

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 7 November 2001**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK

**MEMBERS ABSENT:**

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE LI FUNG-YING, J.P.

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

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

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

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

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

MR RAYMOND YOUNG LAP-MOON, J.P.  
SECRETARY FOR COMMERCE AND INDUSTRY

**CLERKS IN ATTENDANCE:**

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

## TABLING OF PAPERS

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Tax Reserve Certificates (Rate of Interest) (No. 11) Notice 2001 .....	228/2001

### Other Papers

- No. 21 — Occupational Deafness Compensation Board  
Annual Report 2000-01
- No. 22 — Statement of Accounts of the Customs and Excise Service  
Welfare Fund together with the Director of Audit's Report  
(2000-2001)
- No. 23 — Report of the Chinese Temples Committee on the  
Administration of the Chinese Temples Fund for the year  
ended 31 March 2001
- No. 24 — Report of the Chinese Temples Committee on the  
Administration of the General Chinese Charities Fund for  
the year ended 31 March 2001

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. Question time normally does not exceed one and a half hours, with each question being allocated about 12 to 15 minutes on average. The Member who asks a question has priority to ask the first supplementary. Supplementaries should be as concise as possible and Members should not make statements when asking supplementaries.

First question.

**Staff Salary Adjustment Mechanisms of Aided Schools**

1. **MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, with effect from the last school year, recurrent subventions to aided schools are provided in the form of a block grant. Items paid out from the grant includes the salaries of clerical staff and janitors, but not the salaries and allowances of teaching staff. The grant is adjusted annually along with the price changes in the preceding year. As Hong Kong experienced deflation last year, aided schools have accordingly received lesser amounts of grant this school year. As a result, less money is available for paying the salaries of clerical staff and janitors. On the other hand, teaching staff received a salary increase this year in line with the pay adjustment for civil servants. In this connection, will the Government inform this Council:*

- (a) *of the reasons for not adopting the same mechanism to pay the salaries of teaching staff and other staff of aided schools;*
- (b) *of the respective total numbers of clerical staff and janitors currently employed by aided schools; and*
- (c) *of the measures it will adopt to improve the situation in which two different sets of salary adjustment mechanisms exist in a school as a result of the Administration's subvention policy?*

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

- (a) The practice of using a block grant to cover the salaries of administrative/clerical staff and janitors was introduced in secondary schools in 1973 and was later extended to primary schools and special schools. The objective is to allow schools flexibility in determining how ancillary services should be provided. Schools may choose to procure services or directly employ staff. They also enjoy full flexibility over the number of staff to be employed and the terms of employment. Indeed, some schools have chosen to contract out cleansing and security services and reduced the number of directly employed staff. Schools may also keep a surplus up to the equivalence of three months' provision. As a *quid pro quo* to the increased flexibility of a block grant,

schools do not enjoy the same security of financial provision as with a deficiency grant.

Unlike administrative/clerical staff and janitors, there are strict requirements in the Code of Aid governing the establishment and qualifications of teaching staff and the salary scales. Salaries of teaching staff within the approved establishment of aided schools are funded from the Salaries Grant and are paid according to civil service salaries. Teachers' salaries are therefore adjusted in line with the civil service salary adjustment.

In September 2000, the various administration grants and non-salary recurrent grants were consolidated into the Operating Expenses Block Grant (OEBG). The OEBG provides aided schools further flexibility in the use of resources by removing the constraints on transfer of funds among grants in the General Domain (that is, schools now enjoy total flexibility in the virement of funds between constituent grants). It also helps to simplify the administration by integrating the constituent grants, which were introduced at different times in the past and were adjusted using different indices. Under the OEBG, schools are allowed to accumulate a larger reserve equivalent to a maximum of 12 months' provision.

The OEBG for the 2000-01 school year was based on the rates of the constituent grants approved for the 1999-2000 school year, notwithstanding a 4% deflation between 1999 and 2000, as well as the lowering of the mid-point salaries of clerical staff following the review of civil service entry salaries in 2000. For the 2001-02 school year, aided schools received broadly the same provision under the OEBG, as compared to the notional constituent grants had the OEBG not been introduced. This notwithstanding, given the downward adjustment of 1.1% of the OEBG, in line with the CCPI movement, we have, in response to strong requests from schools, made an exceptional one-off advance to aided schools. The allocations to schools for the 2001-02 school year have therefore not been reduced.

- (b) With the introduction of a block grant, schools are no longer required to report to the Education Department the number and salaries of staff employed. However, based on the claims for



provident fund or mandatory provident fund received, we gather that about 12 000 administrative/clerical and janitor staff were employed in aided schools as at September 2001. We do not have any breakdown by rank, as schools have complete discretion in determining the terms of employment which do not necessarily follow the civil service pay scales.

- (c) It is not uncommon for staff of the same organization, including government departments, to have different terms of employment and salary adjustment mechanisms. Contract staff, for example, do not necessarily receive annual salary adjustment during the contract period. We have fully explained in (a) above the reasons for maintaining different subvention arrangements for teaching and ancillary services.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, with respect to part (c) of the main reply given by the Secretary, if there is a strong demand from the school staff to unify the salary adjustment mechanisms, will the Administration reconsider combining the two different practices?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, when we introduced the OEBG arrangement, we had discussed with the School Finance Section of the Advisory Committee on School-based Management and we had consulted representatives from the relevant council and the teachers' bodies. At that time, we noticed that the implementation of school-based management could enable schools to use resources more flexibly and this would be conducive to the overall development of education. It would be rather rash, I believe, if we should abandon this practice when it has operated for only one year. I have already mentioned in the main reply that there are no problems with the finance of many schools in the current year. We would like to observe the situation for one more year, and after we have looked into the audited accounts of the schools, we will be able to ascertain if they are in any financial difficulties.

**PRESIDENT** (in Cantonese): Honourable Members, there are nine Members waiting for their turn to ask questions, so please be as concise as possible when you raise the questions.

**MR SZETO WAH** (in Cantonese): *Madam President, the salary structure of clerical staff and janitors in aided schools was changed without prior consultation with them. Nor was their consent secured. Would the Government inform this Council whether this is a breach of the original employment contract and hence the Government is legally liable for the breach of contract?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, all the staff in an aided school are basically employed by the sponsoring body and the board of directors of the school concerned. So when we looked into the subvention arrangements with the aided schools, we had acted responsibly and discussed with the schools and the representatives of the schools council concerned. As to whether the schools have discussed the matter with their staff, I think that depends on how individual schools will handle the issue.*

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, since the problem has occurred, may I ask how many complaints the Government has received and how are the complaints handled?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, I am aware that school representatives have met with the Director of Education on this issue and I have explained the issue in detail to the representatives from the labour sector and we have looked at some figures together. The Government is ready to assist schools which have practical financial difficulties and examine how their problems can be resolved. However, we have not received any complaints lodged by individual employees directly.*

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, both the papers issued by the Government to the Legislative Council and the administrative circulars issued by the Education Department which I have with me now describe the OEBG as a non-salary recurrent grant. Since it is a non-salary recurrent grant, why are the salaries of clerical staff and janitors included in this grant and treated together with furniture items and school equipment? Is this a typographic error or an error in policy, or is it deliberately put there to*

*mislead the council? If this grant really does not include salaries, then will the salaries of janitors and clerical staff be raised by 2.4% a la that of the civil servants, teachers and school principals?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have no comments to offer on the remarks made by the Honourable CHEUNG Man-kwong just now, for I am not able to check the context of the papers in question. However, I would like to point out that as I have mentioned earlier, under the Code of Aid, as there are stringent requirements on the qualifications of teachers, so the salaries of teaching staff are incorporated under the item of Salaries Grant for distinction purposes. As for the ancillary services in schools, many schools have chosen to contract out these services. Of course, contracting out these services will also involve the work and salaries of the staff concerned, but that does not cover all the salaries payable by schools. When the education sector accepted the OEBG arrangement and also the use of the CCPI as a mechanism to adjust the amount of grant, it had in fact severed the link of any rise the salaries of these staff with that of the Civil Service.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in her reply to the main question raised by the Honourable YEUNG Yiu-chung, although the Secretary mentioned that it was not uncommon for government departments to have different salary adjustment mechanisms, there will be management problems if the teaching staff and the janitors are treated separately in schools, for schools cannot be compared with the Government or some large organizations. In fact, this practice may make the schools themselves .....*

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

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I will come to my supplementary question in no time. What I have suggested earlier is that the practice of treating teaching staff and janitors separately will lead to very substantial management expenses. May I ask the Secretary whether considerations have been made to the management difficulties and operation*

*expenses in schools which will be increased when the two systems operate in schools?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am afraid I cannot comment on what practical difficulties individual schools will face. Take the Education and Manpower Bureau as an example, with respect to the Quality Education Fund, we have employed staff at different times with different remunerations. I think the most important point is that staff should be informed clearly of their relevant situation and hence they are able to hold reasonable expectations and that they are aware of the salary adjustment mechanisms. As regards the day-to-day operation, from the experience of my Bureau, there are not any serious problems.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han, has your supplementary question not been answered?

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I was asking whether such a model of management would incur additional expenses for schools, but the Secretary did not answer this.*

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

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I do not think this will incur additional expenses.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, whenever we talk about the issue of block grant, I would describe the situation as the big unscrupulous employer creating small unscrupulous employers. What I mean is the Government is the big unscrupulous employer turning schools into small unscrupulous employers. Schools are forced to freeze the salaries of their staff out of administrative considerations. May I ask the Secretary, as this system is pegged with the CPI, if this means that clerical staff and janitors will never get any pay rise in real terms? That will be a blow to the morale of the clerical staff and janitors. In view of this, would the Government conduct a review to examine if another system can be put in place to replace the OEBG arrangement so that there will be no adverse impact on staff morale in schools?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I would like to stress that the OEBG is supported and welcomed by the education sector. When the mechanism was introduced last year, it was endorsed by the Finance Committee of the Legislative Council unanimously. There are many ways of implementing the OEBG. Take the amount of OEBG determined by us at that time as an example, it was pegged at the maximum point in the salary scale of comparable ranks in the Civil Service. For the year 2000, the monthly salary of a Workman II was \$10,715, that of a Clerical Officer II was \$14,300, and that of a Clerical Assistant was \$11,820. Many schools prefer to employ an Executive Officer instead of employing 10 clerical staff to provide support to school administration and, in particular, in an attempt to alleviate the administrative workload of teachers. Therefore, we have given schools a lot of flexibility to make better arrangements in respect of their work. As to whether a freeze in salaries is required, we have checked the level of civil service pay adjustments and the CPI for the past 10 years and the figures indicate that there were times when the consumer price index was high but the level of pay rise was low. There were also times when the level of pay rise was high but the consumer price index was low. There is no hard and fast rule on that. So I have stressed repeatedly earlier that when the educator sector accepted the OEBG, it had in fact severed the link of the pay rise of its staff with that of the Civil Service.

**MR JASPER TSANG** (in Cantonese): *Madam President, the OEBG which is provided in the form of a block grant nominally gives a very great degree of freedom and flexibility to the schools, but most if not all of the schools now use the OEBG to employ staff. The Secretary has said earlier that under the OEBG arrangement, the salary adjustments of the staff employed by the schools are decoupled from those of the Civil Service. If the schools have employed some staff on a permanent basis, then these staff will have no opportunities of a pay rise or promotion, for the subvention will not increase with the times .....*

**PRESIDENT** (in Cantonese): Mr TSANG, please come to your supplementary question direct.

**MR JASPER TSANG** (in Cantonese): *If the situation is like this, does it mean that the Government does not approve of schools using the subvention to employ*

*staff? If yes, would the Government remind the schools that once the subvention is used in employing staff, the staff concerned will not get a pay rise in future?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the block grant arrangement is nothing new, I do not know if the Administration has to issue guidelines to remind schools of it, and we have issued too many guidelines indeed. As to whether each school may encounter practical difficulties in operation, I have mentioned in my main reply that when we determined the amount of OEBG last year, we had considered the actual rates of the constituent grants approved for the year before last and the rates were not reduced as a result of the 4% deflation during the period. If we look at the accounts of the schools for the 1999-2000 school year, we will find that as at the end of August in 2000, 99% of the secondary schools and 93% of the primary schools have a surplus of more than \$50,000. There are 21% primary schools and 82% secondary schools with a surplus of more than \$500,000. I think I would observe the financial situation of the schools as at end August 2001 before considering whether or not a review of this subvention system should be made.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. I shall allow one last supplementary question from Members.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, other government departments have set up a outsourcing system to devise criteria to determine salaries and working hours. The Secretary said in reply to supplementary questions earlier that schools might also contract out some services. In view of this, despite the Secretary having said that she would not like to issue guidelines, but as other government departments have issued guidelines on salaries and working hours, would the Secretary tell us whether this will be done for the education sector?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, outsourcing is certainly one of the possibilities. The Administration has formulated a new outsourcing system since May this year and we can certainly furnish the relevant information to the education sector for reference. However, I must iterate that the employment terms of these staff are determined by the board of directors of these schools.

**PRESIDENT** (in Cantonese): Honourable Members, I notice that some Members have put an orange on their desks. I know that there is a meaning to this. However, as we are not in a discussion about fruits, please take the oranges away. I would also like to remind Members that no eating is allowed in this Chamber. *(Laughter)*

Second question.

### **Number of Directorate Officers in Government and Public-funded Organizations**

2. **MR MA FUNG-KWOK** (in Cantonese): *Madam President, regarding the number of directorate officers in the Government and public-funded organizations, will the Government inform this Council of:*

- (a) the total number of directorate officers in its establishment as at 30 September this year; the total respective amounts of salaries and allowances paid to such officers in the previous fiscal year, as well as their respective percentages in the total salaries and allowances the Government paid out in that year;*
- (b) the respective total numbers of persons employed by public-funded organizations and remunerated according to the Directorate Pay Scale as at 31 March each year since 1997 and as at 30 September this year; the total amount of salaries and allowances paid by such organizations to these employees in the previous fiscal year, as well as its percentage in their total staff remuneration cost for that year; and*
- (c) the measures it has adopted to contain or reduce the number of directorate officers in the Government and public-funded organizations, and whether it has assessed the effectiveness of such measures; if so, of the results of the assessment?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, regarding part (a) of the question, the total number of directorate officers in the Government as at 30 September this year was 1 416 (establishment was 1 581).

The amounts of salaries and allowances paid to such officers in 2000-01 were \$1,978 million and \$245 million respectively, correspondingly accounting for 3.5% and 3.9% of the total salaries and allowances the Government paid out in that year. In calculating the total expenditure on allowances in the Government, we included standard allowances, job-related allowances and fringe benefits but excluded pension and contract gratuity. Directorate officers are not entitled to overtime allowance and job-related allowances.

Regarding part (b) of the question, there are quite a large number of organizations receiving recurrent government subvention. These organizations have their own salaries and allowances systems, and do not fully adopt the civil service Directorate Pay Scale. We have inquired of such organizations about the number of their staff with salaries similar to government directorate officers and the related expenditures. The results are as follows:

<i>Date</i>	<i>Numbers</i>
31 March 1998	1 316
31 March 1999	1 367
31 March 2000	1 378
31 March 2001	1 400
31 August 2001	1 419

The amounts of salaries and allowances paid by such organizations to these employees were \$2,043 million and \$1,208 million respectively in 2000-01. These constitute 3.9% and 9.2% respectively of the total expenditures on staff salaries and allowances in these organizations. In calculating total expenditure on allowances in subvented organizations, we have taken into account cash allowances, housing allowances and provident fund expenditures, and so on.

Regarding part (c) of the question, creation of directorate posts in the Government is subject to an elaborate control process. Proposals for creation of directorate posts are subject to funding support in Resource Allocation Exercises and the scrutiny by the relevant Policy Bureau, the Civil Service Bureau and the Finance Bureau. In considering a proposal, the Government examines very carefully the service needs and whether such needs can be met through redeployment of existing manpower. Only cases that are considered fully justified will be supported. For the creation of permanent directorate posts, support for the grading and ranking of the proposed post from appropriate



advisory bodies, such as the Standing Committee on Directorate Salaries and Conditions of Service, has to be sought. Subject to the advice of the advisory body, the Administration will then put up the proposal to the Legislative Council for approval by the Establishment Subcommittee and the Finance Committee. The Finance Committee makes the final decision on whether to create the proposed post.

We believe that the existing checks and balances in the approval process provide adequate control over the size of the civil service directorate. Also, the organization structure and establishment of bureaux/departments are subject to value-for-money studies conducted by the Director of Audit from time to time.

As regards subvented organizations, over 90% of the directorate staff in these organizations are currently employed in the eight tertiary education institutions and the Hospital Authority (HA). The Government would not interfere in the internal management or staffing establishment of these subvented organizations. The relevant Controlling Officers would, however, through the annual budgeting process, set performance targets and standards which these organizations are required to achieve. They will also closely monitor and assess the achievement by these organizations of the targets set.

Under this regulatory framework, these subvented organizations are responsible for the effective planning, resource deployment and manpower planning for delivery of the pledged services, and to achieve value for money in the use of public funds. The above arrangement is to ensure that the Government allows adequate management autonomy to these organizations, so that they can take best advantage of their strengths and flexibility in the provision of public services.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, we know that the directorate staff of a number of public-funded organizations are earning salaries higher than that of our Bureau Secretaries, and that some of these positions are filled by former Administrative Officers who have left the Government. I do not intend to comment on why or how these former government officials take up such jobs. I only wish to ask about the checks and balances mechanism in the approval process for creation of senior posts in the Government mentioned by the Secretary just now, as she has not told us whether a similar mechanism exists in public-funded organizations. How could we ensure that the public-funded*

*organizations would make the best use of the public funds collected from taxpayers rather than expanding excessively into a bureaucratic establishment if these organizations were not subject to any checks and balances? I should like to raise two points here. According to the Secretary's reply just now, if the number of senior posts in the Government had increased by 4.5%, the number of posts increased in public-funded organizations within the same period would be .....*

**PRESIDENT** (in Cantonese): Mr MA Fung-kwok, since you have already raised your supplementary question, the rest is just supplementary information, right?

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, I should like the Secretary to explain why the number of directorate staff in public-funded organizations has increased so significantly.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for the Treasury.

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the first part of Mr MA's supplementary question refers to organizations not receiving recurrent government subvention. The majority of these organizations are governed by their respective ordinances and laws, many of which have specified clearly the mechanism for determining and adjusting the terms of employment of staff working in such organizations.

The second part of Mr MA's supplementary question is related to organizations receiving recurrent subvention from the Government. As indicated in the figures provided in my main reply, the number of directorate staff in these organizations has increased over the past few years. Just now I also pointed out that over 90% of the directorate staff in public-funded organizations were employed in the eight tertiary education institutions and the HA. The Government regulates these organizations mainly through the annual budgeting process and setting performance targets and standards. We will not interfere in the staff establishment of these organizations because we believe this

will ensure that the eight tertiary education institutions and the HA can have the maximum flexibility in providing the public with the services they need.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, the Secretary mentioned in the first paragraph of the main reply that the total number of directorate officers in the Government was 1 416. Now that the Government is studying the system of accountability for senior government officials, may I ask the Secretary whether the Government has set any target during the course of study in respect of the number of directorate officers to be increased or reduced upon the implementation of the accountability system?*

**PRESIDENT** (in Cantonese): Mr HUI Cheung-ching, does your supplementary question have anything to do with the subject of the main question, which is about the number of directorate officers in the Government?

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, since the accountability system is not yet put into operation, may I ask the Secretary whether the Government will consider increasing or reducing the number of directorate officers when it implements the system?*

**PRESIDENT** (in Cantonese): Mr HUI Cheung-ching, please resume your seat first. This is rather marginal, I am afraid I cannot give you my permission to raise it. Please follow up the issue through other channels.

**MR HUI CHEUNG-CHING** (in Cantonese): *Yes, Madam President.*

**MR JAMES TIEN** (in Cantonese): *Madam President, I feel that the Government has time and again submitted to this Council funding proposals for staff expansion, but I have rarely seen the Government submit proposals of downsizing. In the first paragraph of the main reply, the Secretary mentioned that the total number of directorate officers in the Government was 1 416 while the establishment was 1 581. It seems that although the Government is short of 165 directorate officers, it can still do a good job of governing Hong Kong.*

*That being the case, may I ask the Secretary whether the Government will consider simply revising the establishment to 1 416?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I wish to explain that the difference between the total number of substantive directorate officers in the Government and the establishment reflects that there are currently officers acting the vacant posts concerned. In other words, these posts are being filled as acting appointments; there is no question of such posts being left vacant.

**DR RAYMOND HO** (in Cantonese): *Madam President, according to the Secretary's main reply, the number of directorate officers in the Government and public-funded organizations are more or less the same, and so are their salaries. However, there is a big gap between their allowances — the amounts of allowances paid to the directorate staff in public-funded organizations are three times that of their counterparts in the Government. May I ask the Secretary whether it is because the directorate staff in public-funded organizations do not wish to pitch their salaries at too high a level that these organizations have to increase their allowances, thereby making their total income higher than that of directorate officers in the Government?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I am afraid Ir Dr the Honourable Raymond HO has some misunderstanding in the first place. Just now Dr HO said directorate officers in the Government earned more or less the same salaries as their counterparts in public-funded organizations. I wonder whether Dr HO has come to this conclusion upon learning that the amounts of salaries paid to government directorate officers account for 3.5% of the total salaries the Government paid out to civil servants while the amounts of salaries public-funded organizations paid out to their directorate staff constitute 3.9% of their total expenditures on staff salaries. Actually, the two figures represent two different stories. The first figure is worked out mathematically, and it merely tells us that the amounts of salaries paid to government directorate officers account for 3.5% of the total salaries the Government paid out to civil servants. As regards the small difference between 3.5% and 3.9%, it is just a mathematical conclusion and it does not mean the salaries of the two are similar or not. Nevertheless, I believe the thrust of Dr

HO's supplementary question is: Why do the allowances paid by public-funded organizations to their directorate staff constitute 9.2% of these organizations' total expenditures on staff allowances while the allowances paid to government directorate officers account for 3.9% of the total allowances the Government paid out to civil servants? These figures are of course worked out mathematically. Apart from that, as I have particularly pointed out in the main reply, we have not included pension and contract gratuity in calculating the allowances paid to government directorate officers, whereas public-funded organizations have to make monthly contributions to their provident funds. Hence, the amounts of cash flow between the Government and public-funded organizations are not the same. So, this is one factor.

Secondly, as we understand, some public-funded organizations pay their directorate staff cash in lieu of other forms of allowances. This is quite different from the case of government directorate officers, as some of their allowances are paid in kind rather than cash. So, they cannot be compared in a simple manner.

**MISS EMILY LAU** (in Cantonese): *Madam President, according to the Secretary's main reply, the number of directorate officers has been on the increase. In this connection, may I ask the Secretary whether such a rate of increase is consistent with the expansion/downsizing of the Civil Service as a whole, or the number of directorate staff has been on the increase while the rest of the civil service establishment below directorate grade has been decreasing continuously? Could the Secretary also inform this Council of the reason for that?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for the Civil Service.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I wish to elaborate on the figures concerning the Government. Certainly the main reply has not listed the annual increase in directorate officers since 1997, but as Mr MA Fung-kwok has also mentioned earlier, by 30 September this year, the number of directorate officers has increased some 6% compared to the staffing situation on 31 March 1997. This figure represents only the rate of

increase of directorate civil servants. As regards the civil service establishment as a whole, the overall number of civil servants has actually decreased, particularly in the last two years. Following the implementation of the Voluntary Retirement Scheme and the Enhanced Productivity Programme, we have required various government departments to improve their overall efficiency, so the total number of civil servants has thus decreased from over 190 000 in the past to the present level of around 186 000. Our goal is to further reduce the number to 181 000 within 2001. As we have pointed out from time to time that compared to the establishment of 198 000 estimated by us in 2000, we have to cut 17 000 posts in three years' time. So, this is the rate of reduction of the civil service establishment in the next two years.

Having said that, however, I wish to add one point. As also pointed out in the main reply, the creation of additional directorate posts in the Civil Service is to implement policies and discharge duties of a high level. In addition to the Civil Service Bureau and the Finance Bureau, proposals for creation of directorate posts must also require the endorsement by the relevant Legislative Council panels and then the Establishment Subcommittee, before they are tabled before the Finance Committee for approval. The posts to be created are mainly to implement the many policies introduced during the period concerned, including setting up a number of Policy Bureaux and executive departments. I do have some data on hand, but due to the time constraint, I am not going to expound on them here.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not provided us with the relevant figures. Just now the Secretary only mentioned that the number of directorate officers had increased 6%, may I ask him about the rate of reduction of the civil service establishment as a whole?*

**PRESIDENT** (in Cantonese): Secretary, do you have the relevant figures?

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I am afraid I do not have on hand the relevant figures since 1997. I can only inform Honourable Members that for the period between 2000 and 2003, we expect the civil service establishment to decrease by 9%, representing a total of 17 000 posts.

**MISS EMILY LAU** (in Cantonese): *Madam President, may I ask the Secretary to provide us with the figures for a comparison between "oranges and oranges"?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Yes, Madam President, I will work out the figures and present them to Miss LAU later on. (Annex)

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Council shall now move on to the third question.

### **Fire Safety of Buildings with Steel-based Load-bearing Structure**

3. **MR NG LEUNG-SING** (in Cantonese): *Madam President, on 11 September this year, the Twin Towers of the World Trade Center in New York City completely collapsed just over one hour after fires raged in them upon the crash of two aeroplanes into them. It was reported that one of the causes of their collapse was the severe weakening of the load-bearing strength of the towers' steel-based load-bearing structure under extreme heat. Regarding the fire safety of these buildings in Hong Kong designed with a steel-based load-bearing structure, will the Government inform this Council:*

- (a) *of the current number of such buildings in Hong Kong and the districts in which they are mainly located;*
- (b) *whether it has assessed the risk of such buildings collapsing due to failure to resist the strong heat caused by fire or other accidents; if so, of the details; and*
- (c) *whether it has drawn up any escape and rescue guidelines on the courses of action to be taken in the event of fire and other catastrophic incidents in such buildings; if so, of the details?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President,

- (a) We do not keep a database of buildings in Hong Kong according to types of structure. I note, however, that there is no building in

Hong Kong that is similar in structural design to that of the World Trade Center (WTC) in New York.

- (b) We require the structural elements of a building to meet performance standards which are capable of resisting the effects of fire for a specific period of time according to the use and size of the building. The requirements serve to provide sufficient time for occupants to evacuate the premises. The overall assessment is that our buildings are well protected against the effects of heat caused by fire and other accidents that are likely to occur in Hong Kong.
- (c) The Government has drawn up escape and protection guidelines for application during fire and other emergency incidents. We have also made extensive effort to educate the public on what to do in case of fire and other emergency situations to ensure personal safety and to avoid panic.

Regarding rescue guidelines, the Fire Services Department has put in place established departmental procedures to provide for graded mobilization of operational resources, including fire appliances, ambulances and personnel, logistic arrangement, and co-ordination among relevant bureaux and departments, non-government organizations and public utility companies during large-scale or widespread incidents.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, I am very happy to hear the Government say in part (b) of the main reply that generally, our buildings are well protected against the effects of heat caused by fire or other accidents that are likely to occur in Hong Kong. I would like to ask the Government this: With reference to the incident in the United States — of course, the buildings involved in this incident were tall indeed — it took over 45 minutes for the occupants to escape to the ground level. In view of this, have the authorities examined the time required for all the occupants of a high-rise building in Hong Kong to evacuate the premises at one time, or have tests been conducted to ascertain whether the requisite time meets the standard and allows a full evacuation?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, we have not made individual assessments of individual buildings in Hong Kong. But



according to the Building Regulations and the Fire Service Requirements, we are quite confident that there is enough time for the occupants of high-rise buildings to evacuate during incidents of fire or other accidents.

**MR ABRAHAM SHEK:** *Madam President, in part (a) of the Secretary's main reply, it says "I note ..... that there is no building in Hong Kong that is similar in structural design to that of the WTC ..... ". The structural design of WTC is one of the safest in the world, which had survived a bomb-out. Is the structural design of buildings in Hong Kong less safe than that of the WTC?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, it is difficult to compare apples and oranges. The WTC was a very innovative structural model built in the early '70s by the noted architect Minoru YAMASAKI. It was a unique design of a rigid hollow tube of closely spaced steel columns enveloping the entire facade of the building and bearing both the vertical and lateral loads. The floor rested on a system of steel trusses connected between the external columns and the reinforced steel core, leaving out the need for any interior column. In fact, the Twin Towers were the first super tall buildings designed without any masonry except for the flooring. As to the buildings in Hong Kong, even though they may look similar in appearance from the outside, most of the steel-framed structures are integrated with reinforced concrete.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, will the Secretary tell us whether the Hong Kong Government has, insofar as this incident is concerned, taken the initiative to collect the relevant information from the authorities concerned in the United States for future reference and for drawing up precautionary measures?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, the exact cause of the collapse would require in-depth forensic investigation. But finding evidence among the debris which is still currently accumulated at the WTC site and estimated to be over a million tons, is going to be an enormous task. There has not been any official findings on the causes yet, but as soon as they have official findings, I am sure we will look into that.

**MR JAMES TO** (in Cantonese): *Madam President, can the Secretary quantify the situation so that we can see the picture more vividly? For example, with regard to part (b) of the question about the fire resistance standard, to what degrees in temperature can our buildings withstand the extreme heat of burning, or how high the temperature of scorching heat will amount to the effect of 10 aeroplanes crashing into a building, or insofar as the fire resistant structures of our buildings are concerned, how many bomb-filled vehicles will have to crash into the base of a building for it to collapse? Can the Secretary portray a picture for us in this way, so that we will know how safe the structures of our buildings are?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, the objective of stipulating requirements for the structural elements of buildings to resist fire is to ensure that the buildings remain stable for a specified period of time. And this requirement would allow sufficient time for the occupants to evacuate the premises. What we use is the Fire Resistance Period (FRP). For most of the elements of the structure, we have a range of one to four hours depending on the use and size of the building, unit or compartment. I will give some rough examples, but Members must appreciate that these examples are just general in nature. Take for instance a building, unit or compartment for domestic or office use, if its size does not exceed 28 000 cu m, it would have some kind of FRP of less than one hour. A building, unit or compartment for industrial use, also of the same size, would have a FRP of not less than four hours.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, may I ask the Government if our buildings of steel-framed design can withstand such impact as that of the "September 11 incident" in the United States?*

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong, it appears this supplementary question was already asked by another Member earlier on.

**DR TANG SIU-TONG** (in Cantonese): *What I want to know is that as many buildings in Hong Kong are built of a steel-framed design, so in the event of incidents similar to the "September 11 incident", will the whole block of a building collapse or will only one floor of it collapse?*

**PRESIDENT** (in Cantonese): I wonder if the Secretary has such information up his sleeves. Secretary, can you try to answer it?

**SECRETARY FOR PLANNING AND LANDS:** Madam President, I do not think that there is any building in the world that can resist the impact of a 747 plane loaded with jet fuel. *(Laughter)*

**MR ERIC LI** (in Cantonese): *Madam President, I still cannot quite catch it. Earlier the Secretary mentioned that occupants would have enough time to evacuate in case of fire, and he also mentioned the level of fire resistance of some buildings. Is the said time only enough for occupants to leave a fire scene, or is it also enough for them to evacuate in any case where the building runs the risk of collapse? Besides, how can those who are making their escape differentiate whether they are in a situation where the normal time for evacuation during a fire would apply or one where they must take account of the fact that the building may collapse as the building may not be fire-resistant? I think the situation in the United States then was that the occupants were not aware that the building might collapse and they therefore did not evacuate in the fastest speed. How should the occupants differentiate between the two situations?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, under normal devastation, if there is such a thing, there should be sufficient time for members of the public to evacuate from any of the premises that exists in Hong Kong. When the buildings authorities in Hong Kong give out the permits for occupation, they have to ensure that not only are the materials of the buildings properly used that will fit the proper FRP as I mentioned earlier, but there should also be proper means of escape. The buildings concerned would also have to satisfy the Fire Services Department's requirement that there is adequate installation of fire appliances.

**DR PHILIP WONG** (in Cantonese): *Madam President, regarding the estimated time for occupants to evacuate in case of fire, is it calculated on the basis of the speed of able-bodied persons? Has consideration been given to the time required by people with disabilities?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, for a lot of buildings in Hong Kong that are taller than the height that normal fire engines could reach, we have alternative facilities which would allow the fire fighters to reach to the top floors within a minute. So there are ample facilities to evacuate people under different circumstances.

**DR LUI MING-WAH** (in Cantonese): *Madam President, I would like to ask a simple supplementary question about materials. I believe the Government has very rigid stipulations on construction materials. May I ask the Government if there is any stipulation regarding the range of temperatures in which the fireproof property holds? For instance, fuel can burn to some 1 500 degrees and in this connection, for how long can buildings remain fire resistant? Without such stipulation, how will the authorities handle the relevant situation?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, this is getting a little technical. Under normal situation, steel would begin to lose its effect at about 300 degrees Centigrade. The system that we have now is to provide for the FRP of different materials at certain hours. And the designers would be designing the compartments or the particular design in a building according to its ability to resist different temperatures in different situations.

**DR LUI MING-WAH** (in Cantonese): *Madam President, the Secretary did not tell us the temperature at which buildings will become vulnerable. Just now he said 300 degrees Centigrade, which is more or less the same as the temperature of boiling water. The melting point of steel is 1 650 degrees Centigrade, whereas that of aluminium is 660 degrees Centigrade. So, 300 degrees Centigrade should not be a problem at all.*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, what I mentioned earlier is that steel will start losing its properties at 300 degrees Centigrade. As for the comment made by the Honourable Member, what we have for most of the structural requirements is that, we require them to keep a FRP of four hours rising from 0 degree to 1 150 degrees Centigrade.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, I am more concerned about evacuation in case of fire. Earlier on the Secretary said that it would take*

*just one minute to reach the top floors of a high-rise building. In this connection, if firemen could really reach the top floors within one minute in the event of fire, how would they lead the occupants on the top floors to evacuate the fire scene? Can the Secretary explain this in detail?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, let me explain it in detail. Just now when Mr TSANG, the Secretary for Planning and Lands, said that it takes one minute to reach the top floors, he was referring to a fire service requirement. All building plans are required to include a firemen's lift to carry firemen to the top floors within one minute. So, he meant that the lift could reach the top floors within one minute, not that people on top floors can be evacuated within one minute.

There is a diversity of ways to facilitate the evacuation of the people affected. First, there are the fire safety installations, including the automatic sprinkler system, hose reel system, fire hydrant, and so on. Under the regulations, a hose reel system is required for every 30 m; fire hydrants must be installed at staircases where fire hoses can be pulled out for use; firemen should be provided with easy access to the fire scene, such as a lift that reaches the top floors within one minute; there should be designated floors in high-rise buildings for occupants to take refuge, for instance, the provision of one such refuge floor for every 20 floors or so, in order to curb the spread of fire. Obviously, the Fire Services Department does have other facilities, such as the scaling ladder, the cage on the scaling ladder, the inflated rescue cushion onto which evacuators can jump from a height, and so on. All these facilities can be used together in different combinations.

**DR RAYMOND HO** (in Cantonese): *Madam President, I wish to make a declaration first. In the early '80s, the design specifications of steel structures were drafted by the working group for which I was responsible. In part (a) of the main reply the Secretary said that the Government does not keep a database of buildings in Hong Kong according to the types of structure. But given continuous improvements in fireproof materials used to encase steel structures, will the Government consider setting up a database to identify the older types of materials used by steel-based structures and examine if there is a need to conduct more in-depth investigation into the current conditions of such materials?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, we do not have any current intention of looking at all the existing buildings and setting up a new database. But we are in the process of beginning a review of updating the current fire safety requirements. In that review, we would be looking into the latest techniques according to the more recent technology in material science, construction methodology as well as intelligent architecture. I hope that in the process of doing so, we would be able to cover some of the concerns that the Honourable Member has raised.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Council will now move onto the fourth question.

### **Negative Equity Mortgages**

4. **DR YEUNG SUM** (in Cantonese): *Madam President, regarding the residential mortgages with outstanding loans exceeding the respective current market values of the mortgaged properties (commonly known as "negative equity" mortgages), will the Government inform this Council:*

- (a) *of the total number of residential mortgages at present; the number of negative equity cases among them and the total amount of outstanding loans involved, together with a breakdown of these cases by bands of two percentage points of mortgage interest rates;*
- (b) *of the number of negative equity mortgage cases in which the properties concerned are occupied by the homeowners who do not own other properties, and the total amount of outstanding mortgage loans involved; whether a survey has been conducted on the total amount of funds required for providing "mortgage relief" or "refinancing" for these cases; and*
- (c) *how the Administration arrived at its earlier estimate that a commitment of up to \$300 billion in public funds would be needed to assist homeowners with negative equity mortgages, and whether it has plans to introduce more relief measures to help these homeowners?*

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

- (a) According to the results of an ad hoc survey with seven banks (which are active market players in residential mortgage lending) recently conducted by the Hong Kong Monetary Authority (HKMA), presently, the total outstanding balance of residential mortgage loans (RMLs) is approximately \$540 billion, representing around 460 000 cases. It was estimated that the total number of RMLs in negative equity was around 65 000. By negative equity, we refer to cases where the amount of outstanding loans exceeds the current market value of their property. As to negative equity cases involving a second mortgage, there are about 21 000 cases and the outstanding amount of loans is about \$35.8 billion. 5 400 cases have been included in the 65 000 cases above. In other words, the number of negative equity cases including first and second mortgages is probably about 81 000 and the outstanding amount of loans is about \$150 billion. On the basis of a survey conducted by the HKMA, the breakdown by interest rates charged to homeowners on first mortgage is set out in the Annex for reference by Honourable Members.

Overall speaking, the average rate of the above loans was approximately at Best Lending Rate (BLR) minus 0.27%. The percentage of negative equity homeowners who have their mortgage interest rate charged at BLR or below is 66.4%.

- (b) According to the results of the HKMA's monthly residential mortgage survey, an average of more than 98% of new loans approved during the month is used for the purchase of owner-occupied properties. It is therefore reasonable to conclude that most of the above RMLs in negative equity are occupied by the homeowners themselves. However, the HKMA's survey does not cover information on the number of properties owned by the same owner, and banks do not have information on the status of property ownership of individual client. In addition, the financial position of individual negative equity homeowners differs from the requirements of banks in providing re-financing loans, therefore, it is very difficult to estimate the amount of fund required for

providing re-financing loans to those negative equity owners whose properties are self-occupied or who have no other properties.

- (c) As to the report on the \$300 billion fund for assisting negative equity owners, I would like to point out that this figure does not come from government prediction. This figure was raised by a member of the public during his meeting with the Financial Secretary earlier on.

The Government understands well the difficult position of negative equity owners. What the Government has done is to provide tax relief by raising the tax-deduction ceiling for housing loan interest to \$150,000 from \$100,000. Apart from this, the HKMA has relaxed the restriction of 70% loan-to-value ratio to 100% for RMLs in negative equity when they seek re-financing from banks. Subsequent to our discussion with the banking sector, quite a number of banks have introduced various plans with a view to alleviating the burden of the negative equity owners in meeting the monthly mortgage repayment. Such plans include reducing mortgage interest rates and restructuring mortgage loans through, for example, lengthening the period of repayment of loans or repaying the interest before the principal.

Annex

Residential Mortgage Loans in Negative Equity  
Breakdown by interest rates charged to homeowners

	<i>Number of cases</i>		<i>Outstanding balance (\$ billion)</i>
	<i>Number</i>	<i>Percentage</i>	
(i) BLR + 2% or above	200	0.3%	3
(ii) BLR + 1% or above up to below BLR + 2%	3 000	4.6%	53
(iii) Above BLR up to below BLR + 1%	16 800	25.8%	325



	<i>Number of cases</i>		<i>Outstanding balance</i>
	<i>Number</i>	<i>Percentage</i>	<i>(\$ billion)</i>
(iv) BLR	10 100	15.6%	175
(v) below BLR up to below BLR - 1%	10 500	16.1%	200
(vi) Below BLR - 1%	22 600	34.7%	485
(vii) Others (for example, fixed rate)	1 800	2.9%	29
	65 000	100%	1,270

Note: BLR = Best Lending Rate

**DR YEUNG SUM** (in Cantonese): *Madam President, the HKMA has really relaxed the restriction of 70% loan-to-value ratio to 100% for RMLs in negative equity and some banks have introduced similar re-financing arrangements. But it is not too helpful to people who really own negative equity because they basically do not have the money to pay the value difference. According to the figures given by the Government, over 30 000 households, more than 40% of 60 000 households, pay interests at or above the BLR. Could the Government give them assistance so that they only have to pay interests at the market mortgage interest rate, that is, the BLR (or P) minus 2.5% to 5%?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I have just said what the Government could do. After some Members have proposed setting up a mortgage relief or re-financing fund by the Government, we have considered the proposal but at the same time the Government has repeatedly stated that it is inadvisable to set up a re-financing loan fund with public funds since there will be financial and moral risks. We think we had better leave it to the banks to consider taking more measures in certain aspects. I have just said that banks introduced many new plans in the past few weeks. The Chairman of the Hong Kong Association of Banks had told Members a few days ago that banks were very willing to do more. For instance, they would adopt the approach just mentioned by Dr YEUNG to help homeowners with negative equity mortgages. It is certainly most effective for

banks to put forward different interest options. At present, it should be most effective to consider extending the period of repayment of loans. Actually, some banks have already extended the repayment period to 40 years. If these measures were really implemented, it would certainly help homeowners with negative equity mortgages. An alternative is to allow these homeowners to repay the interest before the principal, reducing the repayment amount by 30% or even 50%. We are very glad to see that some banks have begun to take these measures. Of course, the HKMA would take matching actions, for instance, it would continue to negotiate with the Housing Authority (HA), the Hong Kong Mortgage Corporation Limited and the Hong Kong Association of Banks to find out how more measures can be introduced to help homeowners with negative equity mortgages.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the data on negative equity mortgages are always changing and updated and we wonder if we should believe in such data. The measures provided by the Government to assist homeowners with negative equity mortgages are not really helpful. After drawing a lesson from its bitter experience, would the Government consider introducing specific measures so that banks would not fail to do what they said and would practically help homeowners with negative equity mortgage in re-financing loans? At present, the most important problem is: if homeowners with negative equity mortgages carry poor repayment records, many banks would reject their applications for re-financing. For instance, in some cases, homeowners with negative equity mortgages are still paying interests at P plus 2% or even P plus 4%, and banks have also refused to negotiate re-financing arrangements with them. Concerning these cases, what measures does the Government have to urge banks to sincerely assist these owners in re-financing? Would the Government consider introducing measures similar to the Home Starter Loan Scheme, for instance, lending \$600,000 in a lump sum to homeowners with negative equity mortgages to help them tide over the difficulties?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I would like to thank Mr CHAN for his supplementary question. I have just stated how we could relieve the burden of homeowners with negative equity mortgages. In fact, the Government, banks and the homeowners concerned have to solve the problems together. I have just stated what the

Government could do. I fully agree with Mr CHAN that it is very important for banks to try their best to help. Mr CHAN also attended the relevant meeting the day before and he must have heard Mr Peter WONG say that banks and homeowners with negative equity mortgages were in the same boat. If all repayments for negative equity mortgages were discontinued, these flats would turn into default properties and banks would not stand to gain at all. Under this premise, banks are very willing to try their best to assist. I have just made the points made by the Hong Kong Association of Banks here on Monday. It is most important to adopt practical measures to give homeowners with negative equity mortgages genuine assistance. For instance, extending the repayment period of loans to 40 years or repaying the interest before the principal. These most effective measures can reduce their repayment amounts within a short period (for instance, in the next few months) so that they would really have a breathing spell. To do more, as I have just said, the HKMA has promised to reconsider with the HA, the Hong Kong Mortgage Corporation Limited and the Hong Kong Association of Banks the cases of homeowners with negative equity mortgages on HA flats for which Members have expressed concern or other homeowners, to find out in what ways more measures can be taken.

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

**MR ALBERT CHAN** (in Cantonese): *The Secretary has not answered whether the Government would consider the provision of \$600,000 loans.*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): I have actually given an answer when I answered Dr YEUNG's question and the same answer applies to this supplementary.

**MR HENRY WU** (in Cantonese): *Madam President, the Government has stated in part (c) of the main reply that the "HKMA has relaxed the restriction of 70% loan-to-value ratio to 100% for RMLs in negative equity when they seek re-financing from banks", and many banks have introduced certain plans. As far as I understand it, though the HKMA does not disagree that banks could deviate from the so-called 70% loan-to-value ratio guideline when making re-financing*

*arrangements, it has concurrently required banks to continue to observe the prudent lending standard, especially the repayment-to-income ratio. Can the Government brief this Council on the repayment-to-income ratio? If the party concerned fails to comply with such standard as a result of wage reduction or unemployment, how can the Government give them assistance so that they will not become homeless or street sleepers after their failure to benefit from the relaxed measures of banks?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): I would like to thank Mr WU for his supplementary. In fact, Mr WU also asked this question on Monday and I remember that the Hong Kong Association of Banks and the HKMA had responded. In general, the ratio is around 50%, but it is just a guideline for reference by banks. Certainly, it is best for banks to consider what they should do from the commercial angle. I remember that the Hong Kong Association of Banks replied on Monday that banks would practically consider the matter from a commercial angle. If they believed that it could be done, they would definitely do it. Thus, banks are not necessarily so rigid that they would confiscate the flats or take other actions once the repayment amounts exceed 50% of the income of the mortgagees. Banks have also stated that, under the current circumstances, they would evaluate every case in a pragmatic and flexible manner.

**MR ALBERT HO** (in Cantonese): *Madam President, in part (c) of his main reply, the Secretary has said that the Financial Secretary has referred to a commitment of up to \$300 billion, a proposal which was in fact made by a member of the public to the Financial Secretary earlier on. I do not query this fact but I know very clearly that the Financial Secretary has really told the media that a commitment of up to \$300 billion would be required if the Government were to assist all homeowners with negative equity mortgages. The Government cannot give them financial support since an enormous sum would be involved. The figure appears to be overly exaggerated. I am not sure if the Financial Secretary has to clarify the fact just mentioned by me. If not, I wish to ask the Government to pledge that it would certainly base on some surveys and researches if it wish to cite certain figures in future. The Government should never incorrectly relay an erroneous message and base on the remarks of the public to support its administration for the public might then be misled.*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I have never said that a commitment of up to \$300 billion would be required. A member of the public said an analyst had stated that a commitment of up to \$300 billion would be required and I was just quoting his remark.

**MR MICHAEL MAK** (in Cantonese): *Madam President, has the Government estimated how many homeowners with negative equity mortgages would make bankruptcy petitions because they cannot bear the burden? If they make bankruptcy petitions, what would be the effects on the property market and banks?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I think nobody can come up with an accurate estimate of the relevant figures. But the overall bad debt rate of mortgages of banks and discontinuation of repayment may be taken as an indicator for reference. In this connection, the latest figure is around 1.28% annually.

**MR JAMES TO** (in Cantonese): *Madam President, I wish to follow up the supplementary question just asked by the Honourable Albert HO. I wonder if the Government, especially the Financial Secretary, knows that his remarks are authoritative. If he was quoting the remark of an analyst, had the analyst submitted the report to the Financial Secretary for perusal? If the Financial Secretary has read it, does the Financial Secretary agree with him or has he quoted the remark on a certain basis? Otherwise, people would say in their discussion of the matter that the Financial Secretary has said that a commitment of up to \$300 billion would be required. What could be done then?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I remember that I was attending a forum for discussion with the public on that occasion. A member of the public said that he had read that an analyst had stated that a commitment of up to \$300 billion would be required. I was not the one who said that a commitment of up to \$300 billion would be required.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, the Secretary has stated in part (a) of his main reply that the number of negative equity cases is*

*probably about 81 000. May I ask the Secretary whether these 81 000 cases include homeowners who have bought secondary market flats? Many of them have not obtained first or second mortgages from banks but they have paid a lot of money out of their own pockets. With a plummeted market, the property prices of secondary market flats have fallen even more sharply. Has the figure included these homeowners?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): I would like to thank Mr SHEK for his supplementary. I have included these homeowners in my reply. Provided that they have borrowed from banks and the properties are self-occupied, the second-hand flats mentioned by Mr SHEK just now have been included in my reply.

**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. Council will now proceed to the fifth question.

### **Implementation of Early Retirement Scheme in Hong Kong Institute of Education**

5. **MR SZETO WAH** (in Cantonese): *Madam President, regarding the implementation of the early retirement scheme in the Hong Kong Institute of Education (HKIED), will the Government inform this Council:*

- (a) of the details of the processes involved in the formulation of the scheme, including the means of consultation with the staff of the Institute and the roles played by the relevant bureau and government departments in the processes;*
- (b) of the respective establishment of lecturers in each academic department of the Institute as at 23 October this year, the numbers of lecturers on contract and pensionable terms in the respective establishment, the numbers of lecturers who joined and those who left the department in the past three years; as well as the long-term development needs of the various departments and whether, in determining these needs, consultation with the staff has been included; and*

- (c) *whether it knows if the Institute has assessed if it is a feasible arrangement to first allow the staff to express their interest in participating in the scheme on their own initiative and then let the management select which of them should retire early, and the impact of the scheme, upon implementation, on the image of the Institute, the morale of lecturers, the interests of students and the quality of teaching; if it has, of the results of the assessment; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the HKIED is one of the eight higher education institutions funded by the University Grant Committee (UGC). As with other UGC-funded institutions, the HKIED enjoys academic and institutional autonomy and the Administration does not interfere with its management.

During the HKIED's design and implementation of its Management-initiated Retirement Scheme (MIRS), the HKIED has sought the Administration's advice regarding pension arrangements for staff who are ex-civil servants transferred from the former Colleges of Education to the HKIED when the latter was established in 1994. With the UGC Secretariat's co-ordination, the Education and Manpower Bureau, the Civil Service Bureau, the Finance Bureau, the Treasury and the Education Department have provided input regarding pension, financial and accounting arrangements.

The Administration supports in principle the HKIED's initiative to upgrade itself, through the implementation of an MIRS, to meet the requirements to confer degrees. The design and implementation of the retirement scheme are entirely matters for the management of the HKIED. Based on the information provided by the HKIED, I would like to respond to the Honourable SZETO Wah's enquiries as follows.

- (a) The HKIED has been aware for a few years of overstaffing in certain teaching areas and understaffing in others, which has posed a constraint on the Institute in making teaching arrangements. As society's expectations of the quality of education rises, and to meet the target that by 2004-05, all primary and secondary teacher training graduates will be degree holders, the Institute's Council began consideration of an early retirement scheme in 1999. The

Institute initially considered the possibility of a voluntary Induced Early Retirement Scheme (IERS), and held numerous discussions with the Association of Lecturers of the HKIEd (AL) and open forums with staff.

In early 2001, the Institute decided to implement a MIRS because only through this scheme can it ensure that the appropriate staff members will retire early and that staff transferred from the former Colleges of Education who may be retired can gain immediate pension. In early March 2001, the Institute management discussed with staff and the AL on the MIRS. An open staff forum was held, at which initial thoughts on the possible criteria and procedures for a MIRS were discussed. Emails were also sent to all staff members to solicit their views on the MIRS.

In June, the Staffing Committee of the HKIEd Council met twice to consider the proposal to implement the MIRS. The Staffing Committee took into account the future development of the Institute and the views of staff and the AL. In early July 2001, the HKIEd Council held a special meeting to consider the MIRS, and resolved to implement the Scheme. Staff members are represented on both the HKIEd Council and the Staffing Committee.

The Government and the UGC formally accepted the financial commitments of the scheme in early August. All staff were immediately given full details of the scheme. When the detailed financial arrangements were confirmed in mid-September, the Institute began to inform individuals who had been provisionally identified for early retirement. The timing was designed to avoid a situation of continued anxiety and uncertainty for all staff for a prolonged period. On 21 September, the Director of HKIEd further announced that all who had been provisionally identified had been informed.

- (b) There are a total of 15 academic departments and centres, with strength ranging from one to 65 as at 23 October 2001, adding to a total of 380. Of these, 144 are contract staff and 236 are transferred and superannuable staff. A total of six, 11 and seven academic staff members joined, and 11, eight and five left the



HKIED in the 1998-99, 1999-2000 and 2000-01 academic years respectively.

The long-term academic development needs of the Institute were formulated in consultation with individual departments/schools within the Institute, involving academic staff and subsequently agreed with the UGC.

- (c) In deciding to adopt a MIRS, the HKIED has carefully considered the impact of implementation of the scheme on the future development of the Institute, staff morale, the interests of students, the quality of teaching, and so on. The HKIED management has been maintaining dialogue with the staff and the AL in order to minimize any negative impact. Indeed, as proposed by the staff, the HKIED has engaged a human resources consultant to help implement the scheme, and has been according priority to safeguarding the interests of students and the staff members concerned. The HKIED Council unanimously decided on 31 October 2001 that the MIRS should continue to be implemented, and that a working group comprising a non-staff Council Member as Chairman, two members of the management, and the President and Vice President of the AL should be set up to help make the best possible exit arrangements for the retiring staff, and to assist them in seeking alternative employment.

**MR SZETO WAH** (in Cantonese): *Madam President, the Institute's Council formed a five-member working group on 31 October to consult with those staff affected, in order to identify ways to solve their problems and to assist them in seeking alternative employment. But the Deputy Director of the Institute, Mr Norman NGAI, who was also a member of the working group publicly announced after the Institute's Council meeting and before the working group met that the HKIED would not guarantee it would find work for the lecturers affected. Will the Government inform this Council whether his views represented those of the Institute's? If so, had the Institute a predetermined stance? The five-member working group had not met then. How could he know its stance? If, however, his views did not represent views of the Institute or of the five-member working group, then had he made a blunder or been guilty of dereliction of duty? Would his comments affect the image of the HKIED and spoil the atmosphere of the*

*consultation between the HKIEd and the lecturers? Should he be made to shoulder the responsibility for the consequences thus arising?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe what Deputy Director NGAI said reflected the views of the discussions of the Institute's Council on that day, which were carried out in a very harmonious and constructive manner. Representatives of the students and staff were present at the meeting. At the time, participants indicated in good faith that every effort should be made to help those affected staff find alternative employment as far as possible. Indeed, possibilities include: firstly, such staff may be accorded priority if they are found suitable for vacancies arising from new courses organized by the Institute; and secondly, staff may be referred by the Institute to suitable posts in other institutions should they arise. But then the Institute made it abundantly clear that it could not actually guarantee that it could help all staff so affected find alternative employment. Nevertheless, the Institute would do its best and would in good faith make recommendations and arrangements for the staff. Thus, Deputy Director NGAI's remarks reflected the views of the Institute's Council, which were unanimously accepted by the Council, staff representatives included.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the Secretary's main reply said the MIRS was management-initiated. In fact, when the scheme was first mooted, I trust many people interpreted it to mean that if a staff member were willing to retire, he/she could apply for early retirement, that is, the scheme would be staff-initiated. Now, obviously, as emphatically stated in the Secretary's main reply, it was a management-initiated retirement scheme, which ultimately failed to gain support from the staff. Opposition was even raised by staff, but the Institute decided to go ahead nonetheless. This was obviously a high-handed move by the management. Will the Secretary inform this Council whether the Government would support the high-handed stance of the Institute in implementing the MIRS? When the MIRS was implemented and dissatisfaction caused among the staff, would the Government have the responsibility to handle the problems thus arising?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as I indicated unequivocally in my main reply, the HKIEd had

been aware of a mismatch in teaching professionals: there were overstaffing in certain teaching areas and understaffing in others. If we just implemented a voluntary IERS, we might not be able to solve the problem of mismatch. Thus, it was necessary for the management to define where there was overstaffing and then to retain those who are most suitable to stay and invite others to retire early. I think this is an inevitable reality. Moreover, staff who were formerly civil servants choosing to leave may draw their pensions immediately. This has the same effect of a MIRS initiated by the Government. After the MIRS is accepted by the staff, they may draw pensions immediately. It was out of these two considerations that the HKIED decided to leave it to the management to decide who should retire, which was a position supported by the Government.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, part (a) of the main reply said that the HKIED had been considering a retirement scheme from 1999 to August 2001. Will the Secretary inform this Council whether she was aware that the Institute implemented the scheme after the start of the school year in mid-September? If yes, why did she not request the Institute to advance the implementation of the scheme to a date before the start of the school year, that is, before classes began, so that lecturers did not have to be asked to suspend their lectures while they were teaching? If she was not, why did she not inquire with the timetable for the implementation of the scheme?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe the actual arrangements, that is, whether lecturers had to be requested to suspend their lectures and leave their classrooms was the subject of a letter of apology issued by the Director of HKIED to all staff. The Institute also felt that the arrangements were not entirely appropriate. At the moment, all staff who are asked to retire early may choose to leave the Institute at the end of June next year.

The time taken to consider the retirement scheme, that is, from 1999 to 2001, was rather long mainly because the Institute had to look into several options, conduct enormous consultation and consider whether a voluntary retirement scheme would fit the future development of the Institute. In August 2001, the Institute submitted a proposal to the Government and secured financial commitment from the Government. Should the Institute shelve the matter in August and wait till the end of the school term the following year before

announcing the proposal, or should it announce the plan immediately after the Government had made the commitment? Well, the Institute chose to announce the plan in September to its staff immediately after receiving a reply from the Government in August. Nevertheless, the Institute has now decided to allow the relevant staff to continue with their work until the end of the school year next year before they formally leave the Institute.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the term "early retirement scheme" is very good to the ear but in fact it means layoff, sheer layoff. In this incident concerning the Institute, the Government was criticized for taking the lead to lay off its employees. Will the Secretary inform this Council whether the Government or the UGC will learn a lesson from the incident so that in future they will not use layoff but the milder option of voluntary retirement to deal with the mismatch as mentioned by the Secretary a moment ago? This suggestion of course covers the HKIEd and other tertiary institutions.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, in fact I have repeatedly explained why the HKIEd had to leave it to the management to determine which employees should retire. Education is a great concern to the community and we have a timeframe within which the Government expects that all teacher-training graduates should be degree-holders by the school year 2004-05. Given this timeframe and basing on a four-year university curriculum, the HKIEd must recruit suitably qualified lecturers at an early date for the degree courses. Thus, I trust what the HKIEd's action was a painful but necessary step.*

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, in the answer provided by the HKIEd, some important facts had been covered up. The main reply mentions that the early retirement scheme was passed by the Institute's Council and staff members were represented at the meetings. However, it was not said that the three popularly elected staff representatives unanimously opposed the proposal. The main reply also said emails were sent to staff members to solicit their views on the MIRS, but it did not say most staff also sent emails to oppose the scheme. The Government also indicated that the early retirement scheme was entirely a matter of institutional autonomy of the HKIEd. Would the Government tell this Council if institutional autonomy were*

*a talisman against sanctions as a result of wrong-doing? Are lecturers and popularly elected lecturers' representatives in the Institute's Council part of the Institute? Why were their views not part of institutional autonomy? Why were the views of the dismissed staff not respected? Why were their dissenting views not mentioned at all in the main reply provided to this Council today? Was the omission deliberate?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Government has on hand replies from the HKIEd stating the procedures adopted. I believe when the interests of some staff are affected, understandably dissenting voices will arise. However, the Institute's Council has to be held accountable to the community for the future development of the HKIEd, the enhancement of the quality of education and improvements to the educational system of Hong Kong. As the Director of the HKIEd said at a meeting of the Panel on Education in the Legislative Council, this was a painful decision made with enormous reluctance, in the interest of the public and the students. To cope with staff opposition against the scheme, a working group has been formed for the specific responsibility of co-ordination and negotiation. I think the retirement arrangements and compensation package offered to the staff are basically very reasonable. As regards arrangements for alternative employment, the HKIEd is trying its best to assist the staff concerned to find jobs elsewhere.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the Secretary has not answered my question. It is certainly not surprising for employees to hold dissenting views but why have their views not been included in the main reply today? The main reply just mentioned that staff members were represented at the HKIEd Council and emails were sent to all staff members to solicit their views. Why did it not say they had voiced their dissenting views at the HKIEd Council meeting and expressed their oppositions through emails? Let me ask this one last time. Why were their dissenting views not included in the reply but were simply brushed aside?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the main question is about the details of the process involved in the formulation of the scheme. I trust the HKIEd has indeed provided such

details. The Government has not re-examined the views for and against the scheme, but that is outside the scope of the present question.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Council will now proceed to the last oral question.

### **Creation of Job Opportunities in Public Sector**

6. **MR FREDERICK FUNG** (in Cantonese): *Madam President, the Chief Executive undertook in his policy address 2001 to create over 30 000 job opportunities in the public sector. In this connection, will the Government inform this Council of:*

- (a) *the number of new job opportunities that will be created in the coming 12 months; the detailed timetable for creating the remaining job opportunities; and*
- (b) *any further measures it will take to reduce the unemployment situation aggravated by the deteriorating economy?*

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

- (a) The Chief Executive announced in his policy address 2001 that where it is consistent with our long-term development needs, the Government will seek to create more job opportunities.

Of the 30 000 or so job opportunities mentioned in the policy address, it is estimated that more than 6 600 will be created by April next year while another 18 000 will be created in 2002-03. This means that a total of 24 000 new jobs will be created by 2002-03 which will help alleviate the unemployment situation. The remaining 8 000 or so jobs will be created during or after 2003-04. Details of the job opportunities to be created are shown at the table attached.

- (b) The Government is closely monitoring the economic situation in Hong Kong. It would not be appropriate at this stage to form any rash conclusion on our future development. As unemployment is expected to worsen in the near future, departments concerned are now studying ways to further expedite and to create, as far as possible, job opportunities in needed areas. Feasible proposals to tackle unemployment will be further discussed by the Task Force on Employment led by the Financial Secretary at a meeting to be held in late November.

On the education and manpower front, we are taking steps to open up job opportunities in personal care, domestic helper and security services for job seekers with low education background. We will further reduce the number of imported care workers admitted under the Supplementary Labour Scheme. We will also join hands with the Employees Retraining Board and some training bodies to improve the employment prospect of local domestic helpers. Regarding security services, we will request relevant departments, in assessing bids from contractors, to pay due regard to the proposed salary levels and to consider reducing the working hours of security personnel. This will have the effect of increasing job opportunities. In addition, the Immigration Department, the police and the Labour Department will also step up efforts in joint raids and operations to eliminate illegal employment black spots to protect the employment opportunity of local workers.

Unemployment in Hong Kong is, to a considerable extent, caused by the global economic downturn. Take the unemployment figures in the third quarter as an example. As a result of the impact of the "September 11 incident" and the ensuing events, unemployment in industries related to external trade and travel has showed a marked increase. Furthermore, in the course of our transformation into a knowledge-based economy, workers with a lower education level and traditional skills will have greater difficulties in coping with the changing demand of the labour market, and this has aggravated the problem of manpower mismatch.

As a result, we have to change the traditional mode of education and equip the new generation with a creative mind and the abilities of

self-learning and adaptation in the long run. Greater emphasis has to be put on vocational training to help the employed and the unemployed to cope with the demands of a knowledge-based economy. These are the ultimate solutions to the unemployment problem. We are currently reviewing the entire training and retraining framework to ensure resources are used more effectively. We are also actively preparing for the establishment of a continuing education fund in order to encourage lifelong learning and foster the economic restructuring of Hong Kong.

Annex

*Timetable of Jobs Creation under policy address 2001*

	<i>Total</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003 and after</i>
Works Projects	20 000	2 000	11 400	6 600
Housing Department Estate management services	4 000	900	1 600	1 500 (up to 2006)
Education, medical and health sectors, welfare, and so on	6 100	1 100	5 000	—
Environmental cleansing	2 600	2 600	—	—
	32 700	6 600	18 000	8 100

Note: the above are estimated figures

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the distribution of the 32 700 jobs to be created is shown at the Annex to the main reply given by the*



*Secretary. I note that all these jobs will be created for the purpose of carrying out the Government's scheduled and essential work. Will the Government inform this Council whether it will consider creating some essential but not necessarily urgently needed services that can boost job opportunities or posts to, for instance, carry out street-greening by planting more trees, or consider expanding the number of members of street cleansing teams from two to three as the streets of Yau Ma Tei, Tsim Sha Tsui and Mong Kok are now dirtier than before, or recruiting teaching assistants, or setting up additional building repairs teams?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, all these 30 000 or so job opportunities comply with the standard cited by Mr FUNG earlier. This means that they are essential but not necessarily most urgently needed. However, for the purpose of ameliorating the unemployment problem, we have to strengthen such services as greening, street cleansing, and so on, and implement measures to relieve the working pressure of teachers, as mentioned by Mr FUNG earlier. I have also pointed out in the main reply that various Policy Bureaux and departments will continue their effort to create job opportunities in work areas where it is still necessary to create and expedite job opportunities.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, in part (b) of the main reply, the Government undertook to study ways to further expedite and to create, as far as possible, job opportunities in needed areas. Will the Secretary inform this Council of the Government's objectives and timetable, and the amount of money to be injected for this purpose?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as a first step, we should look at the needs of various government departments. For the time being, no definite or compulsory predetermined targets have been set.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, my supplementary question can be divided into three parts: first, the timetable; second, the amount of money to be injected; and lastly, if the amount of money to be injected is still unknown, what is the number of job opportunities to be expedited and created?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I think I have answered this question. My reply is: we have to look at our needs and then the amount of time available before we can calculate the requisite funds.

**MR ANDREW CHENG** (in Cantonese): *Madam President, I would like to raise a supplementary question with respect to the Annex to the main reply. As mentioned by the Honourable Frederick FUNG in his supplementary earlier, we are worried that these 30 000 or so job opportunities are actually jobs already committed by the Government earlier. Furthermore, of the 4 000 or so Housing Department estate management posts to be created, 1 500 will not be created until 2006. The fact that the Chief Executive mentioned in the policy address the need to create more job opportunities has obviously shown that he is determined to provide immediate remedy to the existing unemployment problem. Why would some jobs not be created until 2006 (five years from now)? Does the Secretary realize that distant water cannot put out a nearby fire?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, let me first clarify that these 30 000 or so jobs are all newly created. They have nothing to do with those job opportunities committed by the Government last year. They are truly additional posts. The 32 000 or so job opportunities mentioned by the Chief Executive in the policy address are set out in the Annex. As regards the issue raised by the Honourable Andrew CHENG with respect to "distant water" and "a nearby fire", we will seek to put out "a nearby fire" with "nearby water" through the creation of 6 600 or so jobs. Another 18 000 jobs will be created in 2003. Of course, views on the adequacy of these jobs may differ.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the Secretary has given a relatively general reply to the question concerning the number and the timetable of the job opportunities to be created. Last year, this Council passed a motion on helping the young people to seek employment. Are some of the job opportunities to be created specifically intended for the young people?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, for the purpose of preventing age discrimination, we have not

created any job opportunities specifically for a certain age group. Employers may recruit any candidates deemed suitable. There are no specific classifications. I believe many types of work are equally suitable for people of different age groups.

**MR HENRY WU** (in Cantonese): *Madam President, the scope of work related to the four main types of jobs to be created, including works projects, education, medical and health, and so on, is set out in the Annex provided by the Government. Will the Secretary inform this Council whether breakdowns of these major types of jobs are available? To avoid any misunderstanding, I would like to cite an example to illustrate my point. For instance, it is obviously essential to further break down works projects into such jobs as formwork, steel reinforcements fixing, and so on. Are the respective numbers of such jobs available? If not, how can the Government come up with the 32 700 job opportunities? Actually, some types of work may put emphasis on physical strength, while others on professional skills or experience. While the Government has promised to take care of people with a lower education level and create job opportunities for them, will it create job opportunities for those with higher education qualifications as well?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, I have undertaken in the Panel on Manpower that breakdown details on various jobs, such as the number of jobs created, their ranks, and so on, will be submitted by late March 2002. Nevertheless, I would like to draw the attention of Honourable Members to the fact that, with the exception of 800 civil service posts, the majority of the 30 000 jobs are outsourcing posts. It will be up to the contractors to choose the types of workers they would like to recruit. Furthermore, there is a wide range of work categories. For instance, even such professional posts as medical practitioners are included. On the other hand, some of the work can be taken up by low-skilled people of a lower level of qualification.*

**MISS EMILY LAU** (in Cantonese): *Madam President, the Chief Executive mentioned in the policy address that 30 000 jobs would be created. In paragraph 96 of the policy address, he added that the Government would seek to create more short-term jobs. Is the Secretary aware that the expression*

*"short-term" may mean an agreement that lasts only one month and thus 12 job opportunities can be created within a year? During a meeting held with the Financial Secretary on 11 October, the cross-party alliance of this Council requested the Government to investigate the matter thoroughly and state whether it supports these short-term job opportunities.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am afraid I have no specific information about this. Since Miss LAU has already reflected her view to the Financial Secretary, I believe follow-up action will definitely be taken. On the education front, I dare guarantee no such short-term jobs are available.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary pointed out that the Immigration Department, the police and the Labour Department will step up efforts in joint raids and operations to eliminate illegal employment black spots to protect the employment opportunity of local workers. I understand that some of these illegal workers are smuggled into Hong Kong and some others two-way-permit holders. I have received numerous complaints in my constituency and witnessed some actual examples. Has the Secretary acquired specific data about this and formulated specific and effective measures against it? If so, may the Secretary tell us?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the frequent raids jointly carried out by the police, the Immigration Department and the Labour Department has produced a remarkable result in combating illegal workers on construction sites. Some representatives from the labour sector have pointed out that the number of illegal workers on construction sites has diminished. Of course, I dare not rule out the possibility of illegal acts in other areas, such as foreign helpers performing part-time work during holidays. As a matter of fact, the Labour Department has carried out intensive publicity to familiarize employers with the relevant rules and regulations. Nevertheless, the most effective solution is for Members to lodge complaints if they become aware of such illegal activities. This can enable us to acquire concrete evidence so that legal actions can be taken. Otherwise, we will be like searching for a needle in the sea.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, the Secretary has not answered whether she has acquired specific data. May she tell us if such data are available? It seems that the Secretary has not answered my question.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I said earlier that what we will be doing is like searching for a needle in the sea. This means that no concrete data are available. Although it has frequently been quoted that many people consider it unnecessary to offer foreign domestic helpers the minimum wage set by the Government and that many foreign helpers are performing part-time work, no one has made a formal complaint or furnished evidence about this. This explains why it is difficult to discharge our duty. We can only conduct inspection and raids as many as possible to identify such cases.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, one of the solutions adopted by foreign countries in handling the unemployment crisis is to restrict the number of working hours. Will the Secretary consider imposing an upper limit on working hours so as to make more job opportunities available? If not, why not?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, restricting the number of working hours is a "double-bladed knife". On the one hand, it may create more job opportunities. On the other, however, some employees may wish to work longer hours to better guarantee their income. We must take into account various views before adopting this method.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, in answering a question raised by the Honourable WONG Sing-Chi with respect to the unemployment problem faced by young people, the Secretary said no particular attention would be paid to the unemployment problem faced by a certain age group for fear of age discrimination. Nevertheless, I believe the Secretary is also aware that, according to the findings of the census conducted by the Census and Statistics Department, the unemployment rate among young people has exceeded 20%, four times higher than the overall unemployment rate of Hong*

*Kong that stands at 5.4%. Given the fact that unemployment among young people is particularly serious, why did the Secretary refuse to consider adopting some specific measures and do something for the unemployed youngsters?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we are very much concerned about the young people. In recent years, different types of training, ranging from Project Springboard, the Youth Pre-employment Training Program (YPTP) to various forms of tertiary education, have been provided to help the young people to equip themselves. Therefore, opportunities do exist. In this year's YPTP, vocational training is strengthened to give the trainees a few more months to gain practical working experience. I think such arrangements are useful to the young people in seeking employment. We welcome more young job seekers to participate in the YPTP.

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

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, it appears that the proposal will drag on indefinitely since the Secretary indicated in her reply to the Honourable LAU Chin-shek's question that there was no timetable. I hope the Secretary would not give me the same reply when answering my question.*

*In part (b) of the main reply, the Secretary mentioned that the Government would request relevant departments, in assessing bids from contractors, to consider reducing the working hours of security personnel. I am aware that the Housing Department has actually adopted this method. Why does the Government not simply issue guidelines to require all departments to implement a three-shift system, rather than considering or requesting them to do so? Can this not ensure compliance? To the Secretary's knowledge, how many departments are willing to consider implementing this system?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Education and Manpower Bureau has recently reached a consensus with the relevant departments and the Treasury that tenderers who are willing to implement the three-shift system and promise not to lower the salary levels will definitely be given preference in the course of assessment. The

Housing Department has already commenced its tender procedure. We will examine whether it is necessary to review the assessment system in the light of the tender results. In any case, the Government will certainly make more efforts in this aspect. Meanwhile, the relevant departments have also indicated that they will co-operate with and support the Government.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I suggested the Government to simply issue guidelines to lay down its requirements, rather than adopting the assessment system. The Secretary has not answered whether the Government should simply lay down the requirements.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in answering the Honourable LEUNG Yiu-chung's question, I pointed out that if we made the three-shift system compulsory, salary levels might drop as a result. This will not necessarily be welcomed by all employees. I would rather gauge the response of the market and then induce tenderers to opt for the three-shift system and maintain stable income levels through the assessment system. Furthermore, as there are no minimum wages or maximum working hours in Hong Kong — I emphasize we would not like to lay down such requirements in a compulsory manner — the market should be allowed to make adjustments of its own accord.

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

## WRITTEN ANSWERS TO QUESTIONS

### Private Sector Participation in Provision of Water Supply Services

7. **MR LEUNG FU-WAH** (in Chinese): *Madam President, the Government commissioned a consultancy study in 1998 to explore the feasibility of private sector participation in the provision of water supply services through various forms, including privatization, corporatization and outsourcing services. In this connection, will the Government inform this Council:*

- (a) *if it has made decisions on whether the private sector should participate in the provision of water supply services and the form of participation; if it has, of the details;*

- (b) *except for the announced outsourcing of transportation services and maintenance works, whether it has plans for outsourcing other work of the Water Supplies Department (WSD) to private contractors; if so, of the reasons and implementation timetable, as well as the number of staff that will be affected; and*
- (c) *whether it has considered adopting a higher target for the Enhanced Productivity Programme of the WSD, instead of going for privatization and corporatization?*

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

- (a) In 1998, the Government commissioned a consultancy study on the benefits of various forms of institutional reform for the WSD, including private sector participation, corporatization and improvement under a vote-funded department. The consultancy study has been completed. Taking into account the financial, economic, management and other considerations, the Government has decided that rather than introducing any major institutional changes now, the WSD should proceed with its efficiency and productivity improvement programme under the present structure as a matter of priority. The Government will closely monitor the performance of these efficiency and productivity improvement measures and will review the overall situation in early 2004 when the improvement programme is fully implemented.
- (b) Apart from transportation services and maintenance works, the WSD is considering contracting out meter reading in remote areas. This proposal will only affect a few Meter Readers, who will be redeployed internally within the WSD as necessary. Since the plan is in its early conceptual stage, an implementation timetable is not yet available.
- (c) The WSD has drawn up a major efficiency and productivity improvement programme which includes over 100 initiatives. By 2002-03, these initiatives will have achieved an Enhanced Productivity Programme target of 5.5%. Additionally, the management of the WSD is working with staff in developing other



efficiency improvement measures which will further increase its productivity by another 4.5% by end of 2003 to achieve the savings target of \$300 million per annum, or 10% of the WSD's recurrent expenditure on operation and maintenance.

### **Payment of Government Fees via PayThruPost Service**

8. **MR FRED LI** (in Chinese): *Madam President, with effect from 3 October, the public can pay general government fees and charges at post offices via the PayThruPost service. It has been reported that on the first day the service was introduced, large crowds queued up at various post offices to make payments and, to cope with this, some post offices extended their service hours. In this connection, will the Government inform this Council of:*

- (a) *the number of payments of government fees and charges made via the PayThruPost service and the average waiting time of the public who used this service to make payments on that day;*
- (b) *the names of the post offices which extended their service hours on that day and the respective time of their extension; and*
- (c) *ways to shorten the waiting time to make payments?*

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

- (a) On 3 October, the first day when the PayThruPost service was extended to take payment for government bills, the Hongkong Post (HKPO) handled a total of 69 400 bills, of which 36 900 were government bills. Although the service is available at all post offices in Hong Kong, most people chose to make their payments at post offices located in the vicinity of the former collection offices of the Treasury or the collection offices of the District Offices in the New Territories where they used to make payments, and it also happened that the fee collection computer system of the HKPO experienced some technical problems. Some members of the public had to wait for more than 30 minutes at some post offices on

that day. For the less patronized post offices, the average waiting time was between 10 to 15 minutes.

The situation has since improved greatly. Post offices in general are able to meet their performance pledges, that is, members of the public are served within 10 minutes on normal working days and within 25 minutes during busy hours and peak periods.

- (b) As some members of the public were still queuing for service at certain post offices after the normal business hours on 3 October, the post offices concerned decided to extend their business hours until all members of the public in the queue had been served. On that day, 66 post offices (Appendix) extended their business hours for about 10 to 30 minutes.
- (c) In view of the public's positive response to the PayThruPost service, the HKPO has taken the following measures to maintain the standard of its services:
  - (1) adjusting the business hours of some of the post offices and engaging security guards for maintaining order at the busier post offices;
  - (2) setting up a temporary PayThruPost service centre on the first floor of the Yuen Long District Office Building as from 8 October to alleviate the load at the Yuen Long Post Office and, expanding the counter hall and adding more workstations to the Lam Tin Post Office as from 15 October;
  - (3) in addition to the originally planned staff complement of 40 and workstations at nearly 100 counters, 95 more staff members have been redeployed to the counter service of the PayThruPost. At the same time, the fee collection computer system has also been upgraded in terms of speed and capacity; and
  - (4) different counters for payment and normal postal services have been set up in the majority of post offices.

End October is normally one of the peak periods for the payment of government bills. In anticipation of that, the HKPO had especially advanced or extended the business hours and provided cheque collection boxes at certain post offices during the period from 26 to 31 October, so as to enhance the standard of its service and shorten the waiting time for its patrons. Similar special arrangements will be adopted during all peak periods for government bill payments, that is, during the months of January, April, July and October.

Experience in the last month indicates that most people choose to make payments at those post offices located in the vicinity of the former collection offices of the Treasury or the collection offices of the District Offices in the New Territories, leading to a surge in demand for service at certain post offices. To ensure that members of the public would be able to enjoy an efficient and convenient PayThruPost service, the HKPO will conduct publicity aimed at getting a more even spread of patrons to other post offices in the districts.

## Appendix

### Post Offices that closed late on 3 October 2001

#### *Hong Kong (Island)*

Aberdeen Post Office, Chai Wan Post Office, Causeway Bay Post Office, Discovery Bay Post Office, Gloucester Road Post Office, Happy Valley Post Office, Hennessy Road Post Office, Hing Man Street Post Office, King's Road Post Office, Kennedy Town Post Office, Morrison Hill Post Office, North Point Post Office, Shau Kei Wan Post Office, Siu Sai Wan Post Office, Sheung Wan Post Office, Sai Ying Pun Post Office, Tai Koo Shing Post Office, Tsat Tsz Mui Post Office, Wan Chai Post Office, Wong Chuk Hang Post Office, Wyndham Street Post Office

#### *Kowloon*

Choi Hung Chuen Post Office, Cheung Sha Wan Post Office, Fu Shan Post Office, Granville Road Post Office, Hung Hom Bay Post Office, Kowloon Bay

Post Office, Kowloon City Post Office, Kwun Tong Post Office, Kwong Wa Street Post Office, Lei Cheng Uk Post Office, Lam Tin Post Office, Mei Foo Sun Chuen Post Office, Ngau Chi Wan Post Office, Ngau Tau Kok Post Office, Oi Man Post Office, Po Lam Post Office, Sheung Tak Post Office, Shek Kip Mei Post Office, Sau Mau Ping Post Office, Tai Kok Tsui Post Office, To Kwa Wan Post Office, Tsz Wan Shan Post Office, Wong Tai Sin Post Office.

*New Territories*

Butterfly Post Office, Fo Tan Post Office, Fu Shin Post Office, Kam Tin Post Office, Kwai Fong Post Office, Kwong Yuen Post Office, Leung King Post Office, Ma On Shan Post Office, On Ting Post Office, Sha Tin Central Post Office, Sai Kung Post Office, Shek Lei Post Office, Sun Chui Post Office, San Tin Post Office, Shek Wu Hui Post Office, Tuen Mun Central Post Office, Tai Hing Post Office, Tin Yiu Post Office, Tai Po Post Office, Wah Ming Post Office, Yuen Long Post Office, Tung Chung Post Office

**Regulation of Contents of Programmes and Advertisements Broadcast on Buses and PLBs**

9. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, regarding the regulation of the contents of the programmes and advertisements broadcast by the RoadShow Group on franchised buses and public light buses, will the Government inform this Council:*

- (a) how the contents of these programmes and advertisements are regulated by existing legislation;*
- (b) whether the above-mentioned service is within the meaning of "broadcasting service" ascribed by the Broadcasting Ordinance (BO) (Cap. 562); and*
- (c) of the government departments or statutory bodies with which the public's views on or complaints about the contents of these programmes and advertisements may be lodged?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President, the answer to the Honourable SIN Chung-kai's three-part question is as follows:

- (a) The programmes including advertisements shown by the Roadshow Group on franchised buses and public light buses fall within the definition of "film" under the Film Censorship Ordinance (FCO) (Cap. 392). Under the Ordinance, films have to be submitted to the Film Censorship Authority (FCA), who is the Commissioner for Television and Entertainment Licensing, for classification or exemption where appropriate before exhibition. If the programmes to be exhibited fall under the description of cultural, educational, instructional, promotional, sports, musical and religious films and travelogues, as prescribed in Schedule 2 of the Film Censorship Regulations, they may be exempted from classification under section 9 of the FCO. In exempting a film or a programme from classification, the FCA is required to take into consideration the suitability or otherwise of the film or programme for public exhibition having regard to the circumstances of the exhibition.
- (b) Under the BO, a "broadcasting service" does not cover a service consisting of programmes made solely for display in a public place. A public place is defined under the BO to mean a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise. As the programmes and advertisements provided by the Roadshow Group are intended for display on franchised buses and light buses which are regarded as a public place, they are not "broadcasting service" as defined in the BO.
- (c) The public may lodge complaints against the contents of the programmes with the Television and Entertainment Licensing Authority. If a member of the public is not satisfied with the FCA's decision, the person may request the Board of Review to review the FCA's decision in accordance with section 19 of the FCO.

**Progress of Enhanced Productivity Programme**

10. **MISS EMILY LAU** (in Chinese): *Madam President, the Chief Executive announced in his policy address 1998 that the Government would undertake an Enhanced Productivity Programme (EPP) to deliver productivity gains amounting to 5% of its operating expenditure between 1998 and 2002. In this connection, will the executive authorities inform this Council:*

- (a) *of the total amount of savings achieved through the implementation of the EPP;*
- (b) *of the total amount of expenditure incurred by the Administration on outsourcing work, and the percentage of such expenditure in its total operating expenditure, in the past three years;*
- (c) *of the total amount of expenditure incurred by the Administration on commissioning consultants, and the percentage of such expenditure in its total operating expenditure, in the past three years; and*
- (d) *whether outsourcing work and commissioning consultants run counter to the principle of reducing expenditure through productivity gains advocated under the EPP, and whether the Administration, in implementing the EPP, is simply transferring the work originally undertaken by civil servants to non-civil servants?*

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

- (a) Since 1999-2000, government bureaux, departments and subvented organizations together have delivered accumulated savings of \$4.1 billion per year under the EPP. We have ploughed back the whole amount to provide new services or improve on existing services to the public such as on education, environment, health care and welfare. From 2002-03 onwards, these bodies have committed to delivering further savings of \$1.9 billion per year under the EPP. As a result, there will be annual savings of \$6 billion.
- (b) The total spending attributed to outsourcing work in the Government's annual operating accounts in the past three years is as follows:

	(a)	(b)	(c)
	<i>Spending attributed to outsourcing work in the Government's operating expenditure</i> <sup>(Note 1)</sup>	<i>Total operating expenditure</i> <sup>(Note 2)</sup>	%
	(\$ million)		
1998-99	3,199	177,406	1.8%
1999-2000	3,786	175,921	2.2%
2000-01	4,543	186,686	2.4%

- (c) The total spending attributed to employment of consultants in the Government's annual operating accounts in the past three years is as follows:

	(a)	(b)	(c)
	<i>Spending attributed to employing consultants in the Government's operating expenditure</i> <sup>(Note 1)</sup>	<i>Total operating expenditure</i> <sup>(Note 2)</sup>	%
	(\$ million)		
1998-99	465	177,406	0.3%
1999-2000	431	175,921	0.2%
2000-01	344	186,686	0.2%

(Note 1) The figures exclude expenditure incurred by subvented organizations.

(Note 2) As defined in Appendix E of the 2001-02 Budget speech, total operating expenditure comprises all expenditure in the General Revenue Account charged to any of the subheads listed in the Estimates under "Recurrent Account", plus Other Non-Recurrent expenditure. It includes recurrent subventions to subvented bodies of \$70.6 billion in 1998-99, \$74.4 billion in 1999-2000 and \$76.5 billion in 2000-01.

- (d) The Government has been outsourcing work and employing consultants where we think it enables us to deliver existing services more cost-effectively, or improve our services to the public. Doing so is consistent with the principle of cost-effective use of public resources.

Under the EPP, government bureaux, departments and subvented organizations adopt a wide variety of measures to bring about productivity savings, and only some of them involve the transfer of work from civil servants to non-civil servants. And where such transfer takes place under the EPP, we strive to achieve increased productivity.

### **Provision of Infirmiry Services for Elderly**

11. **MR LAW CHI-KWONG** (in Chinese): *Madam President, regarding the provision of infirmiry services for the elderly, will the Government inform this Council:*

- (a) *of the respective numbers of elderly persons waiting or qualified for admission to the infirmaries under the Hospital Authority (HA) among all those who are living in various types of residential care homes for the elderly (RCHEs);*
- (b) *of the unit cost of an infirmiry bed under the HA; and the respective unit costs of taking care of the elderly persons who are qualified for admission to RCHEs in various subsidized RCHEs and private RCHEs which participate in the Bought Place Scheme or the Enhanced Bought Place Scheme;*
- (c) *whether assessment and comparison have been made regarding the service quality of the infirmaries under the HA, subsidized RCHEs and private RCHEs in taking care of vulnerable elderly persons; if so, of the results; and*



- (d) *whether it will consider allowing RCHEs to provide infirmary services as well, with a view to enhancing the co-ordination and continuity of services for the elderly; if not, of the reasons for that?*

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

- (a) The waiting list for infirmary places under the HA comprises both elders assessed to be eligible for admission and those who have not yet undergone assessment. The breakdown of applicants on the waiting list who are residing in RCHEs as at 30 September 2001 is as follows:

<i>Type of RCHE</i>	<i>Number of Applicants</i>
Subvented Hostel/Home for the Aged	43
Subvented Care and Attention Home	1 090
Subvented Nursing Home	64
Non-subsidized Home	2 467

- (b) The cost per day for an infirmary bed under the HA is about \$1,000. Infirmary care under the HA targets at patients whose illnesses and disabilities require continuous professional medical and/or nursing care.

The various types of subsidized residential care services for elders cater for elders with different levels of care needs. Homes for the Aged serve primarily elders with mild level of impairment with a certain degree of self-care capability and who may need assistance in performing some household duties. Care and Attention Homes, including those which have joined the Bought Place Scheme/Enhanced Bought Place Scheme, mainly target at elders at moderate level of impairment who require personal care and attention in the course of daily living activities but do not require a high degree of professional medical and nursing input. Nursing homes provide care to elders suffering from severe level of impairment and who require regular basic medical and nursing care. The monthly unit costs of these different types of subsidized services borne by the Government are:

<i>Type of Place</i>	<i>Monthly unit cost<sup>1</sup></i>
Subvented Home for the Aged	\$4,027
Subvented Care and Attention Home	\$8,690
Subvented Nursing Home	\$12,776
Bought Place Scheme	\$5,036
Enhanced Bought Place Scheme	\$6,343

<sup>1</sup> Excluding user-fee to be paid by the resident.

In addition to the above, the following extra resources are provided:

- one Registered Nurse and four Enrolled Nurses are provided to each of the 29 Infirmary Units set up in subvented Care and Attention Homes to serve a total of 580 elders assessed to be in need of infirmary care;
- the Infirmary Care Supplement (ICS) has been introduced for application by subvented RCHEs to enable them to take care of additional elders assessed to be in need of infirmary care. In the financial year 2001-02, the amount earmarked for ICS is about \$29.64 million; and
- the Community Geriatric Assessment Teams under the HA provide geriatric care to elders in all subvented residential care homes and the majority of the private care homes.

Direct comparison between the costs of an infirmary bed under the HA and other types of subsidized residential care services for elders should not be made as the basis for calculation is different and the nature of service provided is dissimilar.

- (c) As the target group of infirmary care provided by the HA is by and large different from that of subvented and private residential care homes under the remit of Social Welfare Department (SWD), we have not conducted any comparison studies between the service quality of these two types of services. However, both the HA and the SWD have their own mechanisms to ensure service quality.

Infirmity care is part and parcel of the services under the HA and is therefore subject to the standards for professional services provided by hospitals. Quality monitoring and improvement measures adopted include practice guidelines and quality indicators. Regular training programmes are organized to enhance the knowledge and skills of staff working in infirmary units.

For residential care services for elders, the SWD monitors on a regular basis the compliance by all RCHEs with the standards stipulated in the Residential Care Home (Elderly Persons) Ordinance, its subsidiary legislation and the Code of Practice. In addition, the SWD has introduced the Service Performance Monitoring System for subvented RCHEs. Under the system, subvented RCHEs are evaluated against a set of 16 well-defined Service Quality Standards. The SWD has also applied these standards to homes that have joined the Enhanced Bought Place Scheme.

- (d) To enable our elders to age in a familiar environment, we are progressively introducing the concept of "continuum of care" to both home and community and residential care services. We will continue to build on our cornerstone policy of "ageing in place", and expand, re-engineer and integrate the long-term care services to meet the changing needs of our growing elderly population in a comprehensive and client-centred manner. In the longer term and in the context of developing the "continuum of care" concept, we will explore an optimal model of long-term care including the interface with medical care and identify the most appropriate and qualified organization to operate it.

### **Installation of CCTV Cameras in Public Places**

12. **MISS CYD HO** (in Chinese): *Madam President, regarding its installation of closed circuit television (CCTV) cameras in public places, will the Government inform this Council:*

- (a) *whether the faces of members of the public can be clearly captured by these devices;*

- (b) *of the number of CCTV cameras currently installed to monitor road traffic conditions; whether the Administration has made use of these devices to film the proceedings of public processions and handed the relevant films to the police, the Customs and Excise Department or the Immigration Department; if so, of the relevant figures for the past five years;*
- (c) *of the number of CCTV cameras currently installed in public places, including public housing estates, shopping arcades, the airport and stadiums, for the purpose of maintaining law and order;*
- (d) *of the respective numbers of crimes detected in each of the past five years by the police based on the clues provided by the films recorded in public places, together with a breakdown of such numbers by the nature of crimes;*
- (e) *whether it plans to install more CCTV cameras in public places; if so, of the details; and*
- (f) *whether it has drawn up any codes on the procurement, use, retention and destruction of the films recorded in public places; if so, of the details of such codes; if not, how it ensures compliance by relevant departments with the data protection principles stipulated in the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486)?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President, CCTV systems are widely used by the Government and the private sector for security and other lawful purposes. This reply only covers CCTV systems mentioned in or relevant to the question, that is, those under the purview of the Transport Department (TD) and the Hong Kong Police Force (HKPF); and those installed in public housing estates and shopping centres under the purview of the Housing Department (HD), the airport, and stadiums and other facilities of the Leisure and Cultural Services Department (LCSD).

- (a) The CCTV systems of the TD are for traffic surveillance, control and management purposes. The CCTV cameras are generally installed at strategic locations to provide real-time traffic conditions to the TD's Area Traffic Control (ATC) Centres. The colour

video CCTV cameras are operated by high-resolution image sensor. Whilst it is technically possible to zoom in to see the faces of members of the public, the camera's span of view is confined to the traffic on roads to avoid intrusion on privacy.

The HKPF has not installed CCTV systems at fixed locations in public places. Where necessary, the HKPF use CCTV systems to acquire an overview of the size and movement of crowds or the vehicular traffic situation. The systems are not intended nor designed to take close shots of individual persons.

In the case of the HD, two types of CCTV systems are installed in public housing estates and shopping centres, that is, (i) Security System inside the lifts and (ii) Falling Object Monitoring System at the facade of the domestic buildings. The faces of members of the public can be clearly captured by the former system. In the latter system, the cameras are not targeted at the interior of the premises, thus the faces of members of the public will not be clearly captured.

Some of the CCTV cameras installed in the facilities of the LCSD have the zooming and video recording functions. They can clearly capture the faces of members of the public.

- (b) Currently, there is a total of 310 CCTV cameras installed over the territory to monitor road traffic conditions. They enable the operators in the TD's ATC Centres to make prompt adjustments to traffic light signal timings or implement traffic management plans to cope with the prevailing traffic conditions. This is particularly effective in early detection of incidents causing traffic disruptions. The police use the TD's CCTV cameras to obtain real-time traffic conditions so that they could make announcements to the public via the media about traffic diversion, immediately deploy traffic police to control traffic, and implement contingency plans to deal with any traffic incidents. The Highways Department uses the CCTV cameras for monitoring road conditions when its Emergency Control Centres are in operation, that is, in the event of inclement weather causing road damages. In addition, various tunnel operators have installed CCTV cameras within their respective tunnel areas, also for traffic monitoring purpose.

All the information or data collected through the CCTV cameras covered above is for traffic surveillance and traffic management purposes only and is not used for any other purposes.

- (c) At present, 11 930 CCTV cameras are installed in public housing estates and shopping centres under the purview of the HD. About 550 CCTV cameras are installed in the Hong Kong International Airport. There are 944 CCTV cameras installed in the facilities of the LCSD. No CCTV system is currently installed by the HKPF in public places permanently for the purpose of maintaining law and order. The HKPF has only used temporary CCTV systems in crowd management operations during major festivals and events such as Millennium celebrations, Christmas Eve and Lunar New Year Firework Display events, and large-scale international conferences. Separately, CCTV systems have been installed in the land boundary of Hong Kong Special Administrative Region for security purposes, particularly for the detection of illegal immigrants.
- (d) Instances of crime detection, including serious crime such as murder, robbery, wounding, and so on, effected directly or indirectly, through the viewing of privately owned CCTV systems often occur. However, the number of such cases and related breakdown are not readily available. As mentioned in part (c), the police have not installed CCTV systems in public places permanently.
- (e) In line with the development of the transport infrastructure and expansion of area traffic control system, the TD plans to progressively install more CCTV cameras on existing roads in built-up areas, future strategic highways and major transport interchanges for better traffic management. Plans are in hand to expand the ATC, including the CCTV systems, to Tai Po and North District by 2003 and Tuen Mun and Yuen Long Districts by 2005.

The HD is undertaking an improvement programme in existing public housing estates to upgrade the basic security system to a full security system which includes the provision of CCTV cameras to monitor main entrance doors. Upon completion of the improvement works in 2002, more CCTV cameras will be installed.

Plans are in hand to install CCTV systems at 27 venues of the LCSD with a view to enhancing security and crowd control. The number of CCTV cameras to be installed has yet to be decided.

- (f) All user departments of the TD's CCTV systems have established practices and stringent systems to control the use of and access to the systems. This has effectively safeguarded against any misuse or abuse of the systems and is in full compliance with the requirements of PDPO. CCTV video images will only be recorded where there is a genuine need associated with major traffic incidents and congestion, or to facilitate traffic surveys to address specific problems such as road safety and maintenance. The recorded information will be destroyed as soon as such tasks are completed.

As regards videotapes that the HKPF obtain through CCTV cameras, the videotapes are destroyed three months after the events in accordance with the HKPF's guidelines. Where it is necessary to keep the videotapes for more than three months, the approval from a Senior Superintendent of Police will be required, which will be subject to monthly review by the approving officer.

For protection of personal data, there are codes of practice for the video images recorded in public places in public housing estates and shopping centres under the HD's purview. Details are as follows:

- (i) notices should be displayed to inform the data subjects of the installation of CCTV cameras and their use;
- (ii) the recorded videotapes should be kept under safe custody;
- (iii) a proper record of the officers taking charge of and keeping the videotapes should be maintained; and
- (iv) personal data should not be kept longer than necessary. The recorded video images should be erased after being kept for seven days subject to certain exceptions.

The LCSD has consulted the Office of the Privacy Commissioner for Personal Data (PCO) on legislation governing the use of CCTV

systems. Upon the advice of the PCO, the LCSD has issued an internal memo directing operational staff working at venues installed with CCTV systems to display notices at conspicuous spots, informing the public that the installation of the CCTV systems is solely to enhance the safety of the public and that only authorized staff of the LCSD can have access to these video recorded materials. The recorded information will be destroyed as soon as it is no longer required.

The PCO has not drawn up any specific codes of practice on the procurement, use, retention and destruction of video images recorded by government departments in public places. However, the departments, as data users, have to comply with the PDPO. The PCO will investigate if there is any suspicion of contravention of the PDPO.

It should be noted that the use of CCTV cameras does not necessarily involve the collection or use of personal data as governed by the PDPO. No collection of personal data is involved and the matter may fall outside the scope of PDPO, where:

- (i) no recording is made,
- (ii) it is not reasonably practicable to identify any individual from the video recording or
- (iii) the data user is not compiling information about an identified person or about a person whom the data user intends to or seeks to identify.

### **Encouraging Young People to Participate in Healthy Dancing Activities**

13. **MISS CHOY SO-YUK** (in Chinese): *Madam President, a large number of young people participated in a dancing party organized by the Narcotics Division of the Security Bureau in conjunction with the Radio Television Hong Kong on the evening of the Dragon Boat Festival this year for promoting anti-drug messages. In this connection, will the Government inform this Council whether, in the light of the experience gained in the event, it will organize more*



*similar events to encourage young people to participate in healthy dancing activities?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President, the Narcotics Division of the Security Bureau and the Radio Television Hong Kong have jointly organized a large-scale event entitled "Cool Without Drug Concert" at the Hong Kong Coliseum on 25 June 2001. The concert was well received with an audience of around 7 000. Some 1 000 young people joined a dance session held during the concert. Drug abuse and other criminal risks among young people are often associated with rave parties or similar dance parties. Against this background, the concert was organized to promote the message that young people can enjoy music and dancing in a drug-free environment. Preventive education and publicity is an integral part in the combat against the drug problem. The Narcotics Division will continue to organize various anti-drug activities for young people to encourage them to lead a healthy lifestyle.

To encourage the public to exercise regularly, each year the Leisure and Cultural Services Department (LCSD) organizes a wide variety of recreation and sports activities for people of all ages. Since dance activities are well received by young people in recent years, the LCSD and the Department of Health have specially introduced a "Dance for Health" programme under the "Healthy Exercise for All" Campaign in 2001-02. This programme comprises more than 60 dance nights to be held throughout the 18 districts in Hong Kong. It is expected that more than 20 000 people will participate in these dance nights. Among them, "ParaPara Dance Nights", is one of the highlights successfully completed in August 2001 which attracted over 5 300 people. In view of the favourable response, the LCSD will continue to organize similar activities for young people.

### **Safety of LPG Stoves Without Flame Failure Device**

14. **MRS SOPHIE LEUNG** (in Chinese): *Madam President, in June this year, a person was injured in an accident in which a liquefied petroleum gas (LPG) cooking stove exploded, allegedly caused by gas leakage. It was reported that the cooking stove involved in the accident was bought from the Mainland and was not fitted with flame failure device. In this connection, will the Government inform this Council of:*

- (a) *the number of fire or explosion incidents caused by gas leakage from LPG cooking stoves without flame failure device, in each of the past three years; and*
- (b) *the measures taken to prevent such LPG cooking stoves from being brought into Hong Kong; if no measures have been taken, of the reasons for that, and whether it will consider introducing interception measures in order to reduce such accidents?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, my reply to the question raised by the Honourable Mrs Sophie LEUNG is as follows:

- (a) The record of the Gas Authority (that is, the Director of Electrical and Mechanical Services) shows that the number of fire or explosion incidents caused by gas leakage involving LPG cooking stoves without flame failure device from 1998 to date is as follows:

<i>Year</i>	<i>No. of reported fire or explosion incidents</i>
1998	2
1999	1
2000	0
2001 (up to October)	1

- (b) In consultation with the Gas Safety Advisory Committee and the industry, the Gas Authority has drawn up and published in June 1998, a code of practice on domestic gas appliances for voluntary compliance by the industry. The code requires compliance with established international and national standards for domestic gas appliances as well as sets out specific provisions on product quality and safety for models imported into Hong Kong. One of the safety requirements stipulated in the code is that each burner of the appliance must have a flame failure device.

Thus far, over 80% of the sales volume covering about 250 models of domestic gas appliances available for installation in Hong Kong has been submitted by suppliers and approved by the Gas Authority.

The Gas Authority estimates that all models of domestic gas water heaters and about 95% of domestic gas cooking appliances being sold for installation in Hong Kong have flame failure device.

As a next step, we intend to introduce regulations in 2002 to require those new domestic gas appliances manufactured, imported or installed for use in Hong Kong must be approved by the Gas Authority. When the new regulations come into operation, import, sale and installation of new domestic gas cooking stoves without flame failure device will be prohibited.

### **Demand for PayThruPost Service**

15. **MR LAU KONG-WAH** (in Chinese): *Madam President, the Post Office has extended the scope of its PayThruPost service to cover more than 130 items of government fees and charges since 3 October. In this connection, will the Government inform this Council:*

- (a) *whether the Post Office had assessed the increased demand for the service before extending its scope; if it had, of the reasons for a large number of people queuing up to make payments on the first day of the extension of the service; if no such an assessment had been made, of the reasons for that;*
- (b) *whether there is any discrepancy between the actual and forecast demands for the service in the last month;*
- (c) *of the additional manpower and number of service counters deployed by the Post Office for extending the scope of the service;*
- (d) *of the contingency measures to cope with the situation in which crowds of people queue up to make payments at post offices, as well as to avoid other services of the Post Office being affected as a result; and*
- (e) *given that the post offices are handling a much larger amount of cash each day than previously, of the corresponding measures the relevant authorities will take to prevent burglaries and robberies?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, the PayThruPost service of the Hongkong Post (HKPO) was extended to government bills on 3 October 2001. At present, the HKPO handles over 120 types of government bills.

- (a) In planning for collection of payment for government bills, the HKPO had assessed service demand, in the light of the transactions then handled by the Treasury, and deployed manpower and resource accordingly to cope with the extended service. On the first day of extension of the PayThruPost service, there were long queues at certain post offices because people chose to make their payments at those post offices located in the vicinity of the former collection offices of the Treasury or the collection offices of the District Offices in the New Territories, although the service was available at all post offices in Hong Kong which totalled more than a hundred in number, and it also happened that the fee collection computer system of the HKPO experienced some technical problems.
- (b) The HKPO's original estimate was that it would handle around 1 million bills every month after extending the PayThruPost service to government bills. As it turned out, the HKPO handled more than 1.67 million bills in October 2001, well above the original forecast. The surge in demand could be attributable to the following:
  - (i) the PayThruPost offers a one-stop service, which means that payment for government and various public utilities bills can be handled at one place; and
  - (ii) the more extensiveness and convenience of the HKPO's network might have prompted some members of the public who used to settle their bills by mail or other methods to resort to the PayThruPost service.
- (c) In preparing for the extended service, the HKPO has already employed 40 additional staff and installed workstations at nearly 100 counters. In view of the better than expected response, the HKPO has further redeployed 95 staff to the counter service of the PayThruPost. At the same time, the HKPO has upgraded its fee collection computer system in terms of speed and capacity.

- (d) Since 3 October, the HKPO has been closely monitoring the situation at all the post offices and adopted different measures in the light of service demand at individual post offices. These measures include flexibly adjusting the business hours of certain post offices, deploying security guards to maintaining order at the busier post offices, setting up separate counters for payment and normal postal services in the majority of the post offices. To alleviate the load at the Yuen Long Post Office, a temporary PayThruPost service centre has been set up on the first floor of the Yuen Long District Office Building since 8 October. And, to reduce the waiting time, the counter area of the Lam Tin Post Office has also been expanded and more workstations installed since 15 October.

End October is normally one of the peak periods for the payment of government bills. In anticipation of that, the HKPO implemented the following measures during the period from 26 to 31 October:

- (i) advancing or extending the opening hours of individual post offices; and
- (ii) providing cheque collection boxes at certain post offices.

Similar measures will be adopted during all peak periods for government bill payments, that is, January, April, July and October.

Furthermore, experience in the last month indicates that most people choose to make payments at those post offices located in the vicinity of the former collection offices of the Treasury or the collection offices of the District Offices in the New Territories, leading to a surge in demand for service at certain post offices. To ensure that members of the public would be able to enjoy an efficient and convenient PayThruPost service, the HKPO will conduct publicity aimed at getting a more even spread of patrons to other post offices in the districts.

- (e) The HKPO has stepped up its security measures prior to 3 October 2001. In the light of actual operation in October 2001, the HKPO has decided to enhance the security system further. Security measures adopted by the HKPO are in accordance with relevant

government stipulations having regard to the amount of cash collection involved. We would not divulge the details for security reasons.

### **Bidding for Contracts of Olympic Infrastructural Works**

16. **DR RAYMOND HO** (in Chinese): *Madam President, as various infrastructural projects will need to be carried out in Beijing in the next few years upon the city's successful bid to host the 2008 Olympic Games, will the Government inform this Council whether:*

- (a) *it intends to bid to host some of the Olympic events in Hong Kong; if so, whether there is a need to develop infrastructural facilities in the territory for this purpose;*
- (b) *assistance will be given to local developers and contractors in bidding for contracts of the Olympic infrastructural works; if so, of the details; if not, the reasons for that; and*
- (c) *it has made an assessment to identify Hong Kong's major competitors in bidding for the relevant works contracts; if so, of the basis for its assessment?*

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

- (a) Beijing has been elected the Host City of the 2008 Olympic Games. According to the Olympic Charter, all Olympic sports must take place in the Host City, unless it obtains from the International Olympic Committee (IOC) the right to organize certain events in other cities of the same country. Hence, whether the Olympic sports can be held in venues other than those specified in Beijing's bid document will depend on the future recommendations made by the Beijing Organizing Committee of Olympic Games and the IOC's final decision.

- (b) The Government of the Hong Kong Special Administrative Region (SAR) and the Hong Kong Trade Development Council (TDC) will take the following measures to assist our business sector in capturing the business opportunities brought by the Beijing Olympic:
- (i) The Works Bureau (WB) has pledged to help the local construction industry obtain the latest market information on the Beijing 2008 Olympics, as well as co-organize with mainland authorities briefings on the investment opportunities that may arise. In this regards, the WB has, in a conference held jointly with the Ministry of Construction in Kunming in September 2001, invited a guest speaker from the Beijing 2008 Olympic Games Bid Committee to give a talk on "The construction for our country's 2008 Olympics and the business opportunities brought by it". The WB also has plans to organize briefings on the Olympic projects with relevant mainland authorities in early 2002. Liaison efforts will be stepped up to prepare the local construction industry for the Olympic project tendering exercise;
  - (ii) Upon Beijing's successful bid to host the Olympic Games, the Office of the Government of the Hong Kong Special Administrative Region in Beijing (the Beijing Office) has approached the Beijing Municipal Government to brief officials on Hong Kong's experience and convey the message that our business community and professionals are well placed to participate in a wide range of Olympic-related projects and services. The Beijing Office will strive to establish early contact with the Beijing Organizing Committee of Olympic Games once it is formed and continue with the promotion work; and
  - (iii) The Beijing Office and the TDC have been actively liaising with the relevant mainland authorities and will disseminate the latest business information to the SAR Government and business sector in Hong Kong. For instance, the TDC has published special reports setting out the business opportunities brought by the Beijing Olympics. The TDC has also established in the Mainland a task force to collect and analyse

business information related to the Beijing Olympics. In addition, the TDC has set aside a column in its website to provide the latest business information on the Beijing Olympics, including the related infrastructural projects. The TDC will also organize a series of Olympic-related seminars to assist Hong Kong businessmen in capturing the business opportunities. The fifth Beijing-Hong Kong Economic Co-operation Seminar, which has been held recently, provides another opportunity for the local business sector (including developers and contractors) to establish contacts with those responsible for organizing the Beijing Olympics.

- (c) Our preliminary assessment indicates that many consultancy and construction firms from countries like Australia and Japan will be interested in the infrastructural projects for the Games and will make a strong bid for the relevant works contracts. As the detailed technical specifications and arrangements for the projects are not yet available, it is difficult to make an assessment to identify our major competitors.

### **Streamlining Immigration Clearance Procedure for Re-entry Permit Holders**

17. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding immigration clearance for holders of Re-entry Permit holders, will the Government inform this Council:*

- (a) *of the current number of persons holding valid Re-entry Permits;*
- (b) *of the difference in average immigration clearance time between holders of Re-entry Permits and Hong Kong Permanent Identity Cards; and*
- (c) *whether it will take measures to shorten the immigration clearance time for holders of Re-entry Permit, such as bar-coding the Permits or streamlining the relevant procedure, so as to speed up cross-border passenger flow; if so, of the details; if not, the reasons for that?*



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

- (a) At present, about 447 600 people are holding valid Re-entry Permits, the majority of them are children under 11 years of age who cannot undergo immigration clearance with Hong Kong Identity Cards.
- (b) Under normal circumstances, immigration clearance takes about one minute for holders of Re-entry Permits and about 10 seconds for holders of Hong Kong Permanent Identity Cards.
- (c) The Immigration Department has planned to introduce new machine-readable Re-entry Permits by late December this year in order to do away with the existing procedure of manual input of personal data of the holders shown on the Permits and to speed up cross-boundary passenger flow. According to the initial estimate of the Immigration Department, immigration clearance time for holders of these Permits would be reduced by about 30%.

After the introduction of new Re-entry Permits, existing Permits can still be used until they are expired (the validity period for single Re-entry Permit good for a single visit is six months while that for multiple Re-entry Permit is five years). In parallel with the introduction of new Re-entry Permits, the Immigration Department plans to attach machine-readable labels to multiple Re-entry Permits currently in circulation free of charge for the convenience of holders of these Permits. The Immigration Department will announce the relevant details in due course.

### **Arrangements for HOS Estates**

18. **MR FRED LI** (in Chinese): *Madam President, the Chief Secretary for Administration announced on 3 September this year that the sale of Home Ownership Scheme (HOS) flats would be suspended until the end of June next year, and that the number of HOS flats subsequently put on sale would be reduced. In this connection, will the Government inform this Council of the specific arrangements for HOS estates which have already been completed but not yet occupied and those which will be completed in the next three years, with the following details:*

- (a) *the respective names, locations, numbers of flats, estimated completion dates and planned vacant periods of the HOS estates that will be left temporarily unoccupied;*
- (b) *the respective names, locations, numbers of flats and estimated completion dates of the HOS estates that will be transferred to public rental housing; and*
- (c) *the respective names, locations and numbers of flats of the HOS estates that will be changed to be used for re-housing public housing tenants affected by the Comprehensive Redevelopment Programme of the Housing Authority; as well as the details of the relevant re-housing plans?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, implementation of the 10-month moratorium on the sale of HOS flats and the subsequent ceiling on sales at not more than 9 000 flats a year up to 2005-06 announced by the Chief Secretary for Administration on 3 September 2001 will affect 22 HOS and Private Sector Participation Scheme projects. Six of these projects will be transferred to public rental housing. Details are at Annex.

The Housing Authority has not decided on the HOS sales programme after the end of the moratorium on 30 June 2002. Hence the vacant period for each HOS development is not known, but is estimated to range from a few months to about one year. The Housing Authority will explore means to minimize the vacant period.

Under current arrangements, tenants affected by the Comprehensive Redevelopment Programme are given the following options subject to eligibility:

- (i) rehousing in a designated reception public rental housing estate;
- (ii) purchase of subsidized home ownership flats on offer;
- (iii) loans under the Home Purchase Loan Scheme; or
- (iv) rental allowance for the elderly.

Tenants will be given the relevant information at least 18 months before rehousing.

Annex

A. Home Ownership Scheme or Private Sector Participation Scheme estates completed or to be completed during next three years, which may be left temporarily unoccupied for varying periods

<i>Estate</i>	<i>Location</i>	<i>No. of Flats</i>	<i>Estimated Date of Completion</i>
1. Yu Chui Court II	Sha Tin	1 440 576	Completed November 2001
2. Kam Fung Court III	Ma On Shan	1 892	November 2001
3. Lei On Court	Yau Tong	1 684	November 2001
4. Ka Keng Court	Sha Tin	640	December 2001
5. Ko Cheung Court	Yau Tong	2 800	December 2001 to October 2002 (In phases)
6. King Hin Court	Hammer Hill	344	February 2002
7. Hiu Lam Court	Sau Mau Ping	2 100	April 2002
8. Yau Mei Court	Yau Tong	3 872	April to May 2002 (In phases)
9. Hunghom Peninsula (PSPS) <sup>Note</sup>	Hung Hom	2 470	May 2002
10. Kwai Chung Phase 7	Kwai Chung	800	July 2003
11. King Tung Street (PSPS)	Hammer Hill	2 010	August 2003
12. Aldrich Bay Phase 4	Shau Kei Wan	1 216	September to November 2003 (In phases)
13. Lam Tin Phase 6	Lam Tin	720	December 2003
14. Tai Wo Hau Phase 6	Tsuen Wan	512	December 2003

<i>Estate</i>	<i>Location</i>	<i>No. of Flats</i>	<i>Estimated Date of Completion</i>
15. North part of West Kowloon Reclamation Site 10 Phases 1 and 2	West Kowloon	4 350	July to August 2004 (In phases)
16. Eastern Harbour Crossing Site Phase 1	Yau Tong	2 100	August to November 2004 (In phases)

Note Private Sector Participation Scheme

B. Home Ownership Scheme or Private Sector Participation Scheme estates which will be transferred to public rental housing

<i>Estate</i>	<i>Location</i>	<i>No. of Flats</i>	<i>Estimated Date of Completion</i>
1. Tsz Man Phase 2	Tsz Wan Shan	2 000	November 2001
2. Fung Sui Court	Sha Tin	226	April 2002
3. Kwai Ping Court	Kwai Chung	800	May 2002
4. Grandeur Terrace (PSPS) <sup>Note</sup>	Tin Shui Wai	4 100	December 2002 to March 2003 (In phases)
5. Tsing On THA Site (PSPS)	Tsing Yi	510	January 2003
6. Kwai Lok THA Site (PSPS)	Kwai Chung	760	February 2003

Note Private Sector Participation Scheme

## **Review of Linked Exchange Rate System**

19. **MISS EMILY LAU** (in Chinese): *Madam President, regarding the linked exchange rate system, will the executive authorities inform this Council:*

- (a) *of the advantages and disadvantages of maintaining the linked exchange rate system;*
- (b) *other than maintaining the linked exchange rate system, of the options the Hong Kong Special Administrative Region may have regarding exchange rate systems; and*
- (c) *of the circumstances under which the authorities will consider adjusting or changing the linked exchange rate system?*

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

- (a) The Linked Exchange Rate provides a stable, predictable and well understood monetary system that is well suited to Hong Kong's highly external and flexible economy and to its position as an international financial centre. The Link enables Hong Kong's economy to adjust to external shocks without the damage and volatility of a sudden currency collapse. It provides Hong Kong with a firm monetary anchor which, among other things, reduces the foreign exchange risk faced by importers, exporters and international investors. The disadvantages of the Link are that it ties Hong Kong to United States monetary policy at times when the economic cycles of Hong Kong and the United States may not necessarily be moving in tandem (though this is not the case at present), and that it rules out the use of nominal exchange rate movements as a mechanism of adjustment. Adjustments to changes to external factors have to work through the real sector through inflation or deflation. Nevertheless, the advantages of the Link outweigh its disadvantages. There is no plan or intention to change the Linked Exchange Rate system.
- (b) Theoretically, a range of alternative exchange rate systems are available to Hong Kong, although any exchange rate system brings both advantages and disadvantages to the economy.
- (c) As explained above, there is no plan or intention to adjust or alter the Linked Exchange Rate system.

**Residence Requirement for Old Age Allowance Recipients**

20. **MR LAU KONG-WAH** (in Chinese): *Madam President, under the current rule, elderly persons who are receiving "old age allowances" may leave Hong Kong for not more than 180 days a year in order to continue to receive the allowance. In response to a question of this Council on 14 February this year, the Administration stated that the residence requirement was generous compared with other countries. In this connection, will the Government inform this Council:*

- (a) *of the details of the basis used to make the comparison, including the countries, social welfare items and residence requirements;*
- (b) *whether, in view of the possible differences in various aspects of the social environment between these countries and Hong Kong, it has assessed the appropriateness of making the comparison; and*
- (c) *whether, in view of the current economic downturn and as a large number of elderly people have settled outside Hong Kong, the Administration will consider abolishing the residence requirement to save them from having to travel to and from Hong Kong frequently?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President, the Old Age Allowance (OAA) is a cash allowance given to eligible elders of 65 or above to meet their special needs arising from old age. Given the non-contributory nature of the OAA, we need to ensure that the public funds paid out under the Scheme are targeted at meeting the needs of our local elderly population. The OAA should therefore in principle only be granted to elders whose principal place of residence is Hong Kong, and a limit on the elders' period of absence away from Hong Kong is necessary.

Turning to the Honourable LAU Kong-wah's specific question, my reply is as follows:

- (a) and (b)

In comparing the absence period of the OAA with other countries, we have studied schemes which are similar in nature to the OAA

Scheme, that is, a non-contributory allowance funded from government revenue to elders on the basis of age and residence requirements. We have found that in Canada and New Zealand, their Old Age Pension Schemes allow recipients an annual absence period of six months and 26 weeks respectively. In Hong Kong's case, we allow an absence period of up to 180 days (or six months) a year. In special circumstances, the Director of Social Welfare has discretion to further extend the absence period. In the context of our systems, including our simple and low tax structure, we consider the residence requirement reasonable and generous.

- (c) As explained in the first paragraph of this reply, there is a need to set a limit on the period of absence from Hong Kong to ensure that the OAA is paid to local elders. We therefore have no plan to abolish the residence requirement in the OAA Scheme. In fact, the absence period for OAA recipients has been extended from 90 days to 180 days since 1 July 1993 to allow greater flexibility for elders to spend extended periods of time outside Hong Kong, particularly in the Mainland.

## **BILL**

### **First Reading of Bill**

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

### **CHEMICAL WEAPONS (CONVENTION) BILL**

**CLERK** (in Cantonese): Chemical Weapons (Convention) Bill

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

### **Second Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Second Reading.

**CHEMICAL WEAPONS (CONVENTION) BILL**

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I move that the Chemical Weapons (Convention) Bill be read the Second time.

The Chemical Weapons Convention (the Convention) is an international treaty that aims at banning the development, production, use and stockpiling of chemical weapons. The People's Republic of China is a signatory to the Convention and the Central People's Government has extended the application of the Convention to the Hong Kong Special Administrative Region under Article 153 of the Basic Law.

The Convention requires that each State Party shall ban the use and development of chemical weapons and to destroy any chemical weapons or related production facilities in its possession or located in its territory. The three schedules to the Convention list out chemicals which can be used for the development of chemical weapons, as well as for peaceful purposes. Development and use of chemicals for peaceful purposes such as industrial, agricultural, research and medical uses are not prohibited under the Convention. A State Party however is required to make declarations in respect of the actual and forecast production, consumption and storage, and so on of chemicals listed in the schedules. A State Party is also required to make declarations on the production of certain discrete organic chemicals not listed in the schedules, if the amounts involved exceed the respective specified amounts. The Convention also requires that a State Party must allow and facilitate inspections of the relevant sites within its territory by an inspection team sent by the Secretariat of the Convention, in accordance with the requirements and arrangements set out in the Convention.

At present, the import and export of chemicals listed in the three schedules to the Convention must be covered by licences issued by the Trade and Industry Department under the Import and Export Ordinance. Through this licensing system, the Government is able to gather certain information which is relevant to declarations required under the Convention. The Weapons of Mass Destruction (Control of Provision of Services) Ordinance also prohibits the provision of services intended to assist the development, production, acquisition and stockpiling of chemical, biological and nuclear weapons. These controls, however, fall short of the full requirements of the Convention, particularly in



respect of the declaration and inspection requirements. The Government therefore needs to introduce the Bill to fully implement the Convention.

The Bill prohibits the use, development and possession of chemical weapons, and contravention of the provision is liable to a maximum penalty of life imprisonment. The Bill also provides that all chemical weapons seized or found in Hong Kong will be forfeited to the Government and will be destroyed in accordance with the requirements of the Convention.

Separately, in order to closely monitor the production, use and other activities related to the chemicals listed in the three schedules to the Convention and discrete organic chemicals, the Bill requires a person to obtain a permit from the Trade and Industry Department before he can operate a relevant facility. The person is also required to file regular reports and provide information regarding the relevant activities. A person who produces discrete organic chemicals not listed in the three schedules exceeding the respective specified amounts is also required to notify the Director-General of Trade and Industry. These requirements will help ensure that the Government is able to obtain the necessary information for making declarations required under the Convention.

The Customs and Excise Department will be responsible for the enforcement of the Ordinance. It will have enforcement powers similar to those conferred on it by the Import and Export Ordinance, including the powers of investigation, seizure, arrest and forfeiture. The Commissioner will also be empowered to demand information that is relevant to a declaration required under the Convention, and to issue authorization enabling an inspection team sent by the Secretariat of the Convention to conduct inspections of the relevant facilities in Hong Kong.

The Government conducted two rounds of questionnaire surveys among manufacturers, traders, medical and research institutions, testing laboratories, and so on in November 1998 and June 2001 respectively to ascertain the impact of the Bill on these establishments. The results of the surveys revealed that only a small number of establishments were engaged in activities involving chemicals controlled under the Bill, and among them, the great majority were engaged in the import and use of chemicals listed in the schedules. Only a few establishments were found engaged in the production of chemicals listed in the schedules and discrete organic chemicals. We believe the implementation of the legislation would not impose a material burden on these establishments.

Being a responsible trading entity, Hong Kong has actively participated in the international efforts to prevent the proliferation of weapons. Our control system on trade in strategic commodities has repeatedly received high regards from our trading partners and many countries in the world. The existing laws of Hong Kong already meet certain requirements of the Convention. With the introduction of the Bill, the Government will be able to fully implement the requirements of the Convention, thereby underlining Hong Kong's commitment to following international arrangement on the banning of chemical weapons and monitoring of relevant activities.

With these remarks, Madam President, I commend this Bill for Members' support.

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

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

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance in relation to extension of the period for amending subsidiary legislation.

First motion: Extension of the period for amending the Rehabilitation Centres Regulation.

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

**MR JAMES TO** (in Cantonese): Madam President, the House Committee has set up a Subcommittee to study the Rehabilitation Centres Regulation. In my capacity as Chairman of the Subcommittee, I move the motion standing in my name on the Agenda.

The motion seeks to extend the deliberation period of the subsidiary legislation.

The Subcommittee has held four meetings and discussed the relevant provisions with the Administration. The Subcommittee agreed that I should move a motion to extend the deliberation period to the Council meeting on 14 November 2001 to give the Subcommittee time to finish its work and report to the House Committee the outcome of deliberation.

With these remarks, I urge Members to support this motion.

**Mr James TO moved the following motion:**

"That in relation to the Rehabilitation Centres Regulation, published in the Gazette as Legal Notice No. 195 of 2001 and laid on the table of the Legislative Council on 10 October 2001, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 14 November 2001."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Second motion: Extension of the period for amending five items of subsidiary legislation relating to the Chief Executive Election.

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

**MR IP KWOK-HIM** (in Cantonese): Madam President, the House Committee agreed at its meeting on 12 October 2001 to set up a Subcommittee to study all subsidiary legislation relating to the Chief Executive Election. In my capacity as Chairman of the Subcommittee, I move the motion standing in my name on the Agenda.

The Subcommittee agreed that I should move a motion to extend the deliberation period of five items of subsidiary legislation gazetted on 5 October 2001 to the Council meeting on 14 November 2001 to give the Subcommittee time to consider the amendments proposed by the Government and report to the House Committee the outcome of deliberation.

With these remarks, I urge Members to support this motion.

#### **Mr IP Kwok-him moved the following motion:**

"That in relation to the -

- (a) Election Committee (Appeals) Regulation, published in the Gazette as Legal Notice No. 196 of 2001;
- (b) Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation, published in the Gazette as Legal Notice No. 197 of 2001;
- (c) Legislative Council (Formation of Election Committee) (Appeals) (Repeal) Regulation 2001, published in the Gazette as Legal Notice No. 198 of 2001;

- (d) Registration of Electors (Appeals) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 199 of 2001; and
- (e) Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 200 of 2001,

and laid on the table of the Legislative Council on 10 October 2001, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 14 November 2001."

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

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr IP Kwok-him be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies

through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. I will not repeat the relevant time limits since Members should be very familiar with them. I would only like to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Upholding the rule of law.

## **UPHOLDING THE RULE OF LAW**

**MS AUDREY EU** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

The rule of law is a very large subject. The emphasis of the motion moved by me today is only on one important element, "access to justice", which means that everyone can obtain the legal service they need, so that legal services can benefit the public at large.

At present, in order to use the legal aid services provided by the Legal Aid Department (LAD), the maximum disposable financial resources of legal aid applicants cannot exceed \$167,900. Do not mistake that it refers to the amount of savings in one's bank accounts. Disposable financial resources in fact means the monthly disposable income of an applicant multiplied by 12, in addition to his other disposable assets. This is in fact a rather low limit. Even if an applicant does possess such an amount of assets, surely we cannot ask him to spend all his possessions on legal proceedings.

In the business sector, legal aid service at present is not available to limited companies. Commercial disputes between solely-owned enterprises or between partners of joint enterprises, or legal actions taken by enterprises to recover commercial debts are not covered by legal aid either. I have come across many midget companies which are set up by one person only. If these companies want to recover debts owed them in commercial transactions, such as default on

payment for goods delivered, they cannot take any legal action even though they stand a very good chance of winning the case because they cannot get any legal aid.

The Director of Legal Aid, Mr CHAN Shu-ying, estimated earlier on that at present about 60% of households in Hong Kong meet the requirements for applying legal aid. However, according to the information I obtained from the Judiciary Administrator, the problem of parties to civil cases without any legal representation remains serious. In last year, for example, some of the litigants in more than 18 000 and 15 000 civil cases in the High Court and the District Court respectively did not have any legal representation even though their cases had reached the concluding stage.

In order to help members of the public in need, my ward office regularly organizes seminars on legal proceedings to teach the public the basic knowledge on how to initiate legal proceedings or defend a case by themselves. Many participants pointed out that it was very difficult to fend for themselves in court. In fact, Article 22 of the Hong Kong Bill of Rights Ordinance stipulates that all persons are equal before the law and are entitled to the equal protection of the law. Even so, members of the public who are not represented, particularly those who have lost their cases, will inevitably feel that not everyone is equal before the law.

It is necessary for the Government to review legal aid services. Apart from raising the assets limit for applying legal aid, it should also consider extending the scope of legal aid services to include more members of the public and commercial organizations in the legal aid protective net. The LAD can make reference to the existing Supplementary Legal Aid Scheme. Under this scheme, the client, after winning a case, can claim legal costs from the other party and the LAD can also deduct 12% from the amount of compensation as contribution to the relevant costs. This scheme is therefore self-financing.

According to the statistics of the LAD, as at the end of 2000, there is a surplus of \$860 million in the operating fund of the Supplementary Legal Aid Scheme. At present, the scheme is primarily applicable to litigations on compensation for personal injury and death. The Government should consider extending the scope of this type of scheme to other types of litigations.

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

Apart from reviewing legal aid services, the Government should also conduct an overall review on society's need for legal and other related services. Prof Hazel GENN of the Queen Mary and Westfield College, University of London recently conducted a survey on some 4 000 persons. 40% of the local residents said that when they encountered legal problems, they would try to solve the problems themselves because of high legal advice fees. She also found that legal problems often carry a cascading effect, which is what the Chinese call "misfortunes never come singly". For example, a person dismissed by his company without reasonable grounds is evicted from his home because he cannot pay the rent, or quarrels with his wife, resulting in a divorce. He then resorts to violence over problems related to his children, culminating eventually in a family tragedy, for which he has to face criminal prosecution, leading perhaps to his suicide.

Prof Hazel GENN believes that if simple legal advice service is provided at an early stage, many a tragedy like this can be pre-empted.

The Government should conduct similar surveys to identify inadequacies in the existing legal services, in particular, the demand for legal advice services. At present, many community organizations provide voluntary legal advice services, but demand has outstripped supply. Although the free legal advice service provided by the Law Society in its annual legal function lasts only six days, on each occasion it would receive over a thousand requests for assistance, revealing a keen demand for this type of service. The Government should conduct an assessment in this area and try to meet the needs of the public in this aspect.

In addition, the Government should also actively launch new services and in particular, I would like to mention mediation services. The Judiciary launched the Pilot Scheme on Family Mediation in May last year. As at the end of last month, 533 divorcing couples have made use of the service, and it has been reported that the success rate is as high as 85%, and even in cases where settlement could not be reached, the parties were very satisfied with the service. Mediation service, with its emphasis on the importance of harmony, is particularly suited to the Chinese community. Apart from family disputes, the Government can extend this service to other civil actions.

Mediation service is highly cost-effective. If both parties to a case can successfully reach a conciliation, litigation can be avoided on the one hand,



hence relieving the workload of the Courts, on the other hand, the public and the business sector can also solve disputes at a lower cost and in a shorter time.

Madam Deputy, although my motion comprises items (a) to (f), the item which I wish to put into practice most of all is item (d) concerning the establishment of community legal service centres. Here I would like to mention a legal practitioner whom I have a high regard for — Ms Pamela BAKER. I believe many Hong Kong people have heard of her name. Upon retiring from the LAD, she set up her own law firm with the aim of assisting the disadvantaged by providing low-cost and even free legal services. Unfortunately, recently she had to retire again and return to Britain because of cancer. Ms Pamela BAKER's dream is to see the establishment of a community legal service centre, so that legal advice services can be as readily available as out-patient consultation.

At present, the duty lawyer service is jointly offered by the two professional legal associations which provide free legal advice service one or two evenings weekly in seven District Offices under the Home Affairs Department. The response of the public is overwhelming. Last year, they handled a total of almost 6 000 cases and requests for assistance. The number of solicitors and barristers participating in the scheme exceeds 700 and the waiting time is about two to six weeks.

That the Duty Lawyer Scheme can assist members of the public in need is beyond doubt. However, the advice rendered is one-off in nature without any follow-up and each interview lasts only 25 to 30 minutes. The biggest problem is that the District Office staff assisting in handling enquiries are not conversant in law and their postings change often, therefore they cannot find out in advance what questions of law are involved in the cases requiring assistance. As a result, when the duty lawyers arrive at the District Offices, they have to spend much of their time clarifying and understanding the facts of a case, so much so that there is insufficient time to tender legal advice. In fact, since the launch of the service in 1978, no review of its effectiveness has been conducted to date.

In order to improve and enhance the service, the Government can consider designating an area easily accessible by transport as a pilot area for the establishment of a community legal service centre and provide "out-patient" legal advice services. The public will only have to walk in to obtain the necessary services without having to wait for a long time, and social workers as well as

volunteer lawyers or mediators will also be available to provide "one-stop" counselling services.

Consideration should be given to providing services in different aspects in community legal service centres each day, for example, to specifically handle divorce cases on Monday, labour disputes on Tuesday, and so on. Not only will this facilitate the public in making enquiries, it will also be easier for the centres to arrange for lawyers conversant in different aspects of law to be on duty, so as to enhance efficiency and ensure the quality of service.

The establishment of community legal service centres does not necessarily have to entail a lot of resources. In the past three years, the government subsidy for the Duty Lawyer Scheme was only in the region of \$850,000 and \$860,000, being overtime pay for officers of District Offices. In fact, lawyers volunteering for the scheme have to pay for the transport costs out of their own pockets. I hope that the Government can give more impetus and make greater commitments to the legal advice service.

Community legal service centres can make greater contribution in the promotion of the rule of law, such as organizing exhibitions and seminars to enhance the public's understanding of the law. Madam Deputy, in this regard, it is worthwhile to draw on the experience of the Mainland. When I was in Shanghai, I noticed a website known as *Dongfang Lushi* (Oriental Lawyers) set up by the All China Lawyers Association and the contents of this website are all-encompassing. In particular, it has a column devoted to answering enquiries about laws. The public can post their questions on the website and lawyers throughout the country can access the website to answer the questions at any time. Members who are interested can also browse this *Dongfang Lushi* website. I hope the Secretary for Justice can consider setting up a similar website and I believe this kind of service will be immensely popular.

To promote legal knowledge, the Government should adopt a new way of thinking regarding the promotion of the rule of law. It can consider incorporating common legal knowledge into the primary and secondary school syllabuses and make use of lively approaches to impart legal knowledge, in the hope that an awareness of the rule of law can be cultivated amongst the youths from a tender age.

Apart from quantity, the quality of legal services is also very important. Recently, two Australian experts published a consultancy report on legal education reform. However, because of the time constraint, I cannot discuss

this in detail here. What I would like to point out is that, if the recommendations of the consultancy report, such as the conversion of law degree courses from three years to four years, the enhancement of students' language abilities, and so on, are to be implemented, it is necessary for the Government to make substantial commitments. I was very glad to learn that the Secretary for Justice, Ms Elsie LEUNG, pledged during the policy address debate held recently that as long as a consensus on the implementation of legal education reform is reached by all parties, she would support the relevant funding applications.

However, I would like to point out here that since the University Grants Committee slashed its funding to universities, the law schools in the two universities have been subject to immense pressure. The lecturers, apart from teaching and research, have to cope with a heavy administrative workload. Furthermore, they have to cudgel their brains on ways to increase revenue and cut expenses. Recently, a report in the *South China Morning Post* pointed out that there was a drain of professors in the School of Law in the University of Hong Kong. Many professors whom I know think that the morale is very low presently.

However, I must stress that legal education, in particular the training of barristers, is labour-intensive and therefore the lecturer to student ratio cannot be too high. I hope that the Government can pay special attention to this when allocating resources.

The Chief Executive proposed in his policy address the promotion of legal services in Hong Kong that are related to the Mainland and to encourage enterprises on the Mainland to make use of arbitration services in Hong Kong. I hope the Government can think further ahead and examine how Hong Kong can make use of its special international status and connections to promote studies on the legal systems of China and Hong Kong and to publicize the running-in of the laws of Hong Kong and China to the international community. In addition, Hong Kong can also organize more large-scale international conferences on law with a view to enhancing the international status of Hong Kong on the one hand, and to strengthening the exchange between the legal professions in China and Hong Kong and those of other countries on the other, so as to promote the rule of law on both sides of the boundary.

Madam Deputy, the rule of law is one of the underpinnings of Hong Kong's success. If the law only serves the interest of a small group of people,

then Hong Kong cannot live up to its reputation as a city of the rule of law. By moving this motion, I hope that the Government can address the problem squarely: a lot of people in Hong Kong still cannot obtain the legal service they need. I sincerely hope that this debate is just a beginning. Only through constant review and reflection can our legal services progress with the times. I so submit and hope that Members will support the motion.

**Ms Audrey EU moved the following motion: (Translation)**

"That, in order to maintain the competitive edge of Hong Kong in the rule of law, this Council urges the Government to:

- (a) promote and implement reforms in legal education;
- (b) comprehensively review the demand for legal and related services;
- (c) expand the scope of legal aid services;
- (d) set up community legal service centres;
- (e) promote awareness and knowledge of the law in the community; and
- (f) promote studies on the legal systems of China and Hong Kong, and organize more international conferences on this subject."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Audrey EU be passed.

Mr Martin LEE will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr Martin LEE to speak and move his amendment.

**MR MARTIN LEE** (in Cantonese): Madam Deputy, I move that the Honourable Audrey EU's motion be amended, as printed on the Agenda.

In 1997, Hong Kong reunited with China and became the Hong Kong Special Administrative Region (SAR). At that time, Hong Kong already enjoyed a good state of the rule of law. Thanks to the rule of law, Courts did not have to heed the criticisms of senior officials when delivering rulings and even ordinary members of the public could sue the Government as long as they had legal grounds. The degree of the rule of law in Hong Kong not only far surpasses that of any city in China, it can even be said that it is the only Chinese community worldwide that truly enjoys the rule of law. Even Singapore, which practises the common law, lags far behind Hong Kong. We all know that the Singaporean Government often makes use of libel proceedings to crack down on its dissidents. What is noteworthy is that the ruling party in Singapore, that is, the People's Action Party and its members have never lost any libel action against their political opponents or newspapers. The ruling party in Singapore makes dissidents go bankrupt by means of court orders and the courts become instruments of those in power. The people of Hong Kong are far more fortunate in this regard. Therefore, after the reunification, Hong Kong has become China's "city of the rule of law".

The rule of law is the lifeline of Hong Kong, but it is very difficult to uphold the rule of law. It takes a very long time to establish the rule of law, but it takes only one or two cases to demolish it. If those in power have no determination and sincerity in upholding the rule of law and frequently make statements or take actions that run counter to the rule of law, it is impossible for the Courts alone to uphold the rule of law.

Unfortunately, in the four years since the reunification, the Government has constantly "gesticulated" to the Courts, the most serious incident being that in 1999, when the Secretary for Justice, after losing her legal proceedings against non-permit children, went so far as to exert political pressure on the Court of Final Appeal (CFA) openly by requesting it to clarify its verdict. That was already a very improper act. Final appeal is final appeal, and even if the SAR Government was not satisfied, it should accept the Court's ruling. Subsequently, the SAR Government went further and requested the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law. This behaviour of "a bad loser" has set a draconian precedent (that is, a very bad precedent). Small wonder that at that time more than 600 people from the legal professions took part in an unprecedented silent march to protest against the government act which had injured the rule of law. The Government, for convenience's sake, has gone so far as to injure Hong Kong's lifeline, reducing our CFA to a Court of Semi-final Appeal, which is very saddening indeed.

Under the common law system, every court of law, including the CFA, must not be subject to the influence of the executive in making rulings, and still less can the executive be allowed to be above the law. If the Courts are subservient to the government, then the law will not be able to protect the rights of the public. Under the common law system, if those in power cannot put up with the political and social implications of the rulings of the Courts, then the only feasible way is to amend the law, including the Constitution, and even the Basic Law. Article 159 of the Basic Law clearly stipulates the procedures of amending the Basic Law. Although only the National People's Congress has the power of amendment, the SAR has the power to propose bills for amendments to the Basic Law. Unfortunately, the SAR Government, for expedience or out of political considerations, chose the option of interpretation rather than amending the Basic Law, hence causing irreparable damage to the rule of law. The SAR Government's move is tantamount to relinquishing the power of final adjudication to Beijing.

Once the bad precedent of interpreting the Basic Law was set, in a number of subsequent legal proceedings relating to the Basic Law, government counsels all kept making it known explicitly or implicitly that if the CFA did not deliver a judgement to their satisfaction, the Government would request the NPCSC to interpret the relevant articles of the Basic Law again and rule that the Government had won the cases. Political pressure has cast doubts on the independence of the Courts, and political intervention has also severely dented Hong Kong's international image.

What has been most unfortunate is that some of the rulings delivered by the CFA on some of the politically sensitive cases in the four years since the reunification were indeed disappointing. Firstly, when the CFA was requested by the Secretary for Justice to clarify its ruling on the non-permit children case, it did not reject the Government's request immediately, on the contrary it succumbed to political pressure and in an unprecedented move, made clarifications on a ruling which was already very clear, even though no legal proceedings had been initiated. In the case of "Lau Kong Yung" in December 1999, it even accepted the Government's claim and acknowledged that according to Article 158(1) of the Basic Law, the power of the NPCSC to interpret the Basic Law was "not restricted or qualified in any way". That is to say, the NPCSC can make an interpretation on any provision of the Basic Law before or after court rulings, or even when no request is made. As to the interpretation made, the Courts of Hong Kong are of course obligated to abide by them. The

CFA finally succumbed and accepted this preposterous argument in the face of political reality. I believe this has contravened the stipulations of the Basic Law.

Since Article 158 of the Basic Law contains not just paragraph (1), but also paragraphs (2), (3) and (4), I took great pains to retain in Hong Kong the power of the Courts to interpret the Basic Law when I was a member of the Basic Law Drafting Committee. I understood that under the Constitution, the NPCSC had the power and responsibility to interpret national laws, but I told other members that since arguments often arose during hearings in the Courts of Hong Kong, if the arguments had to be submitted to the NPCSC for interpretation, would it be necessary to do so on every occasion? The other members replied in the negative. Therefore, the interpretation of articles falling within the autonomy of Hong Kong was vested in the Courts while other articles could also be submitted to the Courts for interpretation. However, when a final appeal is lodged, only articles involving national administration, central administration, or the central government or regional governments will be submitted to the NPCSC for interpretation, rather than requesting the NPCSC to interpret the Basic Law again after the CFA has already given an interpretation. However, since the CFA has now accepted the interpretation suggested by the Secretary for Justice, it in fact suffices to retain just paragraph (1), and the other paragraphs can be repealed. Therefore, I believe that the request and application for an interpretation of the Basic Law and the relevant rulings were all preposterous, since they totally violated the spirit under which the Basic Law was drafted and the very clear letter of the provisions.

Madam Deputy, Article 82 of the Basic Law stipulates very clearly that the power of final adjudication of the SAR shall be vested in the CFA of the Region. Article 2 also stipulates that the SAR enjoys independent judicial power. However, with the draconian precedent of interpreting the Basic Law, the independence of the Judiciary in the SAR is confronted by an unprecedented and dire challenge. The Secretary for Justice, as the most important bulwark in defending the rule of law in the SAR, not only failed to strive to protect the rule of law and the dignity of the CFA, but even took the lead to exert pressure on the CFA. The Government's action was no doubt tantamount to abandoning the rule of law for the rule of man, destroying the confidence of the international community in the rule of law in Hong Kong and in "one country, two systems". The consequences are serious.

In this year's Policy Objectives, the Secretary for Justice proposed to develop Hong Kong into an arbitration centre providing high quality legal and arbitration services on disputes relating to commerce and trade between China and other countries. This policy is laudable in itself, however, if we cannot restore the confidence of local and foreign investors in the rule of law in Hong Kong, how would they be willing to make use of the laws of Hong Kong and use Hong Kong as a platform to resolve disputes? Therefore, the most pressing task is to restore Hong Kong as a "city of the rule of law", and the Chief Executive or the Secretary for Justice should immediately make a public statement undertaking not to repeat their mistakes or request the NPCSC to interpret any article of the Basic Law on which the CFA has already given an interpretation. It is only in this way that the confidence of the public and foreign investors in the rule of law in Hong Kong can be restored.

Madam Deputy, Members of this Council often claim to support the rule of law and the Government often says it will uphold the rule of law. Here in fact lies a test. If they indeed support the rule of law, then there is no reason not to support my amendment, because the reason cited by the Government when it requested the NPCSC to interpret the Basic Law was that an extraordinary situation called for an extraordinary measure. Since the extraordinary situation is already history, then it should take this opportunity to make a statement stating that it will never invite the NPCSC to interpret an article or provision in the Basic Law on which the CFA has already given an interpretation. Therefore, here lies a test. If Members support my amendment, then we can more easily restore the confidence of international organizations, foreign investors and the people of Hong Kong in the rule of law in Hong Kong. Our country is about to join the World Trade Organization and the rule of law is a very important component. We hope that our country can establish the rule of law quickly. If we can indeed restore the rule of law in Hong Kong, it will surely go a long way in helping establish a system of rule of law in our country. Therefore, if the amendment is passed, it will help to achieve "a better Hong Kong, a better China". However, Madam Deputy, in the final analysis, it is difficult to uphold the rule of law without democracy. Thank you.

**Mr Martin LEE moved the following motion: (Translation)**

"To delete "and" after "(e) promote awareness and knowledge of the law in the community;" and to add "; and (g) declare in public and pledge that in future, after the provisions of the Basic Law have been interpreted by



the Court of Final Appeal, it will not invite the Standing Committee of the National People's Congress to re-interpret the relevant provisions" after "(f) promote studies on the legal systems of China and Hong Kong, and organize more international conferences on this subject".

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Martin LEE to Ms Audrey EU's motion, be passed.

**MISS MARGARET NG** (in Cantonese): Madam Deputy, I must thank Ms Audrey EU for moving this motion to give this Council an opportunity to extensively discuss the comparative edge of upholding the rule of law in Hong Kong. As Ms Audrey EU proposed in the motion, if the law recognizes that the public enjoys certain rights in theory but has not provided any avenue for them to exercise such rights in reality, then the rule of law is nothing but empty talk.

Madam Deputy, there is a lot I would like to say, but due to the time constraint, I would just choose to discuss a few points.

Firstly, it is about the enhancement of the free Legal Advice Scheme. A basic requirement for the rule of law is that the public must understand their rights and obligations under the law. Though the law is closely related to the people's livelihood, very often the average citizen will not even know where to ask for help if they want to know where they stand when faced with pressing problems, not to mention where to enlist the help of lawyers to solve their problems. The situation where less and less litigants are represented by lawyers have even aroused the concern of the Judges.

There are concrete evidences to show that there are great demands in the community for free legal advice and follow-up legal services. Before the debate, I sent a copy of a report on a survey conducted by my office in the summer to Members: "Paths to Justice — a preliminary study on the channels of legal advice available in Hong Kong". This report revealed that hundreds of solicitors and barristers have, in fact, provided free legal advice to members of the public over the years through various service schemes. It mainly involves the free Duty Lawyer Service introduced in 1978, the details of which have been covered by Ms Audrey EU. It was also mentioned in my report that some other

community centres, such as non-governmental organizations providing services for women, workers and the family, have also enlisted the help of volunteer lawyers. Moreover, such services are not restricted to legal advice but also follow-up legal services. However, the demand for such services is invariably so much greater than the supply that needy people with strong grounds cannot enjoy the rights to which they are entitled.

Equal opportunity is one of such examples. In the past, the Equal Opportunities Commission had injected a lot of resources and painstaking efforts to successfully obtain favourable court rulings that could have been directly applied in many cases. However, many employers took advantage of the fact that the employees cannot afford to have their cases followed up by legal representatives and thus totally ignored the rulings of the Court. This shows that the legislation and court rulings have become only empty words because of the government desire to save a little resources. So, how can this meet the criteria for the rule of law?

I hereby urge the Government to allocate additional resources at an earlier date to review the legal advice and follow-up services, and to explore the possibility of developing community legal service centres in association with the social service and legal sectors. The community legal service centres can be housed in the premises of existing community centres. After the existing staff of these centres have received preliminary training by legal professionals, they can work with the volunteer lawyers to provide the needy public with more appropriate legal advice and other services.

Madam Deputy, in countries like the United Kingdom, the United States and Canada that are ruled by the law, legal advice centres serving the public free have been established for many years, why has Hong Kong allowed itself to be lagging so far behind?

Ms Audrey EU has pointed out earlier the inadequacies of legal aid. As the Government refused to initiate a review of the Legal Aid Ordinance at the meeting of the Panel on Administration of Justice and Legal Services, we have decided to set up a working group to collect views on necessary amendments to the Ordinance. Members are welcomed to join the working group, and I have planned to move a motion debate in due course.

Madam Deputy, in addition to the fact that we should make the rule of law to go deep into the community, we should also enhance the foundation of the rule of law by acquiring real ability and learning. My expectation of the competitive

edge of the rule of law in Hong Kong goes beyond providing general legal services in relation to economic activities or settling disputes over business contracts. Hong Kong has a competitive edge in geographical location and human resources, and it is in the best position to promote researches and international exchanges on the development of the laws and legal system of China.

In fact, such researches and exchanges have already commenced at a very high level. Let me quote some examples. In December last year, the Judiciary Studies Board of Hong Kong organized a seminar on "The Current Judicial Reform in China and the Way Ahead". Speakers of the seminar included senior Judges of the Supreme People's Court and Judges of the Supreme People's Court's National School for Judges. The topics covered were "WTO and the Reform of People's Courts", "The Impact of WTO Rules on the Judicial Review System in China", and so on. In January this year, the Hong Kong University-Peking University Research Centre jointly organized a conference on "Judicial Reform and Legal Development". Speakers of the conference included famous local and mainland scholars of law and the topics included judicial reforms in China and Taiwan, criminal law reform in mainland China, law enactment system, and so on. Such exchanges have a great historical and academic significance. However, it is a pity that the number of such exchanges and researches is still very limited and international participation remains to be promoted.

Madam Deputy, it is not easy for overseas countries and the Mainland to gather world-class judicial and legal experts from mainland China, Hong Kong and international countries, but this should be rather convenient for Hong Kong. Why have we focused on "going north" only and forgotten our own merits? By developing researches and exchanges in this area, we can raise the international status of Hong Kong on the one hand, and benefit the nation as well as boosting confidence in the rule of law in Hong Kong on the other. I hereby urge the Government to pay more attention to supporting and promoting such activities.

Finally, I would like to briefly respond to the Honourable Martin LEE's amendment. The incident of "seeking an interpretation by the NPCSC" has alarmed the international community and done great harm to Hong Kong. I am greatly saddened by this. The Hong Kong Bar Association has repeatedly requested the Government to promise not to seek an interpretation by the NPCSC on matters within the autonomy of Hong Kong or on provisions that have already

been interpreted by the CFA, but on each occasion, the Government has refused to make any promise. Therefore, it is only natural that I should support the amendment.

**MR LAU PING-CHEUNG** (in Cantonese): Madam Deputy, sometime earlier, I received a booklet entitled 《侃侃論法》 (talking about law assuredly and calmly) published by the Hong Kong Bar Association (Bar Association). I like the title of this booklet very much. "侃侃" is used to describe a manner in which someone presents his views, that is, assuredly but calmly. In fact, I think if we really believe in something, we do not have to go to extreme lengths and shout ourselves hoarse in repeating our beliefs and forcing other people to accept our views. I thank Ms Audrey EU very much for moving the motion on "Upholding the rule of law" in this Council, for she has given us an opportunity to discuss the rule of law situation in Hong Kong in a calm and peaceful manner.

As I am not in the legal profession, I do not intend to discuss Ms Audrey EU's original motion and Mr Martin LEE's amendment in great detail. I just wish to state my personal views as a legislator on the existing rule of law situation in Hong Kong.

The Basic Law has been implemented in Hong Kong over the past four years and there has been a tremendous increase in the number of cases brought before Courts at various levels. In the Hong Kong Judiciary 2000, Mr Justice Patrick CHAN, the then Chief Judge of the High Court said "The year 2000 was a challenging year for the High Court. The number of civil cases filed with the High Court witnessed a record high at about 35 000 per year during 1998 and 1999". The sudden flux of court proceedings made us wonder whether the Basic Law can really be implemented in Hong Kong, a place that has always practised common law. However, I have also been told by those in the legal profession that the running-in of the two judicial systems is unavoidable and it is only natural that the number of court proceedings will increase because the implementation of the Basic Law is unprecedented in Hong Kong.

In the booklet 《侃侃論法》 mentioned by me earlier, ex-chairmen, the existing chairman and executive committee members of the Bar Association expounded on the rule of law from different angles. They stressed that more should be done in addition to ruling Hong Kong according to law, and this included respecting the constitution and protecting human rights. In fact, in the

past few years, Courts at various levels often dealt with cases in relation to the right of abode in Hong Kong. Even the amendment moved by Mr Martin LEE today is also related to this issue. Outside the Court, this Council was also dragged into the dispute over the Public Order Ordinance. From this, we can see that the dispute over the rule of law has already gone beyond the Courts and involved the whole community. As Mr Justice Andrew LI, the Chief Justice of the CFA pointed out in the Hong Kong Judiciary 2000: "The Court of Final Appeal decided a number of important constitutional issues. By reason of their subject matter, these judgements were inevitably controversial, whatever the outcome".

Madam Deputy, common law is practised in Hong Kong and one of its characteristics is the separation of the executive, legislative and judicial powers. Here in this Chamber, we make laws so that the views of the majority of the public on certain specific subjects can be reflected through the enactment of legislation. Such legislation will then regulate the actions of the public at large, including those of the Government in relation to that subject. Once the work of law-making is completed, enforcement and interpretation will then become the respective responsibility of the executive and the Courts. However, apart from the principle of "one country, two systems" and the Basic Law where there is separation of the executive, legislative and judiciary powers, a fourth element is added, that is, the NPCSC which has the power to interpret the Basic Law. Mr Martin LEE asked the Government to undertake that it will not invite the NPCSC to re-interpret Basic Law provisions that have already been interpreted by the CFA. The crux lies in whether the issue under dispute falls within the autonomy of Hong Kong.

Of the numerous litigation cases on the right of abode, the litigants mostly come from the Mainland. Perhaps the task of deciding whether a litigant is a Hong Kong citizen will be simpler for the Courts if the mainland Government does not have any objections. Just imagine if relevant provinces and municipalities of the Mainland requested the litigants concerned to be repatriated after the SAR Court had passed a judgement, then the case would no longer be a local affair. If the Government makes such an undertaking, it means that it is forced to ask the CFA to consider whether it is outside the autonomy of the SAR, and should thus seek an interpretation by the NPCSC in the event of any such similar cases. The autonomy of Hong Kong may thus be reduced. Madam Deputy, whether we like it or not, Article 158 of the Basic Law has already made a clear stipulation on this.

Mr Ronny TONG, the ex-chairman of the Bar Association has clearly stated the position of the Association on the Public Order Ordinance: "In this relation, some people raised a cry and regarded the Public Order Ordinance as 'draconian law' or 'vicious law'. They have even advocated 'civil disobedience' or tried to challenge the law. These are all politically motivated slogans, and the Bar Association does not condone with such views ..... from the standpoint of our association, even 'draconian law' or 'vicious law' are laws and must definitely be observed. If a piece of legislation does not have the support of the community, the normal procedure is to have it repealed or amended in accordance with the legislative proceedings. If this is not politically possible, then there is a problem with the constitutional framework and not the legal system." With these remarks, I oppose the amendment.

**MR ABRAHAM SHEK:** Madam Deputy, Hong Kong has successfully established itself as a world-class metropolis, and the major key to our success is a sound legal system and society's collective effort to uphold the rule of law.

I am not a legal professional, but as a member of the community, I am as committed as any legal professional in upholding the rule of law. This has become the fundamental belief of our community. It is upon this belief that I will speak on the Honourable Audrey EU's motion.

Different sectors in the community have contributed their efforts in upholding the rule of law in Hong Kong. As Members of the Legislative Council, we have been studying bills and proposing new legislation or amendments to existing legislation. The Government, the legal profession and the rest of the community have tried their best to abide by the existing laws. The belief in the rule of law has created a favourable social environment for equal opportunities and harmonious development.

Madam Deputy, we believe that the efficient legal system has given Hong Kong the competitive edge over other cities, particularly Shanghai. The confidence is based on our understanding of the legal system, which gives confidence to our business partners and potential investors and is admired by all our competitors. But is our legal system perfect? Nothing in life is perfect. There are areas which need improvement, such as how to increase the public's awareness of the laws, how to strengthen our legal system to better deal with rapid economic changes and new socio-economic problems.

In the recent Report on Legal Education and Training produced by two Australian consultants, Prof Paul REDMOND and Mr Christopher ROPER, the English standard and analytical skills of our local law graduates are criticized as insufficient. With regard to the academic stage of legal education, the two consultants suggest that the present three-year Bachelor of Laws degree course in our universities be extended to four years. The consultants also recommend that a special English language test be developed for the study of law.

The recommendations are indeed creative but controversial, and I expect both the legal profession and the general public will have their own opinions. To improve the manpower quality of the legal services sector in Hong Kong, some in the legal profession advocate that the Government should allocate more resources to the law schools to reduce the teacher and student ratio and to increase the number of teaching posts.

It will take some time before the legal profession can reach a consensus regarding what should be the best solutions to improve the local legal system. The Government also has to take time to review the 160 recommendations before deciding whether to accept the Report. In this regard, it would be of benefit to Hong Kong for the legal profession and the Government to work out a programme for implementation to improve the quality of legal profession in Hong Kong.

The motion also urges the Government to expand the scope of legal aid services and review the demand for legal services. I believe that these proposals will in the long term benefit society as a whole. But I am not too sure if the Government has adequate resources to implement the proposals all at once. Therefore, I suggest that the Government should set out its own priority and flexibly adopt the proposals according to its own financial ability.

Ms Audrey EU's recommendation for setting up community centres for the provision of legal services should be supported for immediate implementation. Madam Deputy, laws are made for men and not men are made for laws. Therefore, accessibility to legal services must be made easily available and affordable.

Ms EU also urges the Government to promote studies on the legal systems of China and Hong Kong. I agree very much with her point. It is important that Hong Kong and China understand each other better through conducting

various studies and researches. It is easy for us to understand the people in China, but it takes time for the people in China to understand us. It is very important that we must have this discourse. Very quickly, the bond between Hong Kong and the Mainland will become even closer after China officially joins the World Trade Organization. There is an urgent need to understand what the differences between the two legal systems are and how to accommodate these differences.

In conclusion, Madam Deputy, the rule of law is the very foundation on which our society is built; it is the front and last line of defence. There is no room for compromise and we should guard it jealously with the best of our ability. Regarding the Honourable Martin LEE's recommendation that we must support him to prove that we believe in upholding the rule of law, there are many roads leading to Rome and we can choose the Elsie's way, the Martin's way or the other way. Democracy is for all and should be practised by all.

With these words, I support Ms Audrey EU's motion. Thank you.

**MS MIRIAM LAU** (in Cantonese): Madam Deputy, as the accession of China to the World Trade Organization (WTO) is just around the corner, Hong Kong lawyers will see a lot of opportunities to develop legal services. Therefore, it is necessary for local lawyers to actively upgrade their own capabilities in order to meet new demands. After the accession of China to the WTO, the demand for high quality legal services in different regions of China will become more intense. In China, people of talent have been emerging but given their late start, they do not necessary have sufficient knowledge to handle matters of international law. Under this circumstance, Hong Kong lawyers may seize the opportunity of providing legal services upon the accession of China to the WTO with their relatively broader international outlook in legal practice, the advantage of the similarity in language and culture, and the benefit of Hong Kong being a gateway to the opening Mainland.

Although Hong Kong lawyers have an undeniable broader vision and have undergone professional training, most of them are short of certain modernized and specialized legal knowledge, such as international law, maritime law, information technology law and insurance law. The current courses in legal practice are too conservative; accordingly, the training in specialized legal knowledge is rather inadequate.



For this reason, in order to tie in with the social changes, it is necessary to reform legal education and training in Hong Kong, and the general direction should be supplementing fundamental professional training for law school students and serving legal practitioners with modernized and specialized legal curriculum, so as to enable them to provide diversified and specialized legal services.

Madam Deputy, besides new legal knowledge, lawyers nowadays should also acquire a mastery of language. In recent years, a lot of people have complained of the inadequacy of English language proficiency of new lawyers. We are also concerned about this problem. The Liberal Party has been fighting for improvement to the standard of English language among different industries, and we consider a good proficiency in the English language in the legal sector is important in particular, for most legal documents and litigations are based on the English language. I believe colleagues in this Chamber will agree that enhancing the training in English language is one of the essential links in legal education reform, but I also wish to point out that while stressing the importance of English language education, we should not neglect the importance of the Chinese language. If Hong Kong lawyers aspire to successfully entering the mainland market, I believe the prerequisite is to acquire an excellent command of the Chinese language and Putonghua.

Madam Deputy, the Liberal Party considers the existing legal education in Hong Kong too rigid, lacking in flexibility to cope with demands of the changing society. A review is therefore essential.

Moreover, the original motion proposes to expand the scope of legal aid services. This the Liberal Party can agree in principle. At present, a lot of civil litigations are not included in the scope of legal aid services; for example, limited companies are not entitled to legal aid. However, we believe that many small and medium enterprises (SMEs) also have the need for legal services, such as the recovery of some business debts. They may have good reasons and a good chance of winning their case, but because they cannot meet the application requirements, they are thus barred from bringing the case to Court. The existing Legal Aid Scheme has also laid down many conditions, just as Ms Audrey EU has listed a number of them earlier, such as the ceiling on disposable income, which has made legal aid unavailable to a lot of SMEs and middle class people in genuine need. Therefore, the Liberal Party considers we should review the scope of legal aid services in order to study how these SMEs or

middle class people can be enabled to bring their cases of good justifications to the Court in order to do them justice.

Madam Deputy, the general public in Hong Kong only have a smattering of legal knowledge, as a result, the Liberal Party supports the idea of promoting knowledge of law. We think the Government may hold regular and free seminars on general legal knowledge in community centres all over the territory in order to promote awareness and knowledge of the law in the community. Furthermore, the Government has in fact launched a Duty Lawyer Scheme through the Hong Kong Bar Association and the Law Society of Hong Kong, to provide free legal advice services to the public. However, I do not know whether it is due to insufficient resources or other reasons that a lot of people have to wait for two to three weeks before they can get the free legal advice service. Therefore, whenever they encounter problems, they are unable to obtain timely legal advice or suggestion for a solution. As a result, we suggest that the Government should consider expanding this Duty Lawyer Scheme, or as proposed by Ms Audrey EU, to set up community legal service centres, so that more people in need can get free legal advice service within the shortest period of time, and to solve their legal problems effectively.

In brief, the Liberal Party finds all of the six proposals made in the motion of Ms Audrey EU worthy of support.

The Liberal Party disagrees with the amendment proposed by Mr Martin LEE, which requests the Government to pledge that in future, after the provisions of the Basic Law have been interpreted by the Court of Final Appeal, it will not invite the NPCSC to re-interpret the relevant provisions. The Liberal Party considers the NPCSC has the constitutional right to interpret the Basic Law, as confirmed by the CFA. Of course, we do not wish the Government to seek an interpretation by the NPCSC indiscriminately. We hope the Government would exercise restraint and adopt that as a last resort only in the most extraordinary circumstances and when there are no other solutions and when the problem is of grave significance. However, we consider asking the Government to make pledges such as "not to do it again, just this once and this is an exceptional case" are unrealistic at all. Since nobody can assure that in future, no extraordinary circumstances or emergencies just as mentioned by Mr Martin LEE would arise.

With these remarks, Madam Deputy, I support the original motion.

**MR LEUNG FU-WAH** (in Cantonese): Madam Deputy, Hong Kong is a community upholding the rule of law. There are even plans to develop it into an international arbitration centre. To achieve that goal, the Government must enhance its edge in upholding the rule of law. In Ms Audrey EU's original motion, there are a number of proposals but first of all I would like to talk on the proposal of expanding the scope of legal aid services.

To obtain legal aid, an applicant must be means-tested. His assets cannot exceed \$169,700 in value. This becomes an unreasonable requirement when it comes to settling labour disputes. Well, a fine Chinese tradition is to store up grain against dearth. The fundamental concept is to rely on one's own abilities to prepare for future needs. That is why wage earners in general will keep some money for emergency use as far as they can. Before the Asian financial turmoil, local employees were paid more reasonable wages than now and could accumulate some savings in the bank. When the stock market was flourishing, everyone was buying stocks and wage earners were among the buyers because they treated buying stocks as a protection in addition to retirement funds. So, in the past it was not unusual for a hard-working wage earner to have \$100,000-odd in savings as the Hong Kong economy was doing well.

However, this responsible behaviour of the wage earners' to store up grain against dearth and to dispense with reliance at old age on the community becomes a reason of rejection when they apply for legal aid in their claim for wages in arrears. They are in fact trying to recover their hard-earned rewards but they are denied legal aid due to the poultry savings. Must they spend their last nickel first before they can recover compensations due to them? This is not reasonable.

In labour disputes, if the employees won a case at the Labour Tribunal but the employer appealed to the High Court, the employees would have no choice but to take on the appeal. Proceedings at the High Court are meant to be arguments on points of law but since lawyers are required to represent both sides, everything boils down to a fight based on wealth. If employees could not obtain legal aid because of their financial resources, they might have to pay for a substantial part of the costs of the employer, even if they were prepared to relinquish the award given by the Labour Tribunal. This means additional losses for these wage earners. Some unscrupulous employers may use their wealth, which enables them to instruct lawyers, to force employees to accept a deal on appeal. So, what is the true essence of the law under such

circumstances? Moreover, when Labour Tribunal cases go to the High Court for appeal, the debate is purely on points of law but the legal facts have already been established. If the employees lost their case, that would mean the High Court Judge did not agree with the Judge at the Labour Tribunal on some points of law. If, however, employees have to bear the consequences, is this reasonable? Though the legal facts have been established, employees are forced to relinquish their compensation due to some unfairness or flaws in the system. What an irony this is for a community practising the rule of law!

Madam Deputy, several years ago, the Hong Kong Federation of Trade Unions (FTU) mentioned to the inter-departmental working group the above inadequacy in its submission in respect of a consultation paper on law reform. Regrettably, the working group did not heed our complaint. Ten years have passed and the unfair situation persists. Should this happen to an advanced community? The FTU requests that the means test for legal aid applications in respect of labour disputes be reviewed. The upper limit should be set at the monthly salary or average monthly salary of an applicant, not at his savings. Regarding appeals made by employers against judgement of the Labour Tribunal at the High Court, the FTU thinks the means test for employees should be waived so that justice can be done.

The Honourable Margaret NG cited some cases and examples a moment ago. I also wish to cite some examples to show the lack of protection by the law for our employees. When labour disputes arise in respect of severance pay or employees' compensations, mediation is carried out for both labour and employer in accordance with the Employment Ordinance. However, the so-called mediations now have mostly been reduced to bargaining or domination by employers. Employees are in a passive position. Despite stipulations in the Employment Ordinance employers may agree to pay only 50%, 60% or 70% of what is due from them. If the bargaining fails, an employer may say "let us go to the Labour Tribunal for listing of a hearing date and that would mean a delay of several months for you employees." To wage earners, who get paid only if there is work, this would mean more suffering because they would not only lose their jobs but also be made to wait for several months before getting the compensations due. How can they get by without either work or pay? In the past two years (that is, 1999 and 2000), the Labour Tribunal received 61 000-odd claims and cases of successful mediation amounted to 35 400-odd. That means in the labour disputes, over half of the employees settled for less than the full amount. The Labour Department reported it had no record on the statistics

for the amount of compensation payable to employees or the compensation received by employees after mediation. Nevertheless, that cannot disprove the facts. Our labour unions receive complaints from employees every day against their failures to enjoy the rights prescribed under the Employment Ordinance. That is the reality reported daily to our labour unions.

In fact, wage earners, when faced with labour disputes, can regain their rights explicitly stipulated in the Employment Ordinance only by way of civil proceedings, which may not complete in a short period of time. During the interim, they may suffer in emotional and economic terms that are far greater in magnitude than the compensation they can receive after the proceedings for the basic compensation prescribed by the law is minimal. This proves that wage earners are not given sufficient protection under the existing labour legislation.

Moreover, I would like to talk about the amendment proposed by Mr Martin LEE. From the wording of the amendment, I believe Mr LEE endorses the power of interpretation of the NPCSC regarding the Basic Law, but he wants to use this political manoeuvre to restrict the power of the SAR Government in enforcing the law in the years to come. We must understand that the Basic Law not only empowers the NPCSC to interpret the Basic Law but also empowers the Chief Executive to seek an interpretation from the NPCSC. This is a fact no one can deny. Thus, Mr LEE's demand on the Government to make such a pledge will undoubtedly injure the spirit of the rule of law and is therefore inconsistent with upholding the rule of law.

With these remarks, Madam Deputy, I support the original motion.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, the first point about the motion today is that an issue of social concern has been brought out: fees for legal services are in general deemed to be exorbitant. People from time to time learn through the media astronomical legal fees are paid in certain court cases. This makes it difficult for the general public to enjoy protection of their personal rights under the law. This is especially true for those who are not financially eligible for legal aid but who are not so well-off, so that they are at a great disadvantage in seeking protection from the law. The situation affects not only those who are caught this way but also the credibility and acceptability of the administration of justice, and is hence not desirable for the development of a community practising the rule of law. Given such circumstances, it would be

hollow, irrelevant, or even hypocritical to talk about principles in respect of human rights, the rule of law and independence of the Judiciary.

Hong Kong is an economic system with a low tax rate. Though requiring the Government to inject more resources so that more people may enjoy public-funded legal services may solve the problem in the short term, it may not solve it in the long term or in a sustainable manner. The fundamental point is that the legal profession, the community and the Government have a shared responsibility to reduce legal fees effectively and reasonably through reforms to the legal system so that the law and justice are made easily accessible to the people. Only in this way can a radical solution be effected.

Legal services have a noble responsibility in upholding the rule of law on the one hand, and yet on the other, they may be deemed to be a necessity, not much different from other necessities such as food, clothing, shelter and transportation, that people need every day. In a business community like Hong Kong, which operates according to the discipline of a free market, exorbitant legal fees must be the result of a disequilibrium in supply and demand. Therefore, we should tackle it by ironing out the supply-and-demand relationship and using the forces of the market to facilitate continuous improvement to the quality of legal services and the level of fees. Expensive legal services do not mean the best legal services. Only when quality services are provided at reasonable prices do we have the best legal services. Where an index for legal fees is lacking, it would be difficult to have a balanced assessment on the quality of legal services.

The first step to attain equilibrium in supply and demand is to ascertain that there is no excess of legal professionals but an inadequate number of them. However, churning out more law graduates through legal education alone is inadequate, because graduates may not necessarily be able to enter the market directly to provide legal services or take part in professional work. Therefore, we have to devise a system under which opportunities of professional practice and training are made readily available to new generation legal talents. We must also expand legal services to cover relatively basic and specialized areas, including certainly arbitration, mediation and so on, to enable graduates to enter the market to provide services, to obtain professional qualifications through continuous hard-work and to enhance their professional standards despite the prevailing difficult economic conditions. In addition, regarding the future development of the two streams of legal services, how existing legal proceedings

may be further streamlined, the role of different forms of trials and the role of Judges, we may conduct a research with a more open mind. The most basic principle to which we must adhere is that the entire system should be more user friendly and justice is more readily accessible to the public.

Lastly, the issue of legal language. I think the legal system including trials in Hong Kong must be able to operate in Chinese or English, both being official languages. In criminal proceedings, at least, the accused should enjoy the right to choose an official language for the proceedings to his interests. This is a basic requirement for a fair legal system that protects the rights of the people, including their right to language and culture. In constitutional proceedings regarding the Basic Law, our Courts must have the ability, without resorting to translation, to understand and analyse all types of constitutional instruments. Only in this way can there be an accurate interpretation of the law. Only in this way can our legal services be orientated towards the people they are meant to serve and towards making justice more accessible and acceptable to the people. It is my conviction that in the long run the costs of legal services will eventually be thus reduced and knowledge of the law will be gradually popularized.

The amendment to the motion is, according to my intuition, trying to make use of the subject under discussion to put over someone's ideas, but it is too far-fetched. The reason is that the Government has legitimately sought an interpretation from the NPCSC on the relevant provisions, so it shows that it is upholding the rule of law. Since that was a legitimate act, why does the Government have to make a declaration in public now? If the Government did make such a declaration, it would make people feel that the Government is being unsteady in its stance, hence making its action all the more unconvincing to the public.

Madam Deputy, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, the rule of law is one of the four linchpins of our society, together with freedom of the press, a level playing field and a clean and efficient Civil Service. Despite the many pessimistic forecasts made before the reunification, the rule of law and the independence of the Judiciary have been very much respected after the reunification, and Hong Kong can maintain its competitive edge in these respects.

However, in the face of severe competitions, we cannot be complacent. To meet the needs of economic development, we need to have a sound legal system and to ensure the continued provision of quality legal services. In the past, as our property market boomed, many solicitors focused on conveyancing work to the neglect of other fields of law such as company, partnership, taxation, intellectual property, financing and securities, and so on. But with globalization of the world economy, there has been an increasing demand for legal services in other areas and the services so required have become more specialized. Therefore, lawyers in Hong Kong must enhance their expertise to meet the needs of the market.

On the other hand, our legal education system has been in place for quite a long time. As pointed out by the two Australian consultants who compiled the *Report on Legal Education and Training in Hong Kong*, the system as practised in Hong Kong was not the most desirable if we aimed at training up local lawyers who were able to reach international standards and to compete with the best lawyers in the world. They were also of the view that there were inadequacies under the present system in respect of English language training. Despite the fact that there has been a diversity in reaction to the views presented in the Report from the public, including those from the legal profession, it is commonly believed that there are areas in legal education that call for improvement. I think the Government should consult the public as well as the legal profession to determine a way forward for reforms in legal education and to expedite the implementation of such reforms. Consideration should be given, if necessary, to increase resources for purposes of enhancing the quality of legal education.

With the links between Hong Kong and the Mainland becoming closer, together with the opportunities offered by the imminent accession of China to the World Trade Organization, including those opportunities in legal services, the Government should endeavour to promote studies on the legal systems in China and Hong Kong in order to enhance knowledge of each other's system. Not only will this facilitate lawyers in Hong Kong to develop business in the Mainland, it will also be conducive to the implementation of "one country, two systems".

As an advanced economy, Hong Kong should promote awareness and knowledge of the law in the community. This will make the public have a better understanding of the legal system and their personal rights. As a matter of fact, many people in Hong Kong lack such an understanding. For example,



the Government has been encouraging private residential buildings to set up owners' corporations. These owners' corporations have encountered quite a lot of legal problems such as the liabilities of the office bearers. This has deterred many people who are willing to use their own time to serve the buildings in which they live from taking up positions of responsibilities. I therefore support the proposals in the motion on promoting legal education in the community. However, with respect to expanding the scope of legal aid services, we must be mindful of the needs in society and the effective use of social resources, so that such services will not be abused and that people will not resort recklessly to litigation as a means to solve disputes, thereby exerting pressure on the judicial system and the related resources.

Madam Deputy, as the rule of law is an important pillar of society, we must strengthen and further enhance our competitive edge in this respect, so that society as a whole and individual members of it can be benefitted. I so submit.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, I rise to speak in support of the motion and the amendment, but I will focus on the proposals under items (c) and (d) of the motion, namely, to expand the scope of legal aid services and set up community legal service centres.

Madam Deputy, to uphold the rule of law, an essential element is to ensure that all people who have reasonable grounds for taking legal actions or establishing a defence in proceedings can have access to legal services. Article 25 of the Basic Law provides protection for all Hong Kong residents to be equal before the law, hence Hong Kong residents shall have the right to obtain legal advice. But this is nothing more than academic because in reality, the rich can always obtain more impartial and equitable treatment than the poor before the judicial system and before the law. To a great majority of the middle class who are not eligible for legal aid, legal services are exorbitantly expensive and the pursuit of justice may even cost them all their fortunes. To realize the protection entrenched in the Basic Law and to upgrade the standard of the rule of law in the SAR, I consider it necessary to review and expand the existing scope of legal aid services.

In many civil cases, even though the applicant is unemployed and badly-off, and have merits in law, the applicant may not necessarily be granted legal aid. He will still be denied access to legal aid if his case is outside the scope of

the legal aid scheme. For instance, cases of libel are not within the scope of legal aid. Besides, many cases involving financial disputes also fall outside the scope of legal aid.

Another problem with the legal aid system is about the eligibility criteria. At present, applicants have to pass two tests. First, a means test. The financial resources of an applicant cannot exceed the prescribed limit of \$169,700 in order to be eligible for legal aid. Second, the merits test. The applicant must have meritorious grounds for commencing the proceedings or establishing a defence. But first, we must note that this limit of \$169,700 does not refer to the sum of money in the applicant's possession. What it means is that the amount of the applicant's monthly disposable income multiplied by 12 must not exceed this limit.

A household having a monthly income of a mere \$20,000 and having neither property nor savings in banks may still have a disposable income exceeding the assets limit for legal aid. Therefore, while many "wage earners" or members of the middle class do not have much money to spare, they will still be shut out from legal aid. Moreover, for an applicant whose financial resources are assessed at between \$20,001 and \$169,700, he will have to meet part of his legal costs once he is granted legal aid. The amount of contribution can be up to \$42,425 at a maximum, depending on the applicant's financial resources. So, even though an applicant is granted legal aid, he may still have to make savings for the proceedings.

Another problem lies in section 18A of the Legal Aid Ordinance concerning interest on the first charge. We have recently received a case involving family disputes. In this case, the Court ruled that the title of a property owned by a woman's ex-husband be given to that woman. As it was a joint tenancy, the woman must therefore continue to live there. But as her ex-husband had run away, she could not recover the legal costs from him. The woman was granted legal aid in the first place, but as she was able to recover 50% of property ownership with the legal aid, the Legal Aid Department (LAD) therefore demanded payment of interest under the first charge requirement. As to the amount of interest, Madam Deputy, I can tell Members that under the current arrangement, it is calculated at a rate of 10% per annum from the date of registration. Insofar as this case is concerned, the lawyer's fees demanded by the LAD is \$50,000 only, which is actually not high. But this woman told us that her son is just seven years old and that she can sell the property only 10

years later. If she can sell it only 10 years later, and calculating at a rate of 10% per annum, she is required to pay the interest amounting to \$5,000 per annum, which means \$50,000 over a period of 10 years. The interest alone will cost her \$50,000. So, the total costs, being the lawyer's fees plus interest, payable by the client will double the lawyer's fees. With regard to this provision concerning interest on the first charge, I believe there is a need for the working group on legal aid services chaired by Miss Margaret NG to call on the Government to conduct a review and introduce amendments promptly. Given that the current prime rate remains at a very low level and banks have been consistently lowering the interest rates, it is absolutely unacceptable that the Government has not lowered the interest rate which still stands at 10% per annum.

Another point is about the means test mentioned just now. In some of the cases received by us, while some residents may own properties, the value of their properties may be extremely low. For instance, they may own village houses or properties that cannot be leased. Their properties are nevertheless assessed at very high prices by assessors of the LAD. Applicants for legal aid do not have the means to engage other assessors to conduct an evaluation of their properties, so as to dispute the assessment by the LAD. Therefore, the means test often becomes a barrier, making it impossible for applicants to argue with the LAD and depriving applicants of access to legal aid owing to their property ownership.

Furthermore, when applicants whose applications were rejected by the LAD lodge an appeal, the Registrar often cannot provide assistance for the appellants or teach them how to ask questions (the Registrar, of course, are not allowed to do so). But if voluntary lawyers like us can help draft the affirmations for appellants, my experience tells me that the appeal case will stand a better chance of success with the submission of properly written affirmations. For affirmations written by appellants themselves, sometimes even the Registrar will say that their affirmations do have problems and will therefore ask the LAD to reconsider them. I have a case at hand that has been considered by the LAD for two whole years and a decision has yet been reached as to whether the applicant will be granted legal aid. So, in view of the many problems in this aspect, I hope that the authorities concerned can, whether in the context of the ambit of the legal aid legislation or their enforcement, have regard for the fact that legal services are expensive indeed. In this connection, I think the Government should help the public resolve their financial problems through the

provision of legal aid, so that the public can enjoy the legitimate right to receive better treatment under a fair and just judicial system.

Madam Deputy, let me say this very quickly. I think Hong Kong should follow the examples of other countries, such as Australia or the United States, to set up community legal service centres so that apart from the legal aid scheme, the public can be provided with more alternatives of access to legal aid services, thereby enabling the people of Hong Kong to obtain fair legal services. Thank you, Madam Deputy.

**MISS EMILY LAU** (in Cantonese): Madam Deputy, I speak in support of Ms Audrey EU's motion and Mr Martin Lee's amendment.

Some 10 years ago, I once interviewed a Judge and after the interview, we had a chat. The Judge told me that he did not quite believe Hong Kong people would genuinely support the rule of law, for he thought that most Hong Kong people did not know what the rule of law was all about. Even in the circle of Judges, the Chinese Judges mostly talked about mahjong, whereas the expatriate Judges talked about cricket. They seldom communicated with each other and they had very different cultures. Madam Deputy, I think some members of the legal profession also may not be convinced that Hong Kong people support the rule of law, though the people may say that they support it. But what exactly is the rule of law? How hard will Hong Kong people work or what sacrifices will they make to uphold it? We do have some misgivings about this, particularly at this moment of crisis and turbulence in Hong Kong when many people have little confidence in the future. So, Ms EU has done us a very kind favour by proposing this motion. This motion should be agreeable to us all, because everyone, regardless of their political affiliation, should agree that the rule of law is the cornerstone of the success of Hong Kong. We have to think about what more we should do to uphold the rule of law; and all of us should also agree that upholding the rule of law is conducive to helping the people restore their confidence.

Madam Deputy, I am an elected Member, not a lawyer. But over the past decade or so, numerous citizens have come to my office to seek legal advice. My staff, of course, would wish to help them but they could only tell those people not to come to Emily LAU for legal advice any more, for she is not a lawyer and therefore not in a position to give them advice. After that, some of

these people did not come any more, but many still came anyhow. They told me everything about their cases but in the end, I could only suggest them to go to the District Offices for free legal advice. Earlier on, many colleagues said that there are long queues for these services and so, these services certainly cannot provide timely assistance for urgent cases.

I have been asking friends in the legal profession what can be done to deal with this situation. The citizens are feeling so helpless and distressed, but people who are able to lend them a hand are so few in number. If they must pay before they can obtain such advice, many of them simply cannot afford the costs. They do not even know how to pay for such costs or where to start in the first place.

Moreover, Madam Deputy, some of these people who came to me for assistance were a party to proceedings. They might be the ones who instituted the proceedings or the ones being sued. They would tell me that they had never been sued in their lives and would ask me to refer a lawyer to them. They have never approached any lawyer before, so they know nothing about what to do. I have received countless such cases, but how can I help them? I cannot be of any help to them. Madam Deputy, the most that I can do is to provide them with the list of lawyers, which consists of hundreds of names and hundreds of law firms. I did discuss with the Law Society in the past on ways to address the problems. These people, particularly those being sued, are on tenterhooks. They really do not know which lawyer to turn to and to entrust their cases with. They know that some lawyers are good and some are not. But do they have to go over the list and start from the first one on it, and if the first one is found to be not good enough, then they have to proceed to the second one, the third one and so on and so forth? Do they have to find a lawyer in this way? These are all long-standing problems, and I, being a Member of the Legislative Council, am totally incapable of helping them. Obviously, I am not able or in a position to refer lawyers to them.

Some people said that this is also the case for other professionals, say, doctors. Yet, people are willing to recommend doctors, and so doing will not cause them any trouble. But when one is looking for a lawyer, nobody would wish to make such recommendation. So, people in need of this service are most unfortunate, and I do not have the heart to follow up on these cases or find out how these people solve their problems eventually. I hope that the proposals made by Ms EU can help these people. I believe Ms EU is not suggesting that

tens of billions of public coffers be expended to implement these proposals. I understand that we do not have an unlimited supply of public funds. But sometimes, all it takes is to pool resources together to provide some measure of assistance.

I believe many people do not only know nothing about how to engage a lawyer. They even do not know how to seek advice. If we talk to them about the rule of law, they may say that we are talking nonsense, for they hold that the rule of law is there to serve the rich and only the rich can afford the service of the most prestigious law firm and hire the best and the most experienced lawyer or even a Queen's Counsel from England. To the have-nots, what rule of law is there for them to speak of? Just as some colleagues have said, although some workers did know that they were in the right, they still would not seek outside assistance to do themselves justice. I, therefore, strongly support the points made by Ms EU.

I also hope that more efforts can be made to step up the training of lawyers. Very often we can note from newspapers that lawyers were dressed down by Judges in Court for their poor standard of English. Some clients did tell me that they had to instruct their lawyers what to say in Court, or even told the lawyers that they had misunderstood the words of the Judge for what the Judge had said did not carry the meaning as they perceived. Why can these people practise as lawyers? Madam Deputy, I hope that better efforts can be made in this regard expeditiously to attract people of high calibre to the legal profession and ultimately ensure the provision of quality legal services.

Finally, I would like to say a few words on Mr Martin Lee's amendment. Mr LEE may know only too well that his amendment will be negated. Yet, he is a person who keeps on fighting despite repeated failures. That is why I always hold his spirit in high repute. I understand that the incident to which the amendment alluded had shocked the world, and the United Nations had even made mention of it. While this amendment today may be negated, he has indeed spoken the minds of many people. I hope the executive authorities will not abuse this power (though it is doubtful as to whether the executive authorities have this right). Should the executive authorities seek an interpretation of the Basic Law again, I believe the impact will be unbearable to Hong Kong. I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam Deputy, the rule of law is the fundamental principle governing the Government and the people in the exercise

of powers and rights. This principle is underpinned by the protection of human rights, respect for the constitution, an independent Judiciary, a government bound by law, and statutes that embrace transparency and ensure equity and consistency in application. Measured by these standards, Hong Kong can be considered a society where the rule of law prevails. In fact, a well-established rule of law system is a key factor that contributes to the development of Hong Kong into a modernized cosmopolitan city. Certainly, to uphold the rule of law successfully, Hong Kong must ensure the continued existence of a team of professional and quality Judges and lawyers, a government that keep faith with the rule of law, and a legislature with a high degree of transparency and public accountability. An equally important element is our people making the utmost effort to embed the concept of the rule of law in society. The people must not only abide by the law, they must also respect the legal rights of others. When they come across illegal acts, they must know how to make good use of legal means to ensure that justice is duly done.

In this connection, the original motion today urges the Government to provide additional resources to implement reforms in legal education, set up community legal service centres to promote knowledge of the law, expand the scope of legal aid services to cover limited companies and cases of recovery of commercial debts by companies or individuals, and promote studies on the legal systems of China and Hong Kong as well as exchanges between the legal professions in China and Hong Kong. The Hong Kong Progressive Alliance (HKPA) considers that these proposals are conducive to improving the quality of legal professionals and their service, and will help promote knowledge of law and awareness of the rule of law in the community. These proposals will also help increase public confidence in and the demand for legal services.

The HKPA also agrees that the Government should exploit Hong Kong's unique legal status and connection, so as to give play to its role as a bridge between the Mainland and the international community for pursuing more in-depth exchanges and promote understanding in the international community of the run-in of laws of Hong Kong and the Mainland under "one country, two systems". In fact, following the accession of China to the World Trade Organization, the Mainland, in furtherance of its open-up policy and reforms, certainly has to further understand and adapt itself to the parameters of international law. As long as Hong Kong can give full play to its geographical characteristics and its edge in the rule of law, it should be in a better position than other territories to provide effective assistance for the fusion of mainland law and the international community.

However, the HKPA opposes the amendment which urges the Government to declare in public and pledge that in future, after the provisions of the Basic Law have been interpreted by the Court of Final Appeal, it will not invite the NPCSC to re-interpret the relevant provisions.

The first paragraph of Article 158 of the Basic Law stipulates in express terms that the power of interpretation of the Basic Law shall be vested in the NPCSC. The third paragraph stipulates that when the NPCSC makes an interpretation of the provisions concerned, the Courts of the Hong Kong Special Administrative Region (SAR), in applying those provisions, shall follow the interpretation of the NPCSC. This indicates that the power of interpretation of the Basic Law of the NPCSC is not nominal, but carries substantive binding effect. On 11 December last year, in the judgement on an appeal case involving some 5 300 people who claimed to have the right of abode in Hong Kong as dismissed by the Court of Appeal of the SAR, the Judge said that from the common law point of view, the effect of an interpretation of the Basic Law by the NPCSC is tantamount to that of a legislative amendment. When a legislation is amended or re-interpreted subsequent to a judgement made, other cases of the same merits must observe and accept the new legislative provisions. In the trial of similar cases, the Court must also observe the new legislation and interpretation in passing judgement. In other words, the interpretation of the Basic Law is not only a legal right of the NPCSC. The exercise of the power of interpretation where necessary is a realization of the rule of law.

I am aware that some people are not happy with the relevant provisions of the Basic law, but they cannot attempt to inhibit, without any legal basis, the SAR Government from inviting the NPCSC under the relevant provisions of the Basic Law to interpret provisions of the Basic Law after such provisions have been interpreted by the Court of Final Appeal. The amendment will in effect inhibit the mechanism for interpretation by the NPCSC from being triggered off, thus rendering the provisions in the Basic Law providing for the power of the NPCSC to interpret the Basic Law virtually null and void. This is contrary to the spirit of the rule of law.

Madam Deputy, I so submit.

**MR FREDERICK FUNG** (in Cantonese): Madam Deputy, the Government as well as members of the community all along take pride in the tradition of the rule



of law in Hong Kong. It is not only considered as the cornerstone of the development of society, but also a competitive edge of the local industrial and commercial sector in the international market. Therefore, to ensure the stability and continued development of Hong Kong in future, it is indeed necessary for us to make unrelenting efforts to uphold the tradition and spirit of the rule of law in Hong Kong.

As regards the term "rule of law", we cannot simply interpret it literally as "rule by law", which is too simple and sweepingly general. This interpretation can only be considered a manifestation of "acting in accordance with the law". Indeed, the spirit of the rule of law is far beyond this, and there are "unspoken words" hidden in this concept. To wit, everyone shall have access to equal and comprehensive protection by law, regardless of their wealth and status. In a nutshell, it means "every man is equal before the law". Under the premise of equality for all, it will inevitably involve the question of popularization.

However, while the overall standard of legal services in Hong Kong is satisfactory both in terms of quality and quantity, the fees charged by lawyers, which are expensive and complicated, are unaffordable to the general public. Moreover, people simply do not understand why there is such a great variety of fees. From the statistics of the Judiciary, among the 30 000-odd civil cases filed in the High Court last year, as many as 85% or about 2 600 cases were unrepresented, with the litigants choosing to argue their own cases. This does give cause for concern. What are the reasons for this? At present, the fees for legal services are charged on a time basis. In other words, the duration of a case is directly proportional to the lawyer's fees. But under the existing judicial procedures, like those in other common law jurisdictions, delays in proceedings or protracted procedures under the system have pushed up the legal costs to an exorbitant level. As a result, people are often made to pay far more than they expected or suffer losses. On the other hand, the lack of transparency in respect of lawyers' fees has drawn criticisms for a long time. The variety of items and descriptions of fees cannot be greater, and people facing such a complicated list of fees will often find themselves in a state of complete bewilderment, not knowing what exactly they are being charged for. Besides, given the Code of Practice of the legal profession, no publication duly recognized in the profession has been published to enable the public to know clearly the different fee-charging criteria of lawyers. These two points have, in some measures, impeded popularization.

While popularization is impeded by profit-oriented private legal services, its success will also hinge on whether people in need can truly be provided with free legal services. Much to our regret, insofar as our development in this area is concerned, there is still much room for improvement. Although the free Duty Lawyer Service as co-ordinated by the two professional legal associations and funded by the Government can indeed provide a certain degree of legal support to people seeking help, the waiting time for this service is very long, for a member of the public has to wait for one month or even longer to have a meeting with a voluntary lawyer. Besides, while some non-profit-making groups or offices of Members of the two tiers of parliamentary assemblies do provide free legal advice to various degrees, such support schemes cannot be effectively implemented on an extensive scale given capital and manpower constraints.

Therefore, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I support the setting up of community legal service centres. Full-time legal personnel can be employed to man the centres and provide one-stop legal services and advice, so that people seeking help can be provided with immediate assistance. The community legal service centres can organize free talks and workshops on legal matters regularly to enable the public to acquire basic legal knowledge in areas closely related to them. This will speed up the progress of popularization, hence reversing the passive mentality of many people of "seeing a lawyer only when one is engaged in a lawsuit" and "never stepping into a government office in one's lifetime"; and this will make people understand their legal rights. Only in this way can our sound legal system remain unshaken, and only in this way can the rule of law remain rock solid. Madam Deputy, many colleagues were saying that Mr Martin LEE's amendment is in fact tantamount to denying the power of interpretation of the Basic Law of the Central Government. But as far as I understand it, Mr Martin LEE's amendment only urges the Hong Kong Government to declare in public that it will not seek an interpretation from the Central Government or the NPCSC again. Is this equal to denying the Central Government's power of interpretation? It seems that the amendment has nothing to do with that level or sphere of the hierarchy. I, therefore, do not think that the comments made by Members earlier are relevant to the letter of Mr Martin LEE's amendment.

The ADPL and I support the motion and the amendment. Thank you, Madam Deputy.

**MISS CHOY SO-YUK** (in Cantonese): Madam Deputy, everybody knows that the rule of law is the cornerstone of the success of Hong Kong. In particular, as China is going to accede to the World Trade Organization, Hong Kong's well-tested legal system with which foreign enterprises are familiar is a merit that is temporarily not replaceable as opposed to mainland cities. It also makes Hong Kong very attractive to foreign enterprises. The development of our Motherland can certainly make reference to the Hong Kong experience. But in the chaos of real life, people cannot help asking whether the Goddess of Justice standing atop the Legislative Council Building can always remain blindfolded and disinterestedly use the balance and sword in her hands to uphold justice without turning back or hesitation? Similarly, can our rule of law system ensure that everybody would really be equal before the law and some would not be more equal than the others?

The core of the original motion today responds to the above questions.

Madam Deputy, everybody has a different view as to how to uphold the rule of law. Some like to stand on the pedestal of ethics and always hold up the standard of justice, thinking about things that are not likely to happen or have never happened out of the void all day long. They would then rise to the higher plane of principle, saying that in case such things happen, the death of the rule of law would be declared. I am not sure if these remarks alone would maintain the rule of law system in Hong Kong, but I appreciate more those good intentioned who realistically and practically try to improve the rule of law system and promote public awareness of and defence of the whole system.

Madam Deputy, laws have to be fair and they have to be seen to be fair. To build up a community that upholds the rule of law, a prerequisite is public confidence in the whole system, conviction that the community can operate in a fair environment through this system. In my view, the original motion has made some specific and feasible proposals, such as urging the Government to review the demand for legal services, to set up community legal service centres and to promote awareness and knowledge of the law in the community. These would help the public better understand the operation of the rule of law system on which our success depends, thus feeling for real the precious spirit of the rule of law.

Madam Deputy, let me talk about some personal experience. It is definitely not inexpensive to solve problems by legal means today. Even

though there are the Legal Aid Department (LAD) and the Small Claims Tribunal in Hong Kong to provide ordinary citizens with financial assistance and an inexpensive avenue of litigation, the services provided are very insufficient and they are unable to perform the function of upholding justice for the public to a large extent. Let me take the cases I have handled as an example. Two years ago, the Mass Transit Railway Corporation (MTRC) carried out an expansion project in North Point. The non-stop underground blasting works caused serious disturbance to the neighbouring buildings and residents, and over 200 owners in the affected area found different degrees of cracks and spalling on the ceilings and walls of their flats. Despite the fact that the owners had negotiated with the MTRC time and again, requesting reasonable compensations, their requests were declined. The discontented owners then sought the assistance of the LAD in the hope of suing the MTRC and seeking justice. However, the requirement of a \$169,700 disposable capital ceiling is seriously detached from the existing living standard. As a result, many applications ultimately failed to pass the means test. Without any alternative, some owners turned to the Small Claims Tribunal to pursue their claims. Unfortunately, misfortunes did not come singly, and they only knew on appearing before the Tribunal that the then existing Mass Transit Railway Corporation Ordinance fully protected the MTRC and such claims for compensation had to be handled by the Land Tribunal, so, the Small Claims Tribunal simply had no jurisdiction over such cases. In other words, after hopping here and there for redress, the owners could only expect to obtain an impartial judgement from the Courts. Since the claim made by each owner might only involve a few thousand dollars, would they really have to, for purposes of seeking justice, spend huge amounts of money to engage heavy-weight lawyers and professionals in order to fight a battle of life and death against the wealthy and powerful MTRC in court? The compensation they could get may even not be able to cover the legal fees. As a result, injustices are done in the absence of trial.

Madam Deputy, under the existing system, the public would easily be imperceptibly influenced by what they constantly see and hear, thus, they would have a wrong impression that the legal system is there only for the rich. The idea that the poor should not fight against the rich would also quietly grow and spread in the community. Some may even believe that it is perfectly justified for the rich to be able to order the ghosts to push the grinder (getting things done through the backdoor). To dispel such misconceived ideas, I hope the Government would practically implement the various proposals in the original motion in order to establish a more solid foundation for our rule of law system.

With these remarks, Madam Deputy, I support the original motion and oppose the amendment.

**MISS CYD HO** (in Cantonese): Madam Deputy, I support the original motion and the amendment, and I am grateful to Ms Audrey EU for making those practical and specific proposals to realize the spirit of the rule of law. I am going to focus on discussing the provision of legal aid in libel cases to protect the freedom of expression and the freedom of the press.

Madam Deputy, an important element in upholding the rule of law is to ensure that everybody can effectively argue his case before the Court. Article 10 of the Hong Kong Bill of Rights Ordinance states that everyone shall be entitled to a fair and public hearing, and getting suitable legal aid is a requisite to achieving that objective. Regrettably, Schedule 2 of the existing Legal Aid Ordinance does not cover proceedings related to libel and it is really open to question. In particular, proceedings have recently been initiated among media organizations under legislation on libel, and these organizations have replaced verbal competition by legal proceedings, so much so that the truth can come out through arguments in court, provided both parties to the proceedings have money in abundance. This is unfavourable to the freedom of expression and of the press indeed. Therefore, there is a pressing need to reconsider expanding the scope of legal aid to cover legal proceedings related to libel.

THE PRESIDENT resumed the Chair.

The Government declines to extend legal aid to cover libel cases for three main reasons:

- (a) Given the nature of libel claims and the unpredictable outcome of such cases, it is very difficult to evaluate the possibility of success of individual cases and assess whether legal aid should be granted to parties to such proceedings;
- (b) If both parties to the same proceedings have passed the means test, then it is difficult to determine whether legal aid should be granted to one party or to reject the application of the other because of the

unpredictability of the proceedings. Moreover, if legal aid is granted to both parties, it will give rise to many frivolous proceedings; and

- (c) In other countries such as Britain, Ireland and Australia, libel proceedings are not included in the scope of legal aid.

Putting it simply, as it is difficult to assess the merits of libel cases, the Government has excluded libel cases from the scope of legal aid in a clear-cut manner.

Actually, there is a certain degree of difficulty to assess the merits of any cases. The LAD cannot replace the Courts and it is hardly predictable whether judgement would be given in favour of or against any party. Thus, we believe we can seek justice in court. If some proceedings are excluded because of technical difficulties and the people in need cannot get any help, it is not fair at all.

Court proceedings, especially libel proceedings, involve complicated legal issues. As ordinary citizens have not received professional legal training and lack the relevant techniques in presenting their case, I am afraid they would mostly lose their case in the absence of legal representation. In fact, this has deprived people of the opportunity of fair trial in libel proceedings. If things go on like that, the Government may actually violate the provisions of the Hong Kong Bill of Rights Ordinance on the responsibilities of the Government.

Under section 5AA of the existing Legal Aid Ordinance, the Director may waive the means test where the Director is satisfied that an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. As libel proceedings involve the essence of the freedom of speech, they should be included in the scope of legal aid for proceedings in relation to the Hong Kong Bill of Rights Ordinance, as revealed in the judgement of the Court of Final Appeal in the case of *Albert CHENG and Peter LAM v. Paul TSE*: "The freedom of speech (or the freedom of expression) is a freedom that is essential to Hong Kong's civil society. It is constitutionally guaranteed by the Basic Law (Article 27). The right of fair comment is a most important element in the freedom of speech".

Madam President, the Government actually needs to reconsider whether proceedings related to the Libel Ordinance should be excluded from the Hong Kong Bill of Rights Ordinance.

Our situation is obviously different from that of foreign countries; thus, it is necessary to extend legal aid to libel proceedings. In recent years, quite a few proceedings have been initiated among the media and some wealthy and powerful media organizations spent millions of dollars at every turn to sue other media organizations. Under our legal system, the party against whom a judgement was passed often have to shoulder the costs of the other party. With these unfavourable factors, many reporters who lack manpower and financial resources would often choose to make apologies and concessions to avoid trouble.

However, similar incidents have not only happened among media organizations. Some large business organizations have also made use of similar proceedings. If they wish to stop the media from publishing reports that are unfavourable to their organizations, they would invoke the Libel Ordinance and initiate court proceedings at any time to take their case to court. Such actions are enough to discourage the weak and not influential reporters from following up the reports and comments. Therefore, there is less and less room for freedom and it gives such groups as the Press Council a handle demand legislation on limited exemption from liability for libel. They are looking for legal privileges that would further injure the freedom of expression and of the press.

Madam President, there are defences (such as impartial comments) in the existing Libel Ordinance. If the Courts have not heard these cases, there cannot be better interpretations for these provisions. For example, the judgement of the Court of Final Appeal in the case of *Albert CHENG and Peter LAM v. Paul TSE* has overturned the interpretation of "impartial comments" that has been adopted for years. The Court of Final Appeal ruled that provided that the defendant believed in his remarks in good faith, he would still be exempted even if his comments had constituted a malicious attack. This judgement has given more room for the freedom of expression. Yet, let us imagine if the case was not heard in the Court, and one of the parties had apologized because he did not have the money to meet the expenses of the proceedings, we would not have the benefit of hearing the Judges make a new interpretation of the Libel Ordinance.

Madam President, apart from legal aid, I also hope that the Government would consider invoking the provisions on jurisdiction under the existing Sex Discrimination Ordinance to amend the existing Libel Ordinance. In other words, if legal proceedings were initiated for malicious or frivolous causes, the Courts could order the party initiating the proceedings to bear all the costs.

Madam President, the upholding of human rights and freedom hinges upon the rule of law, and there is really a pressing need to review the provision of legal aid.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, to uphold the rule of law and act according to law, we must first uphold the dignity of the Basic Law and act in accordance with the spirit and letter of the Basic Law. Would the rule of law be upheld if people frequently request repeals of the Basic Law provisions and wantonly unleash criticisms at the Basic Law? In fact, we can uphold the rule of law only genuinely by upholding and acting according to the Basic Law.

To uphold the rule of law, everyone must abide by the law and be equal before the law. But some people in Hong Kong think that they would only observe laws to their liking and disobey other laws that are not. They would call such laws "draconian laws" and euphemized such acts as "civil disobedience"; yet, they are not willing to bear the consequences of "civil disobedience". When the Government prepares to press charges against the offenders, it would be asked to give them a way out instead of suing them according to law. How can these people who always say that they uphold the rule of law and judicial independence uphold the rule of law this way? Those who breach the law have to be sanctioned according to law. If they are not so sanctioned, is this not tantamount to giving them a privilege to breach the law? How could everybody be equal before the law then? Such words and deeds that knowingly violate the law would undoubtedly damage the spirit of the rule of law in Hong Kong, intervene with the enforcement actions of the police and deal a blow at the morale of police officers. As a Member of this Council, I will certainly take the lead to abide by the law, especially the Basic Law. Otherwise, if things go on like this, the rule of law foundation of Hong Kong will certainly be upset to the detriment of our prosperity and stability.

Concerning the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC), if the Court of Final Appeal had requested the NPCSC for an interpretation of the Basic Law concerning the right of abode in accordance with the Basic Law, it could have actually avoided the disputes. The judgement of the Court of Final Appeal had not only violated the legislative intent and spirit of the Basic Law but also put enormous population pressure on Hong Kong that it could hardly cope with. The SAR Government



was thus compelled to request the NPCSC for an interpretation. This act was constitutional, legal, sensible, justified and feasible. In future, the SAR Government should certainly not lightly request the NPCSC to interpret the Basic Law on its own accord. However, the amendment of Mr Martin LEE would deprive the SAR Government of its rights under the law. As it is a political act to ruin the rule of law, the Democratic Alliance for Betterment of Hong Kong (DAB) opposes his amendment.

To promote awareness and knowledge of the law and legal procedures, for instance, how to appoint a lawyer and take legal action, so that the public would have something to base on to protect their interests when they encounter legal disputes is definitely important, but it is more important to publicize and promote the Basic Law. I hope that the promotion of awareness and knowledge of the law in the community as suggested by Ms EU would include knowledge of the contents of the Basic Law.

Madam President, since the establishment of the Basic Law Promotion Steering Committee chaired by the Chief Secretary for Administration in 1998, the SAR Government has done quite a lot in the publicity and promotion work in respect of the Basic Law. Nevertheless, there are deficiencies and the results are not very satisfactory. There is a lack of large-scale activities of characteristics that would give people a deep impression. The latest thematic household statistical survey conducted by the Government indicated that 20.4% of the respondents, mainly old people, children, people with lower education level and new arrivals, had never heard of the Basic Law. Among respondents who indicated that they knew the Basic Law, only 0.8% indicated that they knew the Basic Law fairly well, while 54.2% indicated that though they had heard of the Basic Law, they did not know its contents at all. Moreover, 79.4% of the respondents thought that it was not necessary to gain a better understanding of the Basic Law mainly because they were not interested, they did not have time or they thought that it had nothing to do with them. 20% of students indicated that they had never heard of the Basic Law and 47.5% indicated that they had heard of the Basic Law but they did not know its contents at all. Although most civil servants said that they had heard of the Basic Law, 19.8% of the respondents said that they were not clear about its contents. Besides, 11.4% of teachers indicated that they had only heard of the Basic Law but they did not know its contents. The survey indicated that it remains a long-term and important task for the Government to promote and publicize the Basic Law.

Madam President, upholding the rule of law is certainly a responsibility of legislators. A full understanding of the Basic Law can allow us to know better the Hong Kong edge in the original systems and lifestyle. It would boost our confidence in rising to challenges. It will be the 12th anniversary of the promulgation and the fifth anniversary of the implementation of the Basic Law next year. I hope that the SAR Government will allocate more resources and step up publicity as well as adopt lively and creative methods to promote the Basic Law. It should also use the electronic media more frequently to amplify the publicity effects.

With these remarks, I support the original motion and oppose the amendment.

Thank you, Madam President.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I rise to speak in support of the original motion and the amendment.

The rule of law is an underpinning of the civilization and prosperity of Hong Kong and I do not have to describe its importance in detail. But it is a great pity that when a few Members talked defending the rule of law here in this Chamber earlier, their comments were barely tenable. The Honourable YEUNG Yiu-chung said just now said that the Court of Final Appeal is to be blamed. If it had requested the NPCSC to interpret the Basic Law, the Government would not have to do so. In fact, this remark is just like what a killer tells the person he is going to kill, that is, "the worst bit is that you are not going to kill yourself, so, I have to take the trouble to kill you". With this sort of logic, we really wonder how many people would really do something to defend the rule of law.

But I would like to focus on legal aid, one of the links of the rule of law. Members have been saying that "the poor will not fight against the rich and the rich will not fight against the government". To date, the law has given us an impression that the game is solely favourable to the rich. Certainly, the Government has been providing legal aid to help those people who cannot afford the litigation costs. But the problem is how helpful legal aid is. The legal aid scheme is undoubtedly an indispensable and important component in assuring impartial administration of justice and everybody being equal before the law.

In particular, legal provisions and court proceedings have become more and more complicated nowadays and solicitors' fees are exorbitant (though I believe the relevant fees would reduce under the economic downturn, the rate of reduction can only be so small after all). If our society lacks an effective legal aid scheme, we can hardly assure judicial justice to be done and effectively protect social justice and the rights of individuals.

In my view, the biggest problem now is that many people can still not pass the means test. At present, the capital limit for legal aid is \$169,700. I do not understand why this ceiling has to be set as \$169,700. Does it mean that households with disposable income and capital exceeding \$169,700 would have the resources to meet the litigation expenses? In fact, the \$169,700 income level is not very high. As specified, those who have capital in excess of \$169,700 will not be granted legal aid. Litigations are very costly and they easily cost hundreds of thousands or millions of dollars. Why does the Government not set a higher capital limit? I earnestly hope that the Government would set a higher level than \$169,700 as soon as possible. Of course, some may say that the Government did say that people who have capital in excess of \$169,700 could also get assistance under the Supplementary Legal Aid Scheme. However, we should not forget that the Supplementary Legal Aid Scheme is only applicable to litigation cases involving claims in respect of injuries rather than all cases.

On 3 May 2000, the Legislative Council approved of some improvements to the legal aid scheme, one of which being an improved method of calculation of disposable income. But a higher capital limit than \$169,700 was not set. An evaluation used to be made on the expenditure of Comprehensive Social Security Assistance recipient households, but it was then changed to using the average monthly expenditure of 35% households with the lowest expenditure as the determination benchmark. Although we proposed taking the median monthly household expenditure as the benchmark, we have not got any positive response so far. I remember that the Director of Administration said that a further review and study would be conducted. Yet, there has still not been any improvement in this respect to date.

Among the cases handled by the Hong Kong Confederation of Trade Unions, numerous wage claim cases gave us serious headaches and we encountered a very serious problem. If an employee made a wage claim with the Protection of Wages on Insolvency Fund (the Fund), he must pass the means test for legal aid before he could apply for a winding-up of the company and

claim wages from the Fund. According to the Government, the number of applicants who failed the means test is small, but these applicants also have their rights. There were about 100 cases as far as I remember. As the employees failed the means test, they could ultimately not recover their wages from the Fund. Why were these workers deprived of their rights to claim wages just because they failed the means test? Without legal aid, they could only meet the litigation expenses on their own. I have asked a lawyer and he told me that excluding the solicitor's fees, a minimum payment of around \$30,000 had to be made to the Government to meet the expenses incurred by the insolvency and liquidation procedures. Although the employees may only be claiming wages of \$40,000 or less than \$30,000, but they have to pay tens of thousands of dollars to claim similar amounts of wages. Yet, they would not know if they would ultimately be able to recover the wages they claimed from the Fund. In fact, this system is not good because it fails to enable workers to recover the wages in arrears.

Ms Audrey EU has earlier alluded to the theory that "misfortunes never come singly" and her remark is really good. Workers who are owed wages in arrears may have quarrels with their wives and this may ultimately result in divorce, killing, theft or robbery. It may cause many problems since "misfortunes never come singly", but I do not wish to see such incidents arising.

If the Government exempts these workers from the means test and grant them legal aid, it will actually not incur any losses. When the workers successfully recover their wages from the Fund, the Government will be paid before other creditors, and it will certainly be able to recover the costs. Why would the Government decline to do so since it would not incur any losses and it does not have to make payment from the public coffers even though it would be able to help the workers? I sincerely hope that the Government would consider doing so as soon as possible so that the applicants would get legal aid soon.

Another significant problem concerns the appeal cases handled by the Labour Tribunal that we have dealt with. I wish to say that employees do not wish to make appeals. If employers have the money and they wish to appeal, they could make appeals. On the contrary, if an employee fails the means test, he would not get legal aid or be represented by a lawyer and a judgement may ultimately be passed against him. So, I would like to make another suggestion. When the Legal Aid Department handles the appeal case of an employer, I hope that it would consider that the employees are in a passive position and exempt

them from the means test for legal aid. The fast, inexpensive and simple procedures of the Labour Tribunal would then be brought into full play insofar as upholding justice is concerned.

Thank you, Madam President.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, the rule of law in Hong Kong is just like a completed jigsaw puzzle, and legal aid is one large, indispensable piece of it. Due to the vast difference in financial strength, whenever a labour dispute has to be taken to court, the employee will be in a most disadvantageous position, and it is very difficult for wage earners to enjoy adequate protection of their rights. In order to ensure a fair lawsuit, the employee has no alternative but to apply for legal aid.

Many cases handled by the Hong Kong Federation of Trade Unions can show that our legal aid services are still far from satisfactory. That was why I tabled the Legal Aid (Amendment) Bill 2000 last year, with a view to tackling the following two situations: first, the employee is forced to initiate proceedings because of the employer's failure to comply with the Labour Tribunal's order specifying the making of payments in arrears to the employee; and the employee is forced to engage in a lawsuit at very high costs because of the appeal of the employer against the judgement of the Labour Tribunal.

Claiming compensation through the Labour Tribunal is basically the simplest and most effective means, for the costs are the lowest and efficiency the highest. But if an employer is determined to cow an employee by his huge financial strength and the two situations mentioned just now thus arise, the employee may have to incur several hundred thousand dollars of litigation fees in order to recover just several dozen thousand dollars of wages in arrears. That is why many employers will employ the tactic of lodging an appeal with the High Court after they have lost their case in the Labour Tribunal, so as to plunge their employees into a dilemma and prevent them from claiming for compensation.

The situation of the employee is really very difficult — he cannot afford legal representation, nor can he be sure about the result of legal aid application, and he also fears that if he argue for his own case in person, he may easily lose because of his lack of knowledge about the law. But if he refuses to appear before court, the judgement of the Labour Tribunal will become void and he will

lose all the wages in arrears. And, if the employee is really so unlucky as to lose his case, the employer will claim payment of litigation costs by him.

The Bill submitted by me sought to empower the Director of Legal Aid (the Director) to exercise discretion to waive the means test for applicants who had won their cases before the Labour Tribunal. This is similar to cases involving the Hong Kong Bill of Rights Ordinance (BORO). However, in the end, the Government said that the Bill was related to public expenditure and government policies, and for this reason it could not be introduced according Article 74 of the Basic Law.

The Government pointed out in its reply that if my Amendment Bill was enacted, the Legal Aid Department (LAD) would have to incur an additional \$140 million for the purpose of recruiting additional manpower to handle applications. This is mere exaggeration, I must say. In 1999, for instance, the number of labour dispute cases handled by the Department was just about 500, and only 25% of these cases did not pass the means test. This means that even with the amendment proposed by me, the LAD will only have to handle one or two more cases a day, and it is practically unnecessary to recruit any additional manpower.

What I find even more regrettable is that since the completion of the legal aid policy review the year before last, the Government has in fact been well aware of the problem mentioned above. But after the authorities have studied the matter, they maintain the same position, refusing to vest the Director with the discretionary power of waiving the means test for employees facing the two situations mentioned just now. The authorities are of the view that labour disputes are no different from other civil proceedings, and so it is not appropriate to equate them with cases involving the BORO. This is seriously wrong!

Article 36 of the Basic Law provides that the welfare benefits and retirement security of the labour force shall be protected by law. Article 39 also provides that international labour conventions shall be applied in Hong Kong. The Basic Law is a constitutional document; the labour rights contained therein should be attached the same degree of importance as that to the human rights concepts advocated in the International Covenant on Civil and Political Rights, so as to protect the rights of employees in Hong Kong.

As I said at the beginning of my speech, the integrity or otherwise of the rule of law can be reflected by how much protection employees can enjoy. The

Government is obligated to plug all loopholes in the law that may affect employees' rights. It must not instead aid the wrong-doer, watching with folded arms how employers lodge appeals to force employees to give up their legitimate protection. Since labour rights are recognized by international conventions, they should enjoy the same status as human rights. The two should not be split apart, for the jigsaw puzzle will then have one missing piece.

Madam President, I so submit.

**DR DAVID LI:** Madam President, I have heard much about the rule of law in this Council. I have even learned a little.

In every policy address, the Chief Executive has gone out of his way to reiterate the strength that we draw from upholding the rule of law.

In each Budget speech since the founding of the Hong Kong Special Administrative Region, save for the first, the Financial Secretary has underscored the importance of the rule of law to our growth as an international business centre.

I doubt any government, anywhere in the world, would champion the rule of law as often, or as vocally, as the Hong Kong Government. Why, then, do we return to this subject over and over again? We do so because it is important.

Much of what we in this community take for granted flows from the rule of law:

- Contracts are enforceable;
- Rules apply to all, equally;
- The rights of all individuals and legal entities are recognized and respected; and
- We enjoy protection from arbitrary action.

In short, there is certainty about the way we interact.

That certainty provides the strong, stable foundation upon which we have built our great community. That certainty allows us to plan for the future with confidence. That certainty draws others to come here, to invest and set up businesses. That certainty is the basis of our prosperity.

Hong Kong is a dynamic international financial centre because we enjoy the rule of law. A thorough understanding of the meaning and role of the rule of law, and an unyielding commitment to abide by its principles, will ensure that our community grows and prospers into the future.

For these reasons, I fully support the Honourable Audrey EU's motion on upholding the rule of law.

Sadly, in recent years, the phrase "rule of law" has been given a political shadow. The phrase is repeated so often, in support of so many policies, that it risks losing its meaning.

Ms EU's motion is a return to basics. The motion reminds us that the rule of law is about people, living in a community. To mean something, and not just be an empty phrase, the rule of law must be inclusive. As such, we must make every effort to extend the understanding and the benefits of the rule of law throughout our community.

That will be the greatest safeguard that we can provide to the continuing strength and vitality of the rule of law in Hong Kong. Setting up community legal service centres and expanding the scope of legal aid will make a difference, an important difference. So, too, will implementing reforms in legal education, and enhancing our understanding of the legal systems in China and Hong Kong make such a difference.

We now have a great opportunity, a chance to send a message to our Government that we are not satisfied with empty words. The rule of law must be firmly rooted in the community. By supporting Ms EU's original motion, we send that message loud and clear.

I urge all Honourable Members not to cloud the message. Focus on the fundamentals.

Thank you.



**DR LO WING-LOK** (in Cantonese): Madam President, I think no one will object or disagree to the notion that we must uphold the rule of law and ensure the availability of quality and efficient legal services to people in need. But I must make a special point here. Whenever we deal with any cardinal principles of the kind which always appear absolutely correct, and which sounds appealing and easily acceptable to all, we must be extremely cautious; we must not oversimplify and idealize these principles and take them only at their face value without pointing out at the same time that if society is to attain such ideal and lofty standards, everyone of us will have to pay a price. I believe such a balanced presentation of the facts is the only way to avoid any delusion on the part of the public which may lead to even greater disappointment and opposite results.

The rule of law in the conduct of all affairs and equality before the law are the features of an advanced civil society. If the rule of law is upheld adequately in all segments of society, there will of course be greater protection for the people. With this in mind, I wish to point out the following:

I am for upholding the rule of law, but I must also point out that ruling Hong Kong according to law is not the same as resorting to lawsuits all the time. Some are of the view that the existing laws work in favour of people or organizations with huge financial resources, because the fees of litigation are exorbitant. That is why some have proposed that legal assistance should be provided to the relatively vulnerable members of the community, so as to create a level playing field in the arena of lawsuits, to enable all people to initiate lawsuits regardless of their wealth, regardless of whether or not they have an Identity Card. And, they also believe that as long as they have a justified case, and given quality legal assistance, they will always win in a lawsuit. In this way, Hong Kong will be turned overnight into a haven noted for the rule of law, where people will always say as a kind of byword, "Good morning, please talk to my lawyer if you have any problems." And, they will also say, "Please talk to my lawyer if you have any problems. Goodbye." In the end, access to comprehensive, low-priced and quality legal services will become a right, or even a human right, of the people of Hong Kong.

Once such services become the right of the people, the Government will be obligated to help them exercise this right. This means that the Government will have to spend enormous public funds on the provision of publicly-funded legal services. Initially, many legal professionals may thus benefit from increased

employment opportunities, and the Government may also win political support. Owing to the creation of large numbers of senior posts for legal professionals, the profession will thus experience a boom. But once all people, regardless of their wealth, have become used to the availability of comprehensive, low-priced and quality legal services, they will definitely say that the fees of private-sector legal services are much too high, no matter how good these services are. Private-sector services will therefore wither, with the legal services in Hong Kong gradually turning into a public-funded undertaking. When this happens, the legal profession will discover that the good times are already over; private-sector services will wither, and on the other end, due to limited public resources, public-funded services will no longer be able to expand endlessly, or to create senior posts without any limit. This will block the advancement of legal professionals, depriving them completely of any career prospects. As for members of the public, they will also have increasingly few choices of legal services.

What I have been portraying is of course just an imaginary scenario, and Members may dismiss it as pure alarmist talk. But I must still point out that upholding the rule of law simply does not mean that we should ask the Government to spend public money on providing the people with all the legal services they need, for there is always a cost for everything, and this price must ultimately be borne by everyone in the community. The Government should instead create environment conducive to the rule of law, one in which all people and organizations can live out the spirit behind the rule of law.

How can an environment conducive to the rule of law be created? This question can be answered by giving thoughts to the following four aspects: First, to foster a basic understanding of law among the people through the promotion and popularization of legal education; second, to raise the standards of the administration of justice by improving the quality and broadening the global vision of local lawyers; third, to conduct regular reviews on law enforcement situation by taking account of prevailing circumstances, so as to ensure that our laws can keep up with the times; and, fourth, to review the vetting mechanism of the Legal Aid Department and carry out analyses of different categories of cases on a regular basis, so as to meet the needs and changes in society.

Upholding the rule of law is a consensus in our society, and Legislative Council Members should of course reflect such a consensus. But at the same time, Legislative Council Members are also duty-bound to initiate full-scale and

rational discussions instead of just talking about ideals without mentioning the price to pay, or just shouting slogans without mentioning the realities. We also have to ask, "Is the rule of law we are aspiring to one which encourages people to go to court and argue in lawsuits? Or should we set down some equitable criteria for society, so as to bring forth harmony for our rule of law?" Lastly, I wish to point out that the law is meant to serve the progress of human civilization. That is why we should be the masters of the law, not its slaves.

I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, in many recent medical incidents, it was only because of the availability of legal aid that the truth behind the medical blunders concerned could be ascertained before the Court. This is a kind of protection for patients. Without legal aid, professionals may very often be able to cover up their disregard for human lives on the pretext of professional ethics and conduct. As a result, we should support such an arrangement.

Ms Audrey EU proposes to expand the scope of legal aid today. We certainly think that this is very important, particularly because small and medium enterprises (SMEs) do have a real need for such services during this period of difficulties. But I also think that something else is even more important than this — the quality of legal aid services. The labour disputes mentioned by many colleagues today, for instance, are closely related to legal aid services. We know that very often, many labour cases will eventually have to be transferred to the High Court for a ruling. The point is that before a worker can do so, he must need legal aid, or else, given his own means, he can definitely not afford it. But it must be noted that it often takes the authorities a very long time to conduct the means test and examine the merits of a case before they can decide whether to approve the granting of legal aid; there may well be a very long delay. Under its performance pledge, the Legal Aid Department has to complete the process of vetting within a period of three months for 85% of all applications, but for some particular cases, three months are still a very long time. In some cases of industrial accidents, for example, the injured workers can apply for legal aid only after his sick leave. These workers have already stopped working for quite some time, so if they still have to undergo a further period of vetting, they will be placed under very heavy pressure. This will impose a financial and physical burden not only on the workers themselves, but also their families. I therefore hope that the vetting period can be shortened.

Besides, another problem which I also consider very important is that of case vetting. I now have the information of three cases, all of which are marked by a serious problem. The workers concerned have all passed the means test, but in the end they are not granted legal aid, because the amount of claim in each case, being just \$18,000, is considered too small. It is said that in case a lawsuit is instigated, the Government will have to spend far more than this sum, so even if the claimant wins, it will be pointless. That is why the workers' applications have all been rejected. Madam President, this is indeed a tragedy. To the Government, \$18,000 may be a very small sum, but to the affected worker, this may well be three months' wages. But then, they say that three months' wages for a worker are a very small sum. How can these workers find other channels to recover their wages? The point of providing legal aid is not just to help the vulnerable members of the community, but also to uphold justice. If it is determined that a case is worth pursuing, the amount of claim involved should not be used as a criterion to determine whether proceedings should be initiated, or else it will not be fair, or equitable, to the worker concerned.

As mentioned by the Honourable LEE Cheuk-yan earlier on, the capital ceiling in the means test is \$169,700. In other words, an employee who owns about \$170,000 worth of assets will not be eligible to apply for legal aid. But this ceiling is computed on the basis of annual income, which means a monthly salary of just \$10,000 or so; what is more, this is the family income, not the income of the individual. With such a method of computation, honestly, not many people can actually jump over the hurdle. I have recently come across the workers involved in three labour disputes; they were all unable to initiate any proceedings because they could not jump over this hurdle, could not get any legal aid. I think the system is utterly unfair, in the sense that applicants are barred from initiating proceedings simply because of a capital ceiling. Although the relevant legal aid legislation provides that in case the assets owned by an applicant exceeds \$169,700, the Director may still exercise his power of discretion, the reality is there have not been too many cases in which workers can receive such discretionary treatment of the Director. As we can all see, labour disputes are constantly on the increase. The workers concerned only want to pursue their legitimate interests, including wages in arrears, compensation for work injuries, and so on. I think it is certainly a serious fault of society if they are made unable to instigate any lawsuit.

I also wish to say a few words on the amendment today. This amendment actually pinpoints the greatest challenge to the rule of law in Hong Kong now.

What we can now see is that the Government often tries to restrict people's fundamental rights in the name of law or the rule of law. Recently, I have noticed several cases which can clearly show such a situation. In one case, some friends of mine took part in demonstrations, and the Government sanctioned them by abusing the law, saying that they had violated the law and the rule of law. But when the case was brought before the Court, the ruling made was completely contrary to the charge of the prosecution. According to the Judge, the actions taken by the police were illegal, and such actions amounted to abuses of police power. This shows that if these friends of mine had not been assisted by legal aid in the proceedings, they would have been plunged into a very disadvantageous and unfair position. If we are not given these rights to realize the spirit of the rule of law, it will be impossible to handle such cases in a fair manner.

Madam President, what worries me most is that the Government is now trying to monopolize the law, to turn it into its exclusive instrument of rule. One example is that it does not prosecute some people with special background but seeks to deal with dissidents in the strictest possible manner. I think such practices must be corrected, or else this society will lose its edge in the rule of law. We should realize that when a society loses the rule of law as its edge, it will simply be impossible for it to continue to prosper, nor will it be able to attract inward investments. In that case, there will not be any bright prospects for Hong Kong at all.

Therefore, I think both the original motion and the amendment today are very significant. Because of the existence of the underprivileged, because of the unfairness and partiality in society, and particularly because of the hurdles erected by the Government, the absence of such a system to provide protection will definitely create very negative impacts. Madam President, I so submit.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, I very much agree that it is the duty of everyone to uphold the rule of law. But Mr Martin LEE's amendment requests the Government to make a public statement to the effect that in the future, once the Court of Final Appeal (CFA) has interpreted any provisions of the Basic Law, it will not invite the Standing Committee of the National People's Congress (NPCSC) to re-interpret the relevant provisions. As a member of the Basic Law Drafting Committee years ago, I think I really need to oppose such a viewpoint.

In May 1999, on the right of abode issue involving children of Hong Kong residents born in the Mainland, the Government of the Hong Kong Special Administrative Region (SAR) requested the State Council to propose a motion to seek an interpretation from the NPCSC, so as to ascertain the original legislative intent of the Basic Law in this respect. The Government's decision to seek an interpretation from the NPCSC on the right of abode issue was perfectly legal and constitutional. And, it is indeed fortunate that the NPCSC possesses such power of interpreting the Basic Law; if not, 1.6 million mainland residents would have qualified to come and live in Hong Kong, and our population would have shot up by 26%, making us totally unable to cope with these people's demand for social services such as health care, housing, transport, education, and so on. A request for interpretation from the NPCSC will of course be made only under very special circumstances. I am sure that the Government will not act against the wish of the majority of the people and seek an interpretation of the Basic Law from the NPCSC indiscriminately.

To request the Government to make an open statement that it will stop seeking interpretation of the Basic Law from the NPCSC is actually tantamount to gainsaying the ultimate power of interpretation vested in the NPCSC. Some argue that an interpretation of the Basic Law by the NPCSC is tantamount to giving up the SAR's "high degree of autonomy" and ruining the rule of law. I cannot accept such an argument at all. Under Article 158 of the Basic Law, the NPCSC is vested with the power to interpret the Basic Law. The CFA of Hong Kong possesses the power of final adjudication, not the ultimate power of interpreting the Basic Law.

Will the power of interpreting the Basic Law vested with the NPCSC injure the independent judicial power and that of final adjudication vested with the SAR? The answer is very certain — definitely not. First, because the Constitution provides that it is the work of the NPCSC to interpret laws, so under Article 67 of the Constitution, the NPCSC is vested with the power to interpret the Basic Law, which is one of the fundamental pieces of legislation under the Constitution. Second, because the Basic Law is a national law formulated by the National People's Congress, the consistent interpretation and implementation of it country-wide is possible only when the Central Authorities are vested with the power of interpretation.

Madam President, let me conclude my speech by quoting Mr Henry Denis LITTON, a retired Judge of the CFA: "The rule of law in Hong Kong has not

been weakened as a result of the interpretation of the Basic Law by the National People's Congress. The spirit of the rule of law is still being implemented everyday in our courts."

With these remarks, I oppose the amendment.

**MR MICHAEL MAK** (in Cantonese): Madam President, a well-developed rule of law is pivotal to social justice and economic development. The hardware of the rule of law is legislation and the judicial system, whereas the software of the rule of law is talents and knowledge. A rule of law system underpinned by sound software and hardware is essential to the full administration of social justice and sustained economic development.

However, the quality of law graduates in Hong Kong in recent years has consistently drawn criticisms in the community. For instance, lawyers committed mistakes in court procedures and in English grammar, and there has been a decline in the standard of university graduates. The Report on legal education reforms published recently also pointed out the inadequacy of lawyers in English proficiency and analytical power. While some of the points and recommendations made in the Report have aroused controversy, we all agree that there is a need to enhance the quality of lawyers and introduce reforms to legal education. Recently, the Secretary for Justice also urged us to avail ourselves of the opportunity associated with China's accession to the World Trade Organization to develop Hong Kong into a legal services centre and an arbitration centre. However, local lawyers must enhance their knowledge of China laws and make good efforts to familiarize themselves with the application of Chinese laws and Putonghua as well before they can exploit the opportunity. Legal education reforms, which have been mooted for years, should be implemented in high gear in the light of the competition confronting us. Besides, promoting the use of Chinese in courts and enhancing the Chinese proficiency of members of the legal profession are also in line with the current trend.

There is also a need to review the demand for legal services in the community with emphasis on the Legal Aid and Duty Lawyer Service Schemes provided by the Government. In respect of free legal advice services, the waiting time now is about two to six weeks and so, when an appointment with a lawyer is arranged, the timeliness of the service has often lapsed.

With regard to the legal aid service, it appears that only people with meagre income can benefit from it. The current ceiling of financial resources is \$169,700; and as half of the population in Hong Kong have an income of over \$10,000, they are not eligible for legal aid so long as their savings total \$50,000. No wonder the litigants of nearly 90%, and to be exact, 87% of civil cases filed in the High Court had opted to argue for their own case. Under such circumstances, the protection of the legal rights of litigants is therefore questionable. If a person's legal rights are infringed due to a lack of means, the rule of law in Hong Kong will be injured.

Moreover, the current scope of the legal aid service does not cover cases relating to the appeal board of the Immigration Department, those relating to the Coroner's Court, as well as cases of defamation, partnership disputes, and so on. From past experience, these cases sometimes did have a bearing on public interest. Therefore, an expansion of the scope of legal aid, which includes extending the ceiling of financial resources and the scope of eligible cases, will benefit public interest and the rule of law. As to how and to what extent they should be extended, it requires further studies and a review of the need of the public for the relevant services.

I very much agree with the proposals in the motion of setting up community service centres and promoting awareness and knowledge of the law in the community. The provision of legal advice and legal education in the community can address the problem of the supply of legal services falling short of demand. It can also prevent people from resorting to the Court indiscriminately to settle disputes, and this can help reduce the backlog of pending cases.

Insofar as the Government's effort in promoting legislation and public education is concerned, there is plenty of room for improvement. For instance, the relevant provisions concerning new software in the Copyright Ordinance, which came into operation early this year, had plunged Hong Kong into a state of white terror. Many people said that they did not know how to tell copyright licences apart. Nor did they know what constituted lawful usage of software of discontinued versions as well as rented software. There were even rumours that the Customs and Excise Department would break into premises for inspection. Provisions relating to newspapers in the Copyright Ordinance had also resulted in some organizations still refraining from making photocopies of books and periodicals. In fact, members of the public may suffer losses if they are



unfamiliar with the Employment Ordinance, human rights legislation, consumer-related legislation, the Disability Discrimination Ordinance or those concerning their rights when facing prosecution and the powers of the police.

Regarding studies on the legal systems of China and Hong Kong, given the practice of "one country, two systems" in Hong Kong, courts in Hong Kong will interpret the Basic Law in accordance with common law, whereas the NPCSC will interpret it in accordance with continental law, thus presenting a very knotty problem. We must pool more legal experts from other parts of the world and from China together to conduct studies of the legal systems of China and Hong Kong. This is a challenge that Hong Kong must overcome in order to secure a footing in the Mainland and become a legal centre in China and in the international community as well.

Yet, even if we have quality talents in the legal profession, a comprehensive range of legal services, a high level of public awareness of the law and unequivocal legal concepts, but if we found out only at the end of a trial that the Court does not have sufficient authority, and that its judgement may ultimately be overruled as a result of the Government seeking an interpretation of the Basic Law from the NPCSC, then our efforts in building up a society underpinned by the rule of law would eventually fail on the eve of success. However, I must emphasize here that I am talking about the Government seeking an interpretation of the Basic Law from the NPCSC, not the interpretation of the Basic Law by the NPCSC, for the Basic Law has conferred on the NPCSC the final power of interpretation of the Basic Law, which is irrefutable. I am talking about the problem of the Judiciary yielding to the political pressure of the Government.

A free economy underpinned by the rule of law has all along been an edge of Hong Kong. But since the reunification, such incidents as the Hong Kong Government awarding the Cyberport contract under a private agreement and seeking an interpretation of the Basic Law by the NPCSC have shaken the confidence of international investors. In this regard, I hope that Hong Kong will set up a sound system to protect investors, so that our edge will not be injured.

Thank you, Madam President.

**MR JASPER TSANG** (in Cantonese): Madam President, I support the proposals on upholding the rule of law made by Members who spoke just now,

including those on expanding the scope of legal aid services and ensuring fair and reasonable legal services for people. But the Democratic Alliance for Betterment of Hong Kong (DAB) opposes the amendment moved by Mr Martin LEE, and I shall explain why here.

Earlier on, when Mr Martin LEE and Miss Margaret NG from the legal profession talked about the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC), they were a bit agitated; I can appreciate their feelings. What happened was that some legislative provisions having been interpreted by the Court of Final Appeal (CFA) had to be re-interpreted by an institution outside the system of courts and the Judiciary, and what was more, the CFA had to observe the re-interpretation. I suppose this is something that lawyers trained and practising under the common law system find it hard to accept.

But I think the Basic Law is unique, so much so that it is not found in any other common law jurisdiction. The Basic Law is a Hong Kong law, but at the same time, it is also a national law binding on the Central People's Government and even all other places in China. That being the case, the implementation of the Basic Law is bound to lead to conflicts and disputes. As a Hong Kong law, the Basic Law should be interpreted by the courts of Hong Kong in hearing cases; this is a common law principle. However, as a national law passed by the NPCSC and binding on the whole country, the power of interpretation should rest with the NPCSC under the Constitution of China. This is precisely where the conflict arises.

Article 158 of the Basic Law is an attempt to deal with this conflict. But we must note that under Article 158, the power of interpreting the Basic Law is not vested entirely in the courts of the Hong Kong Special Administrative Region (SAR). We can see that under some special circumstances, under some specific conditions, when the CFA deals with cases involving the interpretation of some specified provisions of the Basic Law, it must seek an interpretation from the NPCSC before making its final adjudication. Why?

Some may wonder why Article 158 has not been so written that the power of interpreting the Basic Law is vested entirely in the courts of the SAR. They may wonder, "Since we are talking about a court of 'final appeal', not a court of 'semi-final appeal' as suggested by Mr Martin LEE, and since the CFA is supposed to make the final adjudication, why should the NPC still be vested with

the power of interpretation?" The reason, as I said just now, is that the Basic Law actually binds the Central People's Government and all other places in China. As we all know, foreign affairs and national defence are the responsibilities of the Central People's Government. But even in these two areas, if the exercise of powers by the Central People's Government affects Hong Kong, it is also bound by the Basic Law. Let us look at national defence and the garrison as examples. Under the Basic Law, the garrison in Hong Kong must obey the local laws; the expenses must be borne by the Central Authorities. These are stipulated by the Basic Law. When it comes to foreign affairs, if China wishes to enter into an international agreement, and if it wishes to apply the agreement in Hong Kong as well, then under Article 153 of Basic Law, it must first consult the SAR Government, instead of just signing the agreement itself and applying it automatically in Hong Kong.

The relationship between the Central Authorities and the SAR, particularly, must be governed by the Basic Law. For example, in Article 22, there are many provisions governing mainland departments, including the departments of the Central Authorities, which wish to engage in various activities or set up offices in Hong Kong. For this reason, in case our CFA needs to interpret these relevant provisions, we must ask, "Are these provisions binding on the mainland Government and people? If the Hong Kong CFA interprets on its own all these provisions concerning the relationship between Hong Kong and the Mainland, but some regional authorities of the Mainland do not accept and comply with its interpretation, what will be the result?"

The Hong Kong CFA also admits that the interpretation of the Basic Law by Hong Kong courts is not binding on the Central Government and other regional authorities. As I notice from the right of abode cases, this will lead to serious problems. If the regional authorities of the Mainland do not follow the judgement of the CFA, it will simply be impossible to implement the judgement; the SAR Government alone cannot possibly do this. How can we make sure that the regional authorities of the Mainland will follow the relevant judgement? If an interpretation is sought from the NPCSC in accordance with Article 158 of the Basic Law before the CFA makes its judgment, or before Hong Kong courts interpret the relevant provisions, the whole country will have to follow the relevant judgement in the end. The reason is that under the National Constitution, the NPCSC is vested with such a power of interpretation. The interpretation of a law by the NPCSC will become part of the law itself, so there should not be any problem of non-compliance by any regional authorities.

However, the problem with the Basic Law is that if the CFA "decides" not to seek any interpretation from the NPCSC — bearing in mind that the decision concerned is to be made by the CFA itself — then, what remedies are there if the interpretation of the CFA and that of the NPCSC contradict each other, and if the mainland Government thus does not follow the interpretation of the former? No ready remedies are found in the Basic Law. If we accept Mr Martin LEE's proposal, which requests the SAR Government to "tie up its own hands" and stop seeking any interpretation of the Basic Law from the NPCSC in the future, then we must be prepared to face a scenario of no remedy that will occur when the interpretation of certain Basic Law provisions by the CFA is not followed by the mainland Government. Thank you, Madam President.

**MR BERNARD CHAN:** Madam President, let me say at the start that I fully support the Honourable Audrey EU's motion.

It is essential that all members of the community are aware of their rights under the law. And it is equally important that they should have access to legal services and advice. In particular, I believe that the idea of establishing community legal centres is well worth exploring.

We all know that not everyone is able to afford legal services, despite the legal aid system and voluntary efforts like the Duty Lawyer Scheme. Going to court is simply not an option for many people in Hong Kong. And this almost certainly means that people who are entitled to justice do not always get it.

Having said that, I would like to remind everyone that better legal protection does not come free. There may be a price to pay if we encourage more litigation. We must accept that better legal protection for consumers and employees may mean higher legal costs for some professionals and companies. And those costs will be reflected in higher premiums for liability insurance for the business community.

Already, general insurance premiums are rising in Hong Kong, as the industry emerges from a long period of underwriting losses. On top of that, the terrorist attacks in the United States and the current climate of instability are putting additional upward pressure on insurance premiums.

People may imagine that insurance coverage is only a marginal part of the overall cost of doing business. But this is no longer the case.

Professionals and companies are already complaining about rising premiums. All sorts of people, from the construction industry to the lawyers and to the Hospital Authority, find themselves with growing liability insurance bills. If we develop more of a litigation culture, it will lead to even higher insurance costs.

In the United States today, there is a significant "liability tax" on many goods and services. For example, around 30% of the cost of a step-ladder goes on insurance coverage for the manufacturer. An incredible 95% of the cost of vaccines goes on insurance coverage.

Not only does this push up prices for consumers, it makes companies less competitive internationally. Some vaccine manufacturers have simply stopped making some products in the United States, because of the threat of bankruptcy if they are found liable for unforeseen side effects.

I am not saying that we will end up with that sort of system here in Hong Kong. But it is something that we must all remember when we discuss the strengthening of legal rights, and improving access to the law.

These things may be desirable. They are likely to be politically popular. But they will cost money. And that money will be in the form of premiums for liability insurance. I am certainly not saying this because I oppose better legal protection for people. People should be able to demand for their rights under the law.

However, a litigation culture can go too far. Many would argue that in the United States, some legal rights are no longer economically rational. The insurance costs outweigh the other benefits.

I would urge everyone in Hong Kong to bear this in mind. Thank you.

**MR ALBERT HO** (in Cantonese): Madam President, I am actually very interested in speaking on the original motion moved by Ms Audrey EU, and I am sure that even 30 minutes will not be enough for me to say all the things I wish to say. That is why I can only focus on the most controversial amendment today within the seven minutes allowed.

Madam President, we have moved another motion debate on the interpretation of the Basic Law (by the Standing Committee of the National People's Congress "NPCSC") in this Chamber not so much because we wish to give the local legal professionals, or even the international legal community, another opportunity to lash out at the Hong Kong Government, to assail it yet again. That said, it must still be pointed out that this issue of Basic Law interpretation has already tarnished Hong Kong's reputation as a place upholding the rule of law. This is a fact that cannot be denied. We cannot possibly make the damage disappear by closing our eyes, nor will the wound cut ever heal. The only thing is how we are going to face and tackle the damage and its aftermath. We believe that a public statement by the Government will be the most effective solution.

Madam President, in brief, our charges against the Government revolve around several points. Let me just repeat these points today. First, we think that in handling the right of abode issue, the Government failed to follow the statutory procedure laid down in Article 158 para 2 of the Basic Law. Options were actually available to the Government at that time, but it elected to the procedure of applying for an interpretation of the Basic Law by the NPCSC. Second, following its defeat in the appeal, the Government, as an executive authority, took the step of requesting the State Council of the Central Government (another executive authority) to propose to the NPCSC for an interpretation of the Basic Law, thus involving it in the interpretation of the Basic Law and producing the effect of overriding the judgment of the Court of Final Appeal. Third, more seriously, when the Hong Kong Government made an indirect request to the NPCSC for an interpretation of the Basic Law, it even requested it to interpret those Basic Law provisions dealing with affairs within the SAR's scope of autonomy. This also violated the fundamental spirit of the Basic Law, because all such affairs should be dealt with by the Hong Kong Government on its own.

In fact, alternatives were available to the Government at that time. It could have resorted to seeking an amendment of the Basic Law to deal with problems which people considered very special and which they thought would give rise to very serious consequences. But eventually the Government chose a course of action that would ruin the rule of law in order to achieve its desired outcome — a course that could hardly be justified even if the outcome was acceptable to people (by this, I mean some people). This matter could have been settled through a legal channel, but the Government eventually chose the

wrong course, a course that would ruin the rule of law, in order to achieve its desired outcome. Even if this outcome is accepted by some people, the means is by no means acceptable.

Madam President, many of the arguments advanced today are actually a repetition of what we have already said before. But still I wish to respond briefly to the viewpoints expressed by Members in this debate. First, let me respond to the remarks of the Honourable LAU Ping-cheung, because he quoted some comments made by Mr Ronny TONG, SC, about the need for all of us to abide by the law; the way these comments were quoted seems to suggest that Mr TONG actually supports Mr LAU's opposition to the amendment today. Let us do the Senior Counsel justice, and I thus hope that Mr LAU Ping-cheung can carefully read the book from which he quoted just now — *On The Rule Of Law And Human Rights*. There is an article in this book which offers a clear analysis of why the writer thinks that the Government has violated the Basic Law. The analysis is very detailed, and I cannot possibly read it aloud in its entirety. But I think I can already illustrate my point simply by reading out a few sentences in it. After a thorough analysis of different points of law, the writer says, "This shows that it is definitely against the Basic Law, definitely unconstitutional, for the SAR Government to seek to overturn the outcome of final adjudication after its defeat in a case by unilaterally requesting the Standing Committee of the NPC to interpret the Basic Law." I hope that Mr LAU Ping-cheung can note this point instead of quoting anything out of context.

The second point I wish to comment on involves Mrs Miriam LAU, who said, to this effect, "The Hong Kong Government has requested an interpretation of the Basic Law only because of very special circumstances and a lack of any other alternatives. We cannot predict whether similar circumstances will arise in the future. If such a need really arises again in the future, if we do not have such a power, and if the Government does not promise to stop exercising this power, the consequences may be very serious." In this connection, I wish to say a few words more. I remember that we once attended a hearing of the United Nations Human Rights Committee; at this meeting, a member of the Committee, during the discussion with the officials of the Hong Kong Government there, put forward what I think an insightful viewpoint. He said, in English, "Constitutionism lies in exception." This means that whether or not a certain place or country actually upholds the spirit of its constitution can only be seen when very special circumstances arise, and such special circumstances are the best test. In other words, special or difficult

circumstances and even circumstances that we think may lead to very serious consequences are a good test of our determination to uphold the rule of law. Precisely because of this, there is all the more reason for us to uphold the rule of law, to adhere to the principle of respecting the constitution. That being the case, amending the Basic Law was in fact the best alternative at that time.

Mr YEUNG Yiu-chung, Mr NG Leung-sing, Mr Ambrose LAU and even Mr Jasper TSANG have all emphasized over and over that the Government has always acted in strict accordance with the Basic Law, adding that the power of the NPCSC to interpret the Basic Law should not be subject to any restrictions. They should really study in detail the mechanism laid down in Articles 158 and 159, then they would realize that the power of interpretation, as it was drafted at that time, should be subject to restrictions both in terms of procedure and the nature of the matters concerned. If not, why do we need so many provisions? Why not just say that under Article 158, the NPCSC is empowered to interpret the Basic Law? It may even be specified in addition that these restrictions shall be applicable to the SAR Government (though not necessarily the NPCSC).

To sum up, the biggest accusation I wish to make is that the SAR Government should not have requested the NPCSC to interpret the Basic Law after its defeat in the appeal. The reason is that if the SAR Government had not made such a request, the NPCSC would not have given its interpretation. This is the crux of the problem. Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Ms Audrey EU, you may now speak on the amendment of Mr Martin LEE. You have up to five minutes.

**MS AUDREY EU** (in Cantonese): Madam President, as I said earlier on, the upholding of the rule of law is a very broad topic involving a wide range of issues such as judicial independence, respect for human rights and liberties, equality before the law and clarity of legislation. Since my primary concern in moving this motion is the popularization of legal services, the motion makes no



mention of the interpretation of the Basic Law. But this does not mean that I do not consider this issue significant.

I am of the view that Mr Martin LEE's amendment can help ensure judicial independence and uphold Hong Kong's power of final adjudication, which is why I will support his amendment.

Article 158 of the Basic Law provides that if the Court of Final Appeal (CFA), in adjudicating cases, needs to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between Hong Kong and China, it should seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress (NPCSC); and, after the NPCSC has made an interpretation of the provisions concerned, the Courts of the SAR, in applying those provisions, shall follow the interpretation of the NPCSC.

If we look at the procedure laid down in Articles 158 and 159, as mentioned by the Honourable Albert HO a moment ago, we will see that very obviously, under the Basic Law, the initiative of requesting an interpretation of the Basic Law from the NPCSC should in fact rest with the CFA. Before the reunification, representatives from the Hong Kong Bar Association met with Mr QIAO Xiao-yang, Director of the NPC Law Office, during a visit to China and Mr QIAO expressed the same view at that time. He told the Bar representatives to rest assured, for the CFA is the only body that can submit an application for interpretation. But in the appeal concerning the right of abode issue, the Government sought an interpretation of the Basic Law, all on its own, after the CFA had made the judgement. The Government was a bad loser, and it also damaged the mechanism prescribed by the Basic Law for seeking an interpretation from the NPCSC.

The amendment of Mr Martin LEE does not seek to gainsay the power of interpretation possessed by the NPCSC. He only requests the Government to pledge that in the future, after the CFA has interpreted some particular provisions of the Basic Law, it will not employ any political means to overturn the CFA's interpretation by requesting a re-interpretation by the NPCSC. This is intended to safeguard Hong Kong's power of final adjudication. And, Mr Martin LEE's amendment will certainly not lead to the consequence that when similar circumstances unfortunately arise in the future, there will be no remedy, as asserted by Mr Jasper TSANG. The reason is that the provisions of the Basic

Law can be amended. Article 159 of Basic Law is after all just part of the Basic Law.

In fact, the interpretation of the Basic Law last time did deal a very heavy blow to the rule of law in Hong Kong, and it also affected Hong Kong's reputation in the world. In contrast, I am pleased to note the restraint demonstrated by the various sides following the CFA's judgement on the case of CHONG Fung-yuen. Such restraint is a full realization of the spirit behind "one country, two systems" and the Basic Law. I sincerely hope that there will not, will never, be any repetition of the Basic Law interpretation incident. With these remarks, I support the amendment.

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, I am responding to Members' comments and views on legal aid services. I am very grateful for their views and comments. The Secretary for Justice will respond to the other points raised by Members during the debate.

Our legal aid policy seeks to ensure that no one with reasonable grounds for taking action in the Hong Kong Courts is prevented from doing so because of a lack of means. A key financial principle underpinning this policy is that the provision of legal cost is not cash-limited. This serves to ensure that financial constraint does not prejudice the grant of legal aid in Hong Kong.

If we go by overseas experiences, Hong Kong is the exception, rather than the rule, in not having a cap on legal aid spending. Other jurisdictions subject their legal cost to a financial limit, and some even impose spending cap on each individual case. We have from time to time considered whether we should also impose a financial limit on our legal aid spending, and have so far decided not to do so. We continue to believe that such impositions tend to prejudice the conduct and success of legal proceedings. This will not be in the interests of justice. We last confirmed this position during the 1997 legal aid policy review.

The scope of our legal aid services is very wide by international standards and goes well beyond our international obligations. In addition to criminal proceedings, we have extended our legal aid services to civil cases covering major areas of the livelihood of the community at large. They include family and matrimonial disputes, personal injury claims, employment disputes, tenancy

disputes, contractual disputes, immigration matters, professional negligence claims and, since last July, also coroner's inquests.

There have been suggestions from time to time that we should expand legal aid services further to cover, for instance, defamation actions, partnership disputes and other cases. We have carefully examined these suggestions, but remain unconvinced. We understand that other common law jurisdictions generally take a similar view. In looking into any new requests, we must bear in mind that legal aid is funded by taxpayers, and we should not move away from practices in other common law jurisdictions without sufficient justification. While we will never be complacent and will continuously look for ways to improve the present system, we believe that the funding policy and coverage of our legal aid regime generally compares favourably with most other jurisdictions.

Some Members have commented on the current level of financial eligibility limits applicable to legal aid. They are concerned that these limits might be too restrictive.

Currently, a person with financial resources of not more than \$169,700 has access to legal aid under the ordinary scheme. Under the supplementary scheme, the limit is significantly higher at \$471,600. In July last year, we adjusted the deductible allowances figures in order to make the legal aid scheme even more generous. This resulted in 58% of Hong Kong households being eligible for legal aid, a considerable step up from the previous 48%. The adjustment has made legal aid significantly more accessible to households in the lower and middle income groups.

That aside, we have in place a comprehensive mechanism and timetable to review the financial limits. It comprises three levels of reviews: first, an annual review to take account of inflation; second, a biennial review to reflect other relevant factors, including changes in litigation costs; and third, a review every five years of the criteria used to assess financial eligibility of legal aid applicants. The next review of financial criteria will fall due next year. I trust that these regular reviews should be sufficient in ensuring that the financial limits keep pace with the economic realities, social consensus and international legal practices of the time.

I would now turn to Members' comments on the operation of the Duty Lawyer Service (DLS). The community must, first of all, pay tribute to some

2 000 lawyers from the private sector participating in the DLS and the Legal Advice Scheme (LAS) at present. Without their devotion and support, the DLS would not have been able to represent over 40 000 defendants and the LAS to provide free legal advice to close to 6 000 individuals last year.

Under the current free legal advice scheme, any person, without going through any financial test, may have access to free legal advice in eight district offices located in different parts of Hong Kong. The Honourable Margaret NG and the Honourable Audrey EU have given us valuable suggestions on how we could enhance existing services. They highlight, among other things, the need to provide such services at convenient locations and the importance of having experienced and trained staff to assist in handling the clients' inquiries.

Let me briefly outline the plan that we have to strengthen existing services. We opened a new free legal advice centre in the Eastern District in August this year. We are planning to open another in Wong Tai Sin later this year. These two offices will help shorten the average waiting time for consultation with duty lawyers from the current three weeks to two weeks. How far we could further expand the free legal service centre network would depend on the availability of duty lawyers to staff them. We would continue to work with the DLS administration on this front.

We are also looking into ways to improve service quality. At present, colleagues at the District Offices conduct preliminary interviews with clients before they see the lawyers on duty. A well conducted preliminary interview not only leads to more efficient use of the time of the duty lawyers, it enables them to give more ready and comprehensive advice to their clients. To improve the quality of these preliminary interviews, we will organize training courses for frontline staff in District Offices on interview and note-taking techniques. We would also consider enlisting the help of university law students in doing the preliminary interviews. In this regard, we are very much encouraged by the positive response from the Faculty of Law of the University of Hong Kong. Discussion is underway on the detailed arrangement. We hope to put in place a trial scheme early next year.

Madam President, within the confines of existing resources, we will continue to look for ways to enhance different aspects of our existing legal aid services. We continue to welcome Members' suggestions and views, and to

work with the legal profession and the Legal Aid Services Council on improving our legal aid system and services in Hong Kong.

Thank you.

**SECRETARY FOR JUSTICE:** Madam President, I rise to oppose the amendment to the motion proposed by the Honourable Martin LEE. The issue that he has raised has been debated for more than two years, and the Government's position on it has been fully explained on numerous occasions.

I, therefore, propose merely to highlight the key points of the Government's position, and I will be happy to supply further details to anyone who requests them.

Firstly, the legal and constitutional position. When the Government sought an interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) in May 1999, some people claimed that this was unlawful, unconstitutional, or both. The Government has never accepted that.

The lawfulness of the NPCSC's interpretation was challenged in Court, in the case of *Lau Kong Yung v The Director of Immigration*. The Court of Final Appeal (CFA) made no adverse comment on the Chief Executive's request for the NPCSC interpretation. It held that "It is clear that the Standing Committee has the power to make the Interpretation. This power originates from Article 67(4) of the Chinese Constitution and is contained in Article 158 para 1 of the Basic Law itself. The power of interpretation of the Basic Law conferred by Article 158 para 1 is in general and unqualified terms. That power and its exercise is not restricted or qualified in any way by Articles 158 para 2 and 158 para 3."

Mr Martin LEE criticized the Government for making the application to the CFA for the clarification of its right of abode judgment in February 1999. The application was made in response to the confusion caused by the judgment on a constitutional issue. This was not without precedent: In 1997, in the famous *Matimak* case decided in the United States. The Court clarified its

judgment two months after it was delivered to make it clear that the principle therein enunciated only applied to Hong Kong companies before 1 July 1997 and not to the Hong Kong companies after the reunification, and the United States judges did not find the application a pressure on them.

The proposed amendment to the motion is based upon the assumption that a request by the Government for an interpretation of the Basic Law by the NPCSC is contrary to the rule of law. The Government has never accepted this assumption. Nor does it accept that judicial independence, or Hong Kong's autonomy, was undermined by the request for an interpretation. I explained why we took this view in my speeches in this Council on 18 and 19 May 1999.

Since then, that view has been endorsed by a number of senior judges at the time of their retirement. Let me quote them.

Mr Justice FINDLAY:

"It has now been two years since the handover and I can honestly say that there has been no interference at all. I know the suggestions from some sources that the right of abode case amounted to interference. I think that is nonsense."

"But to suggest that there is any undermining of the rule of law cannot be because this is the law."

"I do not have the slightest concern about the future of the Judiciary or the legal profession. I think it is in a healthy state and will continue to be so."

*[Hong Kong Lawyer; August 1999]*

Mr Justice MORTIMER:

"The misperception is in the way in which the interpretation is viewed. It is probably not understood that there are provisions for this procedure in our constitution."

"It is a process which common law lawyers may find unusual. But, nevertheless, this is part of the constitution."

[*Hong Kong Standard*; 7 August 1999]

Mr Justice NAZARETH:

"Coming up to the future, I haven't seen any improper influence (on judges). I haven't seen any tilting (in decision-making) any way, improperly. Decisions go according to law. I don't see any reason for people to say independence has been compromised or that there is reason to fear that there would be compromise."

[*Hong Kong Standard*; 28 January 2000]

Mr Justice Henry LITTON:

"I am mystified as to how anyone can claim that the rule of law has been in any way diminished because of the resumption of sovereignty."

[*Hong Kong Lawyer*; June 2000]

Mr Justice KEITH:

"The interpretation of the Standing Committee has not in any way undermined either the rule of law or the independence of the Judiciary if one remembers that it is indeed the Basic Law that confers on the Standing Committee the final power of interpretation."

[*Hong Kong iMail*; 11 September 2001]

In case Honourable Members have forgotten the background to the request for an interpretation by the NPCSC, let me quote an extract from my speech in this Council on 26 May 1999.

"First, there is overwhelming public support for steps to be taken to prevent the influx of possibly 1.67 million people within the next 10 years.

Secondly, the Hong Kong Special Administrative Region (SAR) does not have the autonomy to solve the problem itself, unless the CFA were prepared, at some unknown future date, to change its interpretation of the two articles in another case.

Thirdly, the SAR must therefore seek the assistance of the Central Authorities, either by way of an amendment to the Basic Law or an NPCSC interpretation. Whilst this Council may amend any local law to deal with the unacceptable effects of a court decision, this Council cannot interpret or amend the Basic Law. In considering a request for assistance, there is no question of the Central Authorities interfering unilaterally in Hong Kong's affairs.

Fourthly, having regard to the history behind the two articles, such as the opinion of the Preparatory Committee in 1996, there are good grounds for seeking an interpretation, rather than an amendment, of the Basic Law.

Fifthly, the decision to seek an NPCSC interpretation has been supported by a majority of Members of this Council."

Hong Kong is currently facing economic difficulties and increased unemployment. Perhaps Honourable Members would reflect on the position we would be in now if we had not found a way — a lawful and constitutional way — to prevent a huge influx of people from the Mainland.

The Administration firmly believes that the Chief Executive's request for an NPCSC interpretation was lawful and constitutional, and was not contrary to the rule of law or the independence of the Judiciary. Moreover, the Administration cannot lawfully detract from the NPCSC's constitutional power to interpret the Basic Law, or the Chief Executive's constitutional duties under Articles 43 and 48(2) of the Basic Law. The Administration has repeatedly emphasized that it would not seek an NPCSC interpretation save in wholly exceptional circumstances; that the NPCSC has rarely exercised its power to interpret national laws; and that the NPCSC would not lightly decide to interpret the Basic Law.

The Administration hopes that it will not again be faced with a problem of the magnitude of the right of abode issue. However, the possibility of this happening cannot be ignored. It would not, therefore, be appropriate for the Administration to undertake that it will never again seek an NPCSC interpretation. I, nevertheless, repeat that the Administration will not do so save in wholly exceptional circumstances.

I thank those Members who spoke on Mr Martin LEE's motion for amendment and I urge Honourable Members to vote against the amendment.



I now turn to the original motion proposed by the Honourable Audrey EU. As this motion recognizes, Hong Kong has an important competitive edge in its unswerving commitment to the rule of law. The time has come for us to maximize that competitive edge in order to revitalize the legal profession and establish Hong Kong as the leading regional centre for legal services.

The rule of law has a number of meanings and corollaries. In brief, it means that everything must be done in accordance with the law, that is, the principle of legality. It means nobody is above the law. In the context of the Government, its powers must derive from the law and be exercised in accordance with the law. Therefore, even where the Government is vested with certain discretionary powers, its discretion must be exercised rationally and without procedural impropriety, and the Courts are in a position to prevent abuse. Citizens have the right to challenge in Courts the legality of acts of the Government (including the validity of the law under which it acts) and disputes are to be adjudicated by an independent Judiciary. Justice must also be reasonably speedy and affordable, because if access to the Courts is slow and costly, the rule of law will be diminished. The law should be even-handed between the Government and citizens, striking a balance between the needs of fair and efficient administration and the rights of the individual. The observance of the rule of law makes a government one of laws, and not one of men. I quote the above from my speech delivered to the Japan Society in July this year.

These principles are fully understood, not only by members of my department, but also by the Administration in general. They form the ground rules by which government policies and legislation are formulated, and administrative decisions are made. Moreover, the many court decisions involving the Government since reunification indicate not only that the Government continues to abide by and promote the rule of law, but also that members of the community understand that the Government is subject to law.

I note that Ms Audrey EU has not included quality of legislation in the terms of her motion. I mention this point not by way of criticism, but because Ms EU expressed some concerns on this specific aspect of the rule of law in her speech on 19 October during the debate on the policy address. In my reply that evening in this Council, I said that I took serious note of her comments regarding three particular bills which she felt were illustrations of government officials lacking the spirit of the rule of law. I undertook to look further into these comments. I have done so.

I can reassure Ms EU and this Council that the three bills in question were prepared with full consideration of relevant rule of law imperatives.

Whilst I share Ms EU's concern for clarity and transparency in our laws, I would ask her to reflect on whether we are speaking in absolute or relative terms. I am sure she would agree that the rule of law imperative in legislation is to strive for the maximum possible clarity, transparency and fairness which the subject matter of the legislation will allow. The three bills in question all address complex social issues.

In all three cases, I can assure Ms EU that the Administration is working to achieve appropriate legislative solutions, within rule of law principles, to the complex circumstances inherent in each of the three areas of these bills.

In my speech during the debate on the policy address, I outlined what is already being done to build on Hong Kong's legal strengths. In many ways, today's motion reflects initiatives that are already taking place. The Government will play a full role in these initiatives. But it should not be seen as having sole responsibility for them. On many issues, the legal profession, legal academics, the Judiciary and non-governmental organizations have equally important parts to play.

Take reforms in legal education, for example. The Government has done its best to facilitate reform. Two years ago, the Department of Justice helped to bring together the Steering Committee on legal education and training; it provided most of the funding for the consultancy study by two experts; and the Solicitor General continues to chair meetings of the Steering Committee as it decides the way forward. But the Government should not, by itself, decide on appropriate reforms and implement them. Issues of academic freedom and professional self-regulation are involved. A collective effort is, therefore, needed in this area.

Having said that, I would not seek to underestimate the need for, and the importance of, reforms to legal education and training. It is generally accepted that reform is overdue. There are concerns over standards of some new entrants to the profession. Equally important is the need to prepare future generations of lawyers for a completely new legal landscape. A landscape that is shaped by new constitutional order; where bilingualism is the norm; where globalization and rapid change bring unprecedented demands; and where every member of the community rightly expects access to justice.

The report by the two consultants contains 160 recommendations, covering all stages of professional education and training. Although media attention has focused on the length of the undergraduate training and the future of the Postgraduate Certificate in Law, there are many other equally important areas where reforms are proposed. None of these must be overlooked as the review is taken forward.

Reforms must be pursued with a sense of urgency — but they cannot be rushed. If some aspects of the system — such as the professional training stage — are to be completely redesigned, the process must be thorough and well-considered. And the professional bodies should have a substantial say on the reforms.

Additional resources are certain to be needed, and my department will give its full support for funding requests that are supported by the Steering Committee.

I have listened with interest to the suggestion from Ms Audrey EU and others that there be a comprehensive review of the demand for legal and legal-related services. The extent of the so-called "unmet need" for legal services is one that has received attention in some other jurisdictions.

The English Royal Commission on Legal Services, which reported in 1979, considered that "The need for legal services may be estimated in a number of ways but its extent cannot be precisely quantified". The Commission found that in some areas, which were not specified, legal services were seriously inadequate, and called for a co-ordinated programme of research into this problem in the future.

The Marre Report on the Future of the English Legal Profession, published in 1988, stated that "It is extremely difficult to define the need for legal services. Unmet need is impossible to quantify ..... It would be hard to develop research techniques which would give a reliable profile of unmet legal need broken down by type of problem and geographical area". The Report was, however, able to identify certain categories of unmet need that had been highlighted by organizations working in particular areas, such as housing and immigration.

In Australia, the Access to Justice Advisory Committee produced an Action Plan in 1994, and the Federal Government produced a Justice Statement

in 1995, both designed to improve access to justice "for all Australians". However, neither publication referred to any comprehensive studies of the unmet need for legal services.

In referring to these precedents, I am not trying to dismiss the call for a comprehensive local review, but to draw attention to the complexities involved, and to suggest that the proposal needs to be explored further before any decision can be made.

Amongst the issues to be explored would be the precise objectives of the review. In the course of the project on legal education, for example, it has been suggested that any informed decision as to reform requires a full and proper survey of the unmet legal needs of all Hong Kong's various social groups. This could help to determine appropriate curricula, and better integrate the legal profession and the universities into the lives of their communities.

Another possible objective of a review would be to ascertain how members of the community currently seek to resolve their legal problems; why they do or do not seek legal advice; and whether they feel barred from access to lawyers or the Courts. A survey of this type might help in developing strategies, either for improving access to the Courts or for diverting cases away from Courts into private dispute resolution forums.

Before any review of unmet need could be conducted, socio-legal experts would need to develop a methodology that is tailor-made to achieve the objectives set for it. Adequate funding would need to be found for the team of research assistants that would be involved in obtaining raw data, conducting interviews, and collating the results.

The proposal that such a survey should be conducted is worth exploring. It may be that academics would be best placed, and can be adequately funded, to take up the suggestion. My department will discuss the matter further with the professional bodies and the universities.

Ms Audrey EU and other Members have drawn attention to the fact that many litigants are unrepresented by lawyers, and have commented that existing schemes for providing free or affordable legal services are inadequate. In this respect, I have some doubts as to the meaning of the statement that 85% of the litigants are not represented in Court. It must be remembered that in some

cases, there is simply no defence. People are simply unable to pay and in those cases, I do not think that they would incur expenses of being legally represented.

The Chief Secretary for Administration has explained the role that legal aid services and the Duty Lawyer Service can play in addressing these issues. I would like to say something about the free legal services, other than those financed by the taxpayers, that are currently available.

The Community Chest funds the Free Legal Advice Clinic for Women, which specializes in matrimonial and domestic matters. The Clinic is open one evening every week and about 30 volunteer lawyers provide their services.

A number of non-governmental organizations, including the Caritas Family Service, the Society for Community Organization, the Association for the Advancement of Feminism, the Hong Kong Single Parents Association, the Association Concerning Sexual Violence against Women, the Hong Kong Federation of Women, the Mutual Aid Helpline and some trade unions offer free legal advice in their areas of concern.

Free legal advice is also available during the Law Society of Hong Kong's Law Week; through the Hong Kong Bar Association's Free Legal Service Scheme; and through the offices of certain individual members of this Council.

I would like to pay tribute to all those who have so generously provided free legal advice under these various schemes. Together, they provide valuable assistance to a great number of people. Some speakers today have drawn attention to shortcomings in the present arrangements. No system is perfect. But this combination of public and private services is consistent with the growing international trend of privatization, and partnership between the government and civil society. As the Chief Executive emphasized in his policy address last month, in developing the most effective approach to solving social problems, the Government encourages the community to come together, and pool the wisdom and strength of individuals, non-profit-making organizations and businesses.

As I said at the beginning of my speech, the Government does not have the sole responsibility for the issues covered in this debate. Suggestions for improvements to existing schemes could usefully be directed to those who run them. Any proposal for a new form of service, such as the setting up of community legal service centres, obviously has resource implications. I am

sure that all lawyers would welcome the wider availability of legal services within the community, in order to improve access to justice. However, as Members are well aware, there are always competing demands for limited resources, and priorities will need to be determined.

I now turn to the promotion of awareness and knowledge of the law in the community. This is one of the key objectives of my department, and I believe that its record in this area is a good one. In the time available, I can only highlight some of our activities, but I will be pleased to supply fuller details on request.

Our publications include *The Legal System in Hong Kong*, the biennial report of the Department of Justice, *Legislative Drafting in Hong Kong*, bilingual glossaries of legal terms, the *Victim of Crime Charter* and *Prosecution Policy — Guidance for Government Counsel*.

My department has co-produced with the Radio Television Hong Kong three series of legal docu-drama, which were screened in prime time television. We have also created a VCD containing some of these episodes, a VCD describing the preparation and promotion of an ordinance, a CD-ROM for interactive legal quiz, and a 10-minute video on the legal system.

Our community projects have included 28 school talks, jointly organized with the Local Government Counsel Association; participation in the Law Society of Hong Kong's Law Week; contributing to the Basic Law 10th Anniversary roving exhibition, and the publication of legal articles in newspapers.

Almost all of the publications and reference materials produced by my department are available for browsing on the department's website. In addition to the full set of the Laws of Hong Kong which is updated regularly by a dedicated team of the department, the website also contains the latest speeches and articles by my colleagues or myself, papers and consultation documents. The full text of the Basic Law and selected constitutional documents are also available. The lists of bilateral, multilateral agreements that have come into force and are applicable to Hong Kong are also updated regularly.

In the coming year, my department will continue to promote knowledge of the legal system in the community. Amongst our new initiatives will be a short

drama series on crimes commonly committed by youths, which will be shown on television and put on VCDs for distribution to schools.

I agree entirely with those who have emphasized the importance of the wider dissemination of legal knowledge. My department will play its part, and I commend the efforts of those in the private sector who are doing likewise.

I now turn to the promotion of studies on the legal systems of China and Hong Kong, and the organization of international conferences on this subject. Again, these are key objectives of my department, on which we have devoted considerable efforts.

Since becoming Secretary for Justice in July 1997, I have repeatedly emphasized that the successful implementation of "one country, two systems" can be enhanced by greater mutual understanding of the two systems. I have encouraged members of the community, particularly lawyers, to study the mainland system. I know that many individuals have, for example, undertaken degree courses in mainland law.

What my department can do is to ensure that it provides training opportunities for Government Counsel, and for mainland officials, in each other's legal systems. During the past 12 months, bilingual Government Counsel attended courses in mainland law at Zhongshan University, Guangzhou, and anglophone Counsel attended courses at Peking University; they also attended mainland conferences and seminars on judicial reform, on the recently amended Marriage Law of China, and on China's accession to the World Trade Organization (WTO). Two Law Officers led delegations to Shenzhen, Zhuhai, Beijing, Xian and Urumchi to promote greater mutual understanding.

So far as the study of Hong Kong laws is concerned, there is an ongoing scheme under which about a dozen mainland officials come to Hong Kong each year to study the common law. They undertake the Postgraduate Diploma in Common Law at the University of Hong Kong, and then have a three-month placement in legal sections of the Government or public authorities. Many shorter visits are arranged for mainland judges and officials, who are given briefings on relevant aspects of Hong Kong's legal system.

Mutual understanding is also promoted by the series of mock trials that my department has arranged in mainland cities. In May and June this year for

example, mock trials involving intellectual property (IP) issues were held in Shenzhen and Shanghai, and were followed by debates on the differences between the IP laws and procedures under the two systems.

Knowledge of Hong Kong and mainland laws is also being promoted more widely. My department's website will soon include information relevant to China's accession to the WTO, and a database on mainland law. Basic Law seminars and bulletins are regularly organized.

Turning to international conferences, last year, my department organized a highly successful conference looking at the Basic Law from a comparative perspective. Eminent scholars and judges from the United States, Canada, South Africa, Germany, Hong Kong and the Mainland participated. Earlier this year, my department co-organized a conference on the implications for legal education and the legal profession of China's accession to the WTO.

My department will continue to promote studies of the two systems, and international conferences concerning them. It also welcomes the activities of other organizations in this area. The law faculties, professional bodies and non-governmental organizations have much to contribute, and I look forward to continuing co-operation with them.

In conclusion, I would like to thank Ms Audrey EU for proposing this motion, and to acknowledge the helpful suggestions that she and other speakers have made during this debate. I am sure that we share a common goal of promoting the rule of law, and of developing legal services, legal knowledge, and legal studies, within Hong Kong. As I have said, some of these issues need to be explored further and, in some cases, other organizations need to be involved in the work ahead. Subject to these comments, Madam President, I commend the motion to Members, but urge them to vote against the amendment. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Martin LEE to Ms Audrey EU's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)



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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Martin LEE has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr MA Fung-  
kwok voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the amendment and 19 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 16 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Ms Audrey EU, you may now reply and you have up to 20 seconds for your speech.

**MS AUDREY EU** (in Cantonese): I just wish to extend my thanks to the 25 Members and the two Secretaries who have spoken on the original motion. I hope the Secretaries will take the lead to provide resources reasonably and expeditiously implement the proposal related to the community legal services centre. I believe the legal profession is very willing to maintain the fine tradition of providing free legal services. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Audrey EU be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Second motion: Reviewing the Old Age Allowance Scheme.

### **REVIEWING THE OLD AGE ALLOWANCE SCHEME**

**DR YEUNG SUM** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

The motion today is proposed for the sake of the 750 000 elderly persons aged 65 or above, and particularly the 450 000 Old Age Allowance (OAA, commonly known as "fruit grant"). My motion is very straightforward. I just wish to convey two messages: firstly, we are dissatisfied with the Government's repeated delays in reviewing the OAA Scheme; and, secondly, we urge the Government to increase the allowance rates. I should like to speak on our demand for an increase in OAA rates first.

With regard to the motion moved by me today, some may think that this is not the right time to request the Government to increase the allowance rates as the economic prospects of Hong Kong remain unclear and a budget deficit is expected to be inevitable. However, if we put our feet in the shoes of the elderly, we can see that when economic conditions are poor, the problems facing the impoverished elderly are particularly grave and that they are therefore all the more in need of greater support.

Nowadays, to many elderly persons, the OAA is not just a fruit grant. Last Sunday, the Honourable WONG Sing-chi and I joined 80 elderly persons in making petition at the Government Secretariat, and the elderly persons handed an empty basket to the Chief Executive. To these elderly persons, the \$705 OAA does not help much in meeting their daily expenses, let alone finding any spare money for fruit.

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

I believe government officials are aware of this problem. According to the comprehensive household survey conducted by the Census and Statistics Department between July and September this year, 34.1% of the elderly persons rely on government welfare assistance for their livelihood. As 12% are receiving Comprehensive Social Security Assistance (CSSA) while 2.3% are living on the disability allowance, the remaining 19.8% (or 200 000) elderly persons should be relying on the OAA for their daily expenses. In other words, about 50% of the 450 000 OAA recipients in Hong Kong are using the OAA to cover their daily expenses rather than as money for fruit. I believe this situation is even more common among elderly persons aged 70 or above, as most of them have already exhausted their own savings. Due to the inadequacies of the present social security system, the fruit grant has in fact become the "meal money" for many elderly persons. As these elderly persons have to rely on the ordinary \$625 or higher \$705 OAA payment to meet their daily expenses, we can see how hard their lives are.

The elderly have to rely on the fruit grant to meet their daily expenses due to many reasons, and the most important one is the lack of a retirement protection system. According to the document submitted by the Health and Welfare Bureau to the Legislative Council Panel on Welfare Services in July this year, only 15% of our elderly persons are provided with a one-off retirement pensions of some \$65,000 on average. The government document also deduces that the savings of the elderly persons are rather limited. For the elderly persons, their pension and limited savings are their funeral money. Although the amount is far too inadequate to support the daily lives of the elderly for a long time, it is already enough to disqualify the elderly persons concerned from applying for CSSA.

As pensions and savings are so limited, the elderly can only rely on their families. But then, given the present economic situation, just how many children can afford to support the living of their parents? At present, 170 000 people are unemployed while another 75 000 are underemployed. These 200 000-odd people must certainly not be able to support the living of their parents. As regards those who are employed, with the present median household income standing at \$18,705, many children are unable to support the living of their parents on a long-term basis despite their willingness to do so. In particular, when the children have started their own families, paying their own rent and the various expenses on their own children, many of them are unable to give money to their parents regularly. As revealed in the survey conducted by

the Census and Statistics Department, 42% of our elderly persons do not receive any financial assistance from their children. If the economy should continue to deteriorate, salary rates would continue to drop while the rate of unemployment would be on the increase. In that case, the life of the elderly would be even more difficult as the number of them who are supported by their children would further decrease.

In the past, the elderly could turn to the CSSA for support. But since the Government has tightened the CSSA system, barring elderly persons living with their families from applying for CSSA independently (this is because the income and assets of the whole family will be counted), many elderly persons have been deprived of this last bit of welfare. Even though their children cannot support them financially, many elderly persons are still living with their children because they can take care of them at the least. Under the circumstances, the elderly persons concerned have no choice but to give up their hope on the CSSA and resort to relying on the OAA of a few hundred dollars monthly for their daily expenses, including medical consultation, transport fares, daily necessities, and so on.

To sum up, the long-standing lack of retirement protection, the inflexible CSSA system and the labelling effect on CSSA recipients have caused many elderly persons to live on the several hundred dollars of OAA. The fundamental solution to the problem lies in setting up a centralized retirement protection system, so that all elderly persons will be provided with pensions upon retirement. But then, this slow remedy just cannot meet the urgent needs of the elderly. As such, increasing the OAA rates is the most reasonable and most effective short-term measure to remedy the situation. The Panel on Welfare Services held a meeting in July to discuss the proposal to urge the Government to increase the OAA rates, and the majority of members attending the meeting expressed support for the proposal.

The stance of the Democratic Party on improving the OAA system comprises two points, and I should like to expound on them for Members.

To begin with, the existing welfare support should not be reduced or abolished. The Democratic Party will not support any measures that seek to increase the allowance for certain people by cutting back on that of others. The Democratic Party opposes the introduction of new means tests or asset declaration requirements into the OAA system to disqualify the financially better

off elderly persons from receiving the allowance, or to divide the elderly persons into two groups and increase the OAA rates for the poorer elderly persons by cutting back on that of the financially better off elderly persons.

We oppose the introduction of means tests for four reasons. Firstly, this defeats the original purpose of the OAA. This point is in line with the opinion of the people, as our survey findings tell us that members of the public basically support this point. Secondly, even if a means test is a must, the test should not be overly stringent if the OAA is intended to help the elderly. I believe the majority of the existing OAA recipients are eligible; hence, conducting means tests will indeed be a waste of public money on administration costs. Thirdly, once any means test is introduced, the OAA system will become very rigid and make it very difficult for some elderly persons to apply successfully for the OAA, thus leaving them in an even worse situation. Fourthly, seeing that they will be subject to a means tests in any case, many elderly persons may perhaps apply for the CSSA instead, thereby adding to the public expenditure and causing more trouble to the Government. For these reasons, we hold that no new means tests should be introduced into the OAA system.

The second point of our stance on improving the OAA system is that the allowance rates should be increased. However, since Honourable colleagues have widely divergent views on the rate of increase and on whether or not investigations should be conducted into the financial position of the OAA recipients concerned before increasing their OAA rates, I do not intend to discuss these issues in detail in this motion debate. One point I hope Honourable colleagues will take note of is that we only wish to appeal for your support for the motion today, which urges the Government to increase the OAA rates and to improve the relevant system. As regards the rate of increase and the method of implementing the increase, the Government can conduct further reviews in this respect in future.

I understand that some Honourable colleagues are concerned that with an ageing population, the financial burden on the Government will become increasingly heavy after increasing the OAA rates. I believe Members should actually not be overly worried. According to the survey findings of the Census and Statistics Department, the next generation elderly persons will be in a better financial position than the present elderly persons, as 30% of them will enjoy retirement protection, and the various Mandatory Provident Fund schemes will enable the majority of them to have a certain extent of protection for their

retirement years. Moreover, the next generation elderly persons will also have more assets than the present generation. It is believed that they would each have more than \$100,000 in assets on average, and so the OAA of only a few hundred dollars should not so indispensable to them. Hence, there should be a smaller percentage of elderly persons applying for the OAA.

Another message this motion debate seeks to convey is that we are dissatisfied with the Government's repeated delays in reviewing the OAA Scheme. Both the elderly and the people who are concerned about the welfare of the elderly are very dissatisfied with the Government's repeated delays in this respect. Since the policy address was published on 10 October, we can see almost every week there are elderly persons petitioning the Government to express dissatisfaction with its failure to live up to its promise of increasing the OAA rates. From this we can just imagine how strong the discontent voices in society are.

The Government indicated that it would review the OAA system in as early as 1998. Last year, when delivering his policy address in this Chamber, the Chief Executive mentioned the following: "For those elderly who, because of meagre savings and lack of family support, have to depend largely on their old age allowances for a living, we intend to provide them with additional assistance. We will complete within one year a review of the old age allowance scheme to see if we can further improve their livelihood." Since then, we have heard about different kinds of rumours. At one time, we heard that elderly persons applying for the OAA would be subject to a means test. At another time, we heard that the 430 000 elderly persons who were already receiving the OAA would not be affected, but those who were not yet 65 years old at that time might be affected upon the implementation of the new OAA system. We have also heard government sources saying that for those needy elderly persons aged 70 or above who are not qualified for the CSSA, they may receive an OAA of \$1,000 provided they past the relevant means test. So, there have been all kinds of "hearsay" about the OAA, most of them come from the Government while others are suggestions made by Members of the Executive Council.

The message regarding the OAA has been changed numerous times in just a yea, how can the elderly distinguish which is true and which is not? They were told at one time that there would be a means test but were told the opposite at another time. They have heard that the OAA rates would be increased; but then, they have also heard that the OAA rates for certain elderly persons would

be reduced. As a result, they were very anxious at one time but were full of hope at others. In any case, they simply become disillusioned in the end. All these rumours have caused much disturbance to the elderly who are living on the several hundred dollars of OAA.

Whatever plans the Government may have in reality, it should still submit the relevant consultation document expeditiously. The repeated delays in reviewing the OAA Scheme will only leave the elderly persons at a loss. Regrettably, Mr Deputy, so far the Chief Executive has refused to provide us with even a timetable. He just keeps on saying that reviews will be conducted after reviews, to be followed by further reviews. The Democratic Party has to express our deepest regret about this.

With these remarks, I urge Honourable colleagues to support the motion, so that the impoverished elderly persons living on OAA could receive better returns from society. Thank you, Mr Deputy.

**Dr YEUNG Sum moved the following motion: (Translation)**

"That this Council deeply regrets the Government's repeated delays in reviewing the Old Age Allowance Scheme, and urges the Government to immediately improve the scheme and increase the allowance rates, so as to improve the livelihood of the poor elderly."

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

**MR TAM YIU-CHUNG** (in Cantonese): Mr Deputy, it is an indisputable fact that the people of Hong Kong are living longer and longer and the size of our elderly population is thus growing bigger and bigger. At present, elderly persons aged 65 or above account for 11.1% of our total population, and the proportion is expected to rise to 13.3% by 2016. The average lifespan of the people of Hong Kong is 79 years for men and 82 years for women, and these figures have been rising continuously all along. As indicated in the latest census findings, our elderly dependency ratio has increased from 124 per 1 000 work-age persons in 1991 to 154 this year, representing an increase of 20%. In the face of an ageing population, Hong Kong must make plans promptly to



provide sufficient financial support for the elderly, thereby improving their quality of life.

All along, occupational retirement protection is available to only 20% to 30% of the public in Hong Kong. As regards the Mandatory Provident Fund (MPF) schemes that commenced last year, since contributions have been made to the various MPF schemes for less than a year, it will take some 20 or even 30 years more for the effects of the schemes to be seen. Hence, the elderly persons in Hong Kong mostly have to rely on their own savings and the government Old Age Allowance (OAA, commonly known as "fruit grant") for living in their retirement years. At present, 59% of the elderly persons in Hong Kong are receiving OAA. Despite their limited savings, many of these elderly persons would rather live on the \$705 monthly OAA payment than the Comprehensive Social Security Assistance (CSSA). They have to scrimp and save as much as possible in their daily lives. During a visit to the elderly living in public housing estates, I noticed that some of them were still using kerosene stoves for cooking. I then asked them why they did not make use of the central liquefied petroleum gas supply and was told that kerosene stoves were cheaper.

So, how can we help these impoverished elderly persons who do not have any family support? One way is to provide them with more direct and larger amounts of financial assistance. The problem with the existing OAA and CSSA systems is that while the OAA is too small to support one's living, the requirements for the CSSA are too stringent. In order to provide support for the impoverished elderly persons, we must consider very carefully what we can do with the OAA and CSSA systems, including the application criteria, procedures, and so on. With regard to the OAA review commenced by the Government last year, I hope the Government can put forward a wider variety of effective proposals and solicit opinions extensively, particularly the opinions of elderly persons.

Concerning the residence requirement of the OAA, back in 1985 when I became a Member of the former Legislative Council, I had raised the issue to the then Secretary for Health and Welfare. At that time, elderly persons receiving OAA would be disqualified if they were residing outside Hong Kong for a total duration of more than 90 days in a year. Following my repeated demands, the limit was eventually extended to the present 180 days. However, no adjustments have ever been made since then. I hope the Government will expeditiously abolish this requirement and I believe the technical or administrative arrangements involved should not pose any problem.

According to some recent statistics, about 180 000 people of Hong Kong own real estate properties in the Mainland. Given that expenses are lower in the Mainland despite the rapid social development, and with the various social facilities there being gradually brought to high standards, more and more Hong Kong residents will be spending their retirement years in the Mainland. The Government should therefore promptly conduct researches into the possible impacts and influences of such a trend on Hong Kong's welfare policy, and then formulate proper proposals to deal with or respond to the problems concerned.

However, helping the impoverished elderly is the first and foremost task of the Government presently. In addition to directly providing the elderly with cash subsidy as mentioned by me just now, the Government can also provide support for the impoverished elderly persons in terms of rent assistance and medical expenses assistance. Following the redevelopment of many public housing estates, many elderly persons living in old housing estates have to move to the newly completed public housing units. No doubt their living environment will certainly be improved significantly as a result, yet at the same time the rent they have to pay will also soar several folds. To those elderly persons who are not on CSSA, the tremendous rental increase will be a painful choice. On the one hand, moving to the new housing estates will certainly add to their financial burden. On the other hand, their living environment would not be improved if they should remain in the old estates; besides, they would also lose those old friends who used to be their kaifongs. Thus, the Government should address the situation squarely and relax the restrictions on rent assistance for the elderly public housing tenants. In particular, rental concessions should be introduced to help genuinely improve the living environment of those elderly persons affected by redevelopment programmes. Speaking of medical expenses, due to their old age, elderly persons are prone to diseases and many of them are even chronically ill, that is why they very often have to visit doctors. However, because of their financial constraints, more often than not the impoverished elderly persons dare not seek medical consultation until after their conditions have worsened. As such, this is an urgent task for the Government to find ways outside the CSSA mechanism to provide these elderly persons with assistance to subsidize their medical expenses, including expenses on Chinese medicine.

I so submit. Thank you, Mr Deputy.

**MR TOMMY CHEUNG** (in Cantonese): Mr Deputy, the government of any healthy society has to find out very carefully whether members of the disadvantaged groups in society are being sufficiently taken care of. Indeed, the elderly members of society have spent their lives working hard to make contribution to the community, they should naturally be fully taken care of in their old age. In particular, for those elderly persons who have to rely solely on the Old Age Allowance (OAA) for living because they are not self-sufficient or not receiving any support from their children, they are all the more in need of help from society.

As the old Chinese saying goes, "People should rely on their children as they grow old"; it is therefore very reasonable for grown-up children to take care of their parents. However, in case the children cannot afford to take care of their parents and the elderly persons are unable to support their own living, this responsibility should be taken up by the Government. In our view, the role of the Government in this respect is to guard this "last line" by providing basic protection for needy elderly persons.

Nonetheless, we should still adhere firmly to our fiscal prudence to prevent our welfare expenditure from expanding unchecked, so that we will not end up levying heavy taxes to finance huge expenditure like those welfare countries. In 1995, our social welfare expenditure was \$13.2 billion, including \$4.8 billion Comprehensive Social Security Assistance (CSSA) payments. By 2000, our social welfare expenditure has risen more than 100% to \$29.7 billion, with the CSSA element having expanded three times to \$13.4 billion. As the population of Hong Kong is ageing, the number of our elderly persons will rise to 500 000 in 20 years, and the welfare expenditure is expected to increase considerably by then. Under the circumstances, the Government must consider very carefully whether the increased expenditure can really be used to provide timely and necessary assistance for the genuine needy.

In the face of the serious budget deficit facing us currently, to ensure effective use of social resources, the increased welfare expenditure should be focused on providing support for the most needy elderly persons. Given that applicants for the higher-rate OAA are not subject to any means test, an across-the-board OAA increase may mean that only a very small portion of the social resources will be used on the most needy elderly persons. In other words, these elderly persons who are badly in need of assistance can only have a very limited amount of additional assistance in the end.

Actually, the Liberal Party already raised this view last year in a motion debate on improving the welfare for elderly persons. Perhaps just let me repeat our points to Members once again. Suppose 100 000 out of the current 450 000 OAA recipients are in dire need of help, if the Government should increase the monthly OAA payments by \$300 for all recipients, it would incur an additional monthly expenditure of \$135 million. However, if this additional sum should be allocated to the 100 000 most needy people, these impoverished elderly persons could receive an additional payment of \$1,350 monthly, which is about three times the present OAA rate. This is indeed a more effective way to provide support for the elderly persons concerned.

With regard to the question of how the most needy people can be identified, we consider that the Government can achieve that by way of some criteria. As to whether or not means tests, income limit or other restrictions should be imposed on all OAA applicants, we believe the ideas can be further discussed by Members and examined in detail by the Government.

Furthermore, the Liberal Party holds that while it is surely important to provide elderly persons with financial assistance, the quality of their lives is of far greater importance. For this reason, we suggest that in addition to stressing the financial needs of elderly persons, the Government should also conduct reviews to find out how the existing services for the elderly could be perfected when formulating policies in this respect. In this connection, medical services and home care services for the elderly must be perfected to enable our elderly persons to really enjoy life in their old age.

Regarding the motion moved by Dr YEUNG Sum today, although it seems on the surface that its purpose is to urge the Government to immediately improve the OAA Scheme and increase the allowance rates, the thrust of the discussion lies in the words "deeply regrets", rather than the amount of increase to the allowance rates or the method of the review to be conducted.

The Liberal Party holds that expressing regrets indiscriminately cannot really help to resolve matters practically. According to the Government, the economy of Hong Kong as a whole has continued to deteriorate recently, and the far-reaching impacts of the "September 11 incident", in particular, will deal a heavy blow to our economy even further, thereby aggravating the budget deficit facing the Government. We consider that at the present extraordinary moment, it is acceptable for the Government to take a longer time to fully review the OAA Scheme, especially when the issue of public expenditure is involved.

The Liberal Party will abstain from voting on the motion. However, I wish to emphasize that even though we will not vote in support of the motion, it does not mean we care nothing about the welfare of the elderly. Indeed, if simply expressing "deep regrets" could really resolve the matter, we would certainly cast our supporting vote readily. But then, the reality is another story. In our view, a more practical proposal would be to urge the Government to expeditiously announce the results of the review of the OAA Scheme. We are certainly aware of the fact that the economic environment has changed; still, the Government should not delay the review indefinitely. Hence, if the Government could not announce the final results of the review promptly, it should at least disclose the progress of the review and submit the initial findings to the Council for discussion, thereby accounting the situation to the general public.

Mr Deputy, I so submit.

**MR WONG SING-CHI** (in Cantonese): Mr Deputy, when I was preparing today's speech at home two days ago, I watched a Japanese movie entitled "The Ballad of Narayama" which I believe most Members would have watched it before. I grew anxious as I watched it. The story of the movie was about a community where food shortage prevailed. Youngsters had to carry the elderly on their backs to the mountains, the purpose of which was not to feed them but to let them fend for themselves in the mountains for fear that the elderly would scramble for food with the youngsters, seriously affecting the economy of the community.

Currently, the OAA (commonly known as "fruit grant") is now under review in Hong Kong. I feel that in the view of the Hong Kong Government, the local economy may be affected in future, so much so that the Government cannot spare enough money for the elderly. Hence, we can just let the elderly uncared for now. If we allow this to develop, do we have to carry the elderly on our backs to the mountains when the economy experiences tremendous setbacks? In fact, I think that we should carry those incompetent government officials on our backs to the mountains, but not the elderly. It will be most appropriate to leave them in the mountains to fend for themselves.

The "fruit grant" was launched in 1973 as an allowance scheme designed for the elderly and the disabled to meet their special needs. It is non-

contributory and non-means tested and the rate of payment is fixed. So it is basically a universal welfare scheme. The criteria of paying out the allowance do not lie in the financial position of the beneficiaries, but in their age and degree of disability. With its development to date, the public has generally recognized the "fruit grant" as a welfare to repay the elderly for their past contribution to the community over the years.

In the policy address last year, the Chief Executive proposed that the "fruit grant" system be reviewed. Public opinions also agreed that "fruit grant" basically had embodied the meaning of respecting the elderly. During the discussions, many people even proposed that the "fruit grant" be renamed as "respect for the elderly allowance". Last year, the Hong Kong Council of Social Service interviewed 6 000 old people. Among them, 92% agreed that "fruit grant" represented the respect and payback to the elderly by society for their past contribution. The Democratic Party also interviewed some citizens, and the results showed that they were sharing the same views. 94% of the citizens felt that "fruit grant" was actually set up to show respect to the elderly, and it represented our respect for the elderly. Since "fruit grant" is a kind of "respect for the elderly allowance", recipients should neither be subject to a means test nor an assets test. In the survey, 82% of the elderly expressed that elderly recipients of "fruit grant" aged 70 or above should not be required to undergo an assets test, while 74% of the citizens held the same views.

In fact, the public basically hope that the Government can give the elderly more assistance. In July this year, the Democratic Party conducted a survey asking the public which groups of people they considered should be rendered assistance by the Government. As revealed by the findings, 93% of the public thought that the Government should improve its support and assistance currently given to the elderly. In fact, the general public are aware of the financial difficulties faced by the elderly in their living. Some citizens who have been in contact with the impoverished old people even felt great pity for them, hoping that the Government can provide them with more assistance.

Among the poor in Hong Kong, a majority of them are old people who often do not have enough money to spend. As indicated in a survey conducted by Oxfam Hong Kong in 1997, 87.5% of the elderly aged 60 or above were living in abject poverty among the poverty-stricken households, whereas in two-person households, 71% were poverty-stricken old people. Generally, the elderly have occupied a very large proportion among the poverty-stricken group.

According to the information of the Census and Statistics Department, only 10% of the 1 million old people aged 60 or above in Hong Kong maintain their daily expenses with pension upon retirement; 51% live on interest from their savings. However, according to the results of a survey conducted by Prof Vincent CHOW in 1997, the median savings of the elderly not receiving Comprehensive Social Security Assistance (CSSA) was \$30,000. In fact, this was their "savings for their funerals". However, they were not eligible for CSSA because of this sum of savings, so they could only rely on the "fruit grant" for their living. Since most elderly wish to save some money to meet their expenses in medical fees and emergence needs, they will not spend their savings lightly. They would rather cut back their expenses on food and clothing, and support their living with the several hundred dollars from fruit grant. According to the report of a certain newspaper, an elderly person bought some vegetable at \$2 and ate them for three days. Can we bear to see the elderly leading such a life continually?

In fact, the children of many old people feel great pressure in supporting their parents. In an economic recession, not only the children who suffer a lot, but also their parents. It is because the "fruit grant" that supports their living is utterly far from enough. Therefore, the Democratic Party has moved the motion today, hoping that the Government can really give the elderly due respect and actually show it to them. Insofar as the "fruit grant" is concerned, we hope the Government can give more assistance to the elderly, so that they can lead a more dignified life with this sum of money.

With these remarks, I support the motion.

**MISS CHOY SO-YUK** (in Cantonese): Mr Deputy, the Government, based on a survey, stated at the Panel on Home Affairs in July that the financial condition of the next generation elderly would be better than those of today. I do not have a crystal ball, so I cannot tell whether the Government's forecast is right or wrong. I only know that Hong Kong is facing a difficult time of economic restructuring with uncertain prospects. Salary and staff cuts are haunting most businesses, with signs indicating that the circumstances are prone to aggravate. Coupled with the increasing but not decreasing number of negative assets holders, even homeowners can hardly ensure that their financial position in future will definitely be better than that of their parents. Therefore, I hope that the Government will take actions carefully insofar as this problem is concerned before hastily reaching a conclusion, and it should refrain from using this as an excuse to gradually shirk its responsibility of looking after the elderly.

Although I disagree with mixing the OAA (commonly known as the "fruit grant") together with Comprehensive Social Security Assistance (CSSA) as a long-term method to resolve the problem of improving the livelihood of the impoverished elderly, I still support the proposal to increase the amount of "fruit grant". In this way, we can reduce the financial pressure faced by the elderly and enable them to lead a more comfortable life in their twilight years, thus helping to build up a community that cares for the elderly.

Mr Deputy, the original intent of setting up the "fruit grant" was to repay the elderly for their past contribution to Hong Kong over the years. It meant to show our respect and love for the elderly, and was a token of social appreciation of them. However, we cannot deny that given the current social condition, many old people who rear children for their old age and depend on them for a comfortable life in their twilight years will also feel very worried even though they do not have any financial problems at the moment. Since they know very clearly that their children can barely look after themselves under the threat of salary and staff cuts, how can they spare extra efforts to take care of their parents? Added to the fact that they have lost a stable income after retirement, it will be too late for them to save for the rainy days even if they wish to. With the shadow of their resources being exhausted by the day cast overhead, they can hardly be optimistic about life.

Under such circumstances, the monthly "fruit grant" to the elderly has become their only source of a fixed income. The sum is not enormous, but at least it can make the elderly feel at ease. With the "fruit grant", they hope to meet their daily expenses, without using the meagre savings left frequently and worrying all the time that their "lifetime savings" may be expended for good. However, we all know that given the standard of living in Hong Kong, however hard we try to scrimp and save on the necessary daily expenses including the expenditures on clothing, food, shelter, transport, and so on, the expenses incurred are still enormous. Therefore, if the "fruit grant" truly aims to put people's minds at ease, then its amount must be raised. Currently, the elderly aged 70 or above can get a monthly "fruit grant" of \$705 only; whereas those aged between 65 and 69 can only get \$625 after they have made a declaration in respect of their incomes and assets. In other words, they can only get about \$20 each day. This standard has been far out of line with the current standard of living and has long been strongly criticized. Not to speak of catering for the urgent needs of the elderly, it is too miserly as a token for showing respect to the elderly.



In addition, the Government proposes that the elderly "fruit grant" recipients should be required to declare their assets. If the assets are found to exceed the ceiling, the Government will refuse to pay out the allowance to the old people concerned. I consider this practice undesirable. As I said earlier, the original intent of the "fruit grant" is a small token of our thanks to the elderly for their past contribution to society over the years. Therefore, it should be granted to the elderly as long as they meet the age requirement, no matter they are poor or rich. If an asset declaration is required and an upper ceiling is imposed merely for a few hundred dollars, then how is the application for "fruit grant" different from that of the CSSA? This practice will not only dampen the elderly's desire to lodge applications, but also remove the meaning of showing respect to the elderly. In that case, we would fall prey to outsmarting ourselves, incurring losses more than the gains.

Mr Deputy, apart from the amount of the "fruit grant", I think the most urgent improvement that we need to make to abolish the absence rule imposed on the "fruit grant". As we all know, deflation continues to prevail in Hong Kong, nonetheless there is still a big gap between Hong Kong and the Mainland in terms of living standards. If the elderly only have a small sum of savings when they retire, resettlement in the Mainland has always been an ideal option for them. Besides, if the elderly are allowed a free choice to settle in Hong Kong or in the Mainland, government expenditure on "fruit grant" will not be increased on the one hand, and the elderly can have one more choice and lead a more dignified life on the other. This is killing two birds with one stone. Why does the Government not consider this proposal? From another viewpoint, the existing requirement of the authorities is tantamount to obliging the elderly "fruit grant" recipients to stay in Hong Kong simply because of a meagre sum of monthly allowance. Is it on the contrary unreasonable or even ridiculous? Although the Government has claimed that there is no way to ascertain whether the recipient is settling in the Mainland or is still alive, this is evidently just a technical problem to which a solution can definitely be found. I hope the Government can adhere to the major principle of repaying and helping the elderly by responding appropriately to public sentiments in resolving the "fruit grant" problem for the elderly at the earliest possible time.

Mr Deputy, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Deputy, I believe that we discuss the issue of OAA (commonly known as "fruit grant") today because the

elderly have recently kept asking why the Government has yet made any improvements to "fruit grant". Many colleagues may also doubt: Is the Government really sincere in improving the scheme of "fruit grant"? Through the debate today, we wish to urge the Government to do more in this respect, so that we can see the result. More importantly, many elderly persons said that the Chief Executive had stated in his policy address last year that the review on "fruit grant" would be completed at the earliest possible time, so as to provide additional help to those elderly with meagre savings and not supported by children. Therefore, they have been holding expectations on the Government since then. However, expectation is expectation after all. The policy address this year has yet given any specific response in this respect to date. Therefore, we must have this motion debate today.

Before we started our debate today, we could see that the Government's response to the issue of "fruit grant" was evidently confined to just a few points. Firstly, given that our population will be ageing continuously in the next 20 years, increasing the amount of fruit grant may constitute a heavy burden on the Government. For this reason, some colleagues have earlier expressed the concern that in case the economic conditions cannot support the expenditure in this respect, it will be meaningless to propose an increase in the amount of "fruit grant". Secondly, some people say that we are not refusing to help the elderly, instead, we have to help those elderly who are genuinely in need. Therefore, we should hold thorough discussions instead of making a hasty decision to increase the amount casually. Otherwise, we may not benefit from the outcome because we may just help some old people who do not really need help whereas those who are in genuine need of help will not get any at all, and the social benefits it brings will be minimal.

On these two points, I think that in discussing the issue of "fruit grant" today, we really have to consider two questions. What is the actual purpose of setting up "fruit grant"? How should we view the future development of "fruit grant"? I fully agree with the remarks made by several Members earlier, that the meaning of paying out the "fruit grant" lies not only in looking after the needy. Doubtless we have to take care of the people in need. Apart from this, I think that "fruit grant" brings out one more important point, that is, to pay back the elderly for the contribution they made. If we put aside this point and simply say that the pay-out of "fruit grant" is to help the needy, then we are only returning to the concept of Comprehensive Social Security Assistance (CSSA). In that case, we had better focus more on the CSSA and simply abolish the "fruit grant" without considering its importance any more.

I think that our discussion on the problem concerning the elderly today responds exactly to respecting the old as stated by Mr TUNG Chee-hwa when he assumed his office. At that time, he particularly alluded to the Confucian thoughts of respecting the elderly. As such, I think we should not simply lay emphasis on helping the needy. Insofar as respecting the elderly is concerned, we must consider whether the elderly should be subject to a means test as proposed by the Government, and the "fruit grant" will be paid out only to people with special needs. I hope the Government can understand that if the elderly have to undergo a means test, some may feel that their dignity is injured. The elderly may think that they have made considerable contribution to society over the years, but now they can get the "fruit grant" only after undergoing the means test, that means the contribution they made in the past has become meaningless, for only those elderly with financial problems will be given the "fruit grant". So, how is it related to respecting the elderly? I hope the Government can really pay more attention to this respect.

Some colleagues said that if the amount of "fruit grant" was increased, it would constitute a heavy burden on the Government. I do not deny this possibility. I recall what Mr LI Ka-shing once said: "If the welfare cannot be improved, what is the point of improving economic development? There is no point in ignoring some problems because we may have to pay a big price." I take his remark to mean that from the economic perspective, welfare does not simply concern with the interests of an individual but ties closely with the community. Thus, I believe the public is willing to bear a heavy financial burden, if any, in order to show respect to the elderly. We will grow old and all of us have made contribution to society. So, why can everyone not be repaid by society? I think that this is a very important concept. I hope the Government will refrain from stressing again that the "fruit grant" is intended for the needy only, which I think will violate the concept of respecting the elderly.

Besides, I would also like the Government to consider that the current social and economic conditions have actually changed. We thus have to consider how best to take care of the elderly with specific difficulties in their living other than pure discussions on respecting the elderly and reviewing the relevant mechanism. If the review continues to be conducted so slowly, the elderly "may be unable to hang on further". Many colleagues said earlier that the current conditions in society had changed because some children might be able to support their parents in the past, but they can barely support themselves now. Therefore, they are really in great need of assistance from society. In

connection with this, "fruit grant" actually plays an important role. I hope the Government will not stall any more because stalling is not a way to resolve problems. The best solution is to address the problem positively. Mr Deputy, I so submit.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Deputy, the problem of impoverishment of the elderly has been a long-standing problem in Hong Kong, but the Government has all along failed to address it. Although the policy address last year proposed that the Government would complete within one year a review of the Old Age Allowance (OAA) Scheme to further improve the livelihood of the elderly, regrettably, nothing has been done in this respect in the policy address this year. A lot of things were pending to be dealt with in society in the last generation. The Government did not formulate any policies or legislation to protect workers, nor did it set up a retirement protection system. The wage earners in Hong Kong at that time were in a precarious state, so most of them did not have extra money for savings to support their lives upon retirement. The laborious workers of the last generation have now become old men and women with silvery hair. Many of them are not eligible to apply for Comprehensive Social Security Assistance (CSSA) simply because they have "savings for their funerals" amounting to just several tens of thousand dollars. Or because of traditional Chinese belief, some elderly have not applied for CSSA because they would rather earn their own living instead of depending on others. However, it does not mean that they are leading a good life. As shown by some data, we can see that more than 200 000 elderly people aged over 60 are living in abject poverty, and they are exactly the "impoverished elderly" often mentioned by us.

In recent years, the number of elderly people applying for CSSA has been increasing. As at August this year, there were 137 065 cases. The rate of increase is close to 10% compared to the figure previously recorded. If the percentage increases at such speed, the figure will double four years later. Similarly, the number of applications for OAA, commonly known as "fruit grant" has also increased but not decreased, and 455 207 cases were recorded in August this year. Mr Deputy, the increase in the number of applications for assistance is closely related to the economic transformation undergoing in recent years and the lack of retirement protection for years. Currently, all countries worldwide are developing towards a knowledge-based economy. It is very difficult for old workers to get a job in the labour market. Many old people are

forced to retire earlier. According to the latest information of the Census and Statistics Department, the labour participation rate of people aged over 55 has been dropping. Adding to the fact that Hong Kong has lacked a retirement protection system so far, the elderly can hardly maintain their livelihood with meagre savings. Therefore, the Government should not ignore the problem of impoverishment of the elderly and the worsening situation.

Mr Deputy, some elderly could still live on interest from bank savings and "fruit grant" in the past. But after the abolition of the interest rate agreement by banks in July this year, the elderly cannot earn much interest from their savings. The Government often stresses that most of the elderly can still depend on their families to support them. But is the Government's statement the reality? We can see that many old people living with their families in fact have not received any financial support from their families apart from the provision of food and accommodation. All of their daily expenses including medical fees, pocket money and daily expenses are covered by the mere "fruit grant" of some \$600 to \$700. They are indeed leading a difficult life. As shown by the result of a survey conducted by the Society for Community Organization in May this year, some elderly living with their families do not have a stable income, or they even have to subsidize their household expenses. The median household income of their families is \$2,705 only, which is even lower than the amount received by singleton elderly recipients of CSSA. The prevailing problem of impoverishment of the elderly has developed to a shocking state. If the Government does not propose any mitigation measures expeditiously, it is inconceivable how Hong Kong can resolve the problem involving more than a million old people in year 2010.

Earlier, the Democratic Alliance for Betterment of Hong Kong proposed the formulation of another scheme called "daily expense assistance scheme for the elderly" apart from the original "fruit grant" and CSSA, which seeks to help the elderly who are not given due support owing to the restrictions of the existing policy on application, thereby improving their livelihood and enabling them to lead a happy life in their twilight years. The scheme is similar to the "fruit grant", serving the same targets of the existing government policy. As long as you are an elderly person aged 65 or above and a resident in Hong Kong, you will be given \$1,100 monthly. However, the Government has failed to respond to the proposal positively so far. On the other hand, it claims that the "fruit grant" scheme is under review. Hence, we have to "wait" longer, but we do not know how long we have to wait. We are really concerned about how long it will take before there is protection for the livelihood of the elderly.

Mr Deputy, the Government neither mentioned the increase in "fruit grant" in the policy address this year, nor did it accept the suggestions of the public. We feel indeed very disappointed. Numerous old people are living on "fruit grants". As I said earlier, the inflexibility and the many barriers in the implementation of the CSSA system have caused many old people to face a difficult life. Other than relying on the "fruit grant", they have no way out. Given the difficult circumstances prevailing, we believe that even if the Government increases the "fruit grant" a little bit, it will only have minimal impact on the Government's finance. On the contrary, "timely assistance can be given to the needy".

Apart from all this, I also wish the Government to propose some new scheme. If there is none, I hope the Government can increase the amount of "fruit grant" as soon as possible to meet the pressing needs of the impoverished elderly and reduce their pressure of living.

Moreover, I would also like to talk about the 180-day absence rule currently imposed on "fruit grant". We consider this restriction unnecessary, and we have requested the Government to abolish it for a long time. But unfortunately, the Government has not given consideration to it. I would like to tell the Government that many senior citizens cannot meet the daily expenses in Hong Kong, so they take the "fruit grant" with them and settle in the Mainland. Nevertheless, they are not leading a wealthier life in China, just a little bit better off than in Hong Kong. More often than not, they cannot leave Hong Kong because of the 180-day absence rule. Some government officials may not understand this situation because they have totally forgotten to calculate the return ticket fares for the elderly. For example, a return ticket from Zhongshan will cost the elderly several hundred dollars. What can the elderly do if they have to spare the travelling expenses out of their living expenses amounting to just several hundred dollars? I hope the Government can resolve this problem in the light of the actual situation.

With these remarks, Mr Deputy, I support the motion. Thank you.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, Hong Kong's ability to have made all these achievements is not pure luck. They are attributed to the contribution made by the elderly when they were young. Respecting the elderly is Chinese tradition as well as a virtue of Chinese. For these two reasons, we

must not turn a blind eye to the elderly because of their age and lack of productivity. On the contrary, we must do something to thank them for the contribution they made to Hong Kong when they were young. The Old Age Allowance, commonly known as the "fruit grant", is precisely intended to be a token of our gratitude to them.

The high living standard of Hong Kong is known to people all around the world. Even productive young people may encounter numerous financial problems in their daily lives, not to mention elderly people. Most of the elderly citizens currently residing in Hong Kong came from the Mainland. Many of them were unable to receive good education because of their poor family background. Some of them were even illiterate. As a result, most of them could merely engage in manual work and earn a relatively low income. Worse still, there was no such concept as family planning in Hong Kong many years ago. Therefore, they generally have five or six children. It is easy to imagine their heavy burden in meeting living expenses, not to mention their inability make savings. As a matter of fact, many elderly people in Hong Kong are now leading a frugal life. At present, among the elderly people who are aged 65 or above in Hong Kong, 200 000 or so are living below the poverty line. Those who are not chronic disease sufferers may lead a better life. However, many of the elderly people in the territory are suffering from chronic diseases. As a result of this, medical expenses have aggravated their financial burden.

Even for those elderly who have a little savings, their livelihood is not necessarily secure. With the abolition of the long-standing Interest Rate Agreement in July this year, interest rates offered by banks have dropped lower and lower. Elderly people can no longer sustain their living by relying on interest return. Their savings have also gradually shrunken. There is no law in Hong Kong making the maintenance of parents compulsory. How elderly people can sustain their living is indeed a matter of concern in the long run if their children refuse to support them when their savings are becoming less and less at the same time. Even if they wish to go out to work to boost their income, they are likely to be rejected because of their age. In a nutshell, although they seem to have no urgent problems in respect of their living, the problems do actually exist from a long-term perspective.

At present, elderly people receive approximately \$700 in "fruit grant" monthly. If we calculate in terms of a 31-day month, "fruit grant" recipients have only roughly \$22.6 at their disposal every day. How can those elderly

living below the poverty line sustain their living? We must bear in mind that, in addition to "clothing" and "food", "housing" is an extremely heavy burden on them too.

In my opinion, the existing amount of "fruit grant" is indeed questionable. The livelihood of the elderly will be improved if the Government can effect a small increase in the amount of the "fruit grant". Owing to limited resources, however, the Government must formulate policies to ensure proper utilization of resources.

Mr Deputy, children will become the pillars of society in future, whereas the elderly formed the cornerstone that built up Hong Kong in the past. Each year, a substantial amount of resources will be allocated for the development of education. I deeply agree that the Government should do this. At the same time, however, we must cater to the elderly people's needs to enable them to enjoy a secure life in their twilight years. I hope the Government can give more attention to the quality of living of the elderly people in future.

Mr Deputy, I so submit. Thank you.

**MR LAU PING-CHEUNG** (in Cantonese): Mr Deputy, I rise to speak in support of reviewing the Old Age Allowance (OAA) (also commonly known as the "fruit grant") Scheme with a view to increasing the allowance rates to improve the livelihood of the elderly. Nevertheless, I opine that the scope of the review should be slightly widened so as to cover the application method and procedure of the Comprehensive Social Security Assistance (CSSA) Scheme as well.

Here are some words of wisdom spoken by a wise man in ancient China: "It is necessary to rectify names. If the name is not right then speech will not be in order, and if speech is not in order then nothing will be accomplished". Just as its name implies, the "fruit grant" is meant to be a form of the Government's payback to the elderly for their contribution to society. If this is really the case, there should be no problem. But the crux of the problem lies in the fact that when the "fruit grant" scheme was implemented in 1973, the Government did not find any pressure in meeting the expenses because Hong Kong economy was taking off and its population was relatively young on average, though a universal provident fund system had not yet been put in place at that time. The problem has now worsened as our population is growing increasingly old.



According to the information provided by the Government, as of end September, there are 117 700 "normal fruit grant" recipients (elderly people aged between 65 and 69) and 320 900 "higher fruit grant" recipients (elderly people aged over 70), accounting together for roughly 58% of the 753 200 elderly people who are aged over 65 in Hong Kong. If we take into account the 137 200 or so elderly recipients of CSSA as well, the ratio of elderly people who need to apply for various allowances because of old age will rise to 76%. This figure has not even included the hidden number of elderly people who are applying for disability allowance as well. The actual figure should therefore be even higher. Over the past three years, the actual expenditure in meeting the "fruit grant" commitment has remained at the level of \$3.4 billion to \$3.5 billion.

If we carefully analyse the ratio between the numbers of elderly people receiving "normal fruit grant" and "higher fruit grant", we will find that they represent 47% and 64% respectively of the population of the same age group. In other words, when elderly people reach the age of 70 and are no longer subject to the assets restriction, the number of applicants will rise dramatically.

As I mentioned earlier, perhaps we can find a little justification if the elderly see the allowance merely as a "fruit grant" and spend it on fruit and "dim sum". However, the reality is that the problem has become complicated since the former colonial government adopted an evasive attitude towards the retirement protection issue and the Mandatory Provident Fund (MPF) system was not implemented until end 2000. Many elderly people live merely on their own savings after retirement. They see their savings as the so-called "last stakes saved for their funeral" for they will have \$1 less with every \$1 spent. Therefore, they can only rely on the "fruit grant" to meet their daily expenses. Under such circumstances, how can the "normal fruit grant" of \$625 or the "higher fruit grant" of \$705 be sufficient to meet their daily expenses? It has now become a common phenomenon that elderly people relying on the "fruit grant" find it inadequate to support themselves, whereas a small number of well-off elderly people continue to draw the "fruit grant" on a monthly basis.

Mr Deputy, the problem before us is there is a tendency for our population to grow older in the next two decades. As the MPF system has yet to mature, the elderly will still need to rely on the "fruit grant" to meet their daily expenses. The expenditure thus incurred will not cause any problems if the Government is financially sound; problems will occur if it is in financial straits. We must therefore reconsider the existing allocation method and criteria.

One feasible solution is to impose an assets limit on applications for the "higher fruit grant", though it may be less stringent than that imposed on applications from recipients aged under 65. For instance, the existing limit on singletons may be raised from \$169,000 to \$200,000. I have to stress that I do not mean disrespect to the elderly in raising this proposal. It is just because with savings amounting to \$200,000, an elderly person should be able to handle general unexpected problems. The "fruit grant" or CSSA may be granted to them promptly once their savings drop below \$200,000. As a safety net, CSSA must be able to give play to its role within a short period of time before it can dispel the worries of the elderly and enable them to enjoy a secure life in their twilight years.

Mr Deputy, I so submit.

**DR TANG SIU-TONG** (in Cantonese): Mr Deputy, in recent years, impoverished elderly people from the disadvantaged group have found life increasingly difficult in Hong Kong as a result of the worsening poverty problem fuelled by the economic restructuring and depression. The fact that the suicide rate of elderly people in Hong Kong remains high reflects that they are faced with numerous problems in life. At present, there are a total of 740 000 or so elderly people who are aged over 65 in Hong Kong, accounting for 11.1% of our total population. Of the families coming from the lowest income group, more than 70% have elderly members, most of them being singletons or elderly couples. A survey conducted by the Government last year shows that only a small proportion of elderly people aged over 60 have a formal source of income. A small number of elderly people rely solely on the limited amount of Old Age Allowance (OAA) (also commonly known as the "fruit grant") as their principal source of income. The problem facing us is, the rates of the two types of OAAs currently receivable by the elderly are far lower than that of the Comprehensive Social Security Assistance (CSSA) for the elderly. The hardships faced by the elderly who are relying solely on the "fruit grant" in meeting their daily expenses is therefore conceivable.

For these reasons, the Government proposed in last year's policy address that a review of the "fruit grant" be conducted with a view to providing extra assistance to elderly people who lack support from their children and live solely on the "fruit grant". This proposal was supported by the Hong Kong Progressive Alliance (HKPA). Nevertheless, in this year's policy address, the

Chief Executive has failed to account for the findings of the review. This has not only led to a public outcry, but also brought disappointment to some elderly people. According to some government officials, the Government is prepared to conduct a comprehensive review of various social security schemes, which will also cover allocation of resources in such areas as the CSSA, "fruit grant", and so on. Owing to the complexity of the issues involved, more time is needed to examine them. From a macroscopic perspective, the HKPA realizes that it is essential for the Government to consider the relevant issues with a holistic approach to enable it to make effective use of social welfare resources to cope with the heavy financial burden brought about by the ageing population in future. Yet the Government must not make those elderly living in abject poverty wait too long. The review must be completed expeditiously and made known to the public. The HKPA would also like to stress that in reviewing the "fruit grant" system, the Government must focus on how the system can benefit those impoverished elderly who are not recipients of CSSA, rather than on slashing government expenditure or regulating resources.

The Government has always emphasized that elderly people in financial straits may apply for CSSA. But the reality is many of them would rather be scavengers picking up valuable wastes and soft drink cans and exchanging them for money, do some marginal manual work, live in tightened belts or on some meagre savings, than applying for CSSA. Where exactly does the crux of the problem lie? As pointed out by many people, the CSSA system has subjected the elderly applicants to a number of unreasonable restrictions such as overly stringent assets tests, restrictions barring the elderly from living with their family members, and so on, making it impossible for them to meet the requirements. In addition, the labelling effect of the CSSA system has deterred some elderly people from applying for assistance. If the Government is really determined to improve the lot of the elderly, it must expeditiously introduce improvements targeting these problems so as to extricate the needy elderly from their plight. I think the Government should not impose overly stringent restrictions on the elderly applicants of CSSA. It should set the relevant assets limit with flexibility in regard to the actual situation of the elderly. Government social workers should also proactively follow up the cases of impoverished elderly people who are unwilling to apply for CSSA and help them to get assistance.

Mr Deputy, one of the key issues relating to the discussion on "fruit grant" is: What are the objectives of setting up the "fruit grant"? Should we consider it purely a kind of payback, a token of our gratitude, or a subsidy for impoverished

elderly people who are in need? According to the Government, the "fruit grant" is intended to help elderly people to cope with their special needs arising from old age and those lacking support for various reasons though they have some support from their family. We can thus see that the Government tends to treat the "fruit grant" as a kind of subsidy. Yet I still believe many elderly people and the community consider the "fruit grant" a kind of payback or a token of gratitude from the community. Actually, it is inappropriate for us to look at this issue with a broadbrush approach bearing in mind the realistic situation. In my opinion, the "fruit grant" is two-fold in nature. At present, people aged 65 or above may receive "fruit grant". However, this type of "fruit grant" is a subsidy by nature since the applicants are required to undergo a means test. People at 70 or over are not required to undergo any tests in applying for the "fruit grant". We can thus see this as a kind of payback and an expression of care for the elderly. Statistics have shown that more than 60% of the elderly people aged over 70 are receiving the "fruit grant". This shows that most elderly people see the "fruit grant" as their entitled benefits. In reviewing the "fruit grant" system, the Government must strike a suitable among all factors balance and give them holistic consideration in order to come up with a proposal that can meet the needs of the elderly and is affordable to the Government at the same time.

Mr Deputy, I am convinced that the Chief Executive does care about the elderly. It is also clear that he is determined to improve elderly welfare. Nevertheless, I still hope the relevant government departments can enhance their efficiency in expediting the implementation of government policies to mitigate the pressing problems facing the impoverished elderly. Today, the petitioners standing outside the entrance of this Chamber handed every Member of this Council a "mandarin" in an appeal for our support of this motion on urging the Government to increase the rates of the "fruit grant". However, it appears to me that we were given a "tangerine", not a "mandarin". I just hope my fear will not come true. Thank you, Mr Deputy.

**MR MICHAEL MAK** (in Cantonese): Mr Deputy, the popular saying that rearing children to prepare for the days of old age seems to be unable to reflect the prevailing social values. I think that an increase of the Old Age Allowance (commonly known as "fruit grant") rates is a right idea and it also shows our respect for the elderly.

Ever since I became a Member of this Council, I often pay visits to hospitals and clinics and every time I would feel very upset, for I often see most of the patients waiting for medical consultation are the elderly. Many of them are unable to pay the fees of private clinics because they are poor. So they have to wait long hours albeit with enormous reluctance.

At present, the number of cases of people aged 65 or above receiving the fruit grant amounts to about 450 000, of which 70% are aged 70 or above. They do not have to pass a means test before they can get a monthly payment of \$705. However, those below the age of 70 have to meet the requirements of a monthly income of less than \$5,910 and an asset value of not more than \$169,000. But what they get in the end is a fruit grant of \$625 monthly. The mere payment of about \$600 requires the applicants to pass numerous hurdles, and this makes the elderly unhappy, for they think that the money they get is nothing more than handouts.

THE PRESIDENT resumed the Chair.

The sum of \$705 means a lot to the elderly because they are used to leading a frugal life. If the rate of fruit grant is raised to \$1,000 monthly, the additional expenses incurred on the Government would just be a matter of some \$10 billion. However, the quality of life for the elderly would be improved tremendously. An even more important meaning for this is that the Government is showing respect for the elderly who in their younger days have made contribution to society. The elderly would feel that they are not unwanted and that the sense of belonging of the public towards the Government will increase as a result.

In the past, the elderly relied on the following sources to maintain their living: their own savings, the interest from savings in banks, the support from their children and the fruit grant. However, since we do not have a universal retirement protection system, and the Mandatory Provident Fund Scheme has come into operation only recently, that has led to about 80% of the elderly lacking in any form of retirement protection, while only a very small number of them can live off on their own savings.

What has made matters worse for the elderly is the high unemployment rate. According to the recently released figures, the unemployment rate stands

at 5.3%, in other words, 186 000 people are unemployed. Just imagine if the wage earners are unemployed for a long time or that they are on the verge of unemployment, how can they be able to raise the quality of life of their parents when they are themselves threatened by unemployment? Raising the amount of the fruit grant would not only benefit the elderly, but also reduce the burden of their children, that is really killing two birds with one stone.

The paying out of the fruit grant is made purely as a show of goodwill to those who have made contribution to society. As this is a token of goodwill, then why should it be regarded as a kind of relief and require the applicants to declare their assets and pass a means test? Only those who are penniless will get it, and those who have some savings will be denied of it. Our Chief Executive works so hard from 7 in the morning to 11 at night for the people of Hong Kong, and if my memory has not failed me, he will be eligible for the old age allowance next year. If he has to pass a means test before he is given the fruit grant, I do not think he will be too happy about it.

The existing vetting mechanism is a monstrosity. It applies double standards and is self-contradictory. At present, in the medical and health care system, people over the age of 65 will be classified as senior citizens. I think the Secretary is very clear about this and from the point of view of paying respects, what is the actual difference between someone who is 69 and someone who is 70? Why should arbitrary standards be imposed to separate them into two groups?

The elderly people in society were mostly born in the tribulations of the Second World War. They are not well-educated and when they become old, they would feel that they are useless. With this low self-esteem, as the Honourable Dr TANG Siu-tong has said earlier, unfortunate incidents can happen. Therefore, the Government should not pretend that it does not notice this state of affairs. If our Government does not take the initiative to care for the elderly, forcing these old people to take to the streets and press for their demands, then a government like this does not qualify to talk about care for the elderly. Even if it has a good international image, it is only fair without and foul within.

Madam President, it is important to have aspirations, but it is even more important to have the aspirations materialized. The remarks made by the Chief Executive always give people the feeling that they have fallen into black holes,

not knowing when they will ever land on solid ground. As early as in 1998 the Chief Executive said that the Old Age Allowance Scheme would be reviewed. Last year he pledged that the review would be completed this year so that the life of the impoverished elderly would be improved. However, in this year's policy address, not a word is mentioned on this, let alone a timetable. The elderly people are left gazing into the bleak and dismal future with eager expectations. And in the end what they get is a cheque that cannot be cashed. I implore the Chief Executive to honour his words and not to leave the elderly people in the black hole of despair any more.

With these remarks, I support the original motion.

**MR BERNARD CHAN:** Madam President, frustration from the elderly sector is not surprising when the Chief Executive failed to mention a word in his policy address on old age allowance (OAA). Mr TUNG pledged in 2000 that the OAA would be reviewed so as to provide financial support to economically deprived senior citizens, who are not receiving Comprehensive Social Security Assistance (CSSA). A year has gone and the Government owes the public an answer.

Today's motion is clear. And I believe that it is difficult for Members to oppose. What Members are calling for today in this Chamber is something that the Chief Executive has promised.

As we are all aware, Hong Kong is becoming an ageing society. The number of people over 60 years old in Hong Kong is expected to double in the next 20 years, from around 1 million to 2 million. This definitely poses big challenges for us.

According to the estimate by the Hong Kong Council of Social Service, at least 38% or 650 000 of the people aged 60 or above in Hong Kong are living in poverty. The estimate is based on the figures from the Census and Statistics Department, which states in a recent report that 17% of the elderly are earning less than \$1,000 a month, about 20% earning between \$1,000 and \$1,999. The same report also says that the medium expenditure of the elderly is about \$1,700 a month, which is about \$57 per day. And that is pretty sad for a cosmopolitan like Hong Kong.

The low income means that many elderly people have to depend on the OAA. The Scheme was first introduced in 1973 to provide some form of

financial assistance to the elderly aged 75 or above. In 1978, the age limit was lowered to 70, and to 65 in 1987. Recipients between 65 and 69 are required to have a means test and are eligible for a lower rate.

Today, many people consider the OAA a form of pocket money paid to the elderly in recognition of their past contribution to society. The fact is that the amounts of the allowance, \$625 and \$705 respectively, are too small to pay for their daily living costs. A review and increase of the allowance is necessary, based on the following reasons.

Firstly, at present only about half of the elderly are covered by various forms of retirement protection schemes. The Mandatory Provident Fund (MPF) Scheme was only introduced at the end of 1999. This means that the benefits of the Scheme have yet to be seen and many elderly people will not be helped in the near future.

Secondly, many elderly people in Chinese families rely on their children for pocket money. This is a good tradition. However, as Hong Kong's economy continue to slump, many of the working adults are being sacked or suffered pay cuts. Some of them may find it difficult to pay their parents pocket money, or they would pay less. And the ultimate victims are the elderly.

Finally, some needy elderly refuse to apply for the CSSA because of the labelling effect. They do not apply for the CSSA not because they do not need the money, but because they do not want to be labelled as the parasites of society.

Whatever the reason, it turns out that the hundreds of dollars of the OAA becomes the only source of their income. And we all know that the amount is inadequate.

I agree with the Government that a sustainable social security net should be developed to provide financial assistance to needy older persons to meet their basic needs. And there are many complex issues involved. However, it does not mean that we should do nothing during this process.

After a whole year of review, the Government should have come up with some proposals. Are there any short-term measures that we could try to help the needy elderly? Are there measures that members of the public could discuss first?



Madam President, I support the motion, urging the Government to immediately improve the Scheme so as to improve the livelihood of the poor elderly. However, I would like to remind my fellow colleagues that to improve the OAA alone cannot improve the livelihood of the poor elderly. This is only the first step. To enable our senior citizens to live a decent life after retirement, we need to look at the whole welfare policy.

At present, there is still a lack of comprehensive strategy to strengthen help to the elderly. The Government should try to formulate a feasible model for providing adequate support to the elderly people in the near future. Thank you.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the Chief Executive undertook in his policy address of 1998 to review the Old Age Allowance (OAA) Scheme. Last year, he expressed that the result should be available in a year. But regrettably, the Chief Executive did not mention the results of the review in his policy address this year. I have been given to understand that the Scheme is still under review. If the Chief Executive had specifically told us the result of the review and announced that more funding had been allocated to OAA (commonly known as "fruit grant"), I believe that we would not have had to discuss, debate or argue on this motion in this Council today. Unfortunately, the review has taken a couple of years, which made people very dissatisfied. Irrespective of the explanations to be given by the Secretary in a moment, we can hardly be convinced by reasons other than the Chief Executive is reluctant to increase the amount of "fruit grant". Why has the review taken so long? Why has the review not got any result so far? To some elderly, they are not only disappointed but dealt a blow this time because the Chief Executive has once given them hope. Thus, they feel angry.

In fact, the "fruit grant" is a token of the Government's regard for the elderly, a payback for their past contribution. Therefore, elderly recipients aged 70 or above are not required to undergo the means test or assets test. This is the original intent and principal objective of the "fruit grant" policy. I wish the Secretary to know that any attempt to change this original intent, such as the proposal to request applicants to pass the means test or assets test, will violate the very base of making this policy then, which will definitely be criticized by all the elderly.

In fact, the "fruit grant", as a token of regard and payback to the elderly from society, is used by the elderly not merely for buying fruits. No doubt, some rich people may not take this sum of money seriously, and they really think that it is just a token of thanks to them from society. However, I hope the Secretary will know that there are three types of people who are in dire need of the "fruit grant". Insofar as these people are concerned, the "fruit grant" is not for buying fruits, but for their meals.

The first type is the elderly who are eligible for Comprehensive Social Security Assistance (CSSA), but who do not feel like being treated as people living on alms. They have brazen it out and refused to apply for CSSA to date even though \$705 is a very important assistance to them.

The second type is the elderly not qualified to apply for CSSA because their assets or savings exceed the level required for the relevant application. They depend on the interest return from savings and the "fruit grant" of \$705 currently given to them by the Government to meet their living expenses. They are most worried that their savings, that is, the so-called "savings for their funerals" will be exhausted one day. Therefore, they have to scrimp on things. To these old people, \$705 is very substantial. Since the interest rate for savings has kept falling this year, the livelihood of these old people is much more difficult than in the last few years.

The third type is the elderly facing two different situations. The first situation concerns with the elderly living with their children. The earnings of their children can support themselves as well as the daily expenses, tuition fees and expenses of their children, but no extra money can be put aside for the living expenses of the elderly. Similar to the first type of elderly mentioned by me earlier, such families are reluctant to apply for CSSA. I hope government officials can understand that CSSA applicants filed their applications simply because they had no other choice. Unlike the situation described by some people that CSSA applicants are "lazy bones" and "greedy for money". Some people would rather die than apply for CSSA. The second situation also concerns with the elderly living with their children. However, their children are not eligible applicants for CSSA and they are reluctant to give the elderly enough money to spend. Therefore, these old people also have to live on a "fruit grant" of \$705.

In the light of the various circumstances above, we hope the Government can increase the amount of "fruit grant" as soon as possible. It is because we

have lacked a suitable retirement system that meets the needs of the elderly to date.

Madam President, I believe you may also recall that we discussed in mid-1990s a tripartite retirement system with contributions to be made respectively by the Government, the employer and the employee, so that the elderly aged 65 or above could get a monthly pension of one third of their median wages, which is around \$3,300 as of now. This system can in fact resolve the existing problem in connection with pensions for the elderly. At that time, the Government said that the expenses involved in this respect were enormous. However, if the elderly had received a monthly pension of \$3,300, the need to give them the "fruit grant" now could have been obviated. Or 75% of the elderly who are currently receiving CSSA would have had no need to receive the assistance, and the money concerned could have been allocated to the pension system.

Madam President, I read from newspapers that the Government was "flying the balloon" by saying that 20 years later, the expenses on "fruit grant" would reach \$20 billion, which was enormous. But how can the elderly have "a sense of security" if the Government does not spend this \$20 billion? If this \$20 billion is bound to be spent, why did the Government not consider formulating a better pension system at that time to enable the elderly to have a happier life now? Since the Mandatory Provident Fund Scheme has just been implemented, the elderly can neither enjoy the benefits it brings, nor will they get any money upon retirement.

Apart from the "fruit grant" which is essential to the above three types of elderly, I think the retirement problem will still haunt the Government, the Secretary and the Chief Executive in the next 20 or 30 years. I hope the Government can expedite the review on increasing the amount of "fruit grant".

Thank you, Madam President.

**MR FRED LI** (in Cantonese): Madam President, first of all, I would like to respond to the letter which the Secretary for Health and Welfare faxed to us some time ago. I received the letter only today. It is mentioned in the letter that the Government cannot agree to the motion notion that the Government has delayed repeatedly the review of the Old Age Allowance (commonly known as "fruit

grant"). I can agree here that Dr YEOH Eng-kiong, the Secretary for Health and Welfare, has not delayed the review. This year's report of the Health and Welfare Bureau has pointed out that work in relation to the review has been completed. However, that does not mean that the Government as a whole has not dragged its feet on this. The 1997-98 Budget and the 1999 policy address both mentioned the review of social security schemes for the elderly, but no results of the review were mentioned. It was only in last year's policy address that the Chief Executive said clearly that a review of the OAA Scheme would be made within one year that the review had finally started. In October this year, the Chief Executive said that work on reviewing the OAA Scheme had not finished. It contradicted the claim made by the Health and Welfare Bureau that the review had completed. Besides, there is no information given on when the review would be completed and the timetable for it. The reason is that another review would have to be conducted, that is, after a review of the OAA Scheme, there would be another review of the entire social security system.

Madam President, the Chief Executive undertook last year that the OAA Scheme would be reviewed with a view to helping the impoverished elderly. But there was no mention of making a review of the entire social security system. The Health and Welfare Bureau should be very clear about this point. In a forum held by the Democratic Party on the elderly people, the former Deputy Secretary for Health and Welfare said clearly to this effect, "The most pressing task at hand is that there are people who do not have the means to support their elderly parents and we need to study into how more assistance can be provided ..... We do not have the time to hold lengthy discussions on what is the best kind of retirement protection for Hong Kong." Now the Government is expanding the scope of the review and such a review can take years to complete. The wording of the motion alludes to the Government's repeated delays in making the review. I reckon the motion has been overly optimistic for a worse scenario is that the Government can sit on the issue indefinitely. In the end, the promise made by the Chief Executive is only a cheque that will never be honoured.

We agree that a review should be made of the entire social security system in Hong Kong. However, we cannot put a halt to all sorts of work to wait for this comprehensive review which can well be a long-term goal. Before us now are hundreds of thousands of elderly people who live in poverty, many of whom have been affected by the tightened eligibility criteria for Comprehensive Social Security Assistance (CSSA) in effect in recent years. Since the eligibility

criteria have been made stricter, the fruit grant should be increased. This is the easiest and most direct way of alleviating the financial hardship of the elderly. Meanwhile, the Government can undertake a full-scale review. If there are new initiatives in a few years' time, for example, a decision is made to set up a universal retirement protection scheme, then the existence or otherwise of the fruit grant can be discussed at that time.

The real reason behind the Government's refusal to improve on the fruit grant is believed to be the factor of financial sustainability which Dr YEOH, the Secretary for Health and Welfare, has stated repeatedly. It is feared that the increase in fruit grant payments will increase public spending and hence incur a greater deficit.

Though consideration can be made to public spending, I hope that the Government will not forget the hundreds of thousands of elderly people who do not receive CSSA and are leading a really difficult life. I hope government officials can try to understand how an old lady who is more than 80 years old and is living on the \$705 fruit grant and \$100 or so interest from the bank. She has to pay for the rent and the meals. Her children who make about \$10,000 or so a month find it very difficult to support the living of a family of five. Rents have to be paid, and so are the school fees of the children. So they are caught in a dilemma of feeding their children and supporting their parents. Such a kind of situation in an affluent society like Hong Kong should not be allowed to exist.

The OAA Scheme and the CSSA system are in a sense interactive. If the fruit grant rate is increased, the elderly can hopefully manage to meet their expenses if they are given some pocket money by their children. Then they will not have to apply for CSSA. In general, a recipient of CSSA will get about \$4,000 monthly, and that amount is much greater than the fruit grant. If stricter criteria are imposed on applicants for the fruit grant, such as adding a means test to it, then as the elderly have to pass a means test any way, they will turn to CSSA instead. Therefore, an increase in the fruit grant rate will not necessarily affect the financial sustainability of the Government. On the contrary, this can encourage family members to support the elderly financially and help them in their living, hence public spending can hopefully be reduced. In a discussion paper submitted to the Panel on Welfare Services in July, the Government admits that one of the objectives of the OAA Scheme is to encourage families to take care of their elderly so as to reduce the demand for institutional care services.

I really hope that there will be no more delays on the part of the Government and it should make a proposal as soon as possible to improve on the fruit grant so as to help the impoverished elderly who have not applied for the CSSA.

When I spoke on the policy address, I said that over the past year I had visited many social services centres for the elderly and met thousands of old people there. They said to me that the fruit grant had not seen any increases for three years, so they had been waiting happily after the Chief Executive had delivered his policy address last year. However, in the policy address delivered by the Chief Executive on 10 October, not a word was mentioned on the OAA Scheme. I hope that with the debate on the motion proposed by Dr YEUNG Sum, Honourable Members can speak more on the subject to show their concern for the elderly in Hong Kong. These old people said to me that they had been waiting for one whole year and they hoped that this would not come to naught. However, I am afraid that their expectations may very likely turn out to be hopes unfulfilled.

I so submit.

**MR ABRAHAM SHEK:** Last week, I was invited to lunch by my mother, together with a group of poor elderly. For that two hours, I was told stories of hardships. And at the end of the lunch, they asked me to help them to vote with my conscience. With that in mind, Madam President, I address this Chamber.

We are facing a rapidly ageing population with a need for better financial protection after retirement. At the moment, about one in every 10 of our population is aged 65 or above. By 2029, the number will double. The elderly population will grow to one in every five. The demand for the Government to take care of our vulnerable elderly is mounting high and fast.

Unfortunately, our community had been slow in providing the elderly with much needed retirement protection. We did not have a compulsory pension plan for income maintenance until the Mandatory Provident Fund Scheme was introduced in December last year.

Without the benefits of a pension scheme, some of the elderly in our community who have meagre savings and who lack family support have to rely

on either the Normal Old Age Allowance (OAA) of \$625 or Higher OAA of \$705 as their main source of income. Imagine living on that small amount of money and using it to pay for food and other necessities. It is not the kind of life that Hong Kong would expect them to have. No wonder many members of our community have derisively called the humble allowance "生果金".

Our Government has admittedly recognized the need to take care of those elderly persons who have to survive on the OAA. In his policy address last year, the Chief Executive stated the Government's intention to provide additional financial assistance for those elderly and promised a review of the OAA Scheme.

One year — 365 days — has passed, many of those people who have waited for that year might not be here, and many will still suffer. The promise was made, but the Government is still reluctant to provide a solution to the problem. In this year's policy address, the Chief Executive told us that the Government has completed the review of the OAA Scheme. However, the Government says that further examination is needed because there are many complex issues involved. Life itself is very complex; to be poor is even more complex. I think that it is unacceptable for the Government to procrastinate on this matter which is of vital interest to those needy elderly people. Such a reply makes one wonder if it is sincere in keeping the Chief Executive's promise.

Madam President, I, therefore, agree with Dr the Honourable YEUNG Sum's motion calling for an immediate improvement to the OAA Scheme and an across-the-board increase to the allowance rates. We are not poor as a city. We have enough money to help those who are in need. I am sure that the Government worries that an increase in the allowance will bring a greater burden on its finance in these hard times, but they have been having all these hard times all these years. An increase will bring additional financial burden, but we must not forget that it is our Government's responsibility to take adequate care of the vulnerable section of our community. I, therefore, believe fervently that this is a burden that we should be willing to take.

An immediate increase in the allowance will bring relief to some extent to those elderly who are suffering from financial hardships. It will also be a way for the Government to express its respect and gratitude to the elderly who have, in their hay days, contributed so significantly in their own ways to the successful development of Hong Kong as today in the past, but are no longer able to support themselves in their later years.

I would also suggest that the Government should review the eligibility criteria to ensure that financial assistance is given only to those who are truly in need. Under the present scheme, elderly Hong Kong residents aged between 65 and 69 applying for the Normal OAA are subject to an assessment of their financial and other assets and monthly income, but this test is not applied to those aged 70 or above applying for the Higher OAA.

I urge the Government to consider revising the eligibility criteria so that all applicants in the scheme will go through this asset and income assessment. In this way, we will ensure that the OAA is given to the needy. We will then not turn the OAA into a universal basic pension, which is, as the Government argues, not sustainable under our current low and simple taxation system.

Madam President, our society is undergoing rapid socio-economic changes. At a time when our compulsory pension scheme has yet to mature and the traditional family value of taking care of the elderly is fast weakening, our Government has the ultimate responsibility of taking care of those who are really in need and those who are old.

Thank you, Madam President.

**MISS MARGARET NG** (in Cantonese): Madam President, although I am not yet 70 years old, I still have some vague impression of the original intent of launching the OAA (commonly known as "fruit grant") Scheme. It was because in those days, the elderly did not get enough attention and care and the social security system at that time was very inadequate. This applied in particular to the retirement system. Therefore, the Government acceded to the request of the public and adopted a simple practice of paying out a small sum of money to the needy old persons.

The Honourable Abraham SHEK asked earlier on why these old people did not have to pass a means test. I think there is some sense and wisdom behind it. We all know that if a means test is to be carried out, administrative expenses will be incurred. A means test can be a very cumbersome thing. Some people such as orphans, widows and old people are generally regarded as needy. It may be the case that among the old people, not everyone needs assistance, but the majority of them do have such a need. Only a minority of the elderly does not have this need. And among this minority of elderly people,



maybe some people will not like to receive the fruit grant. Then even if the Government pays some money more to the remaining people, the amount paid out will offset the administrative expenses. That is because the Government will not need to set up some administrative measures and expend administrative costs to carry out a means test. Therefore, the launching of the old age allowance policy at that time was immediately effective.

In my opinion, and since I am also quite advanced in age, the intention of the Government at that time was actually to help the impoverished elderly. However, since elderly people in general also have such a need, so there is no need to require every one of them to undergo a means test. We can thus see the wisdom of society at that time, for it gave a very nice name to what was originally some charity payment — fruit grant. All of a sudden, people feel that there seems to be some warmth in society. We are like treating the old people as if we are showing our respect for our parents. The sum of money paid out is not significant, but it has become a token of gratitude to the elderly. I think that is a very ingenious move to take. I support the idea that the Government should continue with this Scheme.

I have read the letter by Secretary YEOH I understand why he has some grievances over the wording of the motion which carries the wording "deeply regrets". If in future our social security system, including welfare for the elderly, care and attention for the elderly and retirement will be made better, and that the protection offered to the elderly is improved, there may not be any need them to discuss the question of whether the fruit grant is necessary. So I think we can leave the issue now and discuss it by that time.

However, even if the social security system will become better, I think there can still be a good reason not to reduce or abolish the fruit grant. It is because this allowance which does not require the applicants to pass a means test carries the meaning of paying respects to the elderly and it shows the warmth in our community. In addition, the elderly in general have such a need. They may not like to abandon their self-respect and apply for CSSA, so I think the old age allowance is useful in this sense. In my opinion, and looking at the matter from the perspective of society as a whole, this is money worth spending.

Madam President, if we rigidly stick to the principle that social resources must be spent only on helping people who have the need, then regardless of all other factors, we must impose a means test on all applicants. I think that will

mean a great loss for what trivial gain we may get. If we say that due to the reason of financial sustainability, even paying out \$705 to elderly persons would be a problem, then we should look into the question of what kind of social security we should put in place in the community. If the system is sound and we think that there is no need for the fruit grant to exist, then we can talk about this later. However, the present situation is not like that. Many Honourable colleagues have said, the elderly people have special expectations this year, but our Government is letting them down again. This is what I understand by the words "deeply regrets" in the motion moved by Dr YEUNG.

Madam President, later on I will vote in favour of the motion moved by Dr YEUNG. I hope the Secretary will not feel aggrieved because of the motion, for if only this social security system will continue to develop, we will appreciate the efforts made by the Secretary and the Government for our elderly people.

Thank you, Madam President.

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

**MR LAW CHI-KWONG** (in Cantonese): Madam President, I choose speak last because I do not wish to speak so much and to repeat the points already made by Honourable colleagues. Moreover, I also presented many of my arguments in the policy address debate earlier.

Now I would like to raise a few points only. The first is a rather interesting question and many Members have mentioned it today as well. What is the purpose of setting up the Old Age Allowance (OAA, commonly known as "fruit grant")? The Honourable Margaret NG has mentioned earlier the history of the fruit grant as she can recall. In fact, the objectives of many policies put in place by the Government have become blurred and unclear as they develop. That goes for the fruit grant and the disability allowance. We do not know why they have been set up in the first place. Then what is the objective of setting up the fruit grant? The answer given by Honourable Members seems to have included two choices. One is showing our gratitude for the elderly for the hard work they did, and the other is to support their living.

I hope we can understand how the old people would feel. There are times when I ask my mother this way, "Mum, do you have money to go by? If not, I would give you some." Then would you think my mother would be happy to hear that? Of course not. For it is natural that a son should give money to his mother, why should he wait until she has no money to spend? As a matter of fact, paying back to the elderly and giving them financial support are not contradictory. From the first day the fruit grant was set up, we have recognized these two objectives. So the decision not to impose a means test is one of the objectives of meeting this goal of repaying the elderly. Many Members cited many reasons earlier to show that some old people rely on the allowance to get by, so I do not wish to repeat these reasons. These twin objectives existed when the fruit grant was set up: to pay back the elderly for the hard work they had done and to provide a source of support for their basic living expenses.

Quite a number of Members mentioned the introduction of a means test. Miss Margaret NG talked earlier on the wisdom of not introducing a means test. Let me talk now on what will happen when a means test is introduced. If we set an assets ceiling, the applicants for legal aid now have to comply with a ceiling of some \$160,000 and those who apply for CSSA would need to come under a ceiling of some \$30,000. If we want to devise a means test for fruit grant a la CSSA, then we may well ask the old people to apply for the CSSA instead. If some people say we should devise a means test, for example, for those between the age of 65 and 69 who apply for the fruit grant, then what would happen? And what good will this bring? First, an absolute majority of those aged 70 or above who receive the fruit grant will still be eligible for it, but administrative expenses will be incurred on the Government. There is also a social cost for it, including the stigmatizing of the fruit grant and causing discontent among hundreds of thousands of elderly people. What then is the point of introducing a means test? Suppose we say we do not require all applicants between the age of 65 and 69 to undergo a means test a la CSSA, and to require the applicants or their families to undergo such a test. The question is, if their families are willing to do so, they would have applied for CSSA a long time ago and there is no need for the elderly to apply for fruit grant. Should they make the effort to apply for it, I can assert that one quarter of this kind of families can in principle also receive CSSA. If that happens, would the Government ask the applicants whether they would like to apply for fruit grant for their elderly family members or would they like their families to apply for CSSA? The Government will find itself in a dilemma. In the end, the Government may incur more losses than it started out to seek gains and it has to pay this additional 25% of applicants the CSSA. It is because at present they have no intention of applying for CSSA.

Moreover, I believe most of the elderly people would not apply for the old age allowance if a means test is introduced and on top of that, their family members will have to go through the same means test as well. In such circumstances, would this defeat the purpose of paying back to the elderly? Lastly, if a lot of elderly people become unwilling to apply for the allowance, we cannot say that we can provide financial support to the elderly persons as we have said.

Now there are many elderly persons who do not want to apply for means-tested fruit grant. They are living with their family members but they are not given any financial support. Some of these old people may have some savings, but they do not wish to spend all of them to be eligible for CSSA. Then how would they get by? The problem is, I do not see any practical advantage with the introduction of a means test in financial terms, to the community as a whole and to the expenditure position of the Government. Therefore, I would say that this issue should be left aside. If we want to introduce a means test, we may as well improve on the CSSA system to provide more assistance to the elderly.

The Secretary wrote us a letter in which allusion was made to the three sources of support for retirement life. I would like to spend some time now to talk about that. The Secretary refers to the Mandatory Provident Fund (MPF) Scheme, the CSSA and personal savings and investments as the three major sources of support for retirement life. The Democratic Party proposed three major sources of support some years ago, but the contents were somewhat different. The three sources proposed by us then were, firstly, a centralized provident fund, not the MPF we have now; secondly, the CSSA; and thirdly, old age pension. I understand very well that it is not feasible to finance a pension system with recurrent expenditure. Therefore, the fruit grant we are talking about today is not a pension, if this is the case, then we would need much more time to discuss and deliberate on the issues involved.

If we really want to provide the elderly with assistance to support their basic living expenses, even if the fruit grant is raised to \$1,000, or even \$1,100, that will still not be sufficient. The allowance can only serve to provide some relief to the elderly when they are hard up. What we and the public are demanding is to raise the allowance by \$300, but that is not mentioned in our motion. It is because we know that no matter if this is raised by \$300 or \$400, it is only for a symbolic meaning. It is a symbol of our enhanced respect for the elderly and at the same time to give some sort of relief to their hardship. That is

all we want. If we really want to provide assistance to the elderly, it would be better if we improve on the CSSA and set up a contributory old age pension system. It is because by doing so it would be much better than changing the present fruit grant into a pension to provide assistance to the elderly, for that is not practical.

So with respect to the issue of fruit grant, I hope that we can define clearly what our objectives are and what we want to achieve. The reason for our demand to increase the fruit grant is only to achieve two objectives, that is, to pay back to the elderly in order that they will feel a heightened sense of respect, and to meet their basic needs of living. I hope Honourable Members can support the motion. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I would like to thank Honourable Members for their comments and advice on the subject of the review of the Old Age Allowance (OAA) Scheme. The recently released 2001 Population Census findings have highlighted the ageing trend in our population, with our elderly dependency ratio, that is, the number of persons aged 65 or above per 1 000 persons aged between 15 and 64, having increased from 124 in 1991 to 154 in 2001. The ageing trend will continue in the years ahead. The number of older persons aged 65 or above will increase by more than 1 million in 28 years' time. The issue of how we can provide adequate financial support to our needy elders in the near and long term is an important but complex subject, which deserves community-wide discussion.

Before we talk about the subject of financial support for older persons, I wish to highlight the fact that the Government has been putting in a lot of efforts and resources in the past few years on improving the quality of life of our elders. Government spending on direct services for elders has been increasing, from \$1.7 billion in 1997-98 to \$3.2 billion this year, an increase of \$1.5 billion. We have launched initiatives and made significant progress on various fronts for the elderly, including long-term care services, better housing, active and healthy ageing, and support for vulnerable elders.

Apart from promoting active and healthy ageing, providing long-term care services, better housing for the elderly, and providing support for vulnerable elders, it is equally important for the Government to provide assistance to elders in financial need. In fact, we have been putting in a lot of resources to provide financial assistance to the elderly. We have been spending a total of \$49.2 billion in the past five years providing social security payment to elders in Hong Kong under the Comprehensive Social Security Assistance (CSSA) and OAA Schemes. We have also increased the standard rate for elderly CSSA recipients by \$380 per month in 1998, representing an increase of 18.4%.

I have spoken on the various efforts and resources the Government has been putting in to improve the quality of life of our elders in recent years. We believe the Government has made substantial progress to achieve the Policy Objectives set out by the Chief Executive on care for elders in 1997. This is contrary to what some Honourable Members have just said. Of course, given the growth of our ageing population and the changing needs of our elders, there is always room for improvement. The challenge of an ageing population put before us is great but not insurmountable. It requires concerted efforts by individuals, families, our community as well as the Government. The challenge of how we could ensure adequate financial support for the current and future generations of our elders is a case in point.

For our elders to feel secure, they need to have a sense of financial security. The implementation of the Mandatory Provident Fund (MPF) Scheme in last December was a substantial step forward in our efforts to establish a retirement protection scheme for our working population and the future generations of elders. However, for the current generation of elders who cannot benefit from the MPF, and perhaps for some elders in the future generations, we are aware that there are and will continue to be some elders who, because of meagre savings, low income and lack of family support, will look to the Government for some form of financial support.

On this, I wish to make clear that elders, like other members of the community, can turn to the CSSA Scheme for assistance if they face genuine financial difficulty in meeting their basic needs. Indeed, currently over 58% of the CSSA caseloads (or over 137 000 cases) are of elders aged 60 and above, and they are receiving on average an amount of \$4,000 per month. On the other hand, there are currently over 455 500 elders aged 65 or above who are receiving the OAA (either the Higher Old Age Allowance at \$705 per month

which is non means-tested, or the Normal Old Age Allowance at \$625 per month which is subject to income and asset declaration). In total, about 60% of our population aged 60 or above are receiving social security payments of about \$11 billion in 2001-02. For the population aged 65 or above, this accounts for 78% of the population.

According to survey findings, older persons considered their income as sufficient in meeting their expenses. However, we are aware that despite the safety net provided by the CSSA Scheme, there is a section of our older population who, though they may be facing some financial difficulty, are either not qualified for CSSA, or are reluctant to apply for CSSA. In his policy address last year, the Chief Executive stated the Government's intention to provide additional financial assistance to those elders who have meagre savings and lack family support and who depend largely on the OAA for a living.

Our objectives in reviewing the OAA Scheme are to try to ascertain the extent of the assistance this group of elders need, and how the assistance can be provided to those in need and in a sustainable manner, not only in the near future, but also in the longer term in view of the continuing ageing population.

As part and parcel of the review of the OAA Scheme, we have also examined the financial disposition of the current and the next generation of older persons in Hong Kong, and studied the arrangements for providing financial support for older persons in other countries. We have shared this stage of our findings with the Elderly Commission and the Legislative Council Panel on Welfare Services in June and July this year respectively.

To put the issue in perspective, I wish to point out that we have been examining our options of providing financial support to our needy elders in the context of the "three-pillar approach" recommended by the World Bank. That is, first, a publicly-administered, privately-managed mandatory provident fund which is employment-related; second, private savings, investments and annuities; and third, a publicly-managed scheme to provide minimum protection, such as a social safety net to provide needy elders with financial assistance to meet their basic needs.

Old age security systems usually have three major objectives: savings, redistribution, and minimum protection. Most formal systems of old age security around the world are publicly-managed schemes that are financed by

payroll taxes on a largely pay-as-you-go (PAYG) basis, so that today's workers pay the pensions of those who have retired.

In its study "Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth" published in 1994, the World Bank has concluded that the PAYG systems are unsustainable in the face of an ageing population resulting from lower fertility rates and increasing life expectancy. These developments imply that there would be a smaller number of future workers to support a growing number of retirees who will also live longer. This trend is also evident in Hong Kong as the newly released elderly dependency ratio shows. Persistent deficits of PAYG systems require large infusion from government budgets which, in turn, also lower revenues for other growth-promoting public spending such as education and infrastructure, and so on.

In the light of these analyses, the World Bank has proposed the development of a multi-pillar approach that comprises separate schemes for different purposes of savings, redistribution and minimum protection, so as to relieve the substantial budgetary pressures currently faced by many countries around the world. This approach consists of a mix of unfunded and funded provisions, contributory and non-contributory schemes, and public and private management. The three-pillar model is the basic prototype of this approach. The right mix of pillars for a particular society very much reflects the local context, including the historical background, values of that society, its social and financial institutions and systems, particularly its tax system, and so on.

In considering our options, we have adhered to a number of principles, which we believe are cherished by our community: as part of our Chinese culture, we believe we should encourage the family to continue to play an important role in supporting and providing for our elders in every possible way; the Government has a role to step in and provide assistance to elders who are in genuine financial difficulty; and the assistance offered to those genuinely needy elders should address their individual needs and be sustainable in the long term as this form of assistance will be funded from general revenue.

Let me elaborate on the point about financial sustainability and look at the expenditure pattern of social security payments for elders in the past eight years, that is, from 1994 to 2002.

Eight years ago, we spent about \$4.6 billion to assist our elders through the CSSA and OAA schemes. The total amount rose to \$11 billion in 2001-02,



representing a growth of 140%. Currently, over 600 000 older persons are being assisted either through the CSSA or OAA Schemes, accounting for 60% of the population aged 60 or above. For the population aged 65 or above, this accounts for 78% of the population.

If we look ahead 20 years, our population aged 60 or above and 65 or above will rise to about 23% and 16% of the projected population respectively. If we maintain our current social security schemes for elders in their present form, that is, the OAA Scheme and the CSSA Scheme, and assuming the same take-up rate as at present, we estimate that our social security expenditure for our elders will rise from the existing \$11 billion this year to about \$20 billion in 2021. Under these assumptions, the cumulative total expenditure on financial assistance for elders in the next 20 years would be in the region of \$300 billion.

We also cannot assume that the take-up pattern of the social security schemes will remain unchanged in the future. While the take-up rate of OAA by older persons has seen a small reduction in the past five years (-6% from 1996 to 2001), it still accounts for over 60% of the population aged 65 or above in 2001. On CSSA, we have observed a steady increase in the take-up rate of elders in the CSSA Scheme, a rise of 4.5% in the past five years. The number of elderly CSSA recipients has increased to 155 000 in 2001 from 102 000 in 1996, an increase of 54% over a five-year period. Although the number of elderly CSSA recipients is less than that of the OAA recipients, the CSSA Scheme is a much more elaborate and hence expensive scheme. At the same time, we have to bear in mind that there will be a group of older persons in the next generation who are currently on low income or have little family support when they grow old, who are likely to require financial support from our safety net after their retirement, notwithstanding the establishment of the MPF.

In the light of the above, and given our low and simple taxation system, and the competing demands for resources to fund worthwhile human and social development programmes in the years ahead, we, the Government in conjunction with the community, need to carefully examine the long-term sustainability of our existing social security schemes. Our objective is to develop an adequate but sustainable social safety net that provides financial assistance to our needy elders to meet their basic needs.

The purpose of having OAA is to help families to look after their elders. An across-the-board increase in the OAA would effectively reposition it as a

universal basic pension. Overseas experience, however, demonstrates that such a scheme, funded from general revenue, would be difficult to sustain. Our current low and simple taxation system simply cannot sustain such a scheme. Even countries with higher tax rates and the Social Insurance Scheme find such an approach increasingly difficult to sustain.

How to achieve our objectives of providing additional financial assistance to older persons in need, and at the same time ensuring that we have a sustainable safety net for that purpose brings up real and complex issues which we as a community need to address. Quite apart from the question of financing, there are social issues involved like what is the role of the family in supporting our elders; what is the role of the individual in planning for a financially secure future; what is the most appropriate form of assistance for those elders in need in a caring society like ours.

Some Honourable Members have criticized the Government as not being compassionate and accused us of delaying the review of the OAA Scheme. I hope that by setting out what the Government has been doing to improve the quality of life of our elders and by explaining to this Council our thinking and considerations in reviewing the financial support system for our elders, Honourable Members would appreciate the Government's efforts in addressing the needs of our elderly, including their financial security. In this connection, I do not agree with the contention of this motion that there have been repeated delays in reviewing the OAA Scheme. I also do not agree that increasing the OAA rate is the most appropriate solution, given the need for sustainability. Given the complexity of the issues involved, careful consideration and sufficient time in reaching a consensus among the community are necessary. Several Honourable Members agreed that an across-the-board increase in the OAA would not be any answer to the problem faced by elderly people who are living on low income. Let me reassure Honourable Members that the Government is committed to providing additional assistance to those needy elders.

I wish to thank Honourable Members again for their comments and suggestions put forward in today's debate. We will certainly give them careful consideration in the course of our review. We hope to be able to consult the Council and the community at a later stage on the way forward to develop a sustainable safety net to provide financial support for our needy elders.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, you may reply and you still have three minutes 10 seconds.

**DR YEUNG SUM** (in Cantonese): Madam President, I often talk about politics since I am the spokesman for the Democratic Party with respect to constitutional affairs. Sentiments used to run high when we debated political issues. Today, I switch to welfare issues and our debate has turned somewhat sentimental. So far, I have not heard any colleagues raise objection to my motion, except that some Members did indicate that they would abstain from voting. I would like to remind them that under the separate voting system, abstentions are tantamount to voting against the motion. What I refer to is the voting result. I would therefore like to draw the attention of Members to this point.

Secretary YEOH indicated that the findings of the review are not yet available since another round of review has to be conducted. Yet it is obvious that the Government does not support the proposal of increasing the Old Age Allowance (commonly known as the "fruit grant"). The Government appears to be somewhat self-contradictory for it has been insisting that the review is still underway on the one hand and has already taken a position promptly on the other.

I would like to draw the attention of Secretary YEOH to the following two points. First, the Democratic Party has no intention to turn the "fruit grant" into pension. According to a point raised by Dr YEOH earlier, many Western societies have found it impossible to cope if the "fruit grant" becomes a pension. I hope the Secretary can understand clearly that we have absolutely no intention to turn the "fruit grant" into pension. Second, we hope the Government will not deem it necessary to, in order to raise the rates of the "fruit grant" receivable by the needy elderly people without the need to substantially increase its expenditure, subject all "fruit grant recipients" to means tests just because we ask it to increase the rates of the "fruit grant". I hope this motion will not produce this effect for the Democratic Party opposes the practice of "cutting out a piece of flesh to cure a boil". I have stated this very clearly when I spoke earlier.

It is pointed out in a number of studies that the number of elderly abuse is constantly rising, with the main reason being the lack of financial capability. The elderly may therefore need to ask their sons or daughters-in-law for money. Conflicts will arise under such a situation as their sons but not their daughters-

in-law accede to their requests. Their lack of financial capability has thus often become the main reason for their being abused. This point has been raised in a number of studies conducted in Hong Kong too. Therefore, it is very important that elderly people should be financially capable.

Madam President, we can project from the General Household Survey that 200 000 recipients actually live on the "fruit grant" of \$700 or so, rather than spending it on fruit. Therefore, it is essential for the Government to examine how it can enable elderly people to live with dignity and have the means to solve the problems they face in their daily lives. In doing so, not only can we solve the problem of elderly abuse, we can improve the relationship between the elderly and their family members as well.

I deeply regret that the Government has imposed so many hurdles despite its advocacy that we have to "respect and take care of the elderly". I would like to urge Honourable colleagues again to support this motion to press the Government to address this issue and come up with solutions expeditiously. We will have finally done a good deed for the elderly if we can succeed in pressing the Government to increase the "fruit grant" earlier.

Thank you, Madam President.

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

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mr Eric LI, Dr David LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr SIN Chung-kai, Mr Timothy FOK, Mr LAW Chi-kwong, Mr Abraham SHEK, Mr Michael MAK, Dr LO Wing-lok and Mr IP Kwok-him voted for the motion.

Dr Philip WONG voted against the motion.

Mr Kenneth TING, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Ms Miriam LAU, Mr Henry WU, Mr Tommy CHEUNG and Mr LAU Ping-cheung abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Andrew WONG, Mr Jasper TSANG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr TANG Siu-tong, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr MA Fung-kwok voted for the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, 14 were in favour of the motion, one against it and seven abstained; while among the Members returned by geographical

constituencies through direct elections and by the Election Committee, 21 were present and 20 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 14 November 2001.

*Adjourned accordingly at nineteen minutes past Ten o'clock.*

**Annex****WRITTEN ANSWER****Written answer by the Secretary for the Civil Service to Miss Emily LAU's supplementary question to Question 2**

A breakdown of the actual change to the civil service establishment since 1997 is as follows:

	<i>31 March 1997</i>	<i>30 September 2001</i>
Directorate Posts <sup>(1)</sup>	1 493	1 581 (+5.9%)
Non- Directorate Posts	190 300	183 953 ( - 3.3%)
Total Civil Service Establishment <sup>(2)</sup>	191 793	185 534 ( - 3.3%)

Note: (1) Excluding posts created to accommodate directorate civil servants seconded to subvented/public-funded bodies.

(2) Including ICAC and Judicial officers.

As the Secretary for the Treasury said in her main reply to the Honourable MA Fung-kwok's question, creation of directorate posts in the Civil Service is subject to an elaborate control process before it is submitted to the Finance Committee of the Legislative Council for a final decision. I also explained at the meeting that additional senior posts were put forward to implement major government policies and programmes which had the support of the relevant Legislative Council Panels.

Please rest assured that the Administration would continue to examine every case for additional staff for bureaux and departments with the utmost care and attention.