determination to effect the pay cut proposal as "burning all the boats". The present situation in which all the three parties become losers is precisely attributed to such determination and his attitude of "allowing no retreat". To start with, civil service groups were not consulted on the proposal of effecting the pay cut by way of legislation — I must make it clear that consultation and notification are completely different. Then, all counter-proposals made by the civil service groups were rejected. What is more, public opinions were constantly led to put civil service groups and the Government in antagonistic positions. Civil servants are meant to work in partnership with the Government. Differences and conflicts between the two parties should be resolved through consultation and negotiations. The Government should never adopt the attitude of "burning all the boats" in handling its relationship with civil servants.

In any case, I guess the Bill will eventually be passed by this Council. But what shall we do next year? What if the Pay Trend Survey indicates another civil service pay cut next year? Will the Government need to "burn its boats" again? May I ask the Government how many times Hong Kong can endure such sufferings?

It is undoubtedly imperative and vital for the Government to re-establish a relationship of mutual trust with civil servants. It takes a prolonged period of test before mutual trust between people and groups can be established. Yet, such trust can be completely destroyed overnight.

During the Chief Executive's Question and Answer Session held on Monday, I asked the Chief Executive what specific measures he had to improve mutual trust between the Government and civil servants, restore the morale of civil servants, and stabilize the Civil Service. Yet the Chief Executive failed to give me a specific reply. I hope the Secretary for the Civil Service can give us a concrete answer today. In particular, what approach will the Government take to handle the views of civil service unions if it finds it necessary to alter the remuneration and conditions of service of civil servants again in future?

With these remarks, Madam Deputy, I oppose the Government's forced legislation to effect the pay cut.

MR ERIC LI (in Cantonese): Madam Deputy, I believe Members of this Council are all serious and solemn about every vote they cast in this Chamber and they will be extremely careful in the face of a bill which may easily lead to division among different strata in society, and which is highly controversial in nature.

As a Member returned from the functional constituencies, I would act according to the dictates of my conscience, weigh the pros and cons and make a detailed analysis of the issues to the best of my ability. However, before any decision is made, I know that I should always remain loyal to voters from my sector. Once in the Chamber, I feel obliged to submit myself to two overriding concerns and these are, upholding public interest and maintaining social harmony. These are essential, indispensable considerations. Moreover, the above way of thinking is a true depiction of Members returned from functional constituencies.

Before the introduction of this Bill, I wrote to Mr Joseph WONG, the Secretary for the Civil Service, that I had reservations about a one-off Bill on civil service pay adjustment. I considered that this would have the unfortunate result of complicating an otherwise simple labour dispute and politicizing it. After the Bill was introduced, I sympathized with the civil servants for the unfair treatment they faced. My first reaction was to try to weigh the pros and cons of the Bill and analyse its weaknesses. That keen interest to probe into things has become almost instinctive of Members. After discussing the matter with Members of the Breakfast Group, I felt that there was still time and room for working out a better solution, in the hope of averting a confrontation between the Government and the civil servants for it would make both parties losers. That is why on 18 June I sent a letter together with Members from the Breakfast Group to Mr Joseph WONG to present our initial reactions to the matter, that we were in support of the proposal raised by civil servants to put the matter to arbitration. That was supposed to be a first step in starting a dialogue and we also wanted to make both the Government and the civil servants know that both parties did not have any chance of a certain victory in the Legislative Council, so it would be to the best interest of the Government, the civil servants, the Legislative Council and the people of Hong Kong if both parties could sit down and reach an agreement on the issue of salary reduction calmly through consultation.

Thereafter in Letter to Hong Kong on 23 June, I explained my position of "fair means to achieve fair pay". My idea is to use either "parallel legislation"

or "parallel arbitration and legislation" to solve the dispute. The letter also made it clear that the Government should not use any high-handed and arbitrary means in legislation to achieve an administrative end. The letter served to ease to a certain extent the hostile sentiments among civil servants at that time.

After the Letter to Hong Kong was aired, I began to conduct a full-scale consultation in the accountancy constituency, including a briefing given to the Board of Directors of the Hong Kong Society of Accountants, sending out 557 letters to members of the Society and uploading the letter onto the Internet and conducting an open consultation exercise of the sector. In addition, I made the initiative of arranging meetings with key figures in the accountancy sector who hold important positions in government departments and in other public sector organizations. We discussed the matter in great depths and I learned more about the realistic situation from them. They gave me a lot of valuable advice and some of these indeed took me by surprise.

Out of the 557 letters sent, I received 55 replies. Thirty-one of the respondents were in support of legislation, while 24 opposed it. Though a return rate of 9.9% cannot be considered high, it is not so bad after all, considering the small amount of time available and the controversial nature of the matter. What matters most is not the 56.4% of respondents who support legislation, but that among those who oppose to it, only one is a civil servant. He made his stand known by calling me on the telephone and said that he opposed legislation. Among the remaining people who hold a view against legislation, an overwhelming majority of them are people whom I have known for many years and who understand me. They think that I should insist on my principle and act in a fair manner towards the civil servants and uphold the spirit of the contract and do not need to give way just because of some minor loss that may incur to public finance. Moreover, they believe that the Government should handle the matter in a more peaceful way, one which is more appropriate. The Government should not resort to making a one-off piece of legislation hastily to handle an internal problem which is after all a personnel management problem. Furthermore, a financial loss in the short term can be offset by savings in other areas. Otherwise, once social harmony is disrupted, it would not pay if the image which we have built up so painstakingly over the years is tarnished.

Those who support legislation come from all quarters and the views they present are far stronger. They are of the view that since the civil servants

have agreed to a modest pay cut, they should not raise a fuss by opposing to pay cut by way of legislation which is some kind of a technical excuse. Even if there does exist some unfairness, the high salaries enjoyed by civil servants over the years are also unfair in the eyes of other taxpayers. It is essential that the civil service pay cut be enforced in view of factors like the serious deficit which the Government is facing and the possibility of inviting local and overseas criticisms that the Government is a lame duck. All these should be considered and they are urgent factors to be considered as well. That can avoid the impact of a volatile financial situation on society. In particular, looking at our competitor, Singapore, the civil servants there have demonstrated a very co-operative attitude by accepting their government's pay cut proposal for the sake of speeding up the recovery of their national economy.

All of these views are presented to me in a detailed, painstaking, honest and reliable way. However, the reason which made me decide to support the Bill in the end is the outcome of my discussions with my friends in the accountancy sector who work in the Inland Revenue Department, Audit Commission, Treasury, Hospital Authority, post-secondary institutions and statutory bodies. I asked their opinion on the following: First, why are there no strong views of objection from the accountants in the Civil Service? Second, I had talked with Mr Joseph WONG that I hoped the Chief Executive could pledge on behalf of the Government that this would be a one-off pay cut by way of legislation and that no similar action would be taken to make any changes to civil service terms like pension, and so on. I asked their opinion on these.

The views given by these friends from the accountancy sector were almost unanimous. They told me that among the accountant colleagues in the Civil Service, some of them thought that the resort to legislation by the Government was unfair and not honourable at all, but they were also aware of the political and economic reality and that public opinion was overwhelmingly against the civil servants. Moreover, they were of the view that civil servants should act in line with the overall interest of society, even to the extent of making some sacrifices. So most of them adopted a calm, tolerant and receptive attitude and they rarely made it a topic of conversation among themselves. They were still trying their best to serve the public.

They agreed to the idea that a pledge made by the Chief Executive would help allay their apprehensions for the future. They told me that they would accept my decision to vote in favour of the Bill in an attempt to put an end to

the long-standing disputes over the indecision on civil service pay cut. It is interesting to note that in the accountancy sector, friends outside the Civil Service would like to fight for justice for those in the Civil Service while the accountants in the Civil Service persuaded me to make the overall interest of the people as my primary consideration. So those who persuaded me are in fact those respectable civil servants. Who says that all Hong Kong people are selfish?

Remarks from Mr Joseph WONG and Mr Antony LEUNG, and later the strong and sometimes quite extremist lobbying attempts made by the Chief Executive have not really moved me. I am speaking today in their presence, and at least Mr WONG and Mr LEUNG know that I am telling the truth. Their repeated attempts have sent a clear message to me and that is:

- (1) The Government has set its mind on it and there is no turning back but to proceed with legislation;
- (2) The Government has considered many different views, including a careful examination of views of Members of the Breakfast Group; and
- (3) The Government is willing to make a limited compromise to alleviate the discontent of civil servants and that is, the pledge made by the Chief Executive at a later stage.

Most Members from the Breakfast Group think that the Government has a certain degree of sincerity in the approach it is taking.

In their consideration of the overall interest of the community and during the lengthy process of deliberating on the Bill, Members of the Breakfast Group, bearing in mind the need to be accountable to the public for their actions and tactics, have adopted the same spirit of co-operation and moving together, irrespective of their previous voting intention and the fact that the functional constituencies to which they belong may differ markedly on this issue of legislating for a pay cut. It is because we are aware of the fact that only the Breakfast Group would have the flexibility to maintain the possibility of a consultation between the two parties so that the Government, the civil service unions, the Legislative Council and the community as a whole will not all become losers in the end.

If we had made our stand known, that is, to support or object to the proposals, such kind of efforts would be in vain. Therefore, we insisted that we would maintain silence on our voting inclination for three weeks. At the last moment, that is in the evening of 5 July, the Government sent a letter to us and stated that it was determined to proceed with legislation. And when 30 000 civil servants took to the streets to demonstrate on 7 July, the decision we made became something we felt compelled to do so as there was no other choice available.

Madam Deputy, as I am now standing in this Chamber watching how the representatives from the Government and the civil servants refuse to give way to each other, I would cast my vote on basis of the following three principles:

- (1) The nature of the matter is originally a simple labour dispute and it is a problem of internal operation within the Government. When the Legislative Council intervenes in this matter, what we should do is to persuade, reason and iron out the differences. I should not side with any party, nor play the role of being an umpire or pour oil on fire by digging up old wounds or even change from someone who should be stopping the quarrel into someone who joins in the fight;
- (2) As to the pledge made by the Chief Executive on behalf of the Government in public, I would commit it to memory and make it part of my duty as a Member of this Council to see to it that it is honoured; and
- (3) With respect to the overall interest of Hong Kong in the long term, public opinion seems to have concluded that legislation should be used to effect a pay reduction as soon as possible in order that the disputes can be put to an end. It has also been agreed that the relevant mechanism should be restored and negotiations held in a peaceful manner. This is the major direction that has been agreed and the Accountancy Functional Constituency has also indicated a preference for legislation as a choice of the lesser of two evils, an option relatively more desirable.

If Honourable Members can look at this issue, which in fact should not be very complicated, from an ordinary and simple perspective, they may well find that this is the way in which most members of the public would see it.

That is to say, a modest reduction in civil service pay does not worth all the controversies and heated debates. What the Government has done in this issue is that it has made the first step of proposing a one-off pay reduction by legislation. This was done without proper and sufficient dialogue and preparation, thus causing a dispute to arise and politicizing the issue. That is certainly not the most desirable approach and some civil service representatives have reacted strongly to it. As the matter took its course, it was found that they had divergent views and it became very difficult for us to find out the unanimous view. Moreover, we found that it was hard for us to persuade civil servants to proactively address public worries for the deficit problem and the criticisms that the salary of civil servants is too high. Before we made any decision on whether to support legislation or not, it had become increasingly clear to us that both the Government and the staff unions were making the issue a political gamble. The stakes put on the deck were the hard-earned money of the public, the prestige of the Government in governance, an administrative measures which was a breach of the contractual spirit and the economic stability of Hong Kong. We were convinced that the stakes were far more costly than we could afford. As the matter has advanced to such a state, I think a more desirable approach is not to argue who is right and who is wrong, but to go straight to the outcome which is the most sensible one, and that is, to effect a mild reduction in salary about which the least dispute would be caused. What needs to be spared from this dispute is the public at large, for the public should not be drawn into this. The decision we make is in entire consistence with our original expectation, and that is, we should not play the role of an umpire or a judge and that both sides should seek a peaceful solution without allowing themselves to be affected in any way by emotions and a desire to get any advantage over the other. Both sides should also put money considerations aside. And the most important thing of it all is not to do anything which may be harmful to public interest.

Madam Deputy, I hope very much that the buttons placed before Honourable Members of this Council can indicate something more than "for", "against" and "abstain". I hope there is also a button to indicate our desire to solve every problem peacefully outside this Chamber. Had there been such a button, we would not have been labelled as a voting machine by the Government, the staff unions and even the media over the last three weeks. What the people would like to see is who are the winners and who the losers, whether Members of this Council have voted for or against the motion and when it makes the headlines next morning, the number of votes which decides victory or defeat. As Members of this Council, is the only thing that we can do is to press a button to show that we are for or against the motion? Is such a

mechanical vote count the best solution to it all? Is that the most that Members of this Council can do?

Madam Deputy, the way I see it is that no matter what will come out of this voting today, there will never be any winners. If this display board could show a "win-win" outcome and if that is something I can see, should we not care a little bit less of our personal political interests and try to alter the outcome of this rivalry?

Given the state of developments to date, I must confess that in life there is often a great disparity between wish and reality. For example, at the outset, our sympathy with the situation of civil servants and their stand was too obvious and so in the public letter to Mr Joseph WONG and in Letter to Hong Kong, we failed to make the contents impartial and that was why when we made our decision finally, quite a lot of misunderstanding for the Breakfast Group was caused among the public. I think our mistakes in judgement and handling the case should become the subject of a review that we should undertake. Having said that, the failure this time will not make us feel discouraged, if only there are chances of achieving an "all win" scenario with respect to the overall interest of our community, or if an "all lose" scenario can be averted, we will certainly make learn the lesson of this event and make a better attempt next time around.

Lastly, I appeal to Honourable colleagues, irrespective of the positions they hold on this issue and the outcome of voting, to urge the Government to mend its relationship with the 180 000 civil servants and the 140 000 staff in subvented organizations, in order that the normal communication channels can be reopened and the cordial partnership restored.

With these remarks, Madam Deputy, I support the Second Reading and the passage of the Bill.

MISS EMILY LAU (in Cantonese): Madam Deputy, I rise to speak against the Public Officers Pay Adjustment Bill.

Madam Deputy, I think most people will find it very regrettable that right after the inauguration of the second Hong Kong Special Administrative Region Government, the relationship between the executive authorities and civil

servants has become so tense. I would not say that asking us to vote on the Bill is an attempt to make us do the "dirty job". This is our job, and even in the Finance Committee, we still have to do this. I say so even to civil servants. Some civil servants say that the matter should not be politicized. And, I tell them that this has long since been the case with many other issues; voting in the Legislative Council is already an example of politicization. I have no fear of making a decision based on my convictions; some may favour my decision, while others may not. Since the beginning of my political career in 1991, I have come to realize this point completely, and I am always prepared to face the consequences of my own decisions.

In recent years, I have been saying that the salaries of our civil servants are too high, are among the highest in the world. I once expressed the hope that our civil servants and university professors should seek to justify the salaries they received by their performance. But we have now reached a stage at which many people are faced with reductions of salaries and fringe benefits or even unemployment. Therefore, I think it is only reasonable for the community at large to expect the salaries of civil servants not to be too detached from the economic realities of society. However, I also agree that we must treat our civil servants well, so that they will not find it necessary to resort to corruption, so that Hong Kong can in turn continue to remain clean. This is something I support very much.

But I cannot support the Bill today, because I think the approach of the Government is not correct. I know only too well that some people may wonder why I do not support the Bill. Civil servant representatives are also aware that many people simply wonder why the Bill cannot be supported, since the rates of reduction this time around are only so mild. They all wonder: Many in the wider community are faced with salary reductions many times higher than those of civil servants, and some are even rendered jobless, so why is it impossible to reduce civil servants' salaries even just a little bit?

Madam Deputy, our labour laws are unable to provide people with sufficient protection, and we must work harder still in this respect. People may think that workers in general are not protected, but that civil servants seem to be enjoying more protection. During the discussions on the accountability system for principal officials, the Government once shuffled and reshuffled the policy areas of labour and the environment. At that time, the Honourable CHAN Kam-lam came up with what he considered a clever arrangement,

something that no one had ever thought about: placing labour and civil service affairs under one single Policy Bureau. I immediately rendered my support. I explained that civil servants were treated so well and offered so many fringe benefits, so it would of course be wonderful if the several million workers in Hong Kong could be treated likewise. Unfortunately, just minutes afterwards, Mr CHAN changed his mind and said that he wanted to withdraw his proposal. Can the several million workers in Hong Kong really receive the same treatment as civil servants? Should we wish to achieve that, we would have to work towards this direction.

Why can I not support the Bill today? Actually, the course the whole matter has taken is most regrettable. As many Members have mentioned, on 6 March, the Financial Secretary, who had just recently assumed office at that time, said in this Chamber that he expected a 4.75% downward adjustment in civil service salaries in this financial year, and he also expected an identical reduction for the salaries of subvented organization staff. He even said that the reduction would take effect on 1 October. Madam Deputy, as you also know, government officials will never reply to any hypothetical question asked by Members of this Council. But then, why did the Financial Secretary himself make such an assumption in his Budget speech? Did he in fact want to stir up the suspicions of civil servants and all of us? Since the very beginning, this approach has made people think that something unusual must be involved (Many Members have also said so). Later, at the end of April, came the findings of the Pay Trend Survey, which indicated that the rates of reduction for top-, middle- and junior-level civil servants were just 4.42%, 1.64% and 1.58% respectively, all lower than the rate anticipated by the Financial Secretary. The Financial Secretary thought that he was very smart, but his anticipation subsequently led to a spate of salary reductions in society, despite the fact that the rates of reduction reported by the Pay Trend Survey turned out to be lower than anticipated. Then, on 22 May, the Executive Council also endorsed the civil service pay cut.

I must then ask, "Why has such an approach been adopted?" We have faith in the rule of law and the established mechanism. Over the years, civil service pay adjustments have been governed by an established mechanism. What should we do if some say that this mechanism is unfair, that it may not necessarily have performed to the satisfaction of everybody? If that is really the case, we will have to conduct discussions, or even change the mechanism. In the present case, the pay adjustment proposal this time around, if we are to

alter the established mechanism, it will not be possible to implement the pay reduction on 1 October, and we cannot possibly do anything. What then made the Financial Secretary so indiscreet about this remark on 6 March?

I also think that the salaries of civil servants should be reduced, but I also think the salary reduction this time around should be made in accordance with the established mechanism. Many civil servants (be they union representatives or others) have repeatedly said in the Legislative Council that they do support a salary reduction, but that they do not support the enactment of any legislation for the purpose, because they think the options under the established mechanism have not been exhausted. When it comes to the enactment of legislation, civil servants themselves may perhaps have to bear a certain degree of responsibility, because as soon as they learnt that the findings of the Pay Trend Survey indicated a trend of salary reduction, some of them immediately hastened to say that they would sue the Government, claiming that the Government must not reduce their salaries. The Government said at the beginning that it could reduce the salaries of civil servants, but after it had examined the matter more closely, it realized that it did not actually have the power to do so. When the relevant government officials first came to the Legislative Council to ask us to allow the Government to enact legislation, they said that the purpose was just to strengthen the Government's justifications. But as the discussions went on, they suddenly said that if the Government was not allowed to enact legislation, it would surely lose in case there was any lawsuit. I asked them what they actually meant. The answer I got was in effect that the Government simply did not have any power to do so. It has now turned out that the Government simply does not have any power to reduce the salaries of civil servants, but over the years, taxpayers have all been kept in the dark about this. Well, salary reductions are possible only for government employment contracts signed after June 2000, and for all those signed before that, no salary reduction is ever possible. This tells us that the Government actually does not have any power to reduce the salaries of civil servants.

Madam Deputy, as you pointed out in your speech just now, and as also mentioned by our Legal Adviser, if the Government really reduces the salaries of civil servants, it will be depriving the latter of their legitimate rights. I do not wish to side with anyone to deprive any employees of their legitimate rights. However, government officials have told the Legislative Council that we need not have such a worry, because from time to time, the Legislative Council has enacted similar legislation, and they have even cited some examples. But I must point out that none of these examples are about the

enactment of any legislation by the legislature on the deprivation of employees' legitimate rights. In fact, the opposite has been the case; ever since the enactment of the Employment Ordinance some 30 years ago, efforts have been made to enhance the protection for employees as much as possible. Why then should a piece of legislation be required this time around? People who are listening to our debate now may wonder why it is impossible to introduce such mild rates of reduction, rates ranging from only 1% or so to some 4%. I am sure, and I hope people can understand, that this is not simply about the rates of reduction. Rather, as the Frontier and I have said, there must be negotiations between the employer and its employees.

Some may say that civil servants are most certainly reluctant to negotiate — well, you, Madam Deputy, have just asked, "How can civil servants still be willing to negotiate, now that they have been influenced by the Honourable Miss Emily LAU?". Civil servants are also part of the 7-million people living in our community, and for this reason, they will certainly appreciate the public expectations of them. I of course do understand the point that civil servants may come under others' influence and thus refuse to negotiate. But if there is a mechanism under which both sides can conduct negotiations, all of them will have to accept the outcome. The Government must not behave like a bad loser — hugging its apologists, but showing displeasure and even brushing the established mechanism aside in case someone disapproves of its actions.

Some Members have commented that the enactment of legislation can be considered provided that all the options under the established mechanism have been exhausted. Some support salary reductions; others say salaries should be frozen; and yet some others say that an independent committee on arbitration and inquiry should be set up to come up with a decision binding on all parties. However, the Secretary has ruled out all this, saying that even the decision of an independent committee is no absolute assurance, and that even one single lawsuit against the Government is not acceptable, because this may in the end mean that it has no power to reduce the salaries of civil servants. The Honourable MA Fung-kwok asked at that time whether the enactment of legislation could be considered if unanimous agreement had been reached beforehand. I think this can be considered, because instead of a situation whereby the employer takes unilateral action following the breakdown of discussions, we will come up with a decision agreed after negotiations. That is why the decision should be supported by civil service unions. If there is the support of all civil service unions, will the Court necessarily rule against the

Government even when someone really sues it? The likelihood of this is not too high. If there is still the need for any extra assurance at that time, I think all of us will render our support, because all the options under the established mechanism will have been exhausted by then and the situation will be somewhat very different. And, if every option is exhausted, there may be no need to take this next step anyway.

Therefore, I hope people can understand that despite the mild rates of reduction, the implications are in fact very far-reaching. The Government now asks the Legislative Council to enact legislation, and it says that it is alright to do so. In the Government's view, in case negotiations with its employees break down, it can submit a bill to the Legislative Council for enactment. It is small wonder that Mr CHAN Kwok-keung, when commenting on such an approach, said that if the Government was so afraid of being sued, it might as well enact a law forbidding others to sue it! *(Laughter)*

As the situation unfolds, I really doubt whether the rule of law is still being upheld in Hong Kong. Do we still respect the rules of the game in the conduct of our business? Or, has it become necessary for us to rush along regardless just because someone has said that something must be done, and be done on 1 October? Madam Deputy, it is after all impossible to really rush along regardless, because the power of making laws is still in the hands of the Legislative Council. Whether we talk about the United Nations (Anti-Terrorism Measures) Bill or the Public Officers Pay Adjustment Bill, we will see that the Legislative Council does enjoy very great powers. Do not believe anyone who says that the Legislative Council is powerless; one must of course note that legislative power and the powers of the Legislative Council are exercised not just by one or two Members alone, but by a majority vote of the whole Council. This means that he who controls a majority of votes in the Legislative Council will be able to exercise this legislative power. If Members wish to block the Bill, it is absolutely possible for them to do so. Unfortunately, many Members have expressed their support — either following a volte-face or since the very beginning. That is why the Bill will certainly be passed. But I myself will not support it.

Having said that, I must also express my hope that civil servants and the Government can start their negotiations as quickly as possible. I do not want to repeat the same question asked by an Honourable colleague: What about next year? Go through the same process once again? I think the Government and

civil servants should hold discussions on a long-term mechanism. I am sure civil servants are fully aware of the aspirations of society, of their hope to see some results that can bring forth a mechanism acceptable to all. I look forward to seeing a comprehensive pay adjustment mechanism for civil servants in the future, one which is capable of handling both pay rises and reductions, of ensuring that civil servants' salaries are not detached from the economic realities of society. I further hope that when there is any dispute, an arbitration body can be set up under such a mechanism.

Regrettably, once the Bill is carried this evening, there will be no time for us to consider in detail the effects of the Bill on subvented organizations and even the Legislative Council Secretariat. Perhaps, we really have to thank Secretary Joseph WONG for giving us such a complicated task, because while the salary reduction must be implemented on 1 October, the Legislative Council and the wider community are simply given no time for preparation.

Finally, Madam Deputy, I wish to raise a point that has also been raised by many other colleagues — the point that our Civil Service may not necessarily be perfect. Just back in 1997, civil servants were still praised very highly as the cornerstone of Hong Kong's success, as a clean and professional team. But they have now become the scapegoat of the TUNG Chee-hwa regime and turned into a public enemy. Why has there been such a drastic change over just a short span of several years? Well, whatever the reason may be, I still wish to remind all civil servants in Hong Kong that their target clientele should be the several million Hong Kong people. Some members of the public may not understand what is going on in the Legislative Council today, but we would try our best to explain the situation to them. I only hope that civil servants can seek positively to win over the public by their actual words and deeds in the meantime.

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

MR IP KWOK-HIM (in Cantonese): Madam Deputy, without a doubt, pay reduction is an unhappy experience to all wage earners. This unhappy feeling is particularly intense among members of the 180 000-strong Civil Service, as they have not experienced any pay reduction since 1937. Hence, the Democratic Alliance for Betterment of Hong Kong (DAB) can understand very much and sympathize with the strong response of some civil servants to the

present pay reduction exercise. The DAB also appreciates the attitude of the vast majority of the civil servants who have agreed to a pay reduction under the pay review mechanism to ride out the present hard times with the public. The DAB does understand the civil servants' concern over the pay reduction; but then, after careful consideration, we decided to support the stance of the Government on making legislation to implement the pay reduction proposal. In our view, this is the only way to implement the proposal while avoiding any litigation arising from uncertainties in the employment terms of civil servants, which will lead to wastage of public money and procrastination and thereby impact on Hong Kong's public finances. We have to stress that this legislative approach to effect a pay cut is just to implement this year's pay reduction decision made in the light of the Pay Trend Survey results and thus should never be used as a precedent for cutting the benefits of civil servants by way of legislation. Besides, the Government has also made it clear that it had no plan or intention to use this legislative approach to implement the pay reduction proposal as a pretext for curtailing civil servants' pension benefits. The DAB would certainly raise our resolute objection if the Government should go back on its words in future.

The DAB always holds that the Government should strengthen its communication with civil servants, with a view to eliminating any unnecessary misunderstandings and disputes. At the present moment when the economy is still in the doldrums, the Government should all the more strengthen its communication with civil servants, for this is the only way to achieve the objective of "demonstrating real partnership in stormy days" mentioned by the Chief Executive the other day. The fuss about the present legislative approach to effect a pay reduction is obviously attributable to the insufficient communication between the Government and the Civil Service. All along, the DAB has urged the Government to be a good employer, take the initiative to communicate directly with its employees, listen earnestly to the divergent views raised by civil servants and do a good job of clarifying its policies. The procession held by civil servants last Sunday reflects that some civil service groups are of the view that the Government is unwilling to negotiate with them for a solution. The confrontation between civil service unions and the Government is certainly the last thing the public would wish to see. The DAB just hopes that the Government can draw a lesson from this experience and mend the fold before it is too late. From now on, the Government should maintain close contact with its employees and strive to enhance the communication and negotiation efforts between both sides. In particular, care must be taken to avoid putting forward pay reduction proposals casually in

departure from the long-standing mechanism or without consulting the employees.

The various civil service groups have raised a number of views in their petition letters submitted to oppose the legislative approach to reduce civil service pay. One of the major concerns expressed is that this legislative approach to implement the pay reduction proposal may be used as a precedent for cutting the benefits of civil servants. In the letter he wrote to all members of the Civil Service on 5 July, the Chief Executive has made it clear that "the Public Officers Pay Adjustment Bill is a piece of one-off legislation to cater specifically for the implementation of this year's civil service pay reduction, no more and no less", and that "the Government has no plan or intention to use this Bill as a pretext for curtailing civil servants' pension benefits." The DAB welcomes the explanation and undertaking made by the Chief Executive, and we do believe that this legislative approach is adopted just to implement the Government's decision to effect a one-off pay reduction.

The DAB has stated clearly from the very beginning that civil service pay adjustment should be conducted in accordance with the established mechanism. Given that civil service pay is adjusted in accordance with this mechanism every year, it should still be adhered to unless amendments have been made after in-depth discussions and sufficient consultation with the staff side. According to this mechanism, civil service pay can be adjusted upwards or downwards, and civil servants should accept it if the survey result shows a downward pay trend. Actually, the rates of reduction are only very small this time, and the reduced pay level is still higher than that before the reunification. Thus, there is no question of violating Article 100 of the Basic Law.

Civil service groups have urged the Administration to set up an independent committee of inquiry to negotiate a method to resolve the matter. Apart from that, some have also pointed out that the civil servants were not unwilling to accept any pay reduction, only that implementing the pay reduction by way of legislation was an inadvisable approach. The Civil Service has four consultative councils representing the civil servants' interests under the consultation mechanism for pay adjustment, but the Government just insists on implementing the pay reduction proposal by way of legislation rather than negotiating with these consultative councils. This is not a sound approach. In the view of the DAB, negotiations in the independent committee of inquiry

are related to only the rate of pay reduction, but there is no assurance in respect of the Government's decision to implement any pay reduction proposals. Similarly, the DAB agrees very much that the Government should enhance its communication with the Civil Service; but then, even if the two sides reach any conclusion on the pay reduction proposal after negotiations, the Government still has to implement the decision made by way of legislation. It must be stressed that whether the pay reduction decision is made by the committee of inquiry or by both the Government and the staff side after negotiations, it just cannot eliminate the uncertainties of litigations. If the Government is to reduce the civil service pay, the only way to eliminate such uncertainties is to clarify the employment terms of civil servants by way of legislation. The Government has no other options but to adopt this legislative approach. I believe civil servants will support the Government implementing the pay reduction proposal by way of legislation upon learning the rationale behind such a approach. It is the DAB's hope that even after the Council has passed the Bill today, the Government will continue to explain patiently and clearly the aforementioned rationale to the Civil Service and members of the public.

THE PRESIDENT resumed the Chair.

The DAB also hopes the civil servants who oppose the legislative approach to effect a pay cut can understand that the DAB supports the Government reducing civil service pay by way of legislation not because it pays no regard to their rights and interests, or we are brushing them aside. On the contrary, we are doing so to safeguard the overall and long-term interests of the Civil Service. Just imagine, if the legislative approach to effect pay reduction was not adopted and the proposal was eventually overruled after series of lawsuits, the original pay review mechanism would certainly be impaired. At present, when the economy remains in the doldrums and employees in the private sector are given substantial wage cuts, the public will certainly be even more critical of the civil servants' unwillingness to ride out the present hard times with them together. That way, not only the image of the Civil Service will suffer, international investors will also cast doubts on the Hong Kong Government's determination to reduce the budget deficit as well as its ability to govern Hong Kong. In the end, their incentive to invest in Hong Kong will be adversely affected, thereby impacting on the development of the Hong Kong economy. Just how can the pay levels of civil servants be raised if the

economy of Hong Kong is unable to get out of the present plight? Over the past 10 years, the Legislative Council Panel on Public Service has been chaired by Members affiliated to the DAB. Hence, it can be said that the DAB is very familiar with and appreciate fully the situation of civil servants. The DAB has always been and will still be approving of and commending the Civil Service for their contribution to the stability and prosperity of Hong Kong. And it is exactly for this reason that the DAB takes closely to heart the legitimate rights and interests of civil servants and fight for them with all efforts. Perhaps Honourable Members may still recall, in 1998 when the Pay Trend Survey results hit a historical low in 12 years and the rates of pay increase for civil servants at various level were so divergent, we still took the initiative to urge the Government to increase civil service pay in accordance with the survey results, so as to strive for the best interests of the Civil Service.

Having taken into consideration factors like the economic recession facing Hong Kong currently, the grave budget deficit of the Government, the smooth functioning of the existing system that the Government has been adhering to all along, the legitimate rights and interests of civil servants, and so on, the DAB considers that the legislative approach is the only feasible option opened to the Government to implement the pay reduction proposal. Thus, we sincerely hope that members of the Civil Service can accept the proposed legislative approach to pay reduction and ride out the present hard times with the public.

With these remarks, Madam President, I support the Bill on behalf of the DAB.

MR ALBERT HO (in Cantonese): Madam President, I feel very sorry with the way in which the Government has handled the civil service pay reduction. This approach can only be described as "short-sighted and slow-witted", so much so that the Government will end up paying a huge social price, while the civil servants have lost completely the support of the public.

First of all, I should like to briefly analyse the process of handling the issue. The Government has all along stressed the pressing budget deficit and its hope to tackle the problem by reducing the civil service pay to achieve savings in public expenditure. When formulating his annual budget between late last year and early this year, the Financial Secretary made a very rare

assumption which, to the best of my knowledge, could find no precedent in the past. The Financial Secretary assumed that civil service pay should be reduced substantially by 4.75% and incorporated this proposal into his budget. Actually, the incorporation of the proposal into the budget then aroused enormous concern among various sectors of society, and some people even expected the civil service pay to be reduced to help the Government resolve the budget deficit.

However, did the Government, particularly the Financial Secretary and the Secretary for the Civil Service, know at that time whether the Government had the power to reduce civil service pay? Actually, the answer is also very clear. When we subsequently discussed the relevant motion at panel meetings, the Government indicated at the outset it had doubts about it, as there had been court precedents questioning whether the power of the Government under the Civil Service Regulations to retain or adjust the terms of appointment and conditions of service of civil servants really included also the power to reduce civil service pay. At the later stage of deliberations on the Bill, the Government even frankly admitted that it would most probably lose if there should be any lawsuits. When did those court cases take place? They took place in 1991 and became precedents. The judgement made then also cited some similar precedents in the United Kingdom in 1985. Hence, Madam President, the Government already knew it very well 10 years ago that it does not have any power to reduce civil service pay under the so-called established mechanism, or, putting it in another way, its power to do so is very much open to question.

So, this is the real situation. At the end of last year or an even earlier time, the Financial Secretary stressed that the Civil Service should shoulder part of the financial responsibility. He also mentioned that since so many people in the private sector had been given pay cuts, why should civil servants not be given one as well. Given that he had such an idea in mind, why did he not take the long view and conduct a comprehensive review of the pay adjustment mechanism? If the Financial Secretary was not obsessed with the 4.75% reduction proposal or pre-occupied with ideas to shape public opinion, but spent the time on discussing with Secretary Joseph WONG to draft legislation to perfect the pay review mechanism for submission to the Council early this year or even around April and May, Members could then make use of the summer recess to scrutinize the relevant bill. That way, as I estimate, the bill could probably be passed by the end of the year. What is more, there would also be

enough time to fully consult the Civil Service, employees of subvented organizations, as well as academics who are interested in this issue. In other words, a perfected mechanism could be passed by the end of the year. As Members all know, the Civil Service will certainly accept handling the issue along this line. Just what difference can be made in a matter of two months' time? Madam President, the only difference is that the civil service pay reduction would commence two months later. May I ask the Secretary to inform us why the Government had not done so? When did the Government become aware that it did not have any power to reduce civil service pay? Why must the Government force the Legislative Council to support its administrative decision by way of legislation, which is a very controversial measure to force its way into the Council?

Madam President, I wish to stress once again that the grave confrontation and conflict between the Government and the Civil Service this time and the resulting awkward atmosphere in society can in fact be avoided entirely. Some people have even wondered what has gone wrong with Hong Kong. The Civil Service has made it clear that it would not oppose to a pay reduction in principle, provided that the Administration puts forward a proposal acceptable to both parties. The civil servants will find it acceptable if the pay reduction proposal is implemented by way of the arbitration procedure or a mechanism established by legislation. Actually, the Civil Service and the Government do share the same objective, as they have both found the principle of reducing civil service pay acceptable. The only remaining step is to find out a way to implement the proposal. But then, the Government has refused to work out a way but insists on implementing the pay reduction proposal by way of legislation. Is it something a responsible government should do?

I regret very much that all along, the Government has never demonstrated any sincerity or made its best efforts to reach a consensus with the relevant civil service groups, nor has it considered making use of a channel acceptable to both sides to achieve the objective, including arbitration or formulating a comprehensive pay adjustment mechanism. On the contrary, the Government has only kept exerting pressure on civil servants through public opinions and accusing them of not willing to ride out the present hard times with the public. What is more, the Government has even reduced the civil servants who have expressed dissatisfaction with the Government as the common enemy of the people. In my view, the civil servants could certainly

reach an agreement with the Government regarding the pay reduction principle at the very beginning. The executive-hegemonist approach of the Government has removed the basis on which the communication and mutual trust between the two sides develop, thereby leaving the two parties on the verge of being gravely antagonistic towards each other. I find this most regrettable.

Madam President, I wish to emphasize that the accountability system for principal officials (accountability system) has just been implemented and the Government has already adopted such a slow-witted approach and terribly rigid bureaucratic attitudes to handle this pay reduction issue. Without any proper political means, the Government just can never resolve its disagreement with the Civil Service. That being the case, how can we have high expectations of the accountability system in future? In addition to leaving the executive and the Civil Service in an antagonistic position that can hardly be resolved, this forced legislative approach has also compelled Members of this Council to make a decision. The Honourable Eric LI, for example, said in his speech earlier that he had been subject to enormous pressure from public opinion, feeling that he was caught on the horns of a dilemma to make a painful choice. But what would he get in the end?

So, on the whole, Madam President, it is most regrettable that the Government has adopted an improper measure for the sake of some short-term financial gain. For this reason, the editorial of a newspaper has commented that even if the Government could win this small battle, it would have lost an important war in the end. I just hope very much that the Government can reflect seriously on this matter. The stance of the Democratic Party on this Bill has remained very clear all along. Insofar as the principle of lawmaking is concerned, we sternly oppose the use of a one-off piece of legislation to implement an expedient administrative decision.

As Members all know, lawmaking is a very solemn procedure. Generally speaking, laws should be universal, generally applicable and should be used to set up some permanent system or structure. In the past, when we decided to formulate a law for a certain issue, we were giving such issue a legal base. Another case, though rarely happened but did happen in the past, was to legislate to declare a certain special day as public holiday. We have actually done that before and the Reunification Day was made a public holiday this way. Decisions made under such circumstances would certainly affect a great many

people. In other words, the relevant decision is applicable to not just a certain person but many people in many different situations and are therefore considered as generally applicable.

Therefore, the Government's rationale for formulating the Bill, which is to implement a one-off pay reduction, violates the principle of lawmaking. The Government is asking the Legislative Council to do something which is not a responsibility of the Council but a decision of the executive. There is one point I wish to stress, and that is, this time the Government seems to be asking us to play the role of an arbitrator. But can we actually do that? We have not played that role. Have we reviewed whether or not the data contained in the Pay Trend Survey report are correct and accurate? Basically, when making consideration under the pay review mechanism, other factors must also be taken into account, including socio-political factors, financial factors, and so on. Have we taken such factors into consideration? No, we have never considered such factors. With the Bill submitted to this Council, we are only being asked to indicate whether we are in favour of or against the Bill; in other words, we are only being asked to show our support or otherwise for the Government. Is this something the Legislative Council should do? Should the Legislative Council be made an expedient tool of the executive? Is the Government using the Legislative Council as a disposable or a one-off painkiller — taking the legislative approach as a painkiller or a bowl of instant noodles to satisfy hunger? As I said before, this is a totally wrong idea.

In my view, if the Government considers the present mechanism is not vested with enough power, it should conduct a comprehensive review and formulate legislation to perfect the mechanism. In addition to specifying the method of determining the pay trend and the various factors affecting its determination, the pay review mechanism should also cover the possible communication channels available between the management and staff sides, methods of co-ordination, and the ways to resolve any ultimate disagreement that may arise between the two sides. So, these are the things that legislation should achieve.

Unfortunately, the Government has never considered the matter from such angles; rather, it has just asked the Council to pass the Bill to give it an instrument to implement the pay reduction proposal. What are the consequences? In addition to being perceived as an instrument of the executive, the Legislative Council would also be regarded as an organization

which knows only to support the Government, and a rubber-stamp disguised as an arbitrator. With such a legislature and the success of this legislative exercise, the Government may say in future why we should not make another law this way. If there should still be deflation next year and the Government wishes again to reduce the civil service pay, why would the Legislative Council not render its support? Given that the Legislative Council has given the Government its support this year, what will the Council do in the coming year? If the Government should submit such a bill to the Council next year, Mr Eric LI would have to declare his stance again. Would he support the bill then? Will the Honourable Jasper TSANG and other Members affiliated to the DAB have to declare their stance again too? Will they give the Government their support every time it submits a similar bill to the Council? If not, why should they give it their support this time?

Once this Bill is passed, the Government will gradually, or perhaps not gradually, say that the approach is already part of the mechanism. Originally, the legislative approach was not part of the mechanism, but after the passage of the Bill by the Legislative Council this time, the Government would say that since Members supported the Bill, let us make it part of the mechanism and support it as a part of the pay review mechanism!

I hold that this approach is by no means desirable, and it will impact on the base of co-operation and mutual trust between the Government and the Civil Service. In my view, this approach would make it impossible for civil servants to return to the negotiation table with the Government. For these reasons, I hope very much that Honourable colleagues will cast a negative vote today, so as to compel the Government to reconsider the matter again and then back come with a comprehensive bill. Thank you, Madam President.

MR LAU PING-CHEUNG (in Cantonese): Madam President, the Government submitted the Public Officers Pay Adjustment Bill (the Bill) to the Legislative Council with the intention to effect civil service pay reduction through legislation. This has given rise to great controversies in the community and caused dissatisfaction among civil servants. Therefore, no matter whether this Bill is eventually passed by this Council or not, this dispute has already harmed the Government, civil servants and the community at large, which is really unfortunate.

On 24 June, six professional grade associations of the Housing Department, including that of the building, surveying and town planning grades

in my constituency and the Architectural Services Department Maintenance Surveyors' Association jointly wrote me a letter, requesting me to oppose the Bill. As their representative in this Council, I promised them that I would state their reasons for objection to effecting pay reduction through legislation. I would first cite their reasons for objection as follows and here is what they said: "Firstly, to effect pay reduction through legislation is definitely against the spirit of contract. It destroys the existing channels for negotiations and unilaterally damages the existing pay adjustment mechanism. Once such a precedent is set, the Government can do whatever it likes through legislation, and other proven existing mechanisms will become something that exist only in name. Secondly, the real intent of effecting pay reduction through legislation is to deprive the public of their rights to fight for their own interest in court and violates the law through law enactment. This is virtually against the spirit of lawmaking. We are surprised to learn that in Hong Kong, a place that has always attached great importance to the rule of law, the Government could ride over the heads of the people! Thirdly, unlike what the Government has said, effecting pay reduction through legislation will not only fail to obviate litigation, but also destroy the foundation of mutual trust that has been built up between civil servants and the Government over the years. Civil servants will be forced to engage in a protracted struggle with the Government and the civil service structure and stability of the community will be undermined."

In fact, the Civil Service's strong objection to effecting pay reduction by way of legislation could be described as a case of "old grudges and new hatred". The experiences of the professional grades in the Architectural Services Department reflected that the Government did not fully consult its staff. To put it more precisely, the Government had refused to negotiate with the staff despite their repeated requests and in the end, it suddenly decided to contract out 90% of the jobs within seven years. These are the "old grudges". As regards "new hatred", needless to say, it is to effect pay reduction through legislation. The Survey and Mapping Office of the Lands Department has also gone through similar experiences.

What made civil servants most uneasy is that once pay reduction is effected through legislation, there is no guarantee that the Government will not take further actions. It may even lift the floodgate for pay reductions, and other actions that are damaging to civil service remuneration may appear in succession, hence creating a "dominoes effect".

Madam President, in order to mediate in the dispute between civil service associations and the Government over pay adjustments, I arranged a meeting

between 10-odd professional grades associations, which I represented, and the Secretary for the Civil Service on 28 June. Thereafter, I wrote to Secretary Joseph WONG and the Chief Executive, Mr TUNG Chee-hwa, respectively to make suggestions on some positive compromises. Unfortunately, the Bill was still submitted for voting in this Council and no matter whether it is passed or not, as I said earlier, the rift between both parties will be expanded, and this is most unfortunate.

As regards the issue of civil service pay adjustments, I often ask myself the same question over and over again. Is the "legislative approach" the only and unavoidable approach? As a member of the general public, I always believe that pay is an agreement between employers and employees and the level of pay can be adjusted. By "adjustment", it means that it can be adjusted upwards or downwards depending on discussions between both parties. Mr Ian WINGFIELD, the Law Officer, has openly declared that it is not safe and reliable for the Government to effect pay reductions on the basis of a general clause, namely the Government "reserves the right to change the terms of employment and conditions of service".

I am not convinced by the Government's argument. First of all, this pay reduction exercise by the Government is not an entirely unjustifiable arbitrary decision for it is based on the results of the Pay Trend Survey that has been employed for over 20 years. Going through the records, we can see that the Government has made civil service pay adjustments in accordance with the results of the Survey over the past 20 years, and with the exception of the dispute in the year 1991-92, it seems that this mechanism has never been questioned. Therefore, even if the Government goes ahead with the pay adjustment on 1 October without enacting a separate piece of legislation, I still believe that the Government will have grounds for defence even if some civil servants should really initiate proceedings.

Secondly, some civil service groups have said that the Government cannot unilaterally vary the employment contract. Some civil servants have told me that their annual pay adjustment is only based on the decision of the Chief Executive in Council made in accordance with the recommendations of the Pay Trend Survey and other considerations. A circular was then issued to civil servants informing them of the rate of adjustment. In other words, the annual pay adjustment has always been a unilateral decision of the Government.

By comparison, according to the private sector practice of pay adjustment, each employee will receive a written or verbal notification from the employer. If the employee is unhappy about the result, he can ask the employer to terminate his employment on grounds that the employer has unilaterally made major changes to the terms of employment and the employee can then receive statutory compensations.

If we look at the Government's narrow interpretation of pay adjustment in the Memorandum on Conditions of Service in the Civil Service with reference to the established practice of the Government, we can see that civil service pay adjustments in the past 20-odd years were unilateral decisions that did not have a legal basis and could be open to challenges. This, in addition to the interpretation of the "pension system", that is, the job security enjoyed by civil servants under which civil servants will not be dismissed unless they commit acts of misconduct, will give rise to the following absurd situation. "No matter what happens, civil service pay can only be increased but not decreased and civil servants cannot be dismissed or have their employment terminated." This is obviously unfair, unreasonable and undesirable.

If the Government and civil service groups take such a narrow view on the provisions on pay adjustment in the employment contract, then Members of the Legislative Council are duty-bound to require the Government to set up by way of legislation a reasonable pay adjustment mechanism which allows for both upwards and downwards adjustments. This is because civil service salaries are paid by public funds and each time the funding is granted by this Council through a bill. If we are not aware of this absurd situation until today, as Members of the Legislative Council, there are more reasons for us to require the Government to rectify this anomaly through legislation. Over the past month, I have repeatedly requested the Government to settle this legal issue once and for all, and I also made this request at the Chief Executive's Question and Answer Session on 8 July.

Now, all major civil service groups have indicated that they are willing to accept a pay reduction, but they oppose effecting it through legislation. My position is very simple and that is, a legally binding adjustment mechanism that is acceptable to the Government, civil servants and members of the public at large, that allows for upwards and downwards pay adjustments should be established. If we say that the existing mechanism is not legally binding, then new legislation must be enacted separately as soon as possible. For this will

prevent the Government from asking this Council to pass another one-off bill next year and harm the Government, civil servants and members of the public again. Therefore, after going around in circles, eventually, it is still necessary to enact legislation.

On the other hand, civil service groups have repeatedly made compromises from initially opposing the pay reduction, asking for a pay freeze and then requesting arbitration to accepting pay reduction but opposing doing so through legislation and finally demanding to defer the date of legislation for two months so that they could have more time for discussions. For sentimental reasons, I support and appreciate their efforts. However, even if civil service groups are willing to accept the pay reduction, after all, they do not represent the views of all members and a small group of non-union civil servants may initiate proceedings against the Government. Once the Government lost its case, a chaotic situation will arise whereby the majority of civil servants will have their pay reduced and the minority of civil servants will be spared the pay reduction because they have won. I would like to stress that the purpose of legislation is not to increase the Government's chances of winning in such litigation, but rather we cannot accept the chaotic situation that will arise if pay reduction is not applied across the board.

Moreover, once litigation occurs, it may drag on for a long time. In that case, the amount under dispute will no longer be the difference of \$1.5 in six months, but a much bigger amount for many months or many years. This will create difficulties in the compilation of the annual budget or may even affect Hong Kong's financial stability. Besides, the proposed pay reduction actually reflects the overall financial condition of the territory and the aspirations of the community. We cannot ignore them.

Of course, I also fully appreciate the worries of civil servants. As I have mentioned earlier, I am concerned whether this legislation will set a precedent for the Government and lift the floodgate for further reductions in civil service benefits. For this reason, I have been urging the Government to hold discussions with civil servants, refraining from clearly indicating how I would vote. Last week, I still asked the Government to defer the Third Reading of the Bill after the Second Reading so as to buy some time for negotiations or to allow Members of this Council to move a Member's bill. On 5 July, the Chief Executive openly pledged that this is only a one-off exercise that will not be repeated. I think the greatest worry of civil servants

has been addressed. The passage of the Bill can serve to balance the interest of civil servants and the community, otherwise the public will doubt the sincerity of civil servants in riding out the storm with the public.

To quote the editorial of the *Hong Kong Economic Journal* on 8 July: "Is it necessary to effect pay reduction through legislation? Are there better alternatives? It seems that not many people have discussed this issue and it can even be said that there are no absolute convincing justifications to show that the Government should not effect pay reduction through legislation obviously, at present the employment security enjoyed by civil servants is far better than that of their counterparts in the private sector to effect pay reduction through legislation is only to give the Government the power of a private sector employer. Civil servants are only given the same status as private sector employees and they have not been deprived of their rights in any way."

Finally, when I look back at this dispute from another perspective, I find that this is a situation whereby all three parties will lose, and it is most unfortunate. First of all, the Government should not arouse dissatisfaction among civil servants by departing from its past practice and announced the rate of pay reduction in advance. Secondly, some radical civil service groups have made some radical remarks, thus strengthening the Government's determination in enacting legislation. As a result, the dispute cannot be resolved through negotiation or arbitration. Moreover, civil service groups must also admit that the differences between various civil service groups have added difficulties to resolving the differences through negotiation.

Last week, I still asked the Government to consider deferring the Third Reading of this Bill after the Second Reading. Eventually, the Chief Executive wrote to all civil servants last Friday and made the relevant undertaking. The outcome is there for all to see and that is, civil service groups took to the streets as scheduled. As the head of the SAR Government, the Chief Executive made an undertaking, but civil servants who are government employees still refused to trust him. This is really sad.

Madam President, how many civil servants took to the streets last Sunday? Some media estimated that there were 35 000 people, some people estimated there were 20 000 people and there were even people who analysed the situation without counting the number of participants and came to the conclusion that it was a political struggle. However, I think that the number of

participants is not important. The importance lies in the rationale behind their aspirations. During the past few days, I received many letters and e-mails from my constituents in the Civil Service. Most of them asked me to vote against the Bill, while a few asked me to support it. However, as I said earlier, the most important point is whether the Bill is reasonable and whether it is consistent with the overall interest of Hong Kong. The interests of a sector should not override that of the whole community.

With these remarks, I support the Bill.

DR DAVID LI: Madam President, I raised the issue of civil service pay during my response to the Chief Executive's policy address in October last year. In doing so, I became the first Member of this Council to draw attention to the widespread concern in Hong Kong that civil service pay no longer reflected market conditions.

Our economy has been locked in a deflationary spiral since the last quarter of 1998. Unemployment has risen to levels unknown in recent memory. Private sector wages have been under great pressure. In short, our economy is now experiencing a severe structural adjustment. This is a painful adjustment, but one that is necessary to ensure our future prosperity. Hong Kong must regain its competitiveness.

The private sector is learning to do more with less. The Government must not be a growing burden on the rest of society. As the largest employer in Hong Kong, it is incumbent upon the Government to reign in its own wage bill. But the Government is unlike any other employer. No other employer has the power to override existing contracts and statutes when negotiating with its employees. No other employer may use legislation to change the rules. The Government does have that power. In a civilized society, the government exercises its power with utmost restraint, within the context of its mandate to maintain social order. A responsible government does not legislate simply because it is expedient to do so.

I am very uneasy with this Bill. I am very uneasy because legislation should be the last resort. In this instance, it appears to have been the first.

The Government has said that failure to pass this Bill will harm Hong Kong's international credit rating. However, the Government must also be

mindful that this legislation will send a negative message to the international community. Our critics will argue that this is yet another sign that fundamental rights are being sacrificed in post-handover Hong Kong. There is no need for us to give our critics such an easy target.

Even more important, introduction of this Bill has affected the relationship between the Government and the Civil Service. Instead of solving problems through negotiation, the Government has created a problem through confrontation. In this regard, the open letter to civil servants, issued by our Chief Executive last Friday, represents a significant effort at reconciliation. It is my hope that both sides will build on that initiative, and work together for the future good of Hong Kong.

The institution of the Civil Service is one of Hong Kong's key strengths. The professionalism and sense of duty of our civil servants is widely recognized. I believe that the Government has gone as far as it can to meet the concerns raised by this Bill. The civil servants have won a considerable victory, securing a commitment from our Chief Executive that the Government has no intention to use this Bill as a pretext for curtailing civil servants' pension benefits. This clearly demonstrates the Government's commitment in future to negotiate, not legislate. To my mind, that is not only good news for civil servants, it is also good news for Hong Kong as a whole.

There is a great deal for the two sides to negotiate, with the aim of making our Civil Service and Hong Kong stronger and better able to cope with the challenges ahead. Therefore, with the widespread desire within our community and my constituency to look forward to our future strength, I will vote in support of this Bill.

Thank you.

MS AUDREY EU (in Cantonese): Madam President, I rise to speak against the resumption of the Second Reading debate on the Public Officers Pay Adjustment Bill.

The Government has proposed a reduction of the civil service pay starting from 1 October this year. If we look at the rate of reduction alone, it is indeed very moderate and reasonable; and it is also the general aspiration of the people that civil servants will ride out the storm together with them.

However, I have great reservations about the Government insisting on implementing the pay reduction by way of legislation.

Under the civil service pay adjustment mechanism which has operated for decades, the Government will determine the rates of adjustment after considering the results of the Pay Trend Survey based on the pay in private sector, the economic conditions of Hong Kong, the financial status of the Government, price movements, civil service morale, and so on. As the Secretary for the Civil Service, Mr Joseph WONG, has explained, the many individual factors for consideration under the existing mechanism may have a positive or negative impact on the pay adjustment of civil servants. In other words, the pay of civil servants can increase and also decrease. So, he said at first that the pay reduction proposed by the Government was not a departure from the existing mechanism. Madam President, since the pay of civil servants can be adjusted upwards and downwards under the mechanism, it means that there is no need to legislate in order to implement the pay reduction. However, the Government, when lobbying Members for support, has made substantial changes to its arguments. To convince Members that legislation is the only option, Secretary Joseph WONG even said in the end that if the pay reduction was implemented not by way of legislation, the Government might lose in possible litigations filed by civil servants in future.

Madam President, the Secretary's two statements are contradictory. From his latter statement, that is, the Government would lose in litigations if legislation is not made to this effect, it shows that the Government has indirectly admitted that implementing a pay cut by way of legislation will indeed deprive civil servants of their established rights. This is tantamount to changing the rules of the game in the middle of a sports competition in favour of oneself to make sure that one can win. This is not something that a credible government should do. By the same token, when the Government handles other disputes in future, say, in the event of business disputes or resumption of land or compensation for redevelopment involving the Government and certain large companies, enormous public money may be involved and if the Government could pre-empt all consequential actions by the opposite party through legislation to ensure that it wins in such litigations, then what rule of law is there to speak of in Hong Kong?

It should be noted that civil servants, unlike employees in the private sector, are not protected by the Employment Ordinance. If the latter (employees in the private sector) do not accept a pay cut, they can still choose

to accept severance payment and statutory compensation. If the Government successfully implemented a pay cut by way of legislation, civil servants would not have the same right to choose, and no provision in the Bill will allow civil servants who choose not to accept the pay cut and choose to leave can obtain compensation.

My greatest reservation is the very shortsighted approach of the Government in seeking now to legislate on a one-off basis to effect the pay reduction. Indeed, legislation is in itself a very serious matter and should be used to deal with long-term issues of great importance, such as the prohibition of racial discrimination, criminal conduct, and so on. That the Government treats legislation as a one-off, disposable tool is total disrespect for the spirit of legislation. If the Government encounters the same problem next year, will it resort to legislation again to resolve the problem? This question has been asked to *ad nauseam* by many Members. I hope the Secretary can answer this question in his response later on.

Indeed, in the final analysis, the disputes over the civil service pay can be attributed to the failure of the existing pay adjustment mechanism to keep pace with the times and so, the results of the Pay Trend Survey cannot catch up with the actual situation in the market, and a performance-based pay adjustment mechanism is also lacking. Therefore, the Government should start by reforming the existing mechanism. Since the Administration has stated that a review is underway, then it should work in accordance with the established rules and procedures before the completion of the review, rather than implementing a pay cut on a one-off basis by such an unusual means. Many Members, in expressing support for this Bill, stated that they supported it because of its one-off nature. However, the Government can, in fact, freeze the pay of civil servants temporarily and draw up a new mechanism after consultations, and then introduce a piece of legislation into the Legislative Council for passage to establish this new mechanism. The level of the frozen pay could then be dealt with in accordance with the mechanism in one go. Had the Government handled the matter in this way, I believe the situation would have been very much different.

Madam President, there is basically an employment relationship between civil servants and the Government. There should always be discussion and negotiation between civil servants and the Government. If there are differences between them, they should resolve such differences through

consultation. Article 8 of the International Labour Convention which was concluded in 1978 provided that employers and employees should resolve differences on employment conditions through negotiation or an independent arbitration or mediation mechanism.

The Government refused to resolve the dispute on pay reduction through arbitration and insisted that the matter be decided by Members of the Legislative Council. Madam President, I worry not about the Government attempting to make Members of the Legislative Council meat of the sandwich in this issue. But I think this is not a desirable way to resolve the matter, and this may constitute a violation of the International Labour Convention. More importantly, the Government has sought to achieve \$1.55 billion savings at the cost of damaging the proven pay adjustment mechanism, forcing the entire community to choose between the rights and benefits of civil servants and a tax increase. This has eventually induced over 30 000 civil servants taking to the streets to stage a protest just when the SAR Government has just entered its second term, undermined the morale of the Civil Service and caused serious division in society. Madam President, I think the price of this is too great, and this is heart-rending.

Finally, Madam President, I wish to express my gratitude particularly to Mrs Jessie TING, Deputy Secretary for the Civil Service. She had given Members a detailed explanation on the very complicated civil service pay scale in the Bills Committee. Her explanation was well-organized, and she had always maintained her composure and given precise answers. Although I cannot support the Second and Third Readings of the Bill, I am still grateful to the government officials concerned for taking on board the suggestions of the Bills Committee and proposing amendments accordingly, and this has directly made considerable improvements to the Bill.

With these remarks, Madam President, I oppose the Second and Third Readings of the Bill.

MR AMBROSE LAU (in Cantonese): Madam President, with regard to the proposed pay reduction, the Hong Kong Progressive Alliance (HKPA) has proposed that the Government must observe two major principles. First, the rate of reduction must be moderate in order not to undermine the morale of civil servants and further dampen consumer sentiments. Second, the

Government should make every effort to minimize the impact on civil servants. The Government has proposed to reduce the civil service pay by 4.42%, 1.64% and 1.58% for the upper, middle and low salary bands respectively, and these rates are determined in accordance with the pay adjustment mechanism agreed by the civil servants and the Government over the years. They are lower than the 4.75% as assumed by the Financial Secretary in the Budget, and also far better than the arrangement in the private sector in the past few years since the employees were generally subject to a pay cut of at least 10% with the double pay or bonus having been slashed as well. The rates of reduction proposed by the Government are considered moderate. In the meantime, the Government has not proposed a pay cut at the same rate for civil servants across the board. This is in response to the general aspiration of the community that senior civil servants should be subject to a higher reduction rate than civil servants at the lower levels, in order to avoid "the top growing fatter and the bottom thinner". This is fair to the lower-level civil servants who make less income and are greater in number, and this has minimized the impact of the pay reduction as far as possible. In fact, civil service unions have already stated that they accept the proposed reduction rates, and this goes to show that a pay reduction is the consensus between the civil servants and the Government. Therefore, the point at issue does not concern differences in principle, but how the pay reduction should be implemented.

The HKPA appreciates the concern of civil servants that implementing a pay reduction by way of legislation may set a precedent for the Government to cut their benefits in a similar way in the future. But we must note the fact that the Government is legislating on a one-off basis, and the issue being dealt with is confined to a pay cut for this year only. This will not result in reducing the employment conditions of civil servants to below the standard in 1997. Nor will this violate the Basic Law provisions on the protection of the employment terms and conditions of civil servants. Furthermore, the Chief Executive has made a solemn undertaking in black and white in the form of an open letter that "the Government has no plan or intention to use this pay reduction legislation as a pretext for curtailing civil servants' pension benefits". In view of this, civil service unions may as well wait and see if the Government can live up to its undertaking. They should consider the matter from the wider interest of the community and accept the pay cut, so as to alleviate the fiscal deficit and ride out the storm together with the people.

Certainly, apart from implementing a pay cut to reduce the fiscal deficit, the Government should, as a priority task, prevent government departments and

statutory organizations from squandering public money. All departments should make their utmost effort to implement the remedial measures proposed by the Audit Commission every year, and it is also hoped that they will not wait until scandals are exposed that they learn to pull the purse strings tight and keep a close watch on their accounts. If the Government cannot kick the bad spendthrift habits, the pay reduction would only be fruitless at the end of the day.

While a pay reduction by way of legislation is a decision made with much reluctance, it does not mean that the Government must take a hard line and gives tit for tat as if fighting in a battle when handling the pay reduction. If, in drawing up the proposal on the pay reduction, the Government could liaise and discuss more with representatives of civil servants and present for discussion the internal and external problems surrounding the fiscal deficit and the difficulties in the legal aspect concerning the pay reduction to convince civil servants of the Government's sincerity and its reasons for such reduction, and at the same time take practical steps early to allay the concerns of civil servants to make them feel less aggrieved, then the incident of tens of thousands of civil servants taking to the streets to air their grievances should have been avoided. The HKPA hopes that irrespective of who is right and who is wrong, the Government should expeditiously take proactive steps to mend the crack in its relationship with civil service unions and rebuild a partnership relationship for the sake of social stability in Hong Kong. The HKPA trusts civil servants have a high degree of professionalism; they are willing to give priority to the overall interest of Hong Kong and continue to communicate with the Government in order to reach a consensus, and they will not impede the operation of the Government because of the dispute on pay reduction. After all, civil servants, the Government and the public are all in the same boat. We should support each other and work towards a common goal while allowing the existence of differences.

Madam President, I so submit.

MISS MARGARET NG (in Cantonese): Madam President, I rise to speak in opposition of the Second Reading of the Public Officers Pay Adjustment Bill. The main reason is that I consider a pay reduction should not be effected by means of legislation. My arguments have been clearly presented in the meetings of the Bills Committee and a number of commentaries in newspapers,

in particular, my views were expounded in a commentary entitled "Pay reduction must not be achieved regardless of the means", published in the *Hong Kong Economic Journal* on 28 June. Concerning why I consider a pay reduction by legislative means unwarranted, why the pay should not be reduced by legislative means and why the goal of formulating legislation should be laying down clear principles and establishing a mechanism for adjusting the pay of public officers, those who want to listen to reasons should have done so by now, so I do not have to repeat my arguments here.

In the past two months, we have heard some people say that it is a case of "take-the-winnings-and-sack-the-losses" for the civil servants not accepting a pay reduction by way of legislation, since they are only willing to accept a pay rise according to the Pay Trend Survey but not a pay reduction according to the same survey. The Government has also repeatedly stressed that the rates of reduction are mild and supported by society, so the civil servants should accept it. It is particularly ironical that while the Secretary for the Civil Service has just been promoted and will earn an extra \$120,000 each month, he is persuading his former colleagues to accept a pay cut and ride out the storm together with the public.

However, ironical or not, this kind of comment has evaded the issue of the legislative approach. Civil service unions have unanimously and repeatedly made it clear that they are willing to accept the outcome of arbitration including a pay reduction, so why must we assume that they are lying? They have stated clearly that they cannot accept the legislative approach because labour disputes should not be resolved by legislative means. This is in fact a very simple and plain norm, so why must we treat them as though they were kicking up a fuss without good reason? Today, many Members have taken the same stance as mine, that is, they agree to a pay reduction but object to the legislative approach. Why should we be described as capitalizing on this issue to gain political capital, while Members in support of the legislative approach are said to be considerate of the overall situation?

A newspaper which I hold in high regard said in its editorial that the legislative approach is only seeking to strip civil servants of their privilege of not being subject to pay reduction, so nothing is amiss. I would like to respond to this view here.

Firstly, the term "privilege" involves a great deal of value judgement. Of course, it is unfair to enjoy privileges and it is perfectly fine to abolish them by legislation, but the conditions of service of civil servants cannot be considered privileges, they are rather the terms of an employment contract. These terms of contract are neither unilateral nor biased in favour of any party. They are the result of a fair deal between the Government and the civil servants under its employ. There are pros and cons in being a civil servant. The upside is that the job is stable and secure and the working conditions are better than other organizations in general, and as long as one makes no mistakes, there is no need to worry about dismissal. The downside is that everything in the Civil Service depends on seniority and all fringe benefits will be lost if one leaves the service. The stable and secure job denies one of any prospects of getting rich. Nowadays, when deflation persists and there is a general fear of unemployment, the advantages enjoyed by civil servants are of course much envied. But I believe Members will all remember that a few years ago, when the stock and property markets were booming and the pay in private organizations was skyrocketing, civil servants had to be satisfied with their lot and were even regarded as lacking ambitions.

If civil servants do not violate any discipline, the Government cannot dismiss them. This is indeed an advantage over other employment contracts, but on the other hand, the Government reserves the right to unilaterally vary the conditions of service, which is not the case with private contracts. Private employment contracts are protected by the Employment Ordinance, so if employers unilaterally reduce the pay, this will be regarded as dismissal and statutory compensation has to be made, but civil servants are not covered by such protection.

I have no intention of defending civil servants, but when we criticize the civil service establishment as bloated, the pay of civil servants as out of touch with the market, we also have to be fair to them. The terms of contract must be observed and civil servants have the right to expect the Government to do so. In the same vein, any organization which has entered into a contract with the Government has the right to request the Government to honour it, just as any employee has the right to request his employer to do so.

Of course, it is not the case that not even the slightest changes can be made to deals. The structure of civil service remuneration is the outcome of government policies. There may arise a need for the Government to change its

policies from time to time. This is the reason for reserving the right to unilaterally vary the conditions of service. However, certain procedures are called for in changing the policies. If taxpayers now consider civil service pay to be out of touch with the market and the mechanism outdated, then it is the mechanism that should be changed, rather than resorting to the prerogative of the Government to push through legislation forcedly and change one of the contract terms. I am glad to hear Dr the Honourable David LI speak powerfully on this point just now. Unfortunately, he finally decided to support the Government in the end, and this surprised me very much.

The Government has bluntly and repeatedly stressed that under the existing conditions of service, the Government has no power to reduce the pay unilaterally. If this is the case, then this legislation is formulated solely to deprive civil servants of their rights under contract. However, if the rights are deprived without compensation, then this has contravened Articles 6 and 105 of the Basic Law which are provisions on the protection of private property.

In fact, Hong Kong is an international city of trade and commerce and the Government of the Special Administrative Region (SAR) often enters into contracts with private organizations. If the Government can legislate to vary the terms of contracts so as to avoid litigation or compensation, this will definitely result in serious consequences and make international investors lose confidence, irrespective of the reasons advanced. Are Members representing the business sector, who are happy to support the Government depriving civil servants of their protection under their contracts by legislative means, equally willing to accept the deprivation of rights under commercial contracts by the Government in the future? Or with the slippage in the rule of law nowadays, are they content to enjoy the privileges they will get in the future?

Government officials said that legislation often changes the rights under contracts and this is nothing surprising at all. For example, the Employment Ordinance also interferes with private contracts to protect employees. This is sophistry. Laws such as the Employment Ordinance and anti-discrimination legislation actually bear testimony to my points made just now. Changing a mechanism or a system is to introduce changes to public policy and this should be implemented through legislation after sufficient consultation and balancing the interests of all parties. If private contracts are affected, this is a consequence rather than the aim of legislation, and this is forward-looking rather than retrospective.

We only have to look at clause 9 of the Bill tabled today to understand everything. Clause 9 provides that "The contracts of employment of public officers are to be read as expressly authorizing the adjustments to pay and the amounts of the allowances made by this Ordinance".

The aim of this clause is direct and stark, a far cry from the Employment Ordinance. The provision clearly reveals an intent which did not exist when the contract was entered into has been forcedly added to the contract. This is an exact repeat of the re-interpretation of the Basic Law. However, whereas the incident of re-interpretation can be regarded as explaining an existing legislation with a later one, in the case of clause 9, a piece of legislation is used to re-interpret private contracts, obviously creating something out of nothing.

The Government now intends to move a Committee stage amendment to amend clause 9 to: "The contracts of employment of public officers are varied so as to expressly authorize the adjustments to pay and the amounts of the allowances made by this Ordinance", so as to even more blatantly and forcedly vary the contract, even though tens of thousands of civil servants do not agree to it and no negotiation or discussion has been held, to say the least.

Only a government bent on achieving its end regardless can introduce such legislation. Members of this Council should not give their support at all.

Madam President, there are bills which definitely should not be allowed to pass. Provisions with the explicit aim of depriving some people of their rights are among one of them.

Regrettably, I no longer harbour any hopes of the integrity of the SAR Government. The Government is claiming in all earnestness that it has no power to reduce civil service pay under contract and telling this Council that it is obliged to introduce legislation. According to the principles of common law, unless expressly provided, the Court would not consider deprivation of rights the intent of legislation and would order compensations. If one day civil servants should take legal actions claiming that the Bill has contravened the Basic Law or their contracts and petition the Court to declare the Bill void or seek compensations, then I would like to hear what the Government has to say and whether it will change tack and say that the Government in fact always has the right to unilaterally vary the conditions of service, therefore civil servants

do not have any rights to speak of and there are no damages to compensate. In that eventuality, I hope Members who support the Government today will bravely admit that they have fallen into the Government's trap. Thank you, Madam President.

MR NG LEUNG-SING (in Cantonese): Madam President, it is undeniable that the Bill introduced to reduce civil service pay is highly controversial. Even the Government has admitted that legislation is not the most satisfactory approach to effect the pay reduction. It is understandable that civil servants and their unions have expressed strong views on this. On the other hand, under the present economic circumstances, the demand of society on public and private organizations to ride out the storm together is also clear and obvious, and the present state of public finance is also rather critical. Given this situation and in consideration of maintaining the stability of the Civil Service, promoting social harmony and creating a situation in which all parties could emerge as winners in the long run, a number of independent Members have issued an open letter earlier on in the hope of creating some room in which the Government and civil servants could maneuver under the present circumstances. This is meant to create conditions conducive to further negotiations and even to provide possible solutions to resolving the dispute, with a view to employing the most desirable means to achieve the most satisfactory result of imposing reasonable control on expenditure on civil service pay as expected by social consensus.

Some time before and after the issue of the open letter, we did not express any views on our position in voting on the legislation aimed at reducing pay. In view of the actual circumstances at that time, we considered it appropriate to refrain from expressing our views, since making our position in voting known too early would not help induce the two parties caught in the dispute to continue to make good use of the time and strive to solve the problem through negotiation. However, not making our position in voting known does not mean that we do not have any. I believe all Honourable colleagues in this Council have their own independent views and individual positions. As to whether we could offer a feasible solution or approach, it is not the case that we all believed that it was the only option, and even though it might not be the most satisfactory option, it could still be considered. Nor do we consider ourselves to have the power to turn things around or to achieve the impossible. After making efforts to mediate for many days, the final result was indeed not

as satisfactory as we had hoped for. However, as legislators who had to deal with such an unusual and highly controversial issue, we believe that we are duty-bound to encourage all parties involved in the dispute to act rationally, negotiate reasonably, resolve confrontations and eventually implement the pay reduction demanded by the public. Therefore, we have also played the role of a mediator for a period of time because of these convictions. Some representatives of civil service unions, on learning that we finally had to make our position known after working for a number of days, commented in dissatisfaction that our actions were merely intended to enhance our own importance. Their speculations on our motives invariably left us with mixed feelings. However, we only have our conscience to answer and will do whatever is right. There is no need for the several Honourable colleagues concerned to be bothered by this or offer any explanation.

Public opinions have always wanted the Government to exercise reasonable control on the spending on civil service pay. The rates of reduction on this occasion are very mild, and quite a number of members of the public whom I came into contact with thought that the rates were too low. The rates were determined on the basis of the long-standing but not necessarily proven Pay Trend Survey. Therefore, since no adjustment and changes have been made, this basis of pay reduction can be considered reasonable. The problem lies only in the legislative approach. Even some civil service unions have also accepted a pay reduction, but they object to the legislative approach. For this reason, they have demanded arbitration. In the course of communication with civil service unions and the Government, I came to understand that there are some practical difficulties with this. If the outcome of arbitration is that the pay should be reduced, it is still impossible to put this outcome of arbitration into effect without legislation. Even if all groups that take part in the arbitration undertake to accept the outcome, it is still not legally binding on every civil servant.

From a legal point of view, is there any problem in reducing the pay through the legislative approach? It is necessary to consider many provisions in the Basic Law, namely Articles 6, 100, 103, 105 and 160. These provisions can be classified into two main types. The first type guarantees that the conditions of service of civil servants should be no less favourable than before, but legal advice has pointed out that these assurances are designed to ensure that the conditions of service of civil servants would not be jeopardized under the special circumstances of the return of sovereignty in 1997. They do not however restrict the SAR Government in implementing new measures aimed at

promoting good governance in the long term, or permanently. The second type of provisions, as mentioned by the Honourable Margaret NG, protect the right of private ownership of property. One principle in common law is that the law should not be interpreted as having the effect of depriving the right of private ownership of property without having to make compensation, unless the relevant provision explicitly states such an intent. The Court of Final Appeal also invoked this principle in a judgement in 1999. If we accept this principle, does it also mean that it is also possible to introduce legislation to deprive the right of private ownership of property without having to make compensation? In fact, this is the case in legislation relating to land and town planning, and the formulation of the outline zoning plans also has such an effect. Some academics have also pointed out that the conditions of service of civil servants do not merely involve rights under private contracts. Some Honourable colleagues often cite the United States as an example. I have also noticed that in the United States, the Fifth Amendment of the Constitution stipulates that the deprivation of private property for public purposes without reasonable compensation is not allowed. This provision seems to be more specific than the provision that protects the right of private ownership of property in the Basic Law, but the rulings made by the courts in the United States also show that such protection is not absolute and that there are various considerations and approaches in various actual cases. Some people in society hold the view that legislation should be introduced to establish a general enabling legislation on a pay adjustment mechanism rather than a one-off legislation. I agree that this is the most desirable approach, but if Honourable colleagues do not accept a one-off legislation because they do not accept it as having any constitutional or legal basis, then why would an enabling legislation on a comprehensive mechanism have any legal and constitutional basis? This is hardly comprehensible because the rights of civil servants recruited in the early days under their contracts would still be affected.

Madam President, I have considered these issues seriously and understood the respective bottomlines of the Government and civil service unions. Furthermore, since I think that it is important to make reference to the questionnaire survey conducted among my constituents and listen to the views expressed by various sectors of the public, and after analysing the latest developments in respect of this issue, I have come to this view. On this issue of reducing the pay of government employees, which may perhaps be a very simple matter in other countries or regions, if our Government is incapable of doing anything while this Council stands on the sideline and all civil servants do not support it, then not only will the governance of Hong Kong and the

prospect of public finance in Hong Kong become a cause for public concern, the international community and investors will also lose their confidence. This is an outcome which will only be detrimental to the Government, this Council, civil servants and even to Hong Kong society and the public as a whole. After weighing the pros and cons, I have decided to insist on my consistent view and support this Bill in the long-term interest of Hong Kong.

Madam President, I so submit.

MR MICHAEL MAK (in Cantonese): Madam President, first of all, I have to declare an interest. I am an employee of the Hospital Authority, and I will be subject to the ultimate impact of this Bill.

Madam President, "where there is hegemony, there is no justice". This is going to be blatantly manifested to the full before the Legislative Council and the public gallery today. With extreme disappointment and agony, I am here today to protest against the Government obstinately clinging to its own course in defiance of the aspirations expressed by the 35 000 civil servants in a peaceful petition by tabling this Bill at the Legislative Council today as scheduled to force the legislation through. Moreover, regarding some Members of this Council who are called "political swindlers", I, being their colleagues, feel utterly ashamed. Disregarding whether or not those Members will "step into those shoes", God will, anyhow, reasonably judge on their conscience and behaviour.

Now that the issue of civil service pay reduction by way of legislation has developed to such a state. The Government's reputation is tarnished; the morale and confidence of civil servants are seriously undermined; and members of the public are overwhelmed by helplessness. Some Members of the Legislative Council have made an about-turn in exchange for political gains, and they can be considered as "losers on four sides". It is the Government who started all this. To resolve the fiscal deficit, the Government has resorted to all means and gone so far as to openly effect an exploitation of the civil servants *en masse*. What is more, it has shamefully caused the interests to which civil servants are entitled to be diametrically opposed to the interests of the community, saying that "it is not our hope to see civil servants degenerating into enemies of the people". The Government has employed such a contemptible means to divide up society. How could it ask us to work of one

mind for a common goal? The Chief Executive said a few days ago about manifesting sincerity by going through thick and thin together. I fail to see how his sincerity is manifested. The civil servants have contributed their conscience to Hong Kong, but the Government has thrown them the most merciless treatment in return, for it has neglected all consequences and obstinately pushed for a pay reduction by way of legislation.

The only argument of the Government for a pay reduction by way of legislation is that it would be impossible to effect a pay cut if legislation is not enacted for this purpose. This is downright insane and rubbish! Article 100 of the Basic Law provided that public servants may retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before. What exactly does that mean? It certainly means protection of the overall quality of living and reasonable expectations, rather than measurement in mere money terms. If it is purely based on absolute monetary amounts, does it mean that in 2017, the salary could be forced to go all the way down to the 1997 level? Interpreting the Basic Law purely in monetary terms, I believe, will absolutely not win the agreement of the people; and I trust it is absolutely not the intention at that time to make measurement in money terms. How many people would have their hearts broken if the Government insists on its view? Do we then have to seek interpretation of the Basic Law by the National People's Congress (NPC) again? It is absolutely not my wish to see this happen.

Apart from Article 100 of the Basic Law, Article 160 also stipulated that documents, certificates, contracts and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Government, provided that they do not contravene the Basic Law. The Government has failed to protect contracts in accordance with the provisions of the Basic Law. Worse still, it has wantonly sabotaged contracts. What is the use of such a Government? That it has wilfully amended contracts shows its neglect of the contractual spirit; and the consequences can be disastrous. How could overseas investors feel at ease?

Civil servants have in the past made tremendous contribution to the development of Hong Kong. Even leaders of the Central Authorities must admit this. So, express provisions are purposely made in the Basic Law to protect them. Now that the Government intends to cut their pay by legislation. This is definitely in violation of the Basic Law! It is because making provisions in law to serve political aims without any legal basis and making

draconian laws to override the spirit of the original contracts are equivalent to hijacking the law. Such acts that ignore the spirit of law and the feelings of civil servants are tantamount to tyrannizing the civil servants.

Most importantly, the Government has never respected the wish of the civil servants, and it has refused to take steps to resolve conflicts. Civil servants are not irrational. Nor are they unwilling to accept a pay cut. They only worry that once there is a precedent of pay reduction by way of legislation, the rights and benefits of civil servants would be exploited in succession. Some civil servants have made proposals for reconciliation by, for instance, arbitration and setting up a Committee of Inquiry. However, the Government refused these proposals and even closed the door of negotiation. This is absolutely not something that a good employer will do. Is it that it can do whatever it wants because it has secured enough votes? Is it that it can ride roughshod over everything because it has the votes? Is it that it can make draconian laws because it has the votes?

The spirit of legislation is to ensure that the community acts in accordance with the law, so as to steer the community to develop in the direction of reasonableness, fairness and equality among all, and hence prevent chaos and confusions. Legislation is absolutely not a tool for the Government to serve its political aims. It is not something at the Government's beck and call. The most horrible thing in a society where autocracy and the rule of man prevail is certainly non-compliance with the law or distortion of the law at will.

Mr Joseph WONG, Secretary for the Civil Service, said that many meetings had been held. But was everyone on an equal footing during the negotiations, or were civil servants subject to the high-handedness of the Government? The most important thing is that at every meeting, all he had to say was "I understand your feelings but please accept the reality!" This would only give the impression that he was not sincere, and it is not going to help even if 100 meetings are held.

At this point, I feel concerned for Secretary Joseph WONG. On this issue, Mr WONG has openly trampled on the rights of civil servants and violated the Basic Law. I do not know whether he has been forced to do so or he has chosen to stand on the side of the Government of his own free will. What he has got in return are only hatred and accusations from civil servants. Or is he a puppet of Mr TUNG to control the civil servants, so that Antony

LEUNG's 4.75% assumption can back down in good grace? The Secretary is a downright loser. He really has to act cautiously and be prepared for crisis in times of peace. I wish to ask him this: A few days ago on 7 July when 35 000 people took to the streets to stage a protest, is that an indicator for his stepping down from office?

The Chief Executive has categorically urged civil servants to trust the Government, saying that legislation is enacted to effect a pay cut only on a one-off basis and that it will not further curtail the benefits of civil servants. But has the Hong Kong Government done anything in the past that can inspire confidence in Hong Kong people? How can such examples as the policy of "85 000 housing units" vanishing all of a sudden, the Government's "bad loser" mindset in seeking interpretation of the Basic Law by the NPC, and so on, make the people feel at ease? It cannot win the trust of the international community either. The Government is eating the bitter fruits of its own actions and it has only itself to blame. From newspaper reports, it is learned that if this Bill on pay reduction is passed, even the Administrative Officers will be planning to set up a trade union to protect their interest. If this is true, it will be the best proof of the Government's failure in administration.

Much to our regret, some political parties are fanning the flames on the side, alleging that civil servants are enjoying good pay and perks of a standard far better than that in the business sector. This is absolutely unfair to the civil servants. First, that the civil service pay is higher than that in the business sector has only been a transient false impression in recent years. When the economy was thriving, all I had heard was that civil servants had no prospects for future development and were not well-paid, and civil servants had never been the envy of anybody back then. So, this lopsided comment is grossly unfair, Mr Chairman. I am sorry, Madam President, I was addressing another chairman (of a political party). *(Laughter)* Second, when the economy was at its peak, employees in the business sector could enjoy 14, 15, 16, 17 or even 18 months of salary. Have civil servants ever been remunerated so generously? Never. The situation now is that in good times, civil servants cannot get any benefit but in bad times, civil servants are made to bear the brunt. Is that reasonable?

Some said that the civil service system is overly fossilized, and its structure is ever expanding in terms of the number of staff and grades. But we must note the fact that as society and the economy progress continuously, the public will have increasingly high expectations of the Government, and this is

not the fault of civil servants. If reforms are warranted, there should be sufficient consultations and rational negotiations to serve as a basis, rather than forcing through the implementation of reforms unilaterally. In order to rush the legislation through, the Government adopted a high-handed approach before a consensus is reached, trying to ram things down the throat of civil servants. What sort of attitude is this?

The civil service system was set up with the aim to create a stable environment for civil servants to provide the public with quality services in a manner that is open, fair, neutral, impartial, selfless and fearless. If a civil service pay reduction is effected by political means on the ground that the public expenditure has run out of control, and if such a precedent is set, the stability of the Civil Service would be greatly shattered, in which case the recruitment of talents and also the morale and the unique impartiality of the Civil Service would consequently be adversely affected, for one slight move may affect the overall situation. An even more serious consequence is that a pay reduction by way of legislation would allow the Government to make legislation arbitrarily to deprive people of their rights, and this would set a very bad example.

Being Members of the Legislative Council, we should defend public interest, including the interest of civil servants. We serve as a final line of defence, and we should stop the Government from enacting draconian laws. But some Members have eventually succumbed to the Government's lobbying and changed their mind. They have openly made an about-turn, totally brushing aside the feelings of the civil servants. From this, their betrayal of the interest of civil servants is exposed to the full. I do not know if they have genuinely intended to betray the civil servants, and this is something that they know best themselves. They are Members of the Legislative Council, but where is their dignity? Where is their conscience? How do these several Members look at the contractual spirit? There are more than several, and there should be 30 of them.

Some organizations or individuals consider that this is a case of "whichever hand feeds is the master". Civil servants who are voters please look at this with discerning eyes and see clearly their "true face". Not to be touched by the look of these people who pose themselves as persons of high morals and their sweet talk! If Members do not agree with what I have just said, they can prove with actions. Voters must listen to what they say and observe what they do. Voters please look at them clearly in the 2003 District Council Elections and the 2004 Legislative Council Elections.

Madam President, the uproar caused by the Government legislating to implement a pay reduction is, to a large extent, indicative of the mistrust between the Government and civil servants. President JIANG Zemin, during his visit to Hong Kong on 1 July, spoke of his three wishes concerning Hong Kong, one of which is that he wished civil servants at all levels would consciously obey and protect the leadership of the Chief Executive. On the negative side, the implication was that there are grave problems with Mr TUNG Chee-hwa's governance. Now that the civil servants' mistrust in the Government has developed to such an alarming state, I am afraid Mr TUNG must really think twice.

Madam President, earlier on, a good friend of mine who suffered from coronary artery obstruction had undergone the "balloon angioplasty" procedures which eventually saved his heart. But today, my heart is dead and there is no greater sorrow than this. Obviously, nothing can be done to save my "grief-stricken heart". Being a Member of the Legislative Council with conscience, I feel extremely ashamed and sad that I must witness the birth of a new draconian law. I will observe silence for this impending draconian law!

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

PRESIDENT (in Cantonese): Mr Michael MAK, have you finished your speech or do you wish to go on?

MR MICHAEL MAK (in Cantonese): I have finished. I am observing silence. (*Laughter*)

PRESIDENT (in Cantonese): Mr Michael MAK, please sit down.

MR JAMES TIEN (in Cantonese): Madam President, luckily, I did not stand up at once when Mr MAK stopped speaking and you have called upon me.

MR JAMES TIEN: For the benefit of my fellow legislators, foreign media and a proper record on Hansard, I would like to repeat the views expressed in my "Letter to Hong Kong" which was broadcast at RTHK Radio III last Sunday. This was what I said:

While the Government has decided to table the pay-cut legislation to the Legislative Council today as scheduled, a handful of civil service unions delivered their last shot against this and called for a major street demonstration last Sunday.

The Liberal Party's view is that, the pay-cut proposal is a vital measure enabling the Government to trim its huge budget deficit.

MR JAMES TIEN (in Cantonese): Madam President, please ask those on the public gallery to keep quiet so that I can continue speaking.

PRESIDENT (in Cantonese): Is this really noisy there? Mr TIEN, please continue.

MR JAMES TIEN (in Cantonese): Thank you, Madam President.

MR JAMES TIEN: For the fiscal year 1992-93, recurrent public expenditure was around \$105 billion.....

PRESIDENT (in Cantonese): Mr TIEN, please be seated. Security assistants, please check if anybody on the public gallery has turned up the volume of his microphone and affected the Council's proceedings. (*Pause*) Would everybody please do me a favour and check? Thank you.

PRESIDENT (in Cantonese): Would the simultaneous interpreter please say something?

PRESIDENT (in Cantonese): I cannot hear a sound.

PRESIDENT (in Cantonese): I am talking. Is the simultaneous interpreter interpreting for me?

PRESIDENT (in Cantonese): I cannot hear other sounds. Mr TIEN, please continue. I believe we have just had some technical problems.

MR JAMES TIEN (in Cantonese): Thank you, Madam President.

MR JAMES TIEN: For the fiscal year 1992-93, recurrent public expenditure was around \$105 billion. Ten years on, it has doubled to \$220 billion. Seventy per cent of this sum is spent on the so-called civil service related "staff costs", including personal emoluments, pension, and subventions.

Ever-expanding staff costs are the biggest obstacle to the Government's balanced budget. The fact is, we are paying civil servants much higher than the market rate, even without counting their generous and numerous fringe benefits.

Article 107 of the Basic Law requires the Government to "follow the principle of keeping expenditure within the limits of revenue in drawing up its budget. It must also strive to achieve a fiscal balance, avoiding deficits and keeping the budget commensurate with the growth rate of its gross domestic product."

However, there have been operating deficits for four consecutive years since 1998-99. The budget deficit for 2001-02 hit a record-high \$63 billion, and a further \$45 billion for this year was forecasted.

Since civil servants are in permanent jobs, their employment is guaranteed. It follows that their pay and benefits should be within reasonable limits, set maybe just a little higher than those in the private sector. But now salary and benefits have reached a very high level — so high that the tax-paying public may regard it as altogether unrealistic and unsustainable.

The Liberal Party's wage survey in February showed, for instance, a junior government clerk with a Form 4 education earns \$12,000 a month but his private sector counterpart makes only \$8,200, a difference of 46%. A government experienced computer operator with Form 5 education earns \$17,000, while his private sector counterpart only \$12,300. Most strikingly, a newly qualified university graduate is currently offered \$10,000 or less for a general administrative post in the private sector, but the Government offers the same position at \$16,000.

Why have the salaries of civil servants rocketed over the decades? I think the snowball effect of the private sector "Pay Trend Survey" (PTS), which distorts the true situation and is weighted in favour of the civil servants, is the main reason.

The survey limited itself to 91 large enterprises all employing a minimum of 100 staff, and asked how much their workers made compared with last year. The survey did not consider how many workers those companies had been laid off in that period, how much more work was done by fewer hands, and how many highly paid workers had been replaced by less costly ones.

A more comprehensive and objective survey would have confirmed that companies in the private sector are hiring people on lower pay and have enhanced productivity. Has the Government followed suit?

Time and again, the Liberal Party has urged the Government to revise and readjust the PTS. Finally it has embarked on a comprehensive review of the civil service pay and policy system, but contends that a PTS review cannot be implemented in isolation from the broader reform agenda. This is a good move, but it means many more months or years are needed to review and reform the entire system.

Based on those findings, the Government decided to set the pay cut at a very modest 1.58% for junior ranked civil servants, 1.64% for the middle ranked, and 4.42% for the senior ranked, bringing an annual saving of only around \$2 billion. Considering the aggregate deflation of 10% over the last four years, and the average 10% salary increase over that same period, the cut would not adversely affect the livelihood of the civil servants.

Madam President, we also hear a lot about civil service morale. It is on everybody's lips. I agree that Hong Kong is very lucky to have a Civil Service that, by large, is honest, efficient, energetic and is conscious of its need to serve the community. This is one of our greatest assets. But the big question that still remains is, how much should they be paid?

Civil Service is part of the wider Hong Kong society. It cannot expect to remain aloof from the problems and challenges that everyone else has to face.

These have been tough years for business. The global economic slowdown has seen profits slashed, often drastically. Many firms have had to get smaller or to go out of business entirely. Naturally, this has had a severe

effect on staff. There are many people in Hong Kong who are in bad financial shape, through no fault of their own. These are the backbone of our community, workers, artisans, owners of small businesses, executives whose firms have closed, moved or downsized.

These decent, honest people now find themselves without jobs. Some cannot even afford clothes for their children. For a lot of people, the good life that many in Hong Kong came to take for granted has temporarily disappeared. Many are struggling to pay mortgages. Some have had to take children out of private schools. Family relations are strained. What about their morale?

Civil servants should not expect to be totally removed from the harsh realities of the present economic situation. In good times, the Government paid public servants high salaries with very generous fringe benefits. In these hard times, it is vital to cut government spending. We have to tighten our belts. It is unrealistic for civil servants to expect to be immune from the real world. They must, at least in part, share society's pain.

Madam President, I am not suggesting massive reductions in the Civil Service and their pay. The proposals are for modest cuts in both size and pay. These are reasonable, the majority of the Civil Service should accept this necessity.

They have to remember that hundreds of thousands of their fellow Hong Kongers are suffering in silence. There are a lot of people who would pray for the chance of having a job and facing only a 1.5% pay cut.

However, civil service unions refuse to accept even this. They object to laws drafted that would require them to surrender 1.5% of their wages. The Government have said that the contractual arrangements between them and the civil servants do not contain an express provision authorizing the Government to reduce their pay. The proposed Bill is therefore a piece of one-off legislation which legalizes the pay cut. Put it another way: We simply had no other choice but to proceed with legislation, if the pay cut is to be fully implemented without having the Government being sued.

What the public hear from the civil servants now is the opinion of their unions. I doubt the majority of civil servants would totally agree with them. Although I noted that 30 000 or more were to demonstrate last weekend, but in that context, over a million people were affected. And this caused a matter of

concern, but the percentage was not that high. I believe many civil servants would accept the current pay-cut proposals, which means they only have to surrender 1.5% of their extra earnings following the 10% pay increase of the last few years.

Madam President, civil servant union leaders are irresponsible in calling for a demonstration. They failed to heed public sentiments over the budget deficit, the over-generous pay packages of their members, and the possibility of new tax or higher taxes for everyone in Hong Kong.

Hong Kong civil servants have to make their choice. Either they are with the community or against it. Whatever their individual positions, they need to speak their own minds. It would be very sad for Hong Kong if it were true that the morale of its highly-acclaimed civil servants rested solely, and I stress on the word "solely", on how much they are paid.

MR JAMES TIEN (in Cantonese): Madam President, the above is the content of my last Letter to Hong Kong. Madam President, since there is still some time left, I wish to raise some questions.

The Liberal Party has recently received a lot of e-mails, and many senders thought that we had done very well and should continue to do so. Some said that we had not done enough and requested for a further cut on civil service pay. Many of them, whether they were civil servants or not, said that we should adopt a low profile and stand aside at this time, and we should not arouse further public dissatisfaction with civil servants. In their e-mails to us, some senders who might be civil servants doubted what other people could do to them even though they were like that. Actually, it would not be helpful to them.

Madam President, I have paid close attention to some moderate opinions, that is, we should handle the matter in a low profile and suggest the Government to further negotiate and discuss with civil servants. However, the Liberal Party takes the view that civil service pay is 40% to 50% higher than the market rate and that a 10% pay reduction should be made. It would be consistent with the Basic Law, but the reduced pay level would still be higher than the market rate. Now, the Government is going to reduce the civil service pay by slightly more than 1.5%, and I can hardly suggest that the Government should further negotiate with the leaders of civil service unions. Should the rate of reduction be further reduced from 1.5% to slightly more than thousandths of a percentage point?

We have suggested that civil servants be given a 10% pay reduction because we would only be able to save \$17 billion that way. It would be helpful to addressing the fiscal deficit and increasing our reserve as well as relieving the pressure of tax increase next year. With a 1.5% reduction, the Government would only save \$2 billion, which would not be very helpful to our budget.

In our view, the Government should expeditiously conduct a pay level survey to confirm whether the data collected with the limited resources of the Liberal Party and cited above are accurate. Many Members have queried that the data do not reflect the actual situation. I hope that the Government would make public the result of the survey to be conducted by it. What should it do afterwards? I believe the community would have plenty of time to extensively discuss the matter. Even if it has been proven that the pay level is 30% to 40% higher, no action ought to be taken. In the future, we can further consider whether a reduction is essential, the rate of reduction and whether the Basic Law only permits a 10% reduction at the most.

Madam President, the Hong Kong General Chamber of Commerce (HKGCC) has also conducted a survey on the matter. The HKGCC has 3 000 members, but there were only 314 respondents. However, the number of respondents was rather large compared to that of our other surveys. 90% of these respondents thought that we should support the Bill while 10% said that we should not support it. The supportive 90% also expressed that the rate of reduction was too small. Of course, those were only the views of the HKGCC.

The Liberal Party has also conducted an opinion poll up to 9 July that was yesterday. We interviewed 3 067 people, and 2 162 interviewees, representing 70% of the total number, said that we should support the Bill while the remaining 905 interviewees, representing 30% of the total number, said that we should not support it. I have cited the figures for reference by Members.

Madam President, I wish to discuss the slogan of "supporting a pay reduction and opposing legislation (支持減薪，反對立法)". The slogan designed by the leaders of civil service unions is really good. Being leaders of civil service unions, they could not make do without chanting slogans. As regards "supporting a pay reduction and opposing legislation (支持減薪，反對立法)", I think we should put it the other way round. Those who support a pay reduction should support legislation and those who oppose a pay reduction should oppose legislation. I know many Members of the Council have

expressed such an opinion and I feel that these Members want both. While 70% of people support a pay reduction, civil servants oppose legislation. Those Members wish to get the votes of people including civil servants, but their wish cannot be justified for we should not legislate to address labour disputes. For many years, we have opposed legislation on paid maternity leave but we have not got the support of employees. Although we support giving employees long service payment, we oppose legislation for the purpose. Whenever we say that we should legislate on matters related to money or labour relations, we would be described as trying to deprive people of their rights. In the past, almost all labour legislation was implemented upon enactment and workers would abide by the law.

Madam President, I hope the Government would continue to conduct a pay level survey and closely follow up its result. Thank you, Madam President.

DR RAYMOND HO (in Cantonese): Madam President, I rise to speak in opposition of the Second Reading of the Public Officers Pay Adjustment Bill.

Senior officials in the Hong Kong Government have always stated that the Civil Service in Hong Kong is clean and efficient, being one of the underpinnings for the smooth transition of Hong Kong. Now 10 days after the celebrations marking the fifth anniversary of the reunification, the SAR Government acts in blatant disregard of the opposition by civil servants and resorts to effecting a pay cut on civil servants by way of legislation. That has cast doubts on whether the SAR Government really attaches importance to the crucial role of civil servants and the contribution they have made to stabilizing society. Moreover, people doubt whether the SAR Government still recognizes the value of a civil service that has weathered all sorts of tests and earned international acclaim.

On the issue of pay cut by way of legislation, I have all along maintained close contact with 10-odd associations of government engineers. I have been given to understand from representatives of these staff associations, the civil servants are not opposed to a pay reduction *per se*. They only oppose the resort to legislation this year to effect a pay cut. It is the hope of these staff associations that the existing mechanisms can be invoked to deal with the problems that may arise from this pay adjustment, such mechanisms include arbitration and the formation of an independent committee of inquiry.

The demand to set up an independent committee of inquiry has gained the support of 67 civil service unions. These 67 unions made a joint declaration at the beginning of June to pledge to accept the results of the inquiry and to initiate no proceedings against the Government irrespective of the outcome of such inquiry. Unfortunately, the Chief Executive subsequently said that the civil service pay adjustment this year was proposed in accordance with public policy which had been finalized and so there was no need to set up an independent committee of inquiry for that purpose. In so doing, the Government let slip a good way to resolve the dispute caused by civil service pay adjustment this year.

As the staff unions have made it clear that they will accept the outcome of the inquiry to be conducted by the independent committee and that no legal action would be taken against the Government, then what does the Government have to worry about? The Government has still asked that this Council passes the legislation to effect the pay cut, saying that this will prevent the flood of lawsuits which may arise later. Actually, this is meant to ensure that the Government will win in any lawsuit that may arise. This is only making use of the legislature to pass legislation to resolve a dispute which is essentially a labour dispute. Just imagine if the staff unions will not sue the Government, will individual members of the public or civil servants have the financial means and support to file a suit against the Government?

The Government's insistence on resorting to legislation will show all the more that the Administration does not have sufficient legal grounds to reduce the pay of civil servants. There exists an employment relationship between the Government and the civil servants and the conditions of service of civil servants should be protected by the relevant contractual terms. If the Government demands that the Legislative Council should pass a law to effect the pay cut, then how will civil servants protect their own interests? What is even more worrying is that the Government may invoke the argument of public interest and resort to legislation again to deprive a minority social group of their rights. Doubtless to effect a pay cut by way of legislation will set an undesirable precedent.

Last week, the Chief Executive said in his letter to all civil servants that the Bill which the Government had proposed to the Legislative Council was only a one-off legislation whose aim was to enforce the decision made on pay reduction this year and there was no intention other than that. Although he also pledged that the Government would not use this as an excuse for slashing

the pension of civil servants, his remarks did not help allay the worries in the public for similar moves to be made by the Government to deprive the socially disadvantaged of their rights and interests.

The present crisis is to a very great extent the Government's own making. Over the past few years, there has been a trend of downward adjustment in wages in the private sector. The Government revised the entry salary in the employment contracts for new appointees to the Civil Service after 5 June 2002. But in the two years thereafter, the Government has not consulted more legal advice, nor tried to work out a consensus with the civil service groups under the existing pay adjustment mechanism. That is baffling. Without consultation with the civil service groups, the Government has tried to legislate in great haste to effect a pay cut, and that is one of the causes of grievances among civil servants. The civil servants have made it clear that they do not oppose a pay reduction effected according to the existing pay adjustment mechanism. They hope that the problem can be resolved by consultation and propose that the Third Reading of the Bill be postponed to after September this year so that the Government can talk with the civil service unions and work out a plan which is acceptable to both parties. They even undertake that if no decision can be made by 1 October this year due to the constraints in time, they can agree unanimously that the effective date for pay reduction should be set at 1 October.

Unfortunately, the Government has been deaf to all these proposals and is bent on pushing for support of the Legislative Council for the Bill which is so unreasonable. Government officials have been making every effort to persuade Members of this Council and exerting great pressure on them to make them vote in favour of the Second and Third Readings of the Bill. The only source of comfort I got is to see that the Breakfast Group has not been divided on this issue and, on the contrary, members of the Group will be all the more united and we will try our best to bring our role and function into full play in this Chamber.

On the question of civil service pay adjustment, the Government has all along emphasized that it will consider the six major factors under the existing mechanism. These include the net indicators in pay trend in the private sector, the state of the economy, the financial situation of the Government, changes in the cost of living, claims for pay adjustment from the staff side and staff morale. Developments however show that the morale of the civil servants has been seriously undermined.

Just last Sunday, over 30 000 civil servants took to the streets to demonstrate, and the size of the procession showed their strong discontent for pay cut by way of legislation. Morale among the civil servants has been damaged to a certain extent and it is not known when it can be restored. That is indeed worrying. Findings of an opinion poll show a split of 49% versus 51%. The result of a survey conducted by the Liberal Party shows that 76% of the public supports a pay cut by way of legislation, and that is really surprising.

Hong Kong is presently facing very tough economic hardships and both public sector and private sector organizations should join hands to overcome the adversity. The Government should take the lead to be a good employer and it should work together with the civil servants to steer Hong Kong out of the doldrums. However, as things are developing contrary to this direction, I feel very sorry. I am all the more dismayed to see that the Government has not shown any respect for the contract it has entered into with its employees.

Madam President, my position is firm and clear on this issue and it also reflects the views held by my sector. I have called upon staff associations of government engineers repeatedly that they should not take part in extreme actions so that social stability will not be affected. On 5 July, I arranged a meeting of the representatives from the staff associations of government engineers to meet Mr Joseph WONG in order that Mr WONG would be able to listen direct to the strong discontents among the sector for the Government's attempt to force its way to legislate for a pay cut. After meeting with Mr WONG, we asked this question among ourselves: Would the \$1.5 billion of additional revenue from the pay cut be worthwhile if damage is done to civil service morale, to the partnership between the Government and civil servants and to our international image as a place which adheres to the spirit of contract?

With these remarks, I oppose a pay cut by way of legislation. Thank you, Madam President.

MISS CYD HO (in Cantonese): Madam President, "people have to be adequately clothed and fed before they care about shame and honour". In the face of payment imbalance, the SAR Government is now trying to deprive its employees of their right to negotiation by way of legislation. To put it bluntly, the present legislative approach an attempt of the Government to save money at

the expense of justice. In order to immediately save \$1.6 billion on this year's expenditure, the Government has resorted to betraying the rule of law.

Earlier, Mr James TIEN has mixed the need for lawmaking with the balance of payments in public finance in his speech and said that if one supported reducing the civil service pay, one should support this legislative approach. I was really shocked to hear such view. Money and legislation are two different things. The money lost can be earned back again, as money is but a piece of cloud moving to and fro in front of our eyes. However, if justice is lost, the Government will lose the support of the people. Mr TIEN has expressed such view in his capacity as a Member of this Council: he focused his attention on financial benefits to the neglect of justice, supported doing injustice by way of legislation and even urged that such legislative approach should be exempted from judgement by the Court. I was indeed very much shocked!

Legislation is made to give the people an expectable mode of behaviour to follow, it is not meant to be changed frequently or to serve a "one-off" purpose on a certain day in a certain year. If an agreement was not interpreted in a certain way in the past and will not be interpreted like that in future, the SAR Government is simply treating the people like illiterates if it insists on interpreting the agreement in such a way this year. Legislation is not a disposable syringe used by drug addicts.

The issue before us now is actually a case of contractual dispute or labour dispute. If there should really be a dispute, why must the Government not bring the matter to court? Why must it seek to resolve the matter by way of legislation? It is indeed very mean and unreasonable to resolve such kind of a dispute by way of legislation, as such an approach is tantamount to denying employees any channel to seek justice after taking away their rights and interests.

Madam President, the people trust in and rely on the Government to uphold justice by way of its administration, governance and legislative proposals. But then, having sought to achieve its end today, how can the Government convince the public and particularly civil servants that they can rely on the Government to uphold justice? We are all being oppressed by the Government.

A few days ago, the Financial Secretary even mentioned in an interview that the Government would lose if it did not adopt the legislative approach. If

the Government loses, that means what it does is "unreasonable" and "wrong". If the Government should resort to the legislative approach whenever it is unreasonable and wrong and then claim that it would act in accordance with the legislation made that way, as time goes by, the repeated application of the legislative approach would eventually cause members of society to show no respect for the existing legal system. By then, society will be filled with chaos and disorder.

Actually, the Government has once again applied the divide-and-rule tactics in the present pay reduction incident. Whenever the Government fails to resolve an issue by reasonable means, it will employ the divide-and-rule tactics to stir up people's emotion by giving out one-sided messages. In addition to discrediting the civil servants as a public enemy, the Government has also claimed that if the civil service pay were not reduced, tax rates would be raised. Just what good would it do to the head of the Civil Service and the supervisors of civil servants if civil servants were put in an antagonistic position as opposed to the public?

The Government is indeed oppressing the civil servants by way of legislation and violating the basic principles of contract. As Members may all recall, during 1998 and early 1999 when the financial turmoil took place, many shop operators asked for rental reduction on the ground that they were having difficulty remaining in business. However, members of the business sector, the Housing Authority and relevant government departments all remarked in response that in order to uphold the spirit of contract, they could not reduce the rents for shop premises right away but had to wait until after the expiry of the current contracts to negotiate the matter with the relevant shop operators. The Housing Authority even had to conduct series of investigations and require shop operators to produce tons of data before acceding to reducing the rentals for shop premises it leased to them. Both are reduction proposals, why must the Government and Members representing the business sector adopt a totally different set of standards to deal with the proposal this time around?

Over these five years since its establishment, the SAR Government has so far been very successful whenever it employs the "divide-and-rule" strategy. However, this strategy cannot be applied indefinitely. At present, the cohesion of society has vanished almost completely, but the Government is still not awoken to the truth but remains complacent. This is indeed worrying.

Yesterday, the right of abode issue was at stake; today, the preys are the civil servants. Just who will become the next prey tomorrow? In the end, every member of society will have one thing in common, which is oppression by the Government. How can the Government maintain effective governance when the people have all lost confidence in it? I really have to warn the Government, an oppressive government will certainly fail.

About a month ago, I discussed this matter with a taxi driver. He said, "Miss HO, the civil service pay has to be reduced. I know it is not very good to do so by way of legislation, but it has to be done anyway." So I asked the taxi driver whether he really knew it was improper to adopt the legislative approach, or he just thought it would be acceptable because he was not the affected party and thus could not feel the pain that other people had to suffer. The taxi driver then replied very frankly, "You are right, Miss HO. You really see through me." When such a culture becomes prevalent in society, when members of society demonstrate such mentality, the Government should really be concerned. This is because if members of the public only care about themselves but not social justice, they will not be willing to ride out the hard times with the Government, nor will they listen to the Government's appeal for concerted efforts and co-operation. But then, the Government has repeatedly helped such an undesirable culture to develop. The Government just cares about only the immediate benefits without paying any regard to the impacts on its long-term effective governance.

Last Friday, the Chief Executive gave the Civil Service an undertaking that the Government has no plan or intention to use this Bill to pave the way for future pay reduction or as a pretext for curtailing civil servants' pension benefits. Besides, the Secretary for the Civil Service has also mentioned that since the Chief Executive had made this solemn undertaking in public, the Civil Service should rest assured that this is just a piece of one-off legislation. However, even though the Government has made quite a number of undertakings in the past, it has very seldom honoured them. There were many past cases in which the Government went back on the undertakings it had made in public, and the right of abode issue is just one example. As regards the 85 000 housing construction target, it was considered as having disappeared automatically just because it was not mentioned any more. So, it is not for no reason that the civil servants do not trust the undertaking made by the Chief Executive, for he has indeed gone back on his promises before. In fact, the

civil service procession held last Sunday was a very good action telling us that the Government's credibility is gravely questionable.

Why has the Government not become alerted despite the various warnings but kept insisting on employing this unreasonable approach to reduce the civil service pay? I hope the Government will withdraw the Bill, albeit the chances are extremely slim. Nevertheless, even if the Government does not withdraw the Bill (and I know the Bill will certainly be passed), I still hope that the Government can promptly return to the negotiation table with the representatives of the Civil Service to exchange views on a fair mechanism which covers all aspects, including pay determination and review, fringe benefits, pension, as well as complain channel, and then formulate legislation on the basis of such a comprehensive mechanism. I believe this should be a more feasible alternative.

Madam President, as we are coming to the end of the Legislative Session (which falls on 10 July), the Government has set deadlines for a number of bills to urge us to complete the relevant deliberation processes before the end of the Session. Under such circumstances, it is just inevitable for the rule of law to be sold at ugly prices. This is very much like the situation in the flower market before the dawn of the Lunar New Year Day when unsold flowers are simply thrown away by stall operators. Actually, many views raised during the deliberation process of the Bill have yet to be fully discussed and expounded. In order to assert its position as a strong government, the Government has insisted on playing a zero-sum game and refused to spend more time negotiating a win-win situation with the civil servants. But then, has the new power centre, the new cabinet ever thought about the way in which the grievances of the people other than the Chief Executive and his three Secretaries of Departments and 11 Directors of Bureaux can be effectively addressed? Even though the Government may have secured enough votes to push through this hastily drafted Bill, how is it going to deal with the sequela?

The Government has claimed that this is a piece of one-off legislation, but this is not set out expressly in the provisions under the Bill. The Bill only specifies that the civil service pay reduction shall come into effect on a certain date in 2002. However, has the Government ever thought about incorporating a "lapse" clause into the Bill, so that this pay reduction legislation will automatically expires and disappears from our statutes after a certain period of time? Actually, the Government does know how to draw up such provisions. With regard to the Copyright (Suspension of Amendments) Ordinance 2001, for

example, when the relevant provisions of this Ordinance introduced in respect of the Copyright Ordinance expires, the Government has to re-submit the legislation to this Council for deliberation. However, since the Public Officers Pay Adjustment Bill does not contain such a provision, the civil servants are given one more reason to not believe in the Government's promise.

Madam President, a pay review mechanism should be established only after the employer has held discussions and negotiations with the employees. Actually, we do not oppose reducing the civil service pay, and we agree that the rates of reduction proposed are rather moderate. Nevertheless, it would be very unreasonable of the Government as the employer if it should exploit its prerogative to deprive the employees of their right to negotiation by way of legislation. I hope such thing will not happen again.

What message will the passage of the Bill today give society? The answer is very simple: You can do anything if you have the power; without power, one just can do nothing. What rule of law can we speak of in society? The legislative approach adopted by the Government this time is reflective of its "full victory" mentality and its belief that so doing is natural of a strong government. I worry that such kind of mentality only serves to demonstrate that the governance abilities and strategies of the SAR Government have seen no improvement over the past five years. What is more, because the Government has resorted to the aforementioned tactics all too often in the past five years, society has found it increasingly difficult to remain unified. In future, the policies implemented by the Government will have more difficulty in winning the harmonious and concerted support of the public, thereby laying more time bombs for the Government's administration of the territory.

Madam President, I oppose the Second and Third Readings of the Bill.

MR BERNARD CHAN (in Cantonese): Madam President, the pay adjustment of the Civil Service has all along been determined on the basis of the Pay Trend Survey (PTS) but the PTS only looks at the situation in a specific year. At present, people are concerned about whether the pay levels of civil servants are too high and whether they are close to the market levels. When the economy was good in the past, few people would care about the pay level of civil servants, but when the economy is in the doldrums now, people have started to show concern for and discuss civil service pay.

Many of them wonder why wages in the business sector increase or decrease in tandem with the economic circumstances and the situation of an enterprise, when civil servants still had a pay rise though many people in the business sector had a pay reduction last year. Therefore, many people have queried why civil servants could have a pay rise under adverse economic circumstances and whether there were problems with the mechanism? If not, why was there some distance between the result derived under the mechanism and the facts?

In fact, we have not conducted a pay indicator survey for many years, and it may be one of the reasons why there is a big difference between civil service pay and pay in the business sector. The Government is facing financial difficulties, but it cannot reduce expenditure on many accounts. Under such economic circumstances, a tax increase is unacceptable to the public. For the purposes of reducing expenditure, a civil service pay cut may meet with relatively less opposition, especially when the rates of reduction are so small. Therefore, people generally support reducing civil service pay, and the Government has made use of public opinion to support the move.

Now that the Government intends to reduce civil service pay, a lot of people including me become aware that the mechanism does not allow a pay reduction. Actually, I accept reducing the civil service pay and we have to admit that the rates of reduction are very moderate. I fully understand why the Government wishes to put the decision into effect by way of legislation. Legislation is inevitable and I believe most civil servants would accept the rates of pay reduction. I also understand why civil servants and civil service groups oppose effecting the pay reduction by way of legislation, and the role of the trade union is to speak on behalf of its members and fight for their interests. I know they are concerned that the Government may further change other agreement terms through the legislative approach.

Last Sunday, 10 000-odd civil servants and staff of subvented organizations participated in a street demonstration against the Government's enactment of legislation on a pay reduction. Some opined that the demonstration would affect the image of civil servants and give people the impression that civil servants were acting against public opinion. Generally speaking, both parties could have sat down and negotiate for a feasible proposal satisfactory to both parties. It is a pity that the acts and remarks of both parties have gone too far, so much as that negotiation was hard possible.

Whether the Bill would be passed or not, both the Government and the civil servants would be losers. They take face into consideration when handling the matter. The SAR Government wishes to uphold its prestige and it may be an important first move for the second SAR Government. If it fails in the move, it may give the community and the public an impression that there is deliberation but no resolution, or resolution but no action again.

The trade unions have to be accountable to their members and defend their interests. However, people's impression of the civil servants and the trade unions may have been adversely affected to a certain extent. It would also affect the morale of civil servants and the usual harmonious relationship between the Government and civil servants. If the Bill is passed, \$3.1 billion of public money would be saved, at the expense of affecting civil service morale. If it were not passed, the public would query why this Council would not pass such a bill that is supported by a majority of the public. Both parties have reasons to insist on their respective positions, but they can hardly find steps for going off stage. Therefore, they can hardly sit down and discuss the matter slowly. In fact, Hong Kong people do not wish to see the Government forcing civil servants to succumb this way. Nor do they wish to see civil servants participating in a street demonstration for such small rates of pay reduction. Regardless of how we do the calculation, both parties would be losers.

As a member of the Task Force on the Review of Civil Service Pay Policy and System, I wish to say that if the relationship between civil servants and the Government worsens as a result of this incident, thus giving rise to a lack of mutual trust and a failure to maintain a good relationship, and even causing both parties to become antagonistic to each other, there can hardly be discussions on the way forward. The Government may encounter resistance, even strong resistance, when it conducts a review of the civil service pay system in future. The confrontation between the Government and civil servants would only intensify the divergence, misunderstanding and even the antagonistic tense relationship between both parties, making a pay reform more difficult. How can they discuss the future reform with a lack of trust, communication and consensus?

Honourable colleagues from the Breakfast Group and I have suggested to the Government to first withdraw this Bill, make up for the inadequacy of the existing legislation and establish a practicable pay review mechanism in the long term before legislating on the pay adjustment system. I agree with the Breakfast Group because I hope that there could be other methods to make each

of the parties take a step further for purposes of reaching a consensus. Unfortunately, the pay reduction would finally be consolidated through legislation.

Some members of the media and Honourable colleagues have alleged the Breakfast Group of a volte-face. I wish to say that I have never changed my position on the matter and I have all along supported the pay reduction, including legislating on the reduction, yet, I do not agree with the means by which it is achieved. The relationship between the Government and civil servants has worsened as a result of this means. On this occasion, the Government has put on civil servants the burden of public liability and pinpointed at civil servants, therefore, the trade unions have no alternative but to resist.

As reported, a civil servant has said that Members from the Breakfast Group are political scoundrels (政棍). Madam President, I did not know the meaning of the term, but I know it now. Yet, I think it is definitely unfair to call us such names. I wish to clarify that Members of the Breakfast Group and I have at least not talked to that person, thus, we have never promised them that we would certainly support civil servants and object to the Bill. Throughout the whole course, I have wanted to play the role of a mediator and cool down the incident; thus, I am very astonished by the remark made by that person.

Earlier on, I sent 500 questionnaires to practitioners of the insurance sector to collect their views on the Bill. Among the 204 replies collected, 71% of the respondents indicated support for a pay reduction while 29% of them objected. Some of the respondents who supported the reduction said it was necessary to review civil service pay to narrow the difference between their pay and the market rate. If the Government does not effect the pay reduction by way of legislation, individual civil servants may go to court and claim compensation. Some supporters also think that it would enable the Government to lawfully and effectively reduce civil service pay. Given that the economy is currently in the doldrums, civil servants should tide over the difficulties together with the public and the business sector.

Those who objected think that implementing the pay reduction by way of legislation would set a bad precedent. Some foreigners have reflected to me their objection to the Bill by e-mail. They think that, in the business world, employers and employees are equal before the law but, in this incident, the Government has the upper hand in passing a law and then impose it on its employees.

In the light of the views for and against the pay reduction, it is really not easy to vote on the Bill. One of the reasons for my support to the Bill is, the Chief Executive's undertaking not to reduce civil service pension and benefits by way of legislation, and that it is only a piece of one-off legislation. Though the undertaking cannot dispel all the worries of civil servants, some of their worries would be allayed at least. After this incident, I believe the basis of mutual trust would at least be shaken a little bit and it would definitely not be helpful to the discussions about reform in the future.

I wish the Government would discuss with civil servants about future co-operation through formal or informal channels, as it would facilitate the long-term civil service reform and review in the future.

Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): Madam President, the issue of civil service pay adjustment has become a hot topic of discussion in town in the past several months and it has aroused great concern among the public. The Government has made an unprecedented move of proposing the Public Officers Pay Adjustment Bill (the Bill) to put into force the findings of the annual Pay Trend Survey (PTS). Civil service groups have expressed strong opposition to the idea, and this has caused a wave of massive demonstrations, including the rally held a few days ago in which more than 30 000 people took part. Reactions from the public have been unfavourable. The people of Hong Kong have been hard hit by pay cuts and layoffs and so they complain about the actions taken by civil servants, thinking that civil servants are being bad losers. Moreover, with the adverse situation of an economic downturn and high unemployment rates, people think it is extremely selfish of the civil servants to demand that their pay be increased but not reduced. It is also out of touch with the reality. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I think that people from various sectors in the community should consider the Bill from a rational and objective point of view and in the context of the existing mechanism, putting aside all kinds of bias and emotional reactions.

The indicators obtained from the latest findings of the PTS released in May this year recommend a reduction of the pay for civil servants in the senior, middle and lower ranks by 4.42%, 1.64% and 1.58% respectively. There are

views not only that the existing civil service pay adjustment mechanism is fraught with problems, but also that the survey methodology used fails to reflect the true market situation. Some people even think that the existing system is only a protective shield used by civil servants to enable them to reap advantages. Both the ADPL and I think that, despite the deficiencies found in this system, the authorities should follow the existing pay adjustment mechanism in determining the level of pay adjustment for civil servants for each financial year before any conclusion is reached from the review of civil service pay and system. The Pay Trend Survey Committee which include representatives from four staff consultative councils agreed to the level of pay reduction as mentioned above a long time ago. Therefore, the issue of civil service pay cut has become an issue of technicality. In other words, the greatest disparity between the Administration and the civil servants does not in fact lie in the issue of whether the objective of a pay cut is appropriate or not, but in the ways and means that should be employed to achieve this objective.

As to the argument stressed by the Government, that legislation is the only sound way to effect a pay cut for the Civil Service, both the ADPL and I have strong reservations about it. In recent months, the authorities sent out the message to the public through various channels on a civil service pay cut, but nothing on the deficiencies of other means of effecting a pay cut was explained to the public in a clear manner, nor was there anything on the mode of operation of the existing pay adjustment mechanism for the Civil Service. As a result, the public is unable to analyse, know and understand in a rational and objective way the pay adjustment system which is highly technical in nature. These together with news stories like the anonymous letter written by a typist in the Government who confessed dereliction of duties, grudges against civil servants from the public are fuelled as people who do not know the truth of the matter are led by these selective messages. Both the ADPL and I find such poor publicity tactics which serve only to undermine social harmony unacceptable.

As a matter of fact, both the ADPL and I have all along doubted the Government's argument that legislation is the only sound way to effect a pay cut. According to the advice from the Legal Adviser to the Legislative Council, the existing employment contract for civil servants has in effect preserved the right of the Government to alter any terms and conditions of service when necessary. And in the past there were precedents where the Government made unilateral changes to the terms and conditions of service. So the authorities do not have to resort to legislation to effect a pay cut. There

may be views that most of the civil service groups have only stressed that they oppose the decision to legislate but they were unable to offer any practical methods to effect a pay cut. So what the civil servants were doing were likewise irresponsible, it is only the pot calling the kettle black. However, if we look into the existing civil service pay adjustment mechanism, we can find that there is still room for the Government to avoid resorting to legislation. The proven PTS system which has been in force since 1974 in fact permits civil service groups to make counter-proposals to the Government on the proposed pay adjustment level. That is why representatives of the staff side expressed their disagreement with the decision of a pay cut and proposed a pay freeze. But the Administration disregards this normal procedure and the stipulations in the agreement made in 1968 and bypasses the arbitration mechanism which should be triggered off only when both sides fail to reach any agreement on the matter under dispute. What the Government has done is like sending an ultimatum to say that it will reduce the pay of civil servants by way of legislation. Both the ADPL and I are very dissatisfied with this disrespect shown by the Government for the existing civil service pay adjustment mechanism, for it is just like a trick. A more ironical point is that the Administration has always emphasized that discussions and dialogue are the best ways to resolve labour disputes and this is regarded as the guiding principle for the Labour Department in mediating labour disputes. The way in which the Government has acted in the present case is self-contradictory and it has failed to convince people of its stand that legislation is the only way to effect a pay cut. So both the ADPL and I believe that the Government should adhere to this principle of consultation and make the best use of the existing mechanism. An independent committee should be appointed by the Chief Executive to arbitrate on the pay adjustment issue for this financial year, with a view to completing the entire process by this October. This is in our opinion the best way to settle this pay dispute.

In sum, both the ADPL and I would think that the best way is for both the Government and the civil servants to return to the existing mechanism, discuss the matter and iron out the differences. This guiding principle should be used to solve the pay cut dispute, as it should be used in other labour disputes. For it is what the Government and the Labour Department in particular have been promoting as the guiding principle to be used in settling labour disputes. It is also the slogan which has been so often chanted. With this hope that both parties can reopen talks and discuss the pay adjustment issue, both the ADPL and I oppose effecting the pay cut by way of legislation as proposed by the Administration. It is because such a move will not only

seriously undermine the mutual trust between the civil servants and the Government, but it will also not help the administration of the territory and indirectly cause division between the people and the civil servants, hence damaging the stability of society. In the long run, with the consent of both parties, the authorities should conduct a review of the entire civil service pay adjustment mechanism, including the PTS mechanism and the board of arbitration. When necessary, legislation should be made to provide for the new pay adjustment mechanism formed after the review so as to minimize legal disputes.

Madam President, I would like to quote from the speech made by the Chief Executive in the formation of the second term SAR Government on 1 July. It is because the extract is not just very meaningful to me, but also to Hong Kong as a whole. The Chief Executive said, "There is also a clearer understanding of the roles, mutual responsibility and commitment among the Government, society and the individual. People are growing tired of unceasing disputes. The community longs for stability and tranquility. All these factors reflect that Hong Kong has not been mired in difficulty. Instead, we are continuing to forge our way forward." In this very speech, the Chief Executive made a strong emphasis that the community and the people long for a society of tranquility. However, I find that the incident of legislation for pay cut is precisely heading in the opposite direction. It has caused a conflict between the Legislative Council and the Government, and an internal strife between Members of the Council. There are also clashes between senior officials and the rank and file of the Civil Service, as well as between civil servants and the public at large. Is this attempt to legislate for a pay cut actually in line with the direction pointed out in Mr TUNG's speech as just read out by me, or is it heading in the opposite direction instead? Or is Mr TUNG hoping to see tranquility, but his officials are causing conflicts and clashes?

Conflicts and clashes will not do any good to Hong Kong, to the civil servants and even to the Government. The result of passing this piece of legislation is only a saving of \$1.55 billion in public money, but the price to be paid is growing division and a widening gulf between the Government and the Legislative Council, among the Members of the Council, between the Government and the civil servants, and between the civil servants and members of the public, even to the extent of causing internal strifes and sowing discord. It can be seen that the \$1.55 billion money to be saved is absolutely not worthwhile. Now that the accountability system for principal officials is in places, we have new Directors of Bureaux and their duty is precisely to foster a

team spirit among civil servants of different ranks. Once this team spirit is shattered into pieces as a result of effecting the pay cut by way of legislation, I worry, and I doubt very much how then these officials will be able to mend the rift. If the rift cannot be mended or if a long time is needed to mend it, then how can people place their confidence in successful implementation of the accountability system? Not only will the day to day work, but that policy implementation and administration in the Government will fall apart and disasters will pile up one on another and any reform to be launched would never make any progress.

Madam President, with respect to the legislation for a pay cut, I think we need to make some decisions in the political and legal aspects, as well as taking into account the conflicts that are likely to arise and the aspiration for tranquility in society. I hope Honourable Members and the Government will not sacrifice these for a mere sum of \$1.55 billion. On the other hand, both the Government and the civil servants should sit down and discuss, work out a mechanism before proceeding to legislation. Thank you, Madam President.

DR LO WING-LOK (in Cantonese): Madam President, I speak in opposition to the Second Reading of the Public Officers Pay Adjustment Bill (the Bill). The greatest contradiction between employers and employees is to determine the rate of adjustment on the pay of employees. However, employers and employees also share common interests, the greatest being the sustained development of the organization, which allows the employees to be employed, promoted and develop their careers.

To resolve the contradiction between employers and employees and foster an environment in which both parties can work together for the interest of their organization, the most important thing is to put in place a mechanism which both parties would find acceptable and credible. For such a mechanism to function successfully, there are several prerequisites:

1. the mechanism must be objective, neither biased towards the employers nor the employees, and it must be able to withstand scientific tests and have a sound basis;
2. there is room for negotiation, allowing employers and employees equal rights in expressing their views and in considering each other's views adequately;

3. there should be a mechanism for arbitration so that when employers and employees cannot reach an agreement, there is an arbitration mechanism the decision of which both parties would trust and be willing to abide by. In an area governed by the rule of law, the Court is the next channel for employers and employees to state their cases in the event of the extreme scenario of a breakdown in negotiations. Hong Kong is an area governed by the rule of law and although litigation is often advantageous to the party with greater financial resources and influence, at least employees have a fairer chance of defending their cases.

As regards the channel of legislation, it is appropriate only in extraordinary and very desperate cases, for example, when the Court rules that the Government has no power to reduce the pay.

My question is therefore whether Hong Kong is now facing such a desperate situation. I believe legislation is not called for. The Government has originally two paths to take, but it has not taken any of them.

If the Government really has no power to cut civil service pay, I believe it would not be the case that it became aware of this only in the past few months. Therefore, the first path that it could have taken was to negotiate with civil servants and establish a comprehensive mechanism in sufficient time, and then introduce legislation to improve the shortcomings in the existing pay adjustment mechanism. Unfortunately, the Government did not take this path.

The second path that could have been taken was to carry out negotiations and arbitration, so that civil servants would accept the rates of pay reduction as found by the Pay Trend Survey. In fact, according to reports of the mass media in these several days, all civil service groups and unions have accepted a pay reduction according to the results of the Pay Trend Survey. They oppose only the legislative approach and legislation for the purpose of reducing pay this year. However, the Government did not take this path.

The path taken by the Government is to legislate for a pay reduction for one year. The consequence of taking this path is to succeed only in reducing the pay for one year, at the price of shattering the pay adjustment mechanism completely. However, in the meantime, the new mechanism cannot be established in time, so we find ourselves asking: What about next year?

With the relationship and mutual trust between an employer and its employees devastated by the legislative approach to effect a pay reduction, it is easier said than done to establish a new mechanism which both the employer and employees find acceptable.

Madam President, today I have listened carefully to the speeches of many respectable Honourable colleagues. I have found one most interesting thing, and that is, the arguments of some Members supporting the Bill are rather tortuous. While they gave high praise to the contribution of civil servants, expressed sympathy for the concerns of civil servants, and criticize the Government's handling of the issue, in the end they had to offer all kinds of explanation for supporting the passage of the Bill, or equate a pay reduction awkwardly to legislation. In contrast, Honourable colleagues who are opposed to the Bill are more straightforward and vocal.

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

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, Secretary Joseph WONG sent a one-page lobbying letter to Members of the Legislative Council yesterday. The content of the letter is so short and simple that it is rarely seen recently. I believe the reason for this is that the Secretary thinks that all political deals have been clinched and the Government is already assured of a victory. He thinks further efforts are no longer necessary and a longer letter will only be redundant. So, he no longer finds it necessary to put more efforts in window-dressing, for a sparsely worded simple lobbying letter will serve the purpose. This is also his greatest performance since the implementation of the accountability system for principal officials (accountability system) for it shows that he has already discharge his duty of communicating with Members of the Legislative Council, and all that should be done have already been done. However, I believe this is not the only reason. Another more important reason is that since the TUNG Chee-hwa government announced the Budget, it was decided that civil service pay should be reduced, so the pay reduction has already become a political mission. That means a high-handed approach must be adopted and the Government has no intention to discuss this issue with anybody. Nor does it intend to reason with anybody. Since this pay reduction is a foregone conclusion and Mr TUNG thinks he has

the force of strength to push it through, he does not think that it is necessary to reason with civil servants for he can just act wilfully.

However, Madam President, the Secretary mentioned in the letter that the Public Officers Pay Adjustment Bill (the Bill) "is not only fair to civil servants but also in the interests of the community as a whole". Madam President, I wish to declare an interest. I am an employee of a subvented organization. May I ask the Secretary how fair it is to us if pay reduction is effected through legislation? In what way is it fair? I hope the Secretary can explain this to me later. Under the existing civil service system, if pay reduction is not effected by way of legislation, the Government is afraid that if some employees really sue the Government, they will have a very great chance of winning. So, it has to effect pay reduction by way of legislation. However, to enact legislation, it means that the Legislative Council is required to act as an accomplice so that the Government can have a better chance of winning when pay reduction is effected. However, just as the chairman of a civil service union has said, this situation is similar to the case where the Government has stolen something and then legislates to say that the theft is legal. If that were the case, then it is not necessary for us to have further discussions. Under such circumstances, the Government certainly has a great chance of winning. However, I would like to ask the Government to examine its own conscience: When we say "everyone is equal before the law" and advocate the spirit of the rule of law, is effecting a pay reduction by way of legislation consistent with the spirit of the rule of law? Is this really appropriate and fair to civil servants? Madam President, if the Bill is passed today, I believe the legal spirit of Hong Kong and its international image will certainly be injured. In fact, not only the Secretary but the SAR Government has also often stressed the importance of upholding the image of civil servants. Has the Government ever considered what impact will it have on the image of Hong Kong once pay reduction is effected by way of legislation?

On the other hand, the Government has not only turned itself into what I called an unscrupulous employer, but also forced subvented organizations to breach the law. While the Government legislates to effect a pay reduction, it also cuts back on the funding for subvented organizations and forces them to implement a pay reduction at the same time. If subvented organizations are unwilling to effect a pay reduction, then they have to draw on their reserves or use other means to resolve the problem. Under the existing lump sum grant arrangement and competitive bidding, how can subvented organizations find

any room to overcome their existing financial difficulties? Even if they do not effect a pay reduction this year, they will have to do so next year. Therefore, the employers in such subvented organizations are also forced to become unscrupulous employers. In fact, they are worse than unscrupulous employers for it is clearly stipulated in the Labour Department's guideline on pay reduction that if employees do not accept pay reductions and employers effect the reduction by force, the employers are in violation of the law. Therefore, the Government has not only forced subvented organizations to become unscrupulous employers, but also obviously forced them to violate the law. May I ask the Secretary if this is appropriate? Should the Government force other people to violate the law? Is this a proper stance and attitude of the Government?

Secretary Joseph WONG also mentioned that it is in the interest of the Hong Kong community as a whole to effect a pay reduction by way of legislation and he has repeatedly referred to public interest to apply pressure on civil servants and Members of the Legislative Council. In fact, we have always stressed that if the Government manages to effect a unilateral pay reduction by way of legislation, a very bad precedent will be set. It will destroy the established practices of Hong Kong whereby great importance was attached to the spirit of contract and consultation between employers and employees. Since the Government can effect a pay reduction by force, private organizations can also follow its lead to repeatedly exploit the rights of its employees. As such, does the concept of labour consultation still exist? How can labour rights be protected? Where has the spirit of the enactment of the Employment Ordinance gone?

I have pointed out many times that the determination of civil service and private sector pay is interactive. If the Government takes the lead in pay reduction, private organizations will have a stronger excuse to impose pay cuts and finally, civil service pay will also be adjusted downwards in accordance with the private sector pay trend. The remuneration of the public and that of civil servants is very closely related and there is actually no conflict between the two. However, the Government has intentionally created conflicts between the public and civil servants and damaged the harmony of the community. Can we call this upholding the overall interests of the community?

Moreover, in the past, we have also stressed that civil servants have a stable income and they have the greatest spending power in the Hong Kong

community. If their income is unstable and their prospect uncertain, it will deal a serious blow to their consumption sentiment and will not help the Hong Kong economy that lies in wait of recovery. Furthermore, the Civil Service is an important force in stabilizing the Hong Kong economy. If the job stability and morale of civil servants are damaged, then how can we say that it will benefit the community as a whole?

Obviously, those who damage the overall interests of the Hong Kong community and work against the public today are not civil servants who oppose a pay reduction by way of legislation, but the Chief Executive and his senior officials. The Chief Executive said in the Legislative Council the day before yesterday that we should brave the rain and storm on a united front. By this, he may be addressing Members of the Legislative Council who support a pay reduction by way of legislation or the senior government officials. But, he was certainly not addressing the public and civil servants for we only see that the Chief Executive has all along gone in a direction opposite to the one taken by the public and civil servants. No matter how hard senior government officials are trying to tell us that the Government is poor and civil service benefits and pay have to be reduced, what members of the public see under the existing so-called accountability system is to the contrary, with senior officials gaining promotions and pay increases. The annual remuneration of a Director of Bureau under the accountability system may be increased by more than \$1 million and the monthly salary of permanent secretaries will be increased by at least by \$20,000 to \$30,000. I believe this rate of increase is equivalent to one month's salary of a middle rank civil servant. Can this be called "braving the rain and storm together"?

Perhaps Mr QIAN Qichen is correct in saying that the Chief Executive is really very isolated for he has constantly pitched himself against the public and civil servants. On the surface, he said everyone should brave the rain and storm together but in reality he wants a strong leadership and is totally oblivious of the life and death of the people and civil servants.

Secretary Joseph WONG also stressed in his letter that Mr TUNG has already guaranteed that the Bill will not be used as a pretext for any plan or intention to curtail civil service pensions. Civil servants could not help asking: How much credibility is there left in Mr TUNG? Is it not true that the "credibility credit card" of Mr TUNG has already been debited over its limit?

Where have all the promises on "the 85 000 housing target", "fruit grant" and "security for the elderly" gone? As such, how can the public and civil servants still trust the credibility of Mr TUNG?

From this latest incident, we can see that Mr TUNG, the Financial Secretary and Secretary WONG alike are all playing a political game. They have portrayed civil servants as public enemies with the intention of dividing Hong Kong people. They have resorted to unscrupulous means to achieve their objectives. Is the undertaking of such people worthy of our trust and support? This is especially true of Secretary Joseph WONG for he is responsible for civil service affairs under the accountability system and he is also the only civil servant in Mr TUNG's cabinet. So, he should act as the bridge of communication between the Chief Executive and civil servants instead of just discrediting civil servants. I think the Secretary should reflect on the role he should play today.

Ever since the proposal on effecting a pay reduction by way of legislation was mooted, the Government has maintained that its strongest justification is that there is no other way to ensure that pay reduction can be effected immediately. Secretary Joseph WONG also repeatedly stressed in his letter that legal counsel to the Government is that in order to safely implement the decision on pay reduction for this year, legislation is the only means. As regards this opinion, I think we have to consider two points. Firstly, is this the only alternative? Secondly, even if this is the only alternative, should it be adopted? What is its impact? As regards the first question, both academics and civil service unions have repeatedly stressed that arbitration and negotiations can continue and the question of no other alternative does not exist. The Government may be concerned that even if civil service unions accept the pay reduction, individual civil servants may sue the Government. However, civil service unions or most civil servants have indicated that the chances of individual civil servants suing the Government are very slim, so why should the Government be concerned?

Moreover, Hong Kong is a community that upholds the rule of law and I think it is only normal for employees to sue their employers if their rights are injured. It is not justifiable for the Government to put itself in an indefectible position by blocking its staff from taking legal actions by means of legislation. In fact, as many civil servants repeatedly called out loudly on the day of the demonstration, if pay reduction is justified, then why is it necessary to do so by way of legislation?

Furthermore, even if legislation is the only means, is it worthwhile to do so just for the sake of saving \$1.551 billion? Senior government officials certainly consider it worthwhile for once a precedent is set, the Government could cite this precedent in handling other matters relating to civil service benefits. However, this act will bring about losses in the overall interest of the community, so why has the Government failed to consider this major issue? In relation to the rule of law alone, this act has destroyed the civil service management system and contract and deprived civil servants of their due rights. Has the Government ever considered this issue? Moreover, when the Government legislates to effect a pay reduction, it has violated the relevant provisions of the International Labour Convention. Has the Government ever considered this point? The fact that the Government is forcing through the pay reduction has made us question how the Government can really protect the interest of the people. Worse still, the Government has lightly resorted legislation to modify private agreements. What credibility can we speak of the Government? Do we have to bear risks in co-operating with the Government? As such, how would businessmen still be interested and dare to invest in Hong Kong?

Madam President, since the reunification, not only have democracy and freedom been further suppressed, a culture of resorting to unscrupulous administrative tactics for purposes of achieving its objectives has also appeared in the Government. The Government has gone so far as to destroying the established system and the principle of the rule of law as well as creating conflicts among the people and dividing the people. The first victims of such policies were those people who fought for the right of abode in Hong Kong and the recipients of Comprehensive Social Security Assistance. Now, civil servants have joined the list of victims. If this continues on a long-term basis, Hong Kong will be divided and be doomed forever. Let us exercise our voting right today to vote against the resumption of the Second Reading of the Bill and say no to such poor political conduct.

Madam President, I so submit.

DR YEUNG SUM (in Cantonese): Madam President, I really do not know whether the peaceful petition and demonstration by over 30 000 civil servants is unprecedented in recent years, especially in relation to the participation of civil servants. A single spark can start a prairie fire. Who actually lit the spark which might start a prairie fire?

Madam President, I rise to speak against the Second and Third Readings of the Public Officers Pay Adjustment Bill (the Bill). I have four major reasons, and I wish to explain them briefly.

Firstly, it is the Government who unilaterally broke the contract with civil servants in respect of their remuneration. In order to avoid the possibility of being sued by civil servants and losing the case in court, it has sought to force through a piece of legislation. This is against the rule of law.

Secondly, forced legislation has actually deprived civil servants of their rights, thus hampering the conduct of effective collective bargaining. While the Government seeks to deprive civil servants of their rights, it is reluctant to make compensation. On the contrary, it has made use of legislation to defend its cause. This is most regrettable.

Thirdly, forced legislation has damaged the negotiation and co-ordination mechanism; it is a pity that a proven mechanism has vanished without a trace.

Fourthly, even though the Government can secure enough votes in the Legislative Council to support the passage of the Bill, I believe the mutual trust between the Government and civil servants has been significantly destroyed.

Some members of the public think that civil servants have participated in the peaceful demonstration because they oppose the pay cut proposal. It is really unfortunate. Some others feel that since pay cut is now commonplace, and in view of the economic doldrums, therefore they ask, why can civil servants not weather the hard times with the people and accept the pay cut proposal? Why have they fought against it? This is a most unfortunate misunderstanding. In fact, civil servants have stated time and again that they oppose the drawing up of legislation for pay cut, they have requested negotiation. They have no disagreement with the pay cut, but they are against the forced legislation, especially this year's one-off legislation. I have to highlight this point clearly, otherwise it would be unfair to the civil servants.

The Chief Executive has made his pledge many times that the legislation is one-off. But it will set a bad precedent in effecting this pay cut. Once there is a precedent, it will be difficult to ensure that the Chief Executive will not repeat the stock trick and curtail the rights of civil servants again. As long

as there is a precedent, it will be difficult to rule out the possibility that it will be used again in future. Who can give the word? Perhaps the Chief Executive of this term will not use it again, but what about the next Chief Executive? Since there is a precedent, can he not cite the precedent?

Madam President, that the Chief Executive has sought to make this legislation is an attempted manifestation of strong government. But it comes as another concern to me. The Chief Executive said that he would speed up things that the people needed most and attach importance to public interest. He also laid emphasis on the building up of a team spirit among civil servants, just as the South Korean World Cup team did. Notwithstanding the din of the words having scarcely died away, he was so determined to draw up legislation in a compelling way and to turn a blind eye to the fundamental rights of negotiation and the contractual rights of civil servants. The Chief Executive decided to be antagonistic to the civil servants and has cold-shouldered their request of withdrawing the Bill and returning to the negotiation table. May I ask how he can establish the team spirit with the civil servants? How could those 180 000 civil servants be completely convinced to work under the leadership of the Chief Executive?

Madam President, this incident of effecting a pay cut by way of legislation has made me rethink the issue of the Government's approach to administration. The creator of the bad precedent was the Financial Secretary. In order to reduce the fiscal deficit, he proposed that civil service pay be cut by 4.75%. Although he repeatedly emphasized that it was only a proposal, it seemed that the Government was bent on heading in that direction once he let the cat out of the bag. Have the Financial Secretary and relevant government departments ever thought of the possibility of being sued by civil servants as a result of its unilateral variation of the contract? Will our public finance draw the attention of the international community due to the possible court proceedings? Have these problems been considered? Did anyone remind him? Where have all the departmental think-tanks gone? Had the impact and influence on non-governmental organizations been assessed before it was implemented? How many people would be affected? At that very moment, the proposal of a 4.75% cut on civil service pay won the applause of many people, but how much desolation, injustice and inequality was there behind the applause? It is really unfortunate, and it makes me think that our good intentions may turn into evil deeds from time to time. Some policies are proposed out of good will. Just as the pay cut proposal, it was proposed in

view of enormous deficits. Expenses in every area should be reduced with great efforts. However, if it is not carried out in the right way, any good intention would bring about awful results. This is most unfortunate.

Madam President, I would just like to summarize the reasons for my opposition to the Bill. I attach importance to contractual spirit and the right of negotiation of employees, and I respect the pay adjustment mechanism of the Civil Service. I have to state clearly that I oppose the tyrannical attitude of the Government in drawing up legislation by force.

I oppose the resumption of the Second Reading and I also oppose the Third Reading of the Bill. I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, on the reduction of the civil service pay, the position of the Liberal Party can be considered the most unequivocal. So, no one would speculate on how we will vote or whether we will make an about-turn, and our position has not much news value either. Last year, Members of the Liberal Party in the Legislative Council proposed on their own initiative a 10% on their remuneration. That was not a show. We did so because the Liberal Party did see an enormous disparity in remuneration between the Civil Service and the private sector. Despite limitations in our resources and capacity, the surveys conducted by us indeed pointed to a disparity of 30%, 40% or even 50% between them, just as the Chairman of our Party said earlier. If the Government is not convinced, it can use government resources to conduct its own surveys. No matter what the outcome of the vote on this Bill will be, that will not be the end of the story. The Government still has to conduct surveys on the entry points and pay levels, so as to determine new entry points and pay levels that can reflect the reality, rather than relying on the Pay Trend Survey alone which in itself is fraught with problems and seriously flawed. If this survey was in any way scientific, it would not have led to such a huge disparity today.

Certainly, no one would welcome a pay cut. When Members of the Liberal Party proposed to deduct their remuneration, we had been severely reprimanded by certain Members. Not all Members of the Liberal Party are employers. I am an example. I am only a wage earner, and my 13th month of salary or the double pay has been cut this year. Let us do some calculations. Since my 13th month of salary or the double pay has been cut, it

is equivalent to a pay reduction of 7.76% and so, I also have a pay cut this year. Many employees in the private sector have said to me that they do not know what the civil servants are arguing against, for they are only subject to a pay reduction of some 1% to 4% in their wages. If the private sector imposes pay cuts at this rate and if their employees will subsequently secure their jobs, everyone would applaud, for they know only too well that the economy this year will be very difficult. So, I think on this issue, the Government should expedite the review of the overall civil service pay structure.

Finally, Madam President, a number of Members have referred to questionnaire surveys. For example, Ir Dr the Honourable Raymond HO mentioned earlier on a survey conducted by the Liberal Party, and Mr Eric LI also said that he had received 50-odd responses. I first thought that the 60 responses that I received from the tourism sector may not carry much significance. I did not expect anyone would make mention of the views reflected by some 50 responses. So, I think I might as well talk about the responses that I received from the tourism sector. I had asked my constituents a very clear question of whether they agreed to effecting a pay cut by way of legislation. I received a total of 60 questionnaires, 80% of which expressed support, 18% raised objection and 2% responded that they had no comments. The most puzzling of all is that among that 18% of questionnaires which opposed effecting a pay cut by way of legislation, two stated that they opposed on the ground that the rates of reduction are too small. One considered that the pay should be cut by 3% to 8%, and the other proposed a 15% to 20% pay reduction. I think it is very difficult to tell whether these two questionnaires actually supported or opposed effecting the pay cut by way of legislation. Anyhow, I found that whether from the survey conducted by the Liberal Party or that conducted by me in the tourism sector or those by many social organizations, the ultimate figures derived from these surveys do tally. So, today, I support the Second and Third Readings of the Public Officers Pay Adjustment Bill.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Members, it is now twenty-five minutes past ten at night. I think we cannot finish all the items on the Agenda by midnight. I now suspend the meeting until 9.30 am tomorrow.

Suspended accordingly at twenty-five minutes past Ten o'clock.

WRITTEN ANSWER**Written answer by the Secretary for Home Affairs to Mr CHAN Kwok-keung's supplementary question to Question 1**

Figures as at 31 August 2002 indicate that there are some 326 Internet Computer Services Centres (ICSCs) in Hong Kong. Thirteen of them have licences or permits for serving food or drinks. One application for such licence is being processed. Since it is difficult to suggest a clear distinction between normal ICSCs and ICSCs with possible vice activities, such information is therefore unavailable.

Annex II**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mr IP Kwok-him's supplementary question to Question 1**

A brief survey conducted by the Buildings Department found that about 65% of the Internet Computer Services Centres (ICSCs) are situated in basement, cockloft or upper floor. Premises on these floors may be used as ICSCs subject to compliance with the means of escape codes, and so on, taking into account of such factors as building design and fire resisting construction, floor layout and actual occupancy.

Annex III**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Miss Emily LAU's supplementary question to Question 2**

The eligibility criterion for over-crowding relief used to be 4.5 sq m. In January 1992, it was relaxed to 5.5 sq m for families who are willing to move to larger flats in the New Territories. In 2001, 5.5 sq m is applied across the board to all households.

Annex IV**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mr SIN Chung-kai's supplementary question to Question 3**

Under the existing Gambling Ordinance, both a bookmaker and a person betting with a bookmaker commit criminal offences. The police will take enforcement actions against such activities with the authority conferred by the law. Bookmakers (including "bankers" and intermediaries) are usually the main targets in the enforcement actions mounted by the police. This is because activities of bookmakers are the source of illegal gambling activities. It has always been an effective strategy to investigate and combat illegal gambling by first tracing activities of bookmakers. This, however, does not mean that punters engaging in illegal betting will not be arrested and prosecuted even when there is clear evidence against them. As such, there is no question of us "not abiding by the law". There has not been any change in the Government's policy to combat illegal gambling.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by adding ", 108(a), 109, 110, 116" after "102(b)".</p> <p>(b) In subclause (2), by deleting "February" and substituting "January".</p> <p>(c) By adding —</p> <p style="padding-left: 40px;">"(3A) Sections 108(a), 109, 110 and 116 shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette."</p>
7	<p>In paragraph (b), in the proposed section 73(5), by deleting "liable to pay or who may have paid the compensation" and substituting "entitled thereto".</p>
11	<p>By deleting the proposed section 117(1B) and (1C) and substituting -</p> <p style="padding-left: 40px;">"(1B) For the avoidance of doubt, it is declared that for the purposes of sections 118, 119, 120 and 121 and without affecting the generality of any other provisions of this Part, "unlawful sexual intercourse" (非法性交、非法的性交) does not exclude sexual intercourse that a man has with his wife."</p>

<u>Clause</u>	<u>Amendment Proposed</u>
12	By deleting the clause.
13	By deleting the clause.
14	By deleting the clause.
15	By deleting the clause.
16	By deleting the clause.
17	By deleting the clause.
Part VII	By deleting the Part.
New	By adding -

**"Occupational Deafness (Compensation)
Ordinance**

**44A. Provisions with respect to the
Board and members thereof**

Schedule 1 to the Occupational Deafness (Compensation) Ordinance (Cap. 469) is amended in section 2 by repealing "Crown" where it twice appears and substituting "Government".

<u>Clause</u>	<u>Amendment Proposed</u>
53	<p>(a) By deleting paragraph (a)(iii) and substituting -</p> <p style="padding-left: 40px;">"(iii) in paragraph (d), by repealing "members and appointed by the President" and substituting "number and appointed by the Council";".</p> <p>(b) In paragraph (a)(iv), by deleting "member" and substituting "number".</p>
New	<p>By adding -</p> <p style="text-align: center;">"75A. The powers of the University</p> <p style="padding-left: 40px;">Section 7(1) is amended by repealing "課程" and substituting "科目".</p>
107	<p>In paragraph (b), in the proposed section 9(6), by deleting "shall" and substituting "may".</p>
108	<p>In paragraph (a), in the proposed section 9A(1B), by adding -</p> <p style="padding-left: 40px;">"(aa) whether the alleged breach has been committed with a dishonest intent;".</p>
126	<p>In paragraph (a), by deleting "and (2)" and substituting ", (2) and (4)".</p>
Schedule	<p>(a) In item 3, by deleting "Secretary for Planning and Lands" and substituting "Secretary for Housing, Planning and Lands".</p>

ClauseAmendment Proposed

- (b) In item 8, by deleting "Secretary for Planning and Lands" and substituting "Secretary for Housing, Planning and Lands".
- (c) In item 11, by deleting everything after "repeal" and substituting ""Secretary for Housing, Planning and Lands" and substitute "Secretary for the Environment, Transport and Works".".

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "Commerce and Industry" and substituting "Commerce, Industry and Technology".
Schedule 1, section 4(2)	By deleting proposed section 8(2A) and substituting - "(2A) The requirement under subsection (2)(b)(ii) is deemed to have been complied with if at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body."
Schedule 1, section 5(2)	By deleting proposed section 9(2A) and substituting - "(2A) The requirement under subsection (2)(b)(iii) is deemed to have been complied with if at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body."

ClauseAmendment Proposed

Schedule 1, section 6(2) By deleting proposed section 11(2A) and substituting -

"(2A) The requirements under subsection (2)(a)(ii) and (b)(ii) are deemed to have been complied with if, at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body."

Schedule 1 By adding -

"6A. Section added

The following is added -

"11A. Director to have access to manifests lodged with Commissioner

The Director shall have access to any information contained in a manifest of cargo that has been lodged under this Ordinance with the Commissioner or with an officer appointed by the Commissioner."."

Schedule 1, section 7(2) By deleting proposed section 15(1B) and substituting -

"(1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may -

ClauseAmendment Proposed

- (a) be given to the member of the Customs and Excise Service in paper form;
- (b) be given or sent to the member of the Customs and Excise Service in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap. 553) in relation to this Ordinance; or
- (c) be sent to the member of the Customs and Excise Service using services provided by a specified body.

(1C) In this section, "manifest" (艙單) means a record prepared as a manifest and containing such of the particulars prescribed under section 17 as the member of the Customs and Excise Service considers sufficient for his purposes."

Schedule 1, By deleting the section.
section 8

Schedule 1, By deleting the section.
section 9

Schedule 1, By deleting the section and substituting -
section 12

ClauseAmendment Proposed**"12. Sections added**

The following are added immediately before section 33 -

"32A. Provision of information where use of services provided by specified body is not practicable

(1) This section applies to any information that under a provision of this Ordinance (a "relevant provision") is required to be given to another person by using services provided by a specified body.

(2) Where the Commissioner considers that -

- (a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given by using services provided by a specified body; or
- (b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the

ClauseAmendment Proposed

information shall be given either in paper form or by using services provided by a specified body,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

32B. Provision of manifest information relating to cargo carried in a road vehicle

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Commissioner or the Director, or to an officer appointed by the Commissioner, by using services provided by a specified body.

ClauseAmendment Proposed

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation."."

Schedule 1, By deleting proposed section 42(1) and substituting -
section 13

"(1) Any provision of section 8, 9 or 11 requiring that information given under those sections be given by using services provided by a specified body shall, in respect of the period specified in subsection (2), but subject to any determination made under section 32A(2)(a) or notice published under section 32B(2), be construed as requiring that the information be given either in paper form or by using services provided by a specified body."

Schedule 2, (a) By renumbering it as section 1(1).
section 1

(b) In section 1(1) -

(i) in the proposed definition of "specified electronic services agent", by deleting "section 2A(2)" and substituting "Schedule 2";

ClauseAmendment Proposed

(ii) in the proposed definition of "specified electronic services provider", by deleting "section 2A(1)" and substituting "Schedule 1";

(iii) by adding -

"manifest" (艙單) means a record prepared as a manifest containing the particulars prescribed under section 17 of the Import and Export Ordinance (Cap. 60) but does not include any record, containing the same or similar particulars, which is not specifically prepared as a manifest;".

(c) By adding -

"(2) Section 2 is amended by adding -

"(3) The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette, amend Schedule 1 or 2; and a notice under this subsection is subsidiary legislation."."

Schedule 2, By deleting proposed section 2A.
section 2

Schedule 2, By deleting the section and substituting -
section 6

"6. Sections added

The following are added -

ClauseAmendment Proposed**"14. Provision of information where
use of recognized electronic
service is not practicable**

(1) This section applies to any information that under a provision of this Ordinance (a "relevant provision") is required to be given to another person using a recognized electronic service.

(2) Where the Commissioner considers that

-

(a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given using a recognized electronic service; or

(b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or using a recognized electronic service,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under

ClauseAmendment Proposed

subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

**15. Provision of manifest information
relating to cargo carried in a
road vehicle**

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Director using a recognized electronic service.

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

ClauseAmendment Proposed

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation."."

Schedule 2 By adding -

"7. Schedules 1 and 2 added

The following are added -

"SCHEDULE 1 [s. 2]

**SPECIFIED ELECTRONIC
SERVICES PROVIDERS**

1. Tradelink Electronic Commerce Limited

SCHEDULE 2 [s. 2]

**SPECIFIED ELECTRONIC
SERVICES AGENTS**

1. Tradelink Electronic Commerce Limited".".

Schedule 3, In proposed section 30A(1)(b) and (2)(b), by adding "、申報"

ClauseAmendment Proposed

section 2 after "陳述" wherever it appears.