

# OFFICIAL RECORD OF PROCEEDINGS

**Wednesday, 18 December 2002**

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

## **MEMBERS PRESENT:**

THE PRESIDENT

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

DR THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK, J.P.

**MEMBER ABSENT:**

THE HONOURABLE LAU CHIN-SHEK, J.P.

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

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

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.  
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.  
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

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

**CLERKS IN ATTENDANCE:**

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

| Subsidiary Legislation/Instruments   | <i>L.N. No.</i> |
|--|-----------------|
| Securities and Futures (Financial Resources) Rules .....   | 209/2002        |
| Securities and Futures (Keeping of Records) Rules .....  | 210/2002        |
| Securities and Futures (Accounts and Audit) Rules .....  | 211/2002        |
| Securities and Futures (Contract Notes, Statements of<br>Account and Receipts) Rules .....                   | 212/2002        |
| Securities and Futures (Short Selling and Securities<br>Borrowing and Lending (Miscellaneous))<br>Rules..... | 213/2002        |
| Securities and Futures (Licensing and Registration)<br>(Information) Rules .....                             | 214/2002        |
| Securities and Futures (Investor Compensation —<br>Claims) Rules .....                                       | 215/2002        |
| Securities and Futures (Miscellaneous) Rules .....   | 216/2002        |
| Securities and Futures (Stock Market Listing) Rules.....   | 217/2002        |
| Securities and Futures (Price Stabilizing) Rules .....   | 218/2002        |
| Securities and Futures (Disclosure of Interests —<br>Securities Borrowing and Lending) Rules .....           | 219/2002        |
| Securities and Futures (Contracts Limits and Reportable<br>Positions) Rules.....                             | 220/2002        |
| Securities and Futures (Levy) Order .....  | 221/2002        |
| Securities and Futures (Levy) Rules .....  | 222/2002        |

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| Securities and Futures (Investor Compensation — Levy) Rules.....   | 223/2002 |
| Securities and Futures (Investor Compensation — Compensation Limits) Rules.....  | 224/2002 |
| Securities and Futures (Transfer of Functions — Investor Compensation Company) Order.....                              | 225/2002 |
| Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002.....  | 226/2002 |
| Securities and Futures (Transfer of Functions — Stock Exchange Company) Order .....                                    | 227/2002 |
| Securities and Futures (Fees) Rules .....  | 228/2002 |
| Securities and Futures (Disclosure of Interests — Exclusions) Regulation .....   | 229/2002 |
| Securities and Futures (Offences and Penalties) Regulation .....   | 230/2002 |
| Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 .....  | 231/2002 |
| Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001) (Commencement) Notice 2002 .....             | 232/2002 |
| Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139 sub. leg.) (Commencement) Notice 2002 ..... | 233/2002 |

#### Other Papers

- No. 39 — Report on the Administration of the Fire Services Department Welfare Fund, together with the Director of Audit's Report and Audited Statement of Accounts, for the year ended 31 March 2002

- No. 40 — Report by the Board of Governors of The Prince Philip Dental Hospital for the period from 1 April 2001 to 31 March 2002
- No. 41 — Report of the Chinese Temples Committee on the administration of the Chinese Temples Fund for the year ended 31 March 2002
- No. 42 — Report of the Chinese Temples Committee on the administration of the General Chinese Charities Fund for the year ended 31 March 2002
- No. 43 — The Sir Murray MacLehose Trust Fund Trustee's Report for the period from 1 April 2001 to 31 March 2002
- No. 44 — Grantham Scholarships Fund  
Annual Report for the year ended 31 August 2002
- No. 45 — Report by the Commissioner of Correctional Services of Hong Kong Incorporated on the Administration of the Correctional Services Department Welfare Fund for the year ended 31 March 2002
- No. 46 — Office of the Privacy Commissioner for Personal Data, Hong Kong  
Annual Report 2001-2002
- No. 47 — Hong Kong Housing Authority  
Annual Report 2001/2002
- No. 48 — Hong Kong Housing Authority Financial Statements for the year ended 31 March 2002
- No. 49 — The Accounts of the Lotteries Fund 2001-02
- No. 50 — Forty-first Annual Report on the Social Work Training Fund by the Trustee of the Fund for the year ended 31 March 2002

Report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001

Report of the Bills Committee on Electoral Provisions (Miscellaneous Amendments) Bill 2002

## ORAL ANSWERS TO QUESTIONS

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

### **Improvement to Quality of Television Programmes on English Channels**

1. **MRS SELINA CHOW** (in Cantonese): *Madam President, last month, the authorities approved the renewal of the domestic free television programme services licences of Asia Television Limited (ATV) and Television Broadcasts Limited (TVB), and decided to allow the two licensees to broadcast non-English non-Cantonese programmes on the English channels for two consecutive hours during prime-time (that is, from 7 pm to 11.30 pm) once weekly. In this connection, will the Government inform this Council:*

- (a) *of the detailed justifications for allowing the two licensees to broadcast non-English non-Cantonese programmes on the English channels during prime-time; and*
- (b) *whether it has included conditions in the renewed licences for the purpose of improving the quality of the programmes on the English channels; if so, of the details; if not, the reasons for that?*

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

- (a) The decision on the concerned arrangement aims at allowing the two licensees more programme scheduling flexibility without compromising the identity of the English channels so as to widen viewers' programme choice.

During the licence renewal process, we conducted a Broadcasting Services Survey and a public hearing. The findings of the survey and views expressed at the public hearing reflected the community's strong support for maintaining the existing two English channels on the one hand, and the community's aspiration for more flexibility for the broadcast of non-designated language (non-English and non-Cantonese) programmes on the English and Cantonese channels on the other. When we consulted the two licensees on the renewed licence conditions, both requested more flexibility for the broadcast of non-English programmes on the English channels, or even a reduction in the broadcast of English programmes due to market demand and commercial considerations. Taking into account the public opinion and licensees' requests, we consider that, without compromising the identity of the English channels, we have appropriately balanced all parties' interests and requests in determining the renewed condition for the broadcast of non-designated language programmes.

- (b) As commercial enterprises, licensees will provide their television programme services according to market forces. The Government's responsibility is to maintain a conducive business environment with a level playing field so that competition compels licensees to raise programme quality. In addition, we have requested the two licensees to submit six-year investment commitments to ensure that they will invest a reasonable level of resources on programmes. ATV and TVB's six-year investment commitments on programmes amount to \$2.1 billion and \$6.5 billion respectively. Also, the assessment of programme quality is very subjective and it is difficult to specify such a requirement in objective terms. A licence condition needs to be set out in clear terms to enable compliance by the licensee and enforcement by the regulator. Therefore, we have not included the requirement that the two licensees must enhance the quality of programmes broadcast on the English channels.

**MRS SELINA CHOW** (in Cantonese): *Madam President, under the Basic Law, both Chinese and English are official languages, while the mass media should serve significant educational and cultural purposes, for these reasons, why does*

*the licensing policy for television broadcast fail to adhere to the principle that both languages are equal in status? Will this approach downgrade the status of the English language?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, we have no intention to downgrade the English or any other language. The existing licensing mechanism maintains the entirety and characteristics of the two English channels on the one hand, while taking into consideration commercial factors on the other, hence the two licensees were allowed greater flexibility so that they could have greater room for their manoeuvre. Besides the Cantonese and English speaking population, people speaking Japanese, Korean, Filipino or users of Putonghua in Hong Kong also have their needs. At present, we have allowed the licensees greater flexibility on their English channels so that they can cater to the needs of speakers of other languages.

**MR KENNETH TING** (in Cantonese): *Madam President, in the society, we as parents care very much about the English language proficiency of our children and we are concerned about traces that suggest the decline in the standard of English. Will the Secretary reckon that allocating some intervals on the English channels to non-English programmes would aggravate the tendency for the decline in the standard of English?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, in the course of considering provisions for the renewal of the licences this time, we had also taken into account the need for providing English subtitles in the English programmes, for the sake of two reasons being, firstly, to facilitate those English speaking viewers with hearing problems to watch the news, current affairs, weather, emergency reports and other programmes; and secondly, we have considered that the provision of English subtitles in English programmes may help to improve the understanding of people who wish to learn English but cannot fully understand the English programme to comprehend the contents of the programme and to improve their proficiency in English via the aid of such subtitles.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, at present, the ability for people in Hong Kong to use the English language has been on the*

*decline, and this has been reflected by people both from the commercial and the education sectors; meanwhile, Mr TUNG Chee-hwa and government departments have also encouraged us to improve our English proficiency, but why does this broadcasting policy seem to have taken an opposite direction instead of heading towards the same direction of improving the English proficiency of the general public together?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, just as I have explained, on the one hand, the objective of requiring the two English channels to provide English subtitles for their programmes is to help people who wish to improve their English to obtain assistance in this respect. On the other hand, we have taken into account the aspiration of English-speaking viewers or viewers of the English channels that they may wish to watch a certain non-English programmes, such as some of the good quality Putonghua movies or non-English drama series. The Cantonese or Putonghua motion pictures such as "Crouching Tiger, Hidden Dragon" is a very good example. Therefore, we would allow the licensees a definite flexibility in the broadcast of non-English non-Cantonese programmes.

**MR JAMES TIEN:** *Madam President, in view of current technological advancements, our television stations can switch from analogue transmission to digital transmission easily, threreby providing more television channels within the same wave band. Would the Government reconsider keeping the two English channels for English programmes only, while allowing the licensees to operate more channels for other purposes?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:** Madam President, as far as digital television is concerned, we are still in the process of considering, and will consult the trade as well as the public in terms of the system that we will use. In the context of consultation, we will also take into consideration the systems that our neighbouring economies are going to use. When we have decided on the system and that the commercial stations can put out a digital television system, there would be an additional flexibility and capacity to carry additional digital terrestrial television channels. But before a decision is made, we are not in the position to offer more channels through the existing operators.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, my view is quite different from the Liberal Party on the relaxation in policy, as I consider television viewers should be given more choices. In fact, since we already have Nicam service in place, the relevant problem should have been resolved. May I ask the Secretary whether it is possible for the provision of Nicam broadcast in this time slot? This will meet the requirements of the Liberal Party on the one hand, and in keeping with the relaxation in policy on the other, as people may choose broadcast in English if they wish to listen to English. Besides, the Government may also maintain its relaxing policy in order to meet the needs of the licensees.*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, Mr SIN Chung-kai is very correct. Currently, many English programmes are broadcast in Nicam. Viewers who wish to watch a foreign drama and listen to Cantonese may select those programmes with Cantonese dubbing. The relaxation is currently confined to the so-called prime time (that is, from 7 pm to 11.30 pm), which is also the time slot receiving the concern. We permit the licensees to broadcast non-English non-Cantonese programmes on the English channels for two consecutive hours once weekly. The broadcast of a movie lasts exactly for two hours, therefore we set the duration for two hours, instead of three hours or one and a half hour. In this case, television stations can of course provide Nicam broadcast. Mr SIN Chung-kai might have asked that why television stations were not required to conduct Nicam broadcast for all programmes. I know that he has not asked such a question, but if he has doubts in this aspect, the answer is that dubbing for all programmes would be extremely costly. That is why, based on commercial consideration, we have not required television stations to do so.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, I only wish to clarify one thing. Just now, I was asking .....*

**PRESIDENT** (in Cantonese): I am sorry, Mr SIN Chung-kai, could you please ask your question in the form of a follow-up supplementary? Members are not allowed to seek clarification on their supplementaries.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, yes. The Secretary has misunderstood my supplementary, hence I wish to make a clarification. My supplementary was whether the Secretary would consider requiring television stations to provide Nicam broadcast in the two-hour relaxed time slot? It would meet the requirements of the Liberal Party and the needs of the licensees, thereby achieving a win-win situation. In the meantime, I have not raised other questions.*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, that will be fine. That is part of your supplementary, but the Secretary has not answered. I will now ask the Secretary to reply.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, we are of the view that English subtitles should be provided for the broadcast of non-English programmes, but television stations are not required to broadcast in Nicam. I believe the provision of English subtitles would be adequate when a French or Italian movie is shown, recently, a very interesting Italian movie was shown on television.

**MRS SELINA CHOW**: *Madam President, could the Secretary inform this Council whether he regards the standard or quality of English programming produced or broadcast by the two broadcasters has, in fact, deteriorated? And if so, why was the opportunity not used to try to upgrade the quality at the point of extending their contracts?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY**: Madam President, as far as the licensing condition is concerned, there are guidelines as to the standards of programmes. But the standards are mostly in terms of decency, content or subliminal seduction, or whether a programme is within acceptable public decency. It is not possible for us to set very objective standards as to whether a programme is of acceptable standard ..... *(Noises came from some sound-emitting devices in the public gallery)*

**PRESIDENT** (in Cantonese): Persons in the public gallery who wish to use a pager please leave the Chamber. I am sorry, Secretary, please go on.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:** Thank you, Madam President. Thus, it is not possible for us to put in a licensing renewal condition in order to raise the standards concerned, because the quality of a programme can be very subjective. Something which is of good quality to one Honourable Member may not be of good quality to another Honourable Member. Therefore, it is not possible for us to take subjective standards as a renewal condition.

**PRESIDENT** (in Cantonese): This Council has spent more than 16 minutes on this question. Now we shall proceed to the second question.

### **Provision of Social Protection for the Self-employed**

2. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, regarding the persistent rise in the number and percentage of self-employed persons in the working population over the past two years, will the Government inform this Council:*

- (a) *whether it will consider compiling cohort statistics on self-employed persons by items relating to their age, income, educational attainment, trades and job positions, and so on, and releasing such statistics on a regular basis; if it will, of the start time for that; if not, the reasons for that;*
- (b) *whether it will consider collecting relevant information on these people prior to their becoming self-employed, including the labour force categories (that is, "employer", "employee" and "unemployed", and so on) they belonged, and the trades and job positions they held; and*
- (c) *given that self-employed persons are not entitled to statutory rights and benefits applicable to employees and various types of employee compensation, and as quite a large number of them do not have*

*stable income, whether it will review the existing labour and social policies with a view to providing them with appropriate protection?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President,

- (a) Statistics pertaining to self-employed persons have already been compiled from the data collected in the General Household Survey (GHS). The statistics pertaining to self-employed persons analysed by sex and age, educational attainment, industry, occupation, monthly employment earnings and hours of work for 2000, 2001 and the first three quarters of 2002 are given in the Annex.

Statistics on the number of self-employed persons are published regularly in the "Quarterly Report on General Household Survey". In order to contain the volume of the report, the aforesaid statistical breakdowns pertaining to self-employed persons cannot be fully included in the report. Nevertheless, members of the public can enquire about such statistics from the Census and Statistics Department (C&SD) in person or via mail, telephone, fax or email.

- (b) At present, information on the economic activity and employment status, and so on, of the self-employed persons before they became self-employed is not collected in the core questionnaire of the GHS. The C&SD is planning to conduct a special topic enquiry on self-employed persons via the GHS around mid-2003. The enquiry will collect information on the situation of self-employed persons prior to their becoming self-employed.
- (c) Like the employers, self-employed persons are not employees and there is no need for the labour legislation and policies to give them any special protection. As regards social policies which cover areas such as medical care, health and social security, we determine the eligibility to such benefits with reference to income, assets and needs and ensure that those in need will be covered. The status of the applicant, whether self-employed or otherwise, is not part of the consideration. Also, self-employed persons are offered retirement protection under the Mandatory Provident Fund (MPF) System.

We are of the view that the current labour and social policies have already accorded protection to the needy self-employed persons.

## Annex

Table 1: Number of self-employed persons by age and sex, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Age group</i>                             | <i>Male ('000)</i> | <i>Female ('000)</i> | <i>Both sexes ('000)</i> | <i>Male ('000)</i> | <i>Female ('000)</i> | <i>Both sexes ('000)</i> | <i>Male ('000)</i> | <i>Female ('000)</i> | <i>Both sexes ('000)</i> |
|--|--------------------|----------------------|--------------------------|--------------------|----------------------|--------------------------|--------------------|----------------------|--------------------------|
| 15-29  | 9.3                | 5.8                  | 15.1                     | 13.1               | 7.4                  | 20.5                     | 14.9               | 7.7                  | 22.6                     |
| 30-39  | 31.5               | 7.9                  | 39.4                     | 38.7               | 10.0                 | 48.7                     | 39.6               | 11.7                 | 51.3                     |
| 40-49  | 50.1               | 8.4                  | 58.5                     | 63.3               | 11.9                 | 75.2                     | 71.9               | 13.8                 | 85.7                     |
| 50-59  | 30.6               | 4.8                  | 35.3                     | 37.3               | 4.8                  | 42.2                     | 41.1               | 7.7                  | 48.8                     |
| 60 and over                                  | 12.1               | 2.2                  | 14.3                     | 14.0               | 2.2                  | 16.2                     | 15.5               | 3.1                  | 18.6                     |
| Total  | 133.5              | 29.1                 | 162.6                    | 166.4              | 36.3                 | 202.7                    | 183.1              | 44.0                 | 227.0                    |
| As a percentage of total employed population |                    |                      | (5.1%)                   |                    |                      | (6.2%)                   |                    |                      | (7.1%)                   |

Table 2: Number of self-employed persons by educational attainment, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Educational attainment</i> | <i>2000 ('000)</i> | <i>2001 ('000)</i> | <i>2002 Quarter 1 to Quarter 3 ('000)</i> |
|-------------------------------|--------------------|--------------------|---|
| No schooling/Kindergarten     | 3.4                | 4.0                | 4.5                                       |
| Primary                       | 40.5               | 48.8               | 52.6                                      |
| Secondary/Matriculation       | 95.6               | 123.0              | 134.3                                     |
| Tertiary                      |                    |                    |   |
| - non-degree                  | 8.4                | 9.1                | 12.9                                      |
| - degree                      | 14.7               | 17.9               | 22.8                                      |
| Total                         | 162.6              | 202.7              | 227.0                                     |

Table 3: Number of self-employed persons by industry, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Industry</i> | <i>2000 ('000)</i> | <i>2001 ('000)</i> | <i>2002 Quarter 1 to Quarter 3 ('000)</i> |
|-----------------|--------------------|--------------------|---|
| Manufacturing   | 8.5                | 9.8                | 9.8                                       |
| Construction    | 8.7                | 23.9               | 31.3                                      |

| <i>Industry</i>  | <i>2000</i><br>( <i>'000</i> ) | <i>2001</i><br>( <i>'000</i> ) | <i>2002</i><br><i>Quarter 1 to Quarter 3</i><br>( <i>'000</i> ) |
|--|--------------------------------|--------------------------------|---|
| Wholesale, retail and import/export trades, restaurants and hotels | 54.1                           | 59.8                           | 61.7  |
| Transport, storage and communications                              | 54.7                           | 60.3                           | 64.2  |
| Financing, insurance, real estate and business services            | 11.7                           | 18.4                           | 23.1  |
| Community, social and personal services                            | 21.6                           | 28.4                           | 33.4  |
| Others   | 3.3                            | 2.0                            | 3.4   |
| Total  | 162.6                          | 202.7                          | 227.0   |

Table 4: Number of self-employed persons by occupation, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Occupation</i>                             | <i>2000</i><br>( <i>'000</i> ) | <i>2001</i><br>( <i>'000</i> ) | <i>2002</i><br><i>Quarter 1 to Quarter 3</i><br>( <i>'000</i> ) |
|---|--------------------------------|--------------------------------|---|
| Managers and administrators and professionals | 3.5                            | 4.4                            | 6.4   |
| Associate professionals                       | 42.2                           | 53.6                           | 60.9  |
| Clerks  | 0.9                            | 1.8                            | 2.0   |
| Service workers and shop sales workers        | 33.0                           | 38.0                           | 40.9  |
| Craft and related workers                     | 15.4                           | 30.3                           | 35.6  |
| Plant and machine operators and assemblers    | 56.9                           | 61.5                           | 64.5  |
| Elementary occupations                        | 7.5                            | 11.2                           | 13.4  |
| Others  | 3.2                            | 2.0                            | 3.4   |
| Total   | 162.6                          | 202.7                          | 227.0   |

Table 5: Number of self-employed persons by monthly employment earnings, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Monthly employment earnings</i><br>( <i>\$</i> ) | <i>2000</i><br>( <i>'000</i> ) | <i>2001</i><br>( <i>'000</i> ) | <i>2002</i><br><i>Quarter 1 to Quarter 3</i><br>( <i>'000</i> ) |
|---|--------------------------------|--------------------------------|---|
| <3,000  | 9.8                            | 15.4                           | 23.1  |
| 3,000-3,999   | 5.2                            | 7.7                            | 10.6  |
| 4,000-4,999   | 5.3                            | 7.2                            | 10.3  |

| <i>Monthly employment earnings</i><br>(\$) | 2000<br>('000) | 2001<br>('000) | 2002                                    |
|--|----------------|----------------|---|
|  |                |                | <i>Quarter 1 to Quarter 3</i><br>('000) |
| 5,000-5,999                                | 8.7            | 10.9           | 17.5                                    |
| 6,000-6,999                                | 9.5            | 13.0           | 19.4                                    |
| 7,000-7,999                                | 9.9            | 13.7           | 19.1                                    |
| 8,000-8,999                                | 17.4           | 22.7           | 23.5                                    |
| 9,000-9,999                                | 9.2            | 13.5           | 13.8                                    |
| 10,000-14,999                              | 47.1           | 53.3           | 43.4                                    |
| 15,000-19,999                              | 17.9           | 20.5           | 19.7                                    |
| 20,000-29,999                              | 15.5           | 16.7           | 16.9                                    |
| ≥ 30,000                                   | 7.2            | 8.1            | 9.7                                     |
| Total                                      | 162.6          | 202.7          | 227.0                                   |

Table 6: Number of self-employed persons by hours of work during the seven days before enumeration, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

| <i>Hours of work during the seven days before enumeration</i> | 2000<br>('000) | 2001<br>('000) | 2002                                    |
|---|----------------|----------------|---|
|   |                |                | <i>Quarter 1 to Quarter 3</i><br>('000) |
| < 20  | 12.3           | 14.0           | 21.3                                    |
| 20-29   | 5.3            | 7.8            | 9.5                                     |
| 30-34   | 3.0            | 4.2            | 5.4                                     |
| 35-39   | 10.2           | 16.5           | 20.4                                    |
| 40-44   | 23.1           | 34.5           | 40.0                                    |
| 45-49   | 30.2           | 36.0           | 35.9                                    |
| 50-54   | 22.4           | 24.1           | 23.5                                    |
| 55-59   | 7.9            | 7.9            | 8.3                                     |
| ≥ 60  | 48.3           | 57.7           | 62.8                                    |
| Total   | 162.6          | 202.7          | 227.0                                   |

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary stated in his reply to part (c) of my main question that the Government was of the view that the current labour and social policies had already accorded protection to the needy self-employed persons. However, according to the government figures we have at hand (although the Government has already provided detailed information, some parts are still missing, and I hope the Secretary will further supply the supplementary information later), we see clearly that the number of self-employed persons engaged in construction industry has multiplied several times, from some 8 000 in 2000 to over 30 000 in 2002, since the implementation of the MPF System. In fact, I have received many complaints regarding construction workers being forced to become self-employed after the*

*implementation of the MPF. What worries the trade is that being self-employed, they will be at a loss if they sustain injuries in the course of work. Therefore, when the Secretary replied just now that the Government considered the current labour and social policies had already accorded protection to the needy self-employed persons .....*

**PRESIDENT** (in Cantonese): I am sorry, Miss CHAN, please put forward your supplementary question and do not express your opinion.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, my emotions are only a bit worked up with this. (Laughter) The figures have already indicated that the number of self-employed persons in the construction industry has increased by multiples, why does not the Government make consideration in the policy aspect? If self-employed persons sustain injuries in accidents, what should they do?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, there are many self-employed persons engaged in the construction industry. In Miss CHAN's view, some of them are forced to become self-employed. However, I believe the most important concern is to ascertain whether they are self-employed, or they are indeed employees. To prove the employee status of a person, various evidence certainly have to be taken into account, and the evidence required is subject to each case, but I am not going to explain the details here. For those who are not given the job title as employee but are employees by nature, and have entered into an employment contract with the employer, or able to provide evidence to prove their status, their employer definitely cannot evade their responsibility as employer, such as the liability of paying employees' compensation as mentioned by Miss CHAN earlier. In fact, as indicated by the prosecution cases initiated by the Mandatory Provident Fund Schemes Authority, if the person concerned was proved to be an employee but not a self-employed person, the Court would order the employer to hear his responsibility. On the other hand, self-employed persons have to take out personal accident insurance policy to protect themselves. The Labour Department is negotiating with insurance companies to see if they can offer a special category of insurance cover for self-employed persons.

**MS LI FUNG-YING** (in Cantonese): *Madam President, I would like to raise a supplementary on the main reply of the Secretary. The Secretary simply said that like employers, self-employed persons were not employees and the current labour and social policies had already accorded sufficient protection to them. What I wish to ask is, at present, some self-employed persons who are engaged in high-risk industries have failed to obtain insurance cover. Does this illustrate that there is a need for the current policy to be reviewed?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, like other employers, self-employed persons in fact have to run the risks incurred in business and economic activities. Self-employed persons, certainly, should also have their protection, for example, they have to take out their own insurance cover. In this connection, self-employed persons, like employers, should consider taking out insurance from insurance companies. However, as risks are involved, I believe this has to be left to the market to decide. In answering Miss CHAN Yuen-han's supplementary question just now, I have already said that if self-employed persons encountered difficulties in obtaining insurance cover, or if the premium involved is too high, we are ready to provide assistance. For example, we could negotiate with the insurance sector to see if they can develop some products for self-employed persons priced at reasonable levels.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, I wish to ask the Secretary did he notice that in Table 3 of the Annex to the main reply, the number of self-employed persons has increased by 3.6% over the past two years, from 8 700 to 31 300? Was the Secretary aware that since the MPF System came into operation, insurance companies would check the names of victims against the list of the MPF schemes on the occurrence of accidents at work involving injuries; and if the persons concerned are self-employed, no workmen's compensation would be offered? The Secretary said earlier that special categories of insurance cover would be offered to the self-employed, could he provide the timetable for this?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, in fact, the Labour Department has been

negotiating with insurance companies during the past couple of months. I understand that Members are concerned about this, and I hope a solution would come by without delay within the next few months.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary said that negotiations with insurance companies were carried out, but I think he might have got the wrong tone. Everyone can take out a life insurance, but the primary concern is whether the Secretary will amend the Employees' Compensation Ordinance (ECO) to extend the compensation coverage to self-employed persons? If so, insurance companies will naturally have to provide such insurance policies. Under the negotiations between the Secretary and the insurance sector, the insurance companies will only provide life insurance or other insurance products for the self-employed. Is the Secretary going in the wrong direction? Should the ECO be amended first to extend the coverage to the self-employed? If amendments are made, disputes and litigation can be avoided. Otherwise, if an employer who loses the case cannot afford to pay the compensation out of his own pocket, both the employer and the employee will have to suffer. Will the Secretary have some far sight and consider amending the relevant ordinance?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, as I have stated in my reply to Miss CHAN Yuen-han earlier, this is a matter of view and perspective. Should self-employed persons be regarded as employees? Or are they in fact running a business of their own who should bear risks as other employers do? We should remember that under the definition of self-employed persons in the Mandatory Provident Fund Schemes Ordinance (MPFSO), a partnership or a sole proprietor, as well as any person engaging employees to work for him are included. Under the Ordinance, self-employed persons may be employers themselves, thus we can see such a great number of these people in this category. I think this is merely a matter of principle. It seems to me that Mr LEE Cheuk-yan considered that if self-employed persons also include employers, it should be mandatory for them to take out insurance, or for insurance companies to undertake their insurance. However, I think self-employed persons and employers are actually similar by nature, they should also undertake the risk incurred in commercial activities. In respect of insurance, we are certainly not talking about life insurance but accident insurance. In fact, personal accident

insurance policies are offered in the market, however, as I have just said, the construction trade may have to pay a much higher premium for personal accident insurance. What we can do is to negotiate with the insurance sector, and see if they can offer specific products for self-employed persons at reasonable prices.

**MR MICHAEL MAK** (in Cantonese): *Madam President, there are many enticements for the relevant persons to choose to become self-employed, and the main one is to seize the opportunity to evade tax and MPF contributions. Will the Administration inform us of the effective measures in place to plug the loopholes in this respect? On the implementation of relevant ordinances and policies, so that those people who are self-employed understand that they should not evade tax even if they are self-employed.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): *Madam President, I have to thank Mr MAK for his question. However, Mr MAK might have get it wrong, as self-employed persons are also liable to taxation. Moreover, under the MPFSO, the self-employed are also obliged to make MPF contributions. In fact, self-employed persons in Hong Kong represent about 7% of the labour force or working population, while in Britain, United States and Canada, the relevant figures are 7%, 11% and 15% respectively, thus I do not find the figures in Hong Kong too high. Moreover, I believe there is nothing particularly amiss about being self-employed, and Miss CHAN Yuen-han and many other Members have provided much assistance to the self-employed. Take the local community economy or the Dragon Market as an example, those operators are also self-employed persons. Self-employed persons may also make their business a success, and it is also a good thing for them to develop their own business and make money.*

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, perhaps the Secretary is not fully aware of some of the problems involved. I know that owners, business associations and trade unions of the construction industry are conducting negotiations on obtaining insurance cover for construction workers. However, the insurance sector said that such workers do not fall within the definition of labour. The construction industry has thus urged the Government to amend the ordinance. Insurance companies said that it was the underwriters who refused to underwrite such insurance other than they and thus urged the*

*Government to amend the ordinance to provide protection also to such workers in case of they sustain injuries in the course of work. May be my question so broad that the Secretary cannot grasp the focus all at one time. In this connection, is the Government prepared to amend the relevant ordinances to provide protection to construction workers?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I have to thank Miss CHAN for her question. In fact, I am replying the question all along, and I think there is only a difference in perspective. I have said earlier, it is a fact that an employer must take out insurance for his worker or employee. However, if such persons are self-employed instead of being employees, then should we amend the relevant ordinance to require for the procurement of insurance for such persons? I have repeatedly stated that, if they are self-employed, they are by nature similar to other trade operators or self-operating businessmen. If they are only self-employed persons in name, and their employee status remain in substance, then such employers cannot evade their responsibility.

**PRESIDENT** (in Cantonese): This Council has spent more than 14 minutes on this question. This is the last supplementary question.

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary has provided the number of self-employed persons by industry in Table 3 of his main reply, and I notice that the number of self-employed persons has increased across the board. However, some of the industries are quite big, in particular the financing and insurance services industry which the Secretary is very familiar with, and which we know that a number of companies in that industry has closed down. Will the Secretary inform this Council of the many industries listed in Table 3, what are the trades in which the number of self-employed persons has decreased? Moreover, will the Secretary list the number of self-employed persons engaging in the financial, insurance and real estate industries respectively?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, in fact, the relevant figures, Mr Henry WU are interested in, of the financing, insurance and real estate trade in 2000, 2001 and the first three quarters of 2002 in which Mr Henry WU is interested, have

already been listed in Table 3. Those figures indicate a growing trend in the number of self-employed persons, and I believe Mr WU has probably noticed that. In the year 2000, there were about 11 000 self-employed persons; in 2001, there were about 18 000, and in the first three quarters of 2002, there were about 23 000. The relevant figures have been listed out.

**MR HENRY WU** (in Cantonese): *Madam President, will the Secretary provide a breakdown on the number of self-employed persons grouped under the head of financing, insurance, real estate and business services. Does the Secretary have such figures?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): *Madam President, I have to approach the C&SD for such breakdowns, and will provide a written reply to Mr WU if they are available. (Appendix I)*

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

### **Review of Student Travel Subsidy Schemes**

3. **DR TANG SIU-TONG** (in Cantonese): *Madam President, at present, travel subsidy is provided to students who reside beyond 10 minutes' walking distance from school and travel to school by public transport, subject to their families passing the means test. The subsidy scheme is divided into Student Travel Subsidy Scheme (STSS) and Cross-net Travel Subsidy Scheme (CTSS). The STSS is applicable to students aged 12 or above, and the rate of allowance is equal to the whole or half of the travelling expenses required for school trips. The CTSS is applicable to primary school pupils who are below 12 and residing in a district outside the school net in which the school is located, and the rate of allowance is equal to half of the travelling expenses concerned. In this connection, will the Government inform this Council:*

- (a) *of the contents of the amendment proposals regarding the travel subsidy schemes made by the Student Financial Assistance Agency (SFAA) or the Education Department (ED) to the Education and*

*Manpower Bureau in the past three financial years; and the follow-up actions taken by the Administration;*

- (b) whether it plans to standardize the level of subsidy for both schemes; if not, the reasons for that; and*
- (c) whether it plans to abolish the stipulation that only cross-net students are eligible to apply for the CTSS, or re-demarcate the primary school nets on the basis of the average time needed for the home-to-school trips; if not, the rationale for that?*

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

- (a) In the 1999-2000 school year, the rate of grant under the STSS was based on 50% of the average fare payable by students. In the 2000-01 school year, the SFAA proposed to increase the basis of calculation of grant to 100% and introduce a two-tier system of full-rate and half-rate grants. The proposal was approved by the Finance Committee on 26 May 2000.
- (b) The levels of subsidy provided under the STSS and the CTSS are calculated on the same basis, which is the average public transport fare paid by the students. There is thus no need for change.

Students aged 12 and above generally pay full fare on public transport. Under the STSS, they are assisted with a subsidy toward their transport fare at either full or half rate, depending on their means.

Since public transport operators generally charge children under 12 concessionary half fare, therefore, under the CTSS, all successful applicants are assisted with a subsidy towards the cost of their concessionary half fare.

- (c) The ED reviews the school nets annually primarily considering the movement of population and changes in demand and supply of school places, also taking into account factors including

development of new towns, opening of new schools and particular local conditions.

There are some primary school students who are living at a distance of more than 10 minutes' walk from their schools within the same school net. These students are not qualified for the CTSS. On the other hand, there are students travelling to schools in neighbouring school nets at a distance slightly more than 10 minutes' walk. They are qualified for the CTSS. For the STSS, there is no cross-net requirement.

We will review the two travel subsidy schemes with a view to rationalizing the utilization of resources. We aim to complete the review before the beginning of the 2003-04 school year.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary mentioned in the last paragraph of the main reply that the Government will review the two travel subsidy schemes but the review will not be completed until the beginning of the 2003-04 school year. I hope the Government can complete the review and implement the new system before March next year. At present, the Government is using public transport fares as the basis in calculating the subsidy, however, school buses and nanny vans are in fact available in many schools. May I know if the charges of these types of transport will be used as the basis in calculating the subsidy?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, at present, we are using the average fare as the basis in calculating the subsidy, that is, we make reference to the fares of all types of public transports (such as the mass transit railway) in calculating the average fare. In fact, there is still some unfairness in this approach, for example, minibuses do not offer half-fare concessions to children aged under 12, but we would still calculate the subsidy according to the average fare.*

**MR AMBROSE LAU** (in Cantonese): *Madam President, as far as I know, for many primary school students living in the rural area, their major means of transport when going to school is in general the minibus. May I know if the*

*fares of minibuses have been taken into account in the STSS? If not, will the Government make special consideration in this respect when conducting the review?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the STSS is designed for application by students aged over 12 and these students rarely take minibuses. As regards students aged under 12, most of them do take minibuses and we have included the fares of this type of transport in our calculation.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the most ridiculous thing about the existing CTSS is that within the same school net, students who have to walk for more than 10 minutes to school cannot receive any subsidy, whereas for some cross-net students who only have to walk for several minutes to cross into another school net to go to school are entitled to subsidy. Under these circumstances, no matter how reviews are conducted, the constraints imposed by school nets cannot be overcome. Will the Government consider giving schools discretion on granting travel subsidy to students in cases which are obviously ridiculous?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as I have said, we will review the directions of these two subsidy schemes. Notwithstanding that we say the walk is 10 minutes, there is also the question of how quickly or slowly one walks. Therefore, we will conduct a comprehensive review in this regard.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the point of my supplementary is whether the Government will consider giving schools actual discretion to grant travel subsidy to students in cases which are obviously ridiculous under the present review, so as to address the shortcomings of the system?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we will definitely handle the matter in a fair and just way.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, at present, a lot of manpower is required to carry out the means tests in these two subsidy schemes. I do not know how much resources the Government has spent in this regard. May I ask the Secretary if he will consider re-adopting the former Student Travel Card to replace the two existing subsidy schemes? I think this is a more convenient approach.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, the Student Travel Card was used prior to 1998. We are not satisfied with that scheme because even though half-fare concession was offered to impoverished students, the fares were still very high to them. Nowadays, we can provide full-rate grant to them, although these students are subject to means tests. If we implement the former scheme, I believe a lot of people will be dissatisfied.*

**MR IP KWOK-HIM** (in Cantonese): *Madam President, I wish to follow up Mr CHEUNG Man-kwong's supplementary. I have received a case in which the home of a student who originally had to go to a school in another school net was included in that particular school net after a re-demarcation of school nets, so he could no longer receive the travel subsidy which he was originally entitled to, whereas the distance of his trip to school did not change in any way. May I ask if, in these circumstances, flexibility can be exercised when handling cases in which the subsidy is cancelled as a result of the Government's administrative changes?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, I have said that we will conduct reviews in different areas. Firstly, we will review whether it is necessary to grant the subsidy according to school nets. Secondly, we will review the walking distance to see whether the time required, such as 10 minutes, or the actual distance, such as a mile or half a mile, should be used as the criterion. In addition, we will also consider if travel subsidy should be granted to all primary schools students, or whether the practice adopted for secondary school students, that is, to divide the students into two tiers, namely, into those aged 12 or above and those below 12, should be followed. We will conduct reviews in various areas.*

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary mentioned the case of walking speed, some may walk faster and some may be slower. I would like to ask a supplementary in this connection, since I do not know how the criteria for travel subsidy were formulated in the past. Could the Secretary inform this Council if he knows why time, rather than actual mileage as mentioned by the Secretary just now, was adopted as the criterion in calculating the subsidy? Is this because some other overseas areas have adopted this practice? If so, does the Secretary know which areas have adopted this practice? Does the Secretary think it unwise to adopt time as the criterion?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am sorry I am not familiar with the history on this, so I cannot answer this supplementary.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that "students aged 12 and above generally pay full fare on public transport". The governments in overseas countries often encourage elderly people aged over 65 to enroll into study programmes. If elderly people aged over 65 in Hong Kong enroll into programmes recognized by the Government, such as those of the Open University or other programmes of a similar nature, will the Government consider granting them some travel subsidy or offer them partial concessions on transport fares?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, under the present system, as long as the student is studying full-time in a recognized educational institution, the subsidy will be offered to him regardless of his age.

**DR RAYMOND HO** (in Cantonese): *Madam President, the programmes offered by the Open University, which I have just mentioned, are not full-time but part-time ones only. My supplementary is to focus on this type of programmes.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have already given the reply. The programmes enrolled must be full-time ones.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary has said just now that the STSS is being reviewed. May I know what the scope of the review is this time? Is it just on the student travel subsidy, or does it also cover students' background, the family income limit and the criteria adopted for the point system?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, this time we are conducting a comprehensive review on the two schemes according to the principles of fairness and the proper use of resources. I believe each and every detail will be examined, for example, whether school nets should be adopted as the basis, what criterion should be adopted in calculating the travelling distance and whether students' family income should be vetted before the travel subsidy is granted. According to existing requirements, students whose family income is below \$8,500 monthly can receive a full-rate grant. However, students whose monthly family income is between \$8,500 and \$22,000 can only receive a half-rate grant. We feel that the range of income covered is too broad, since under the present arrangement, a student whose monthly family income is \$9,000 and another whose monthly family income is over \$20,000 are both entitled to a half-rate grant. Therefore, we have to conduct a comprehensive review in which the issue of classification will be covered.

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

### **Railway Corporations Offering Interchange Concessions to Passengers**

4. **MR LAU KONG-WAH** (in Cantonese): *Madam President, regarding the proposal for the two railway corporations to offer interchange concessions to their passengers, will the Government inform this Council whether:*

- (a) *it knows the reasons for the two railway corporations' decision to not implement the proposal, following their discussions;*
- (b) *it will re-examine the proposal together with the two railway corporations; and*
- (c) *it has assessed if a merger of the two railway corporations will provide more room for the provision of interchange or other fare concessions to passengers; if it has, of the result of the assessment?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the Kowloon-Canton Railway Corporation (KCRC) has discussed with the MTR Corporation Limited (MTRCL) in August 2002 the feasibility of introducing a fixed interchange discount for passengers interchanging between KCR and MTR in Kowloon Tong. The MTRCL is of the opinion that under the guiding principle that there should not be any negative impact on their revenues, this proposal could not be implemented. Moreover, on the basis of prudent and wise commercial principles, the MTRCL also has reservation on the proposal.

As the Government, we have always been trying our best to urge the major public transport operators to, depending on their operating conditions, make fare reduction or offer concession so as to reduce the public's travelling expenses. As the two corporations have to be operated on the basis of prudent commercial principles, it will be their commercial decisions on whether they could offer concessions. The Government will continue to encourage the two railway corporations to further explore interchange concession.

The merger study is still underway. The scope of the study includes analysis of the pros and cons of merging the two railway corporations. We will conduct in-depth study on the impacts of the merger on the public, the community, the operations of the railway corporations as a whole, and the overall government policies as well as those relating to traffic and transport, and so on. In particular, the impact of the merger on the public is a major consideration. If there would be savings in the operating costs of the railway corporations due to better use of resources after a merger, and if the management principles of the two railways are also consistent, then there should be more room for the provision of fare concessions.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, could the Secretary tell us what is the original proposal of the KCRC, that is, how much fixed interchange discount does it plan to offer? In fact, both corporations are operating on the basis of prudent and wise commercial principles, then why is it that the KCRC could offer discounts while the MTRCL could not do so? How come one corporation is willing to do so and the other corporation is not? May I ask the Secretary whether she is a bit disappointed that the MTRCL has refused to offer discounts?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): *Madam President, according to our understanding, the KCRC proposes to offer a discount of \$1 to \$1.5 for passengers interchanging at the Kowloon Tong Station and the KCRC has set aside a sum of money for this purpose, so it is not that there is no negative impact. Back then, the two corporations have agreed on this mechanism as their operating principles in accordance with the principle of revenue neutral, which means that there is no negative impact on revenues. From another perspective, how many passengers would actually be taking buses instead of the MTR and KCR after interchange discounts are offered? If the number of passengers increased, then there would be a breakeven in revenues and expenditures. This is only an estimate and the two railway corporations may have arrived at different conclusions because different ways are used.*

**MR ANDREW CHENG** (in Cantonese): *Madam President, since the KCRC has already planned to offer a concession of \$1 to \$1.5 and the Secretary is representing the Government on the Managing Board of the government wholly-owned KCRC, how come the KCRC could not take the initiative in offering concessions even if the MTRCL refuses to do so? In that case, the Secretary could, on one hand, apply some pressure on the MTRCL, and on the other, she could do what she has always wanted, that is, to reduce the pressure caused by travelling expenses on the public.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): *Madam President, as regards the negotiations between the two corporations, I believe the MTRCL would still like to do something. As the Government, we do not wish to interfere with their negotiations for fear that the*

outcome would not be most beneficial to the public. At the moment, the issue under discussion is the Kowloon Tong MTR and KCR stations, but the negotiation will be extended to cover the Nam Cheong and Mei Foo stations of the West Rail. In fact, we could see that both sides would be benefitted, that is, on one hand, the KCR will bring in more passengers for the MTR and on the other, so will the opposite apply. Therefore, in the whole course of the negotiations, we have not yet given up but we do not want to interfere for fear that it would cause the loss of balance in certain areas. I hope Members would appreciate this.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the MTRCL has reservations about the proposal on interchange concessions because this proposal could not lead to a breakeven in revenue and expenditure. In fact, the Government is the largest shareholder of the MTRCL. On the issue of interchange concessions, how could the Government balance the interests between shareholders and the public?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, as I said earlier, this is a commercial action and despite the fact that we are the largest shareholder of the MTRCL, it is also a listed corporation. Under the operating guidelines of the MTRCL, it does have its own autonomy in deciding how to conduct its business operations. The balance between the two depends on how members of the public could really benefit from the transportation network as a whole (including the West Rail) after interchange concessions are offered by the two corporations. We have not yet completed this task because this must be discussed in conjunction with the interchange concessions of the West Rail.

**MS CYD HO** (in Cantonese): *Madam President, the main reply given by the Secretary earlier is rather colloquial and some of the information are not printed in the main reply, therefore, I hope the Secretary could give us a further explanation on such information. The last line of the original main reply was "If there would be savings in the operating costs of the railway corporations due to better use of resources after a merger, there should be more room for the provision of fare concessions", but the Secretary has added one sentence,*

*changing it into "If there would be savings in the operating costs of the railway corporations due to better use of resources after a merger, and if the management principles of the two railways are also consistent". I hope the Secretary could give us a further explanation on whether consistent management principles mean that both corporations would eventually come under consistent management or does it mean that the methods, cultures and systems for the management of the two corporations are consistent?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, if comparisons were to be made, one corporation is certainly different from two corporations in many ways. If there is really a merger between the two corporations, then their cultures, management and accounting principles would be the same, and there would be no need for arguments on these.

**MS CYD HO** (in Cantonese): *Madam President, has the Secretary ruled out the possibility that both corporations could come under consistent management?*

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

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I have nothing to add.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, after looking at the main reply, I felt that the public is choicelless while the Government is incompetent. Does the Secretary agree with me? If the Secretary does not agree that the Government is incompetent, then may I ask the Secretary, in what other ways is the Government competent?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I do not agree with Mr LEE Cheuk-yan that the Government is incompetent. During the whole negotiation process, a lot of

factors have been brought up and each of the two railway corporations has its own considerations. However, at the request of the public, we would continue to do our work. We think the Government should try its very best to strike a balance between public interests and protection of the free economy market.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My supplementary was not on whether the Government would do its best but whether it is competent or not. So far, the Secretary has not answered my question on how competent the Government is.*

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

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, no.

**MR ANDREW CHENG** (in Cantonese): *Madam President, since the main concern of the MTRCL is "money", it indicated that it would not discuss whether concessions could be offered. Though the Secretary said in her reply to a supplementary question that negotiations are still underway, how could the Government still be so optimistic that the two railway corporations may be successfully merged in the future? Furthermore, in the absence of a reasonable fare determination mechanism, even if the two railway corporations are really merged in the future and their costs could really be reduced, there is actually no room for fare reductions or concessions since "money" is the main concern and profits are given top priority. How could the Government solve the issue that Mr LEE Cheuk-yan has always queried, is the Government competent to do so? I think the Government must take this point into consideration instead of just relying on the free market economy principle to allow them to hold free discussions, otherwise, in the end, the Government would not have a fare determination mechanism .....*

**PRESIDENT** (in Cantonese): Mr CHENG, you have already asked your supplementary question.

**MR ANDREW CHENG** (in Cantonese): *Thank you, Madam President.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, Mr Andrew CHENG has asked a very basic question. Though the Government is, to a certain extent, the major owner, the fare determination mechanism involves the operating principle of the MTRCL, and we must abide by the spirit of the contract. As there are many constraints under the business contract, we are now holding a comprehensive discussion and study on the fare determination mechanism, as well as the economic conditions, the business conditions of the operators, public affordability and the consumer price index. After considering all the factors, we would hold discussions once again with the community and operators in an open attitude, to see whether this mechanism is acceptable before we could change certain rules of the game under the new mechanism. I think if all these were done on a unilateral basis, the Government would not have been a responsible one. Therefore, we are still trying our best but we are not incompetent.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Government encourages the railway corporations to offer interchange concessions so that the passengers could enjoy concessions in their travelling expenses, and this is the policy of the Government. Notwithstanding the fact that the MTRCL is operating under prudent commercial principles, the provisions of the Mass Transit Railway Ordinance should not be overlooked either. Is the Secretary aware whether it is specified in the Ordinance that the MTRCL must adhere to the policy of the Government on public interests or whether public interests could be neglected so long as it is operating under prudent commercial principles?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the obligations of the MTRCL in relation to public interests were not clearly stated in the Operating Agreement of the MTRCL. I believe everyone knows that under the Operating Agreement, if the MTRCL wishes to increase its fares, it must first consult the Transport Advisory Committee and seek its approval before considering — only considering — the acceptability of the public and the Legislative Council Panel on Transport must also be consulted. Under this Operating Agreement, the MTRCL certainly has the right to determine its fares, but there is no mechanism through which it could

be requested to reduce its fares. As such, there are no clear provisions on public interests. Unlike foreign countries, our Operating Agreement does not have the social charter written in it.

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

**DR RAYMOND HO** (in Cantonese): *Madam President, I am not referring to the agreement between the Government and the MTRCL but rather whether it was specified in the Mass Transit Railway Ordinance that if the Government has a policy in relation to public interests, then would the MTRCL adhere to the government policy or operate under prudent financial principles?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, the Mass Transit Railway Ordinance could only require the MTRCL to build railways that may not be in line with the commercial return principle, but this necessitated a subsidy from the Government to the MTRCL. That is the only thing we could ask of them.

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

**MR LAU KONG-WAH** (in Cantonese): *Madam President, could the Secretary tell us exactly when the proposal on the merger could be announced? Originally, it was said that the announcement could be made by the end of this year, but the Secretary gave me the impression that if concessions were to be offered in the future, it may be based on the merger. As such, is it really true that concessions would be offered if there are mergers and vice versa?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I think this is still an uncertainty. Even if there is a merger, it would take some time and during this time, we hope that an

agreement could be reached in respect of the concessions but this is not a set target.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary has not answered my question on when the study on the merger could be completed.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): *Madam President, we are now looking at the initial findings and the related financial issues to see what adjustments could be made in relation to this policy, so as to ensure that future operations would be feasible. As these tasks have not yet been completed, I think I would not be able to make any concrete recommendations until after the New Year.*

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

### **Outsourcing of Traffic Light Maintenance**

5. **MR LAU PING-CHEUNG** (in Cantonese): *Madam President, it is learnt that the Transport Department (TD) has handed over the maintenance responsibilities for traffic lights to the Electrical and Mechanical Services Department (EMSD). However, since last year, the EMSD has contracted out the maintenance of traffic lights in some districts to private contractors, and it is stated in the service contracts that repair services are to be provided daily from 7 am to 8 pm only. Consequently, in the event of traffic signal failures in these districts outside the specified hours, police officers often have to be deployed to the scenes to direct traffic until repairs are completed. In this connection, will the Government inform this Council of:*

- (a) *the value-added services provided by the EMSD in the maintenance of traffic lights, and the reasons for the TD not contracting out such maintenance works directly;*
- (b) *the reasons for requiring the contractors to provide services from 7 am to 8 pm daily only, rather than round the clock, and the arrangements for carrying out repairs outside these hours; and*

- (c) *the number of working hours of police officers deployed to direct traffic at the scenes of traffic signal failures in the past three years, whether there has been an increase in the police's working hours in this aspect since the contracting out of traffic light maintenance by the EMSD, and whether it has evaluated the cost-effectiveness of deploying police officers to direct traffic all through the night at the locations of defective traffic signals?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President,

- (a) The EMSD provides maintenance services for traffic lights to the TD through a trading fund mode of operation, and is directly responsible to the TD for all such services. Most of the maintenance services are undertaken directly by the EMSD's staff, but some are subcontracted so as to increase cost-effectiveness. In subcontracting the services, the EMSD establishes a contractual relationship with the contractors concerned and assumes the role of contract management, which includes drawing up contract conditions, laying down maintenance standards and monitoring the services of the contractors to ensure that they meet the contract requirements. The department also provides comprehensive professional advice and technical support to the TD to ensure the efficient operation of traffic signal systems. In addition, the EMSD provides daily operational support to the TD, such as assisting in monitoring the electricity consumption by traffic lights, recovering damages on behalf of the Government from people damaging traffic lights as a result of traffic accidents and processing such claims for damages.

Starting from August 2002, all government departments have been untied from using services provided by the EMSD Trading Fund and they now have a free choice between using its services and the services of other contractors. As the EMSD is experienced in traffic lights repairs and management and it can provide a number of value-added services, the existing service level agreement signed between the TD and the EMSD on the basis of trading fund services

is more cost-effective. However, the TD will review the arrangement from time to time to ensure that using the services provided by the EMSD Trading Fund is the most cost-effective option.

- (b) According to the service agreement between the EMSD and the TD, the normal time for providing repair services for traffic lights is from 7 am to 8 pm. The EMSD has also provided a hotline operating round the clock the whole year for reporting traffic signal failures. Upon receiving such reports from the TD, the police or members of the public, the EMSD's Traffic Aids and Signals Section will provide 24 hours emergency repair services for the traffic lights to ensure the safety of road users and replace or reinstall the traffic lights damaged during traffic accidents as soon as possible. When the Rainstorm Red or Black Warning has been issued, the EMSD will also make special repair arrangements to ensure that any defective traffic signals can be restored to normal before the morning peak hours.
- (c) The police have not kept any records of the number of working hours of police officers deployed to direct traffic during traffic signal failures. However, as mentioned above, the EMSD has made arrangements with the TD and the police for providing emergency repair services for traffic lights outside the working hours. After receiving reports of traffic signal failures, the police will deploy police officers at any time to direct traffic at the scenes to ensure road safety and the smooth flow of traffic there and to prevent traffic accidents. If necessary, temporary traffic signs will also be provided there to remind people to cross the roads or drive carefully. The Command and Control Centre of the Police Force will properly deploy its manpower to handle such incidents in the light of the actual situation. As such, the other areas of the police duties, especially maintaining law and order, will not be affected.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, in the second paragraph of part (a) of the main reply, the Secretary stated that starting from August 2002, all government departments have been untied from using services*

*provided by the EMSD and their work projects are now open for free tender. Will the Secretary inform us, since then, has the EMSD offered lower tendering price to other departments for the same project item? If so, what is the difference involved? Can an illustration be given?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I would like to clarify if Mr LAU Ping-Cheung is asking about the arrangement of other government departments instead of the contract of the TD?

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, mainly there are two departments involved in this oral question, one is the TD, and the other is the EMSD. My supplementary question is that, as the "untying" programme in August 2002 included all government departments, it meant they are no longer obliged to enter into a service level agreement with the EMSD, and are free to invite outside contractors to submit tender, is this the case? Theoretically, when other departments were required to enter into contract with the EMSD in the past, the EMSD was faced with no competition, but now that competition has been introduced, will the EMSD reduce its tendering prices? If that is the case, what is the rate of reduction? Can the case be illustrated with examples?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I do not have any concrete examples at hand to illustrate the situation, and thus cannot provide practical examples to Mr LAU Ping-cheung. However, according to my colleagues, the prices that the EMSD offered in the recent tendering exercises have been quite close to market prices. Certainly, in the past few years, the overall project prices have been decreasing, and thus the prices the EMSD offered have also been reduced. But I am not able to provide such examples now, I will give a written reply to Mr LAU afterwards. (Appendix II)

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, in part (b) of the Secretary's main reply, it is stated that upon the receipt of reports on traffic lights failures, replacement or reinstallation services would be provided as soon as possible. Does the EMSD or TD require the contractors to complete their*

*repair works within a specified period upon receipt of the failure reports? We often find some defective traffic lights left out of order for one to two months, does the Secretary know the reason for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the TD certainly has set the requirements for repair works. For failure of the entire set of traffic light, the EMSD or the contractor is required to arrive at the scene within three hours after the failure is reported. We are now considering to shorten the time limit to 2.5 hours. Furthermore, standards for completion of repair works are divided into three categories. For failure of all traffic lights, repair works must be completed within eight hours; for minor incidents, within 24 hours; and for damage of underground wiring, within 48 hours. The performance pledge on repair works to be completed is reasonable, if compared to that of the Drainage Services Department. The EMSD has attained over 99% in honouring the pledge to arrive at the scene on time and to complete repair works on schedule.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the Government said that it is cost-effective for the TD to employ the traffic light repairing services provided by the EMSD, but the EMSD said that it is cost-effective to contract out such works. Will the Government inform us of the amount that the TD would pay to the EMSD for the traffic light repair service, and the amount that the EMSD would pay to the subcontractor? Would maximum cost-effectiveness be attained if the repair works are to be contracted out directly by the TD to the contractors?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, as I have explained earlier, such repair works are in fact divided into two parts. Only works within a specific period, from 7 am to 8 pm, are contracted out to subcontractor. For the rest of the time, repair works have to be done by the EMSD, and they are responsible for different equipment. However, I would like to inform Members of the contract price first. The contract price for the Island District is \$10 million; for Kowloon, Tsuen Wan and Sha Tin is \$13 million; and for the Light Rail Transit is \$3 million. On average, the maintenance fee for each set of traffic lights per annum is \$530. We reckon that the cost-effectiveness achieved in this respect

would be much higher than if all the repair works are to be undertaken by the Government. Moreover, the contractors and the EMSD are responsible for different repair items. Contractors are responsible for the repair works of the central computer system and junction traffic signal controller of the transport control system, while the EMSD would undertake the rest, such as the repairing of cables, acoustic generators and light covers.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. The Secretary said that it would be more economical to contract out such work, and we do understand the case. But I queried why the TD did not contract out such works to the contractor directly, and had to do so via the EMSD, if it is more economical to do so? Meanwhile, my supplementary question contains two more parts. One is on the project fee of the EMSD charged and the other is on the amount the EMSD pay to the contractor. Are there cases in which the EMSD has been able to earn an income even without performing any tasks?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): *Madam President, Ms LAU's question is on the value-added performance of the EMSD; the payment made by the TD to the EMSD would certainly exceed the \$26 million I just mentioned. Between 2002 and 2003, the repair charges paid to the EMSD amounted to \$85 million in total. In respect of the value-added issue of the EMSD, I have explained in my earlier reply that the duties of the EMSD include the stipulation of contract terms, setting of repair standards, supervision of the service standard of contractors, provision of technical support to the TD, ensuring effective operation of the traffic system, provision of 24-hour emergency repair services, as well as handling, on behalf of the Government, compensation cases involving damages caused by traffic accidents.*

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary mentioned the trading fund of the EMSD just now. Will the EMSD have privilege over other tenderers, if the bidding price it offered in open tenders for the TD projects, such as repair works of traffic lights, is similar to that of other tendering companies, since there are over 4 000 civil servants in the EMSD, and*

*the EMSD cannot impose wage cuts or layoffs on them at its own discretion? Will the Government consider this factor in allotting tenders?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, under the major premise of fair competition, the tender exercises we processed are entirely fair without giving special favours to the EMSD.

**PRESIDENT** (in Cantonese): This is the last supplementary question.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, part (b) of the main reply is more important. Has the Highways Department cut the size of its establishment after some of its services were being contracted out? If so, has the service quality and speed of service delivery been affected?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, is Mr LAU referring to the downsizing of the TD?

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I am sorry. I am referring to the EMSD.*

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, are you referring to the downsizing of EMSD?

**MR LAU KONG-WAH** (in Cantonese): *Yes, Madam President.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, since the EMSD adopted the trading fund mode of operation, it has been striving to maximize the cost-effectiveness of its practice. We also hope that the Government itself can be downsized, and thus

projects suitable for outsourcing will be contracted out by phases to reduce the expenditure that the Government directly incurs on civil servants. This is also one of the reason for adopting the trading fund mode of operation. Therefore, in connection with Mr LAU's question, we have been putting efforts in natural wastage to reduce the establishment of the EMSD.

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

### **Extension of No-smoking Areas**

6. **MR BERNARD CHAN** (in Cantonese): *Madam President, this Council passed a motion in January last year to urge the Government to study the necessity for and feasibility of designating more public places as no-smoking areas. Subsequently in June last year, the Administration released a consultation document on the proposed legislative amendments to the Smoking (Public Health) Ordinance, which included proposals to designate all public indoor premises and indoor workplaces as no-smoking areas. In this regard, will the Government inform this Council:*

- (a) *of the specific measures taken with regard to the extension of no-smoking areas since the passing of the said motion, and their effectiveness;*
- (b) *whether it will defer the implementation of the proposal to designate all public indoor premises as no-smoking areas; if it will, of the reasons; and*
- (c) *whether it will implement as soon as possible the proposal to designate all indoor workplaces as no-smoking areas; if it will, of the details; if not, the reasons for that?*

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

- (a) After the passing of the motion in respect of the designation of more public places as no-smoking areas by the Legislative Council in

January last year, we conducted a comprehensive review of the existing Smoking (Public Health) Ordinance and issued in June 2001 a consultation document setting out a host of proposed legislative amendments to the Ordinance for public consultation. One of the main objectives of our legislative proposals is to protect members of the public, particularly non-smokers, against passive smoking in public indoor premises by expanding statutory no smoking areas to all catering venues, educational institutes and indoor workplaces.

To explain to the general public the rationale behind our proposals, we held meetings with key stakeholder groups including catering industry associations, labour unions and chambers of commerce during the consultation period. We also worked closely with other local tobacco control organizations to solicit public support of our proposals. At the conclusion of the 14-week public consultation period in late September 2001, we received a total of over 10 000 written submissions and 200 000 signatures expressing public's views on banning smoking in indoor public premises.

After analysing and collating the feedback received, we reported to the Health Services Panel of the Legislative Council on 8 July 2002 the outcome of the public consultation exercise. Views of the general public, key stakeholders and various sectors of the community on our legislative proposals were presented to the Members. In addition, findings of three public opinion surveys conducted in July 2001, November 2001 and January 2002 on the proposals were also reported.

To assess the potential economic impact of our legislative proposals on different business sectors, the Business and Services Promotion Unit of the then Commerce and Industry Bureau commissioned an independent consultant to conduct a Regulatory Impact Assessment (RIA) study in June 2001. A special meeting of the Health Services Panel of the Legislative Council was held on 25 October 2002 to serve as a forum to discuss the study, together with a study by KPMG commissioned by the Hong Kong Catering Industry Association on the potential impacts of the proposed smoking ban on Hong Kong hospitality premises. At the meeting, the consultants of the RIA study and the KPMG report, together with

representatives of the Department of Community Medicine of the University of Hong Kong were invited to present the key findings of their respective studies, and to respond to queries on the reports.

To bring about more effective enforcement of the existing Ordinance, and to prepare for future enforcement of smoking ban requirement in the proposed new no-smoking areas, the Tobacco Control Office (TCO) was set up under the Department of Health in February 2001 to act as a designated enforcement agency to enhance and co-ordinate the enforcement efforts among parties concerned. Apart from visiting restaurants with 200 or more seats and shopping malls to educate and assist the management, staff and security guards in implementing the smoking restriction stipulated in the Ordinance, the TCO has in fact visited over 90% of all licensed restaurants in Hong Kong to promote smoke-free messages and encourage them to adopt a smoke-free policy. No smoking signage and education package containing useful information pamphlets and guidelines are distributed to venue management of no smoking areas. The TCO is also collaborating with the Employees Retraining Board and other security companies to provide training for security guards to implement the no smoking restriction in statutory no smoking areas.

In addition, to promote the Government's proposals to expand no-smoking areas, the TCO and the Hong Kong Council on Smoking and Health (COSH) organized over the past one to two years a variety of publicity and educational programmes including signature campaigns, roving exhibitions, community level anti-smoking activities, and so on. These programmes not only mobilized public support for our proposals, but also raised public awareness of the hazards of smoking and secondhand smoking, as well as the benefits of a smoke-free environment. Notwithstanding the fact that the current legislation does not provide for banning of smoking in all restaurants and indoor workplaces, the TCO has been promoting to restaurant management the benefits of smoke-free restaurants. Concurrently, COSH has organized annually the "No-smoking Day in the Workplace" Campaign with a view to promoting a smoke-free working environment on a voluntary basis. Under this Campaign, local business and commercial firms were invited and encouraged to

adopt a smoke-free policy in their workplaces. In the past three years of Campaign, a total of 1 026 organizations have undertaken to adopt a smoke-free policy in their workplaces.

(b) and (c)

We are formulating the way forward for our proposals to expand statutory no smoking areas, having regard to the feedback received during the consultation exercise and findings of the related studies. Prior to the implementation of the proposals, the TCO, together with COSH, will continue to promote, through publicity and education, a smoke-free public indoor environment in Hong Kong.

**MR BERNARD CHAN** (in Cantonese): *Madam President, I certainly understand that to require all restaurants to ban smoking completely under the present economic circumstances in Hong Kong will bring about a great impact and cause a lot of economic problems. However, I believe it is more important to implement a total ban on smoking in offices, since the public can choose which restaurant to go to but not their offices. I think the Secretary has not replied to part (c) of my question.*

**PRESIDENT** (in Cantonese): Mr CHAN, do you want the Secretary to reply to this part of your supplementary now?

**MR BERNARD CHAN** (in Cantonese): *Yes, Madam President.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have said in the main reply that we are formulating the way forward for our proposals to expand statutory no smoking areas, having regard to the feedback received during the consultation exercise and findings of the related studies. Therefore, we have not yet come up with a decision.

**DR LO WING-LOK** (in Cantonese): *Madam President, according to the main reply, a consultation document on expanding statutory no smoking areas was*

*tabled to the Legislative Council in June 2001, however, after 18 months, that is, in December 2002, the Government's reply is that the way forward is still being formulated. May I know for how much longer the public in Hong Kong will have to wait before they could know the Government's direction in this regard? Will the Secretary undertake to enact the legislation on a total ban on smoking in restaurants and workplaces within his five-year term of office?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I think Dr LO and Members are all aware that it is the policy of the Government to adopt various approaches to encourage the public not to smoke. Apart from legislation, we also adopt other approaches such as imposing taxes, publicity and education. I have also mentioned in the main reply that there is already legislation to ban smoking in some parts of restaurants, therefore, our present efforts to advocate and encourage a voluntary ban on smoking in restaurants have in fact been effective as well. I believe that it is not merely by means of legislation that we can encourage the public not to smoke. We can also work along many other lines. Since the scope of the legislation to be tabled to the Legislative Council in the future is rather broad, we have not yet made a decision but our proposals are stated clearly in the consultation document. The policy of the Government is to work progressively and the Government has to consider how the legislation can be amended when taking each step.

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

**DR LO WING-LOK** (in Cantonese): *Madam President, the thrust of my supplementary is on "when".*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, we will present our proposals to the Panel on Health Services of the Legislative Council early next year.

**DR LAW CHI-KWONG** (in Cantonese): *Madam President, when the consultation document was published, Secretary YEOH Eng-kiong was not yet an*

*official under the accountability system. However, he is one such official today. May I know if, as an accountable official, he will press ahead courageously with the work on a smoking ban?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I think this is not a matter of being courageous or not, but of duty. My duty is to safeguard the health of the public. We have already stated clearly in our proposals that smoking in indoor premises should be banned by stages.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, the Secretary said in his reply just now that it is not always necessary to resort to legislation to ban smoking in restaurants. I wish to express my support on behalf of the catering industry. May I ask the Secretary if he will also consider the suggestion of the industry to provide incentives to encourage restaurants to ban smoking voluntarily, for example, by offering tax or licence fee reductions if restaurants implement a total smoking ban voluntarily?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the results of the RIA study indicate that the incentives will come from the restaurants. A voluntary ban on smoking in restaurants will bring about many benefits, one of them is that less maintenance and cleaning work will be required as a result. In addition, the study conducted by us also shows that if smoking is banned in restaurants, there will be an increase of about 20% in customers patronizing restaurants, whereas about 3% of people will go to restaurants less often. We estimate that a smoking ban in restaurants in the future will bring about an income of about \$4 billion for the restaurants.

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

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, I do not want to go on debating with the Secretary whether there will be more business or less*

*business for restaurants. May I know if the Government will offer restaurants any incentives in encouraging them to ban smoking?*

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

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the future legislation on a smoking ban in restaurants is already an incentive to restaurants. *(Laughter)*

**MS CYD HO** (in Cantonese): *Madam President, even the stated position of the representative of the catering industry has changed somewhat and it seems there is now room for negotiation on a piece of legislation on this matter.*

*My supplementary is also about the time. The Government completed its consultation exercise in September 2001 and the outcome of the consultation was presented to the Legislative Council on July 2002. It took as long as 10 months to collate 10 000 written submissions. The Secretary also said just now that proposals will be presented to the Legislative Council next year. May I know what sort of proposals will be presented? According to the reply that I have heard, it seems the Secretary did not say explicitly that a piece of legislation will be tabled. Will the Secretary again present some sort of inducement, incentive or some other directions in education by then? Could the Secretary tell us clearly that which will be tabled to the Legislative Council next year is a piece of legislation?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, generally speaking, after completing the consultation exercise and drawing a conclusion, we will report to the Panel on Health Services which pieces of legislation have to be amended. The first step is to report to the Panel on Health Services the future amendments to the legislation, the second step is to table a bill to the Legislative Council for its scrutiny. I hope that this exercise can be carried out as soon as possible and I also agree that we must deal with this matter as early as possible.

**MR MICHAEL MAK** (in Cantonese): *Madam President, I think we should waste no time in banning smoking completely. The stance of Mr Tommy CHEUNG seems to have softened and he has already left the Chamber. However, the Secretary has not yet told us when he will muster his courage and act responsibly by implementing a total ban on smoking. In fact, the harm posed by secondhand smoke has been proven in many ways. May I ask the Secretary if an assessment has been conducted on the negative effects on health care and on resources in particular, of not imposing a total ban on smoking as soon as possible, especially in restaurants?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I believe the effects of smoking and secondhand smoke have been well documented in research. Therefore, our policy is to table a proposed bill for the scrutiny of the Legislative Council as soon as possible and then table the amended legislation.

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

**DR RAYMOND HO** (in Cantonese): *Madam President, many people have probably hoped that there would be a total ban on smoking in the workplace. However, if there is no legislation stipulating the ban, employers are not in a position to stop employees from smoking in the workplace. May I ask the Secretary if a comprehensive consultation has been conducted on registered companies to solicit their views before making the final decision?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have already said in the main reply that the COSH organizes programmes every year to promote a smoke-free working environment. The Council also organizes publicity campaigns each year. During the consultation period, we have conducted a survey on the public and the majority agrees that smoking should be banned in the workplace.

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

**DR RAYMOND HO** (in Cantonese): *Madam President, I am asking if the Government has consulted registered companies, not the public.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, during the consultation period, we have consulted a wide range of different industries.

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

## **WRITTEN ANSWERS TO QUESTIONS**

### **Appeal Board on Public Meetings and Processions**

7. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, regarding the Appeal Board on Public Meetings and Processions (Appeal Board) established under the Public Order Ordinance (Cap. 245) (POO), will the Government inform this Council of:*

- (a) *the background of each of the members currently serving on the Appeal Board and the other public offices held by them respectively;*
- (b) *the criteria adopted by the Chief Executive for appointing members to the Appeal Board; and*
- (c) *the measures to ensure that members of the Appeal Board have full understanding of the POO, the Hong Kong Bill of Rights Ordinance (Cap. 383) (BORO) and the International Covenant on Civil and Political Rights (ICCPR)?*

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

- (a) The Appeal Board is an independent statutory board formed under section 43 of the POO, comprising non-officials appointed by the Chief Executive, and with a retired judicial officer as its Chairman. The two Deputy Chairmen are legal professionals. The other 13 Members of the Appeal Board are respectable personalities drawn from various sectors or professions of the community such as legal, education, medical and business. The background of and the other public offices held by the Members are as follows:

Chairman: Professor E L G TYLER

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

|                                     |   |   |
|-------------------------------------|---|---|
| 2 years<br>(up to 21 December 2003) | University<br>Professor (Retired<br>Judicial Officer) | - Member, Advisory<br>Committee on Legal<br>Education |
|-------------------------------------|---|---|

Deputy Chairman: Ms Vivien CHAN, JP

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

|                                     |           |   |
|-------------------------------------|-----------|---|
| 2 years<br>(up to 21 December 2003) | Solicitor | <ul style="list-style-type: none"> <li>- Deputy Chairman,<br/>Appeal Board on<br/>Closure Orders<br/>(Immediate Health<br/>Hazard)</li> <li>- Member, Fight Crime<br/>Committee</li> <li>- Member, Advisory<br/>Committee on Travel<br/>Agents</li> <li>- Member, Copyright<br/>Tribunal</li> <li>- Member, Appeal<br/>Board (Amusement<br/>Game Centres)</li> <li>- Member, Appeal<br/>Board (Hotel and</li> </ul> |
|-------------------------------------|-----------|---|

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>  |
|---|-------------------|---|
|   |                   | <ul style="list-style-type: none"> <li>Guesthouse<br/>Accommodation)</li> <li>- Member, Appeal<br/>Board (Clubs (Safety<br/>of Premises))</li> <li>- Member, Appeal<br/>Board (Bedspace<br/>Apartments)</li> <li>- Member, Social<br/>Welfare Advisory<br/>Committee</li> </ul> |

Deputy Chairman: Mr Kenneth HO King-man, JP

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>  |
|---|-------------------|---|
| 2 years<br>(up to 21 December 2003)                 | Barrister         | <ul style="list-style-type: none"> <li>- Chairman, Residential<br/>Care Homes (Elderly<br/>Persons) Appeal Board</li> <li>- Deputy Chairman,<br/>Appeal Board Panel<br/>(Consumer Goods<br/>Safety)</li> <li>- Deputy Chairman,<br/>Appeal Board Panel<br/>(Environmental Impact<br/>Assessment)</li> <li>- Member, Action<br/>Committee Against<br/>Narcotics</li> <li>- Member, Action<br/>Committee Against<br/>Narcotics Sub-<br/>committee on<br/>Preventive Education<br/>and Publicity</li> <li>- Member, Long-term<br/>Prison Sentences<br/>Review Board</li> </ul> |

Member: Mr Thomas CHAN Siu-kam, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>                                |
|---|-------------------|---|
| 2 years<br>(up to 21 December 2003)             | Business Director | - Lay Observer,<br>Independent Police<br>Complaints Council |

Member: Mr CHENG Yan-kee, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>   |
|---|-------------------|--|
| 2 years<br>(up to 21 December 2003)             | Engineer          | - Deputy Chairman,<br>Drainage Appeal<br>Board Panel<br>- Member, Hong Kong<br>Housing Authority<br>- Member, Commission<br>on Youth<br>- Member, Council of<br>the Hong Kong Baptist<br>University<br>- Member, Hong Kong<br>Housing Authority,<br>Building Committee<br>- Member, Authorized<br>Persons' and<br>Registered Structural<br>Engineers'<br>Disciplinary Board<br>Panel |

Member: Mr CHIU Chun-bong, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>                                |
|---|-------------------|---|
| 2 years<br>(up to 21 December 2003)             | Managing Director | - Member, Council of<br>the Open University of<br>Hong Kong |

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

- Member, Po Leung Kuk Advisory Board
- Lay Observer, Independent Police Complaints Council

Member: Mr Gerard CHUNG Wai-hung

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

2 years  
(up to 21 December 2003)

Solicitor

- Member, Board of Review (Inland Revenue Ordinance)
- Member, Criminal and Law Enforcement Injuries Compensation Boards
- Member, Board of Governors of the Prince Philip Dental Hospital
- Member, Chiropractors Council

Member: Mr HO Chun-tung, JP

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

2 years  
(up to 21 December 2003)

Managing Director

—

Member: Mr Patrick LAI Shu-ho, MH, JP

| <i>Terms of Appointment to<br/>the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
|---|-------------------|------------------------------|

2 years  
(up to 21 December 2003)

Secondary School  
Principal

- Chairman, District Fire Safety Committee, Kwun Tong

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>   |
|---|-------------------|--|
|   |                   | <ul style="list-style-type: none"> <li>- Member, Hong Kong Examinations Authority</li> <li>- Member, Action Committee Against Narcotics</li> <li>- Member, Action Committee Against Narcotics Subcommittee on Preventive Education and Publicity</li> <li>- Member, Kwun Tong District Council</li> <li>- Member, Area Committee, Kwun Tong South</li> </ul> |

Member: Dr Michael LEE Yuk-kwan, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
| 2 years<br>(up to 21 December 2003)             | Doctor            | —                            |

Member: Mr Clement TAO Kwok-lau, BBS, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>  |
|---|-------------------|---|
| 2 years<br>(up to 21 December 2003)             | Managing Director | <ul style="list-style-type: none"> <li>- Member, Fight Crime Committee</li> <li>- Member, Appeal Panel (Estate Agents Ordinance)</li> <li>- Member, Energy Advisory Committee</li> <li>- Member, Gas Safety Advisory Committee</li> <li>- Member, Appeal Board on Closure Orders (Immediate Health Hazard)</li> </ul> |

Member: Mr Vincent TO Wai-keung

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>  |
|---|-------------------|---|
| 2 years<br>(up to 21 December 2003)             | Solicitor         | <ul style="list-style-type: none"> <li>- Chairman, Area Committee, Wah Fu and Pok Fu Lam</li> <li>- Member, Hong Kong War Memorial Pensions Appeal Board</li> <li>- Member, Solicitors Disciplinary Tribunal Panel</li> </ul> |

Member: Miss Winnie TSUI Pui-man

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i> |
|---|-------------------|------------------------------|
| 2 years<br>(up to 21 December 2003)             | Solicitor         | —                            |

Member: Mr Justein WONG Chun, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>   |
|---|-------------------|--|
| 2 years<br>(up to 21 December 2003)             | Director          | <ul style="list-style-type: none"> <li>- Chairman, Action Committee Against Narcotics Subcommittee on Prevention Education and Publicity</li> <li>- Member, Action Committee Against Narcotics</li> <li>- Member, Energy Advisory Committee</li> <li>- Member, Legal Aid Services Council</li> <li>- Member, Panel of Film Censorship Advisers</li> <li>- Member, Rice Advisory Committee</li> </ul> |

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>   |
|---|-------------------|--|
|   |                   | <ul style="list-style-type: none"> <li>- Member, Sha Tin District Council</li> <li>- Member, Committee on Services for Youth at Risk</li> <li>- Lay Observer, Independent Police Complaints Council</li> </ul> |

Member: Mr WU Man-yung

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i>             | <i>Other Public Services</i>  |
|---|-------------------------------|---|
| 2 years<br>(up to 21 December 2003)             | Secondary School<br>Principal | <ul style="list-style-type: none"> <li>- Member, Board of Control – Subsidized Schools Provident Fund</li> <li>- Member, District Fight Crime Committee, Sham Shui Po</li> <li>- Member, District Fire Safety, Sham Shui Po</li> <li>- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)</li> </ul> |

Member: Dr Natalis YUEN Chung-lau, JP

| <i>Terms of Appointment to the Appeal Board</i> | <i>Occupation</i> | <i>Other Public Services</i>   |
|---|-------------------|--|
| 2 years<br>(up to 21 December 2003)             | Doctor            | <ul style="list-style-type: none"> <li>- Member, Medical Council of Hong Kong</li> </ul> |

- (b) When appointing Members to the Appeal Board, the Chief Executive will consider the suitability of the prospective candidates, taking into account factors such as their personal abilities, expertise, experience, integrity and commitment to public service.

- (c) The Secretariat of the Appeal Board had organized a briefing for Members on the work of the Appeal Board and relevant parts of the POO and the BORO. Before each meeting, the Secretariat will also send relevant extracts of the POO to Members for reference. The above measures can ensure that Members have adequate understanding of relevant parts of the POO and the BORO. The latter reflects the provisions of the ICCPR.

### **Illegal Operation of Car Hiring**

8. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, it has been reported that hundreds of taxi drivers went on strike in protest at the taxi rank at the airport late last month because they were aggrieved that operators of illegal hire car service were touting passengers in the arrival hall at the airport, and were seriously affecting their business. In connection with the police's efforts in combating illegal operation of car hiring, will the Government inform this Council:*

- (a) *of the respective numbers of complaints received and prosecutions instituted by the police in relation to such illegal activities, as well as the number of persons convicted over the past three years, together with a breakdown by the location where the crime was committed;*
- (b) *of the estimated number of people engaging in such illegal activities and the locations where these drivers usually tout passengers; and*
- (c) *how the police investigate and clamp down on such illegal activities?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Chinese): Madam President, the police do not keep specific record of complaints on illegal hire car services. During the period from 2000 to October 2002, the police conducted 65 enforcement actions against illegal hire car

services. All these actions were taken at the Hong Kong International Airport. They resulted in 44 conviction cases and 44 persons were convicted. The breakdown of the enforcement actions and conviction cases are as follows:

| <i>Year</i>                     | <i>No. of<br/>enforcement<br/>actions</i> | <i>No. of<br/>convictions</i> | <i>No. of<br/>persons convicted</i> |
|---------------------------------|---|-------------------------------|-------------------------------------|
| 2000                            | 13  | 11                            | 11                                  |
| 2001                            | 27  | 17                            | 17                                  |
| 2002<br>(January to<br>October) | 25  | 16                            | 16                                  |

The operation mode of illegal hire car services fluctuates due to a number of reasons such as changes in passenger demand and enforcement actions. Location where illegal hire car services are observed to be relatively active is the Hong Kong International Airport. We do not have an estimate on the number of people engaging in such activities.

In taking actions against illegal hire car services, the police maintain close contacts with the transport trades (including the taxi trade) to collect information about suspected illegal hire car services. In addition, appeals to the public through education and publicity to avoid taking illegal hire car services and to report such activities are regularly made. Such efforts will continue and be strengthened as necessary, and appropriate enforcement actions will continue to be taken.

### **Road Excavation Works on Pavements Along Nathan Road**

9. **MR ERIC LI** (in Chinese): *Madam President, regarding the road excavation works on the pavements along Nathan Road in Tsim Sha Tsui (TST) District which were in progress in the first 10 months of this year, will the Government inform this Council of:*

- (a) *the total number of road sections involved in these works;*
- (b) *the respective numbers of days within this period on which*
  - (i) *no excavation work was carried out; and*
  - (ii) *more than five works items were carried out at the same time;*
- (c) *the largest number of works items carried out at the same time on a single day; and*
- (d) *the measures it has put in place to minimize the inconvenience caused by these works to the businesses and pedestrians?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President, the roads in Hong Kong serve dual purposes. They provide passageway for vehicular and pedestrian traffic as well as underground space for accommodating utility services and underground railway or subway systems. From time to time, underground utility services would require repair and upgrading. Underground railways/subway systems might require expansion and modifications to keep up with the rapid pace of the development in the territory. Road openings would be required to facilitate these works.

- (a) For the section of Nathan Road in TST, there were 97 road openings for the period from January to October 2002, amongst which about 81% were conducted by utility operators, the MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC), and about 19% were road maintenance works.
- (b) According to our records, there were more than five road openings carried out on each day of the 10 months period along this 2.5 km road section of Nathan Road.
- (c) On the busiest day, eight excavations were taking place at the same time — six of which were related to the MTRCL's TST Station

Modification works and the KCRC's East Rail Station works and the remaining two were utility excavations.

- (d) The following measures have been taken to minimize impacts on the public:
- (i) A consultancy study was conducted by the Transport Department (TD) in December 2001 to explore ways to tackle possible traffic problems in TST caused by the roadworks. A series of temporary traffic management schemes have been recommended and implemented which include the implementation of the Peking Road Gyratory System, widening of Salisbury Road and rationalization of bus stops, and so on;
  - (ii) In order to improve the co-ordination and control of road opening works and to reduce disturbance to the TST area, all major proposed works which require traffic diversion arrangements have to be scrutinized by a Traffic Steering Group and the Traffic Monitoring Group chaired by the TD to ensure that they are genuinely needed and properly planned;
  - (iii) During the construction stage, all proposed works have to be discussed at the Site Liaison Group with members from the police, the TD, the Highways Department (HyD), the District Office (DO), the KCRC and the MTRCL. Appropriate conditions, such as restriction on working hours, minimum footpath width, and so on, would be specified in order to minimize the disturbance;
  - (iv) The Yau Tsim Mong District Council, shop operators and hoteliers have been kept informed of the road works and the associated traffic management measures. Site visits have been made and information leaflets have been distributed to locals. In addition, regular meetings have been conducted with the hoteliers;

- (v) More signages and route maps have been put on the hoardings to direct pedestrians, in particular tourists, to their destinations with least inconvenience. The TD is also in the process of improving the pedestrian directional signages including the provision of clearer and better quality map type signs in the area;
- (vi) The HyD has implemented the following measures to further reduce the disturbance to the public :
  - (1) request the utility operators or contractors to deck over excavated trenches outside working hours in order to maintain access for pedestrians;
  - (2) request the utility operators or contractors to carry out excavation work outside peak hours to minimize obstruction to pedestrians flow;
  - (3) re-route excavation trenches to other less busy footpath wherever possible; and
  - (4) request different utility operators and contractors to better co-ordinate their works at the same location to avoid repetitive excavation; and
- (vii) Relevant government departments including the HyD, the TD and the Environmental Protection Department have been keeping a close watch on the contractors' performance of site housekeeping. All contractors are required to comply with the legislative requirements to maintain the required noise restriction and air quality standards.

Apart from the above, the Government is enacting the Land (Miscellaneous Provisions) (Amendment) Bill 2002, which *inter alia*, aims to set up a system to charge economic cost on road works promoters and contractors for delays in completion of their works in order to encourage timely completion of road excavation works.

## **Applications for Using Central Government Offices Compound for Public Meetings or Processions**

10. **MR JAMES TO** (in Chinese): *Madam President, at present, members of the public who wish to use the Central Government Offices (CGO) compound for public meetings or public processions have to submit applications in the prescribed form to the Director of Administration at least two full working days prior to the event. In this connection, will the Government inform this Council:*

- (a) *as it is stipulated in the application form that "seeking permission from other related authorities where the activity so required", of the meaning of "so required", and the relevant procedure for seeking such permission;*
- (b) *as it is stipulated in the application form that applicants should "agree to abide by the conditions annexed hereto in addition to any other conditions imposed", of the conditions, apart from those stipulated in the Public Order Ordinance (Cap. 245) (POO), to which "any other conditions" refer; and how applicants can be informed of the details of these conditions before submitting their applications;*
- (c) *as it is stipulated in the annex to the application form that "approval to use the CGO compound for public meetings/processions given may be withdrawn at any time without any prior notice", of the justification for the authority's power to withdraw its approval and the circumstances under which approval will be withdrawn;*
- (d) *of the practical difficulties the authority has, which render it not possible to give prior notice to applicants in respect of the withdrawal of approval; and*
- (e) *whether it has considered or will consider implementing similar requirements for public meetings or public processions held within other government premises; if this has been or will be considered, of the details; if not; the reasons for that?*

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

- (a) The Director of Administration may permit individuals or organizations to use the CGO compound for public activity. However, such permission does not relieve the applicant of his obligations, if any, under the Laws of Hong Kong. For example, if the public activity in question falls within the definition of a public meeting in the POO, the applicant would be required to notify the Commissioner of Police. Therefore, the "so required" referred to in the application form aims to remind an applicant of the statutory obligations he may need to fulfil in respect of his public activity.
- (b) As explained above, a public activity may fall within the jurisdiction of a particular ordinance. For example, a public activity may fall under the POO, whereupon the applicant would be required to comply with the conditions imposed by the Commissioner of Police under the POO, in addition to those imposed by the Director of Administration. These are the "any other conditions" that the applicant would be required to comply with in organizing the public activity. In such circumstances, the applicant will be separately informed of these conditions by the Commissioner of Police.
- (c) and (d)

Normally, we do not expect to withdraw the approval to use the CGO compound for public activity. We would consider the withdrawal only when there is a special need to do so. For example, if there were unforeseen incidents as a result of which the use of the CGO compound for public activity is considered not suitable, we would then need to invoke the provision under item 5 of the "Conditions as to the Use of the Central Government Offices Compound for Public Meetings/Procession" and withdraw the approval to use the CGO compound for public activity. Under such special circumstances, the Administration Wing would contact the applicant as early as possible so as to allow time for him to make other arrangements. The Administration Wing would also provide a written explanation to the applicant as to the reasons for withdrawing the approval.

- (e) In general, the Building Management Committee of the government building in question or the relevant department is responsible for the management of the building. Having regard to its circumstances, the Building Management Committee concerned or the relevant department may decide on the appropriate requirements or arrangements for members of the public to use the premises for public activity.

### **Pilot Scheme on Separate Collection of Wet and Dry Wastes**

11. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, it was reported that the Administration plans to launch, in conjunction with a political body, a pilot scheme on the separate collection of wet and dry wastes in some housing estates on Island East next February. In this connection, will the Government inform this Council:*

- (a) *of the details and the implementation timetable of the scheme;*
- (b) *whether it has made open invitations or sent invitation letters to interested parties for participating in the scheme; if so, of the details; if not, the reasons for that; and*
- (c) *of the channels available for non-governmental organizations to participate in the scheme?*

### **SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President,

- (a) The pilot scheme on wet/dry waste sorting will be conducted in early 2003 in several housing estates in the Eastern District so as to test the economics and logistics of this form of waste recovery which has been practised in some overseas economies but never in Hong Kong. Under the pilot scheme, dry waste would be separately collected and delivered to a temporary sorting facility at the Island East Transfer Station where recyclables would be

recovered for recycling purpose. We are currently working on the detailed arrangements. The scheme is expected to commence in early 2003 and last 12 months. A review will be carried out upon completion of the pilot scheme to examine the feasibility, logistics and cost-effectiveness of this form of waste recovery.

- (b) In recent years, the Government has been working closely with community organizations and green groups to try out different waste recovery systems in order to identify the modes that are most cost-effective and best suit local needs. Recently, one organization has submitted a proposal on promoting recycling by wet/dry waste sorting, and has applied for funding from the Environment and Conservation Fund (ECF) to carry out, among other things, the related educational and publicity work in the housing estates where the pilot scheme is to be implemented. Having considered the capacity of the sorting facility at the Island East Transfer Station and the need to manage within available resources, we have agreed to collaborate with the proponent organization to carry out the pilot scheme on wet/dry waste sorting.
- (c) Funding applications to the ECF is open to all organizations that are interested in carrying out environment-related promotional, educational and community involvement projects. We will continue to provide the necessary assistance and facilitate the implementation of these community projects.

### **Land Granted to Golf Club at Nominal Land Premium**

12. **MR LEUNG FU-WAH** (in Chinese): *Madam President, regarding the two pieces of land, one at Deep Water Bay and the other in Sheung Shui, granted by the Government to The Hong Kong Golf Club (the Club) at a nominal land premium, will the Government inform this Council:*

- (a) *of the respective dates when the land leases were signed; whether there are terms in the leases to provide for the early resumption of land by the Administration; if so, of the criteria on which the*

*Administration will base to resume the land; if not, the reasons for that;*

- (b) whether the Administration had taken into account the following three factors: the applicant is a non-profit-making body; it adopts a non-discriminatory membership policy; and the application is supported by the Home Affairs Bureau or other relevant Policy Bureaux, when considering the applications for these land grants; if so, of the conclusions and whether they justified its decision to grant the land; if it has not, the reasons for that;*
- (c) whether it knows the respective numbers of accidents of various types that occurred on each of the two pieces of land and the numbers of resultant casualties over the past three years; and*
- (d) whether it will, when considering the relevant application for renewing the land grants in the future, take into consideration the number of casualties that occurred there, the membership system adopted and the level of membership fees charged by the Club, or to add a term in the land leases stipulating that the Administration may resume the land basing on these factors; if so, of the details; if not, the reasons for that?*

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

- (a) The current lease of the lot at Deep Water Bay granted to the Club was signed on 11 April 1995. It is an extension of the previous lease expiring on 25 December 1996. The current lease of the Sheung Shui lot was granted to the Club on 1 September 1999.

Like all other land leases, there are provisions in the lease conditions governing the grant of these two lots whereby the Government is entitled to re-enter upon and take back possession of the land or any part thereof including any buildings erected thereon, upon any failure or neglect by the grantee to perform, observe or

comply with any of the obligations specified in the land grant conditions.

Besides, the land grant conditions for private recreational purposes also contain additional provisions which empower the Government to re-enter upon and take back possession of the lot or any part thereof and all buildings thereon, if it is at any time to the satisfaction of the Director of Lands that the lot or such part of the lot or building(s) thereon has ceased to be used for the purpose as specified in the land grant conditions for the members of the grantee in accordance with its Memorandum and Articles of Association or that the extent of the user thereof for the purpose as specified has so diminished that the retention of the lot or any such part thereof for such purpose is no longer justified.

Other than the above, the lease conditions for these two lots also contain provisions which empower the Government to resume, re-enter upon and take possession of all or any part of the lot if required for the improvement of Hong Kong or for any other public purpose.

- (b) Under the existing policy, all private recreational leases should be renewed provided that the sites concerned are not required for a public purpose; there being no breach of lease conditions; and a non-discriminatory membership policy has been adopted by the grantees. The grant of the current leases of the two lots to the Club had the support of the Home Affairs Bureau/the then Recreation and Culture Branch. Besides, other relevant factors, such as the subject lots were not required for a public purpose; the Club had not violated any conditions of the previous leases; and the requirement for adoption of a non-discriminatory membership policy had been taken into consideration.
- (c) In the past three years, six and 52 work injury cases were reported either by the employer or the employees to the Labour Department for the sites at Deep Water Bay and Sheung Shui respectively. (Details of these work injury cases are summarized at the Annex.)

- (d) In accordance with the criteria as mentioned in part (b) above, the level of fees and the number of casualties occurred on sites are not determining factors for renewal of such land grants.

## Annex

Summary of work injury cases at the Club  
Sheung Shui lot and Deep Water Bay lot  
from 1 December 1999 to 30 November 2002

| <i>Nature</i>  | <i>Sheung Shui</i>  |                   | <i>Deep Water Bay</i> |                   |
|--|---------------------|-------------------|-----------------------|-------------------|
|  | <i>No. of Cases</i> | <i>Percentage</i> | <i>No. of Cases</i>   | <i>Percentage</i> |
| <i>Cases with sick leave exceeding three days:</i>   |                     |                   |                       |                   |
| - cases related to daily operation/maintenance work (for example, hit by branches, slipping, injured by broken glass, and so on) | 29                  | 56%               | 2                     | 33%               |
| - cases related to golf activities   | 7                   | 13%               | 0                     | 0%                |
| - cases related to catering/restaurant operation   | 4                   | 8%                | 4                     | 67%               |
| <i>Cases with sick leave not exceeding three days</i>  | 12                  | 23%               | 0                     | 0%                |
| <b>Total</b>   | <b>52</b>           | <b>100%</b>       | <b>6</b>              | <b>100%</b>       |

Work injury cases from 1 December 1999 to 30 November 2002 at The Club — Sheung Shui lot

| <i>Date</i>      | <i>Post of Injured</i> | <i>Nature</i>                          | <i>Injury Part</i> | <i>Remarks</i>                   |
|------------------|------------------------|--|--------------------|----------------------------------|
| 14 February 2000 | Semi-skilled worker    | Hit by tree branches                   | Left finger        | No permanent incapacity involved |
| 19 February 2000 | Mechanic               | Hurt by explosion of plastic wheel rim | Left hand          | No permanent incapacity involved |

| <i>Date</i>      | <i>Post of Injured</i>                                      | <i>Nature</i>                              | <i>Injury Part</i>             | <i>Remarks</i>   |
|------------------|---|--|--------------------------------|--|
| 17 April 2000    | Temporary worker  | Fell out of the loader whilst driving      | Back, face and hand, and so on | No permanent incapacity involved   |
| 7 May 2000       | Semi-skilled worker   | Hit by golf ball                           | Chest                          | No permanent incapacity involved   |
| 25 May 2000      | Worker  | Stung by hornet                            | Eye lid                        | No permanent incapacity involved   |
| 22 June 2000     | Semi-skilled worker   | Hit by golf ball                           | Right hand                     | No permanent incapacity involved   |
| 10 July 2000     | Semi-skilled worker   | Hurt waist while pushing machine           | Waist and back                 | No permanent incapacity involved   |
| 17 July 2000     | Worker  | Slipped while cutting branches             | Right leg                      | No permanent incapacity involved   |
| 4 August 2000    | Detailed information not available (as reported by Form 2B) |  |                                | Sick leave not exceeding three days  |
| 22 August 2000   | Detailed information not available (as reported by Form 2B) |  |                                | Sick leave not exceeding three days  |
| 29 August 2000   | Detailed information not available (as reported by Form 2B) |  |                                | Sick leave not exceeding three days  |
| 30 August 2000   | Detailed information not available (as reported by Form 2B) |  |                                | Sick leave not exceeding three days  |
| 9 September 2000 | Driver  | Injured while drawing soil                 | Back                           | No permanent incapacity involved   |
| 9 September 2000 | Golf Professional   | Hit by golf ball                           | Head                           | No permanent incapacity involved   |
| 16 October 2000  | Junior Mechanic   | Squatted down to clean grass and felt pain | Back                           | Sprained back resulting in limited flexion and lower lumber pain 2% permanent incapacity |
| 25 October 2000  | Gardener  | Stepped on a stone and lost balance        | Sprained right hip             | Sprain of right hip resulting in residual pain 0.5 % permanent incapacity                |

| <i>Date</i>      | <i>Post of Injured</i>                                      | <i>Nature</i>               | <i>Injury Part</i>    | <i>Remarks</i>   |
|------------------|---|-----------------------------|-----------------------|--|
| 1 November 2000  | Cook  | Cut by meat slicer          | Right thumb           | No permanent incapacity involved   |
| 6 November 2000  | Detailed information not available (as reported by Form 2B) |                             |                       | Sick leave not exceeding three days  |
| 14 November 2000 | Detailed information not available (as reported by Form 2B) |                             |                       | Sick leave not exceeding three days  |
| 15 November 2000 | Detailed information not available (as reported by Form 2B) |                             |                       | Sick leave not exceeding three days  |
| 22 November 2000 | Detailed information not available (as reported by Form 2B) |                             |                       | Sick leave not exceeding three days  |
| 5 December 2000  | Driver  | Fell off from container     | Wrist, elbows and hip | Fracture resulting in numbness and weaknesses of both hands and pelvic 2% permanent incapacity |
| 20 December 2000 | Worker  | Hit by sand mixing machine  | Left eyebrow          | No permanent incapacity involved   |
| 10 January 2001  | Detailed information not available (as reported by Form 2B) |                             |                       | Sick leave not exceeding three days  |
| 15 February 2001 | Worker  | Hit by the stand            | Back                  | No permanent incapacity involved   |
| 30 March 2001    | Worker  | Hurt by truck               | Back                  | No permanent incapacity involved   |
| 9 May 2001       | Worker  | Unloading things from truck | Back sprain           | No permanent incapacity involved   |
| 9 May 2001       | Skilled worker  | Hit by aerator machine      | Right ankle           | Contusion of right ankle resulting in weakness 1% permanent incapacity                         |
| 19 May 2001      | Semi-skilled worker   | Wounded by a branch         | Left little finger    | No permanent incapacity involved   |
| 22 June 2001     | Driver  | Descending the mower        | Sprain left ankle     | Left ankle sprain resulting in stiffness 0.5% permanent incapacity                             |

| <i>Date</i>      | <i>Post of Injured</i>                                      | <i>Nature</i>                              | <i>Injury Part</i>  | <i>Remarks</i>   |
|------------------|---|--|---------------------|--|
| 13 August 2001   | Skilled worker  | Hit by golf ball                           | Left ankle          | No permanent incapacity involved   |
| 13 November 2001 | Detailed information not available (as reported by Form 2B) |  |                     | Sick leave not exceeding three days  |
| 13 December 2001 | Cook  | Cut by knife                               | Left index finger   | Injury resulting in pain, stiffness and weakness 4% permanent disability   |
| 29 January 2002  | Foreman   | Refilled water bottles                     | Back                | No permanent incapacity involved   |
| 18 February 2002 | Driver  | Slipped down while getting off the mower   | Sprain right ankle  | No permanent incapacity involved   |
| 22 February 2002 | Cook  | Sterno fire fell from the dish             | Right leg and thigh | Burn injury resulting in scar, pigmentation, pain and itchy 2.5% permanent incapacity  |
| 6 March 2002     | Detailed information not available (as reported by Form 2B) |  |                     | Sick leave not exceeding three days  |
| 9 March 2002     | Semi-skilled worker   | Stepped into a hole and twisted his ankle  | Ankle               | Right foot injury resulting in residual pain 1% permanent incapacity. Employee raised objection to assessment; review assessment to be conducted on 23 December 2002 |
| 23 April 2002    | Driver  | Hit by golf ball                           | Chest               | No permanent incapacity involved   |
| 23 April 2002    | Skilled worker  | Cut by grass-catcher                       | Right ring finger   | No permanent incapacity involved   |
| 27 May 2002      | Detailed information not available (as reported by Form 2B) |  |                     | Sick leave not exceeding three days  |
| 30 May 2002      | Assistant Course Manager                                    | Hit by branch after cutting a large branch | Wrist               | No permanent incapacity involved   |
| 4 June 2002      | Waitress  | Slopped at third step stair                | Back                | Pending for assessment   |

| <i>Date</i>       | <i>Post of Injured</i> | <i>Nature</i>                                     | <i>Injury Part</i>  | <i>Remarks</i>                                     |
|-------------------|------------------------|---|---------------------|--|
| 10 June 2002      | Worker                 | Hit on the garden secateurs while trimming trees  | Right middle finger | Injury resulting in pain 0.5% permanent incapacity |
| 10 July 2002      | Skilled Worker         | Some chips entered his right eye when driving     | Right eye           | No permanent incapacity involved                   |
| 11 August 2002    | Caddie                 | Hit by golf ball                                  | Chest               | Dispute employer/employee relationship             |
| 31 August 2002    | Caddie                 | Hit by golf ball                                  | Face and mouth      | Dispute employer/employee relationship             |
| 3 September 2002  | Worker                 | Branch bounced up struck her face                 | Right eye           | No permanent incapacity involved                   |
| 23 September 2002 | Worker                 | Slipped outside the toilet                        | Left foot           | No permanent incapacity involved                   |
| 30 September 2002 | Temporary Worker       | Hit by the truck                                  | Hand                | Pending for assessment                             |
| 29 October 2002   | Bartender              | Cut by broken glass                               | Right hand          | Pending for assessment                             |
| 12 November 2002  | Assistant Plumber      | Twisted and hurt while moving the catch pit cover | Lower back          | Pending for assessment                             |

Total number of cases : 52

Work injury cases from 1 December 1999 to 30 November 2002 at The Club — Deep Water Bay lot

| <i>Date</i>       | <i>Post of Injured</i> | <i>Nature</i>  | <i>Injury Part</i> | <i>Remarks</i>                                 |
|-------------------|------------------------|--|--------------------|--|
| 3 March 2000      | Night Watchman         | Injured by a piece of metal wire on the door                                       | Left index finger  | Resulting in stiffness 3% permanent incapacity |
| 25 September 2000 | Junior Cook            | A small amount of detergent splashed into his left eye when cleaning electric oven | Left Eye           | No permanent incapacity involved               |

| <i>Date</i>     | <i>Post of Injured</i> | <i>Nature</i>  | <i>Injury Part</i> | <i>Remarks</i>   |
|-----------------|------------------------|--|--------------------|--|
| 19 January 2001 | Preparation Cook       | Cut left little finger at the edge of the stainless steel steamer  | Left little finger | No permanent incapacity involved                         |
| 25 May 2001     | Waitress               | Right knee was injured by broken dishes                            | Right knee         | No permanent incapacity involved                         |
| 21 October 2001 | Preparation Cook       | Cut left thumb by knife when trimming a piece of sirloin beef      | Left thumb         | Resulting in residual numbness 0.5% permanent incapacity |
| 26 October 2002 | House Labour           | Cut right forearm by a broken glass while pulling a bag of rubbish | Right forearm      | Pending for assessment                                   |

Total number of cases : 6

### **Adjustment of Disability Allowances**

13. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, given that the Chief Executive pledged not to cut the rates of the Old Age Allowances under the Social Security Allowance (SSA) Scheme when he attended the Question and Answer session of this Council on 10 October this year, will the Government inform this Council whether it plans to adjust the rates of the Disability Allowances (DA), which are also payable under the SSA Scheme?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, the DA is one of the two allowances payable under the SSA Scheme. It aims to provide a flat-rate monthly allowance to the severely disabled to meet special needs arising from disability. It is non-means-tested, non-contributory and entirely funded by General Revenue.

A severely disabled person can receive a monthly Normal DA of \$1,260. For those who require constant attendance but are not receiving such care in a government or subvented residential institution or a medical institution under the Hospital Authority, they are eligible for a Higher DA of \$2,520 per month.

The SSA payment rates are revised with reference to the price movements as reflected by the Social Security Assistance Index of Prices (SSAIP)<sup>1</sup>. The

SSA payment rates were revised upwards by 6.5% in 1997-98 and 4.8% in 1998-99 on the basis of the then forecast SSAIP. Taken together, the payment rates have been increased by 11.6%<sup>2</sup>. However, the SSAIP only registered an increase of 4.2% and 0.3% respectively during the period and thereafter has been on the decline. The actual prices, as measured by the SSAIP, fell by 2.7% in 1999-2000, 1.9% in 2000-01 and 0.5% in 2001-02. The SSA payment rates have however remained frozen since 1999-2000<sup>3</sup>.

The combined effect of the upward adjustment up to 1998-99 based on forecast price increases and the continued deflation since then is an over-adjustment to the SSA payment rates of 12.4% up to the end of March 2002<sup>4</sup>. In other words, there is room for an 11.1% downward adjustment without affecting the originally intended purchasing power of the DA rates.

In July 2002, we informed the Finance Committee of the Legislative Council that for both policy and fiscal reasons, we would like to take stock of the situation and gauge the public's views on the adjustment of the Comprehensive Social Security Assistance (CSSA) and SSA rates. In the meantime, the CSSA and SSA rates would remain frozen until March 2003. As with the CSSA rates, we have not made any decision on the DA rates yet.

1 The SSAIP measures inflation according to the expenditure pattern of households receiving CSSA. The SSAIP consists of the same items as the Consumer Price Index, except for items which are covered by special grants under the CSSA Scheme (for example, rent). The SSAIP is compiled by the Census and Statistics Department monthly. In order to ensure that up-to-date expenditure patterns of CSSA households are accurately reflected in the compilation of the SSAIP, it is an established practice to rebase the SSAIP once every five years based on the data from the Household Expenditure Survey on CSSA Households. The SSAIP presented in this reply refers to the 1999-2000-based series.

2 The percentage is calculated as follows:  $1.065 \times 1.048 - 1$ .

3 In July 1999, we informed the Finance Committee of the Legislative Council that the past practice of adjusting the standard payment rates according to the forecast inflation for the following year would discontinue. Instead, inflationary adjustments to the CSSA and SSA standard payment rates will be based on actual price movements in the previous year

4 The percentage is calculated as follows:  $1.116 / (1.042 \times 1.003 \times (1 - 0.027) \times (1 - 0.019) \times (1 - 0.005)) - 1$ .

### **Trees at Site of Former Marine Police Headquarters in Tsim Sha Tsui**

14. **MISS CHOY SO-YUK** (in Chinese): *Madam President, the Administration is currently putting up the site of the former Marine Police Headquarters (MPHQ) in Tsim Sha Tsui for sale by public tender, and there is a substantial number of trees in the lot. It is stated in the relevant tender*

*document that the developer may not remove or interfere with the trees in the lot, including transplanting, without the prior consent of the authorities. In this connection, will the Government inform this Council of:*

- (a) the total number of trees in the above lot, as well as the ages and species of such trees; and*
- (b) the locations to which the developer will be allowed to transplant the trees, and how it will ensure that the trees will continue to grow after transplanting?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, my reply to the two parts of the question raised by the Honourable CHOY So-yuk is as follows:

- (a) According to a consultancy study of the Planning Department in 2001, there are 133 trees within the site of the MPHQ. Details of the species are shown at the Annex. There is no information on the age of the trees.
- (b) The tender document for the MPHQ project contains specific requirements on tree preservation. Existing trees on the site cannot be removed or interfered with unless with the prior written consent of the Director of Lands (the Director) who, in granting a consent, may impose such conditions as to transplanting, compensatory landscaping or replanting. Moreover, the majority of the site is declared as monument under the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance). Before any felling or planting of trees within the monument boundary is done, a permit under section 6 of the Ordinance must be obtained from the Authority (presently the Secretary for Home Affairs).

In submitting tender proposals, tenderers must submit landscaping proposals, together with proposals for tree felling and replanting. This would form part of the assessment of the tender proposals.

After the award of the project to the developer, he would need to seek the consent of the Director to remove certain trees. In so

doing, the developer has to make transplanting proposals in the first instance, before resorting to compensatory landscaping or replanting. Transplanting proposals would have to cover details such as the transplanting locations (normally within the affected site) and particulars of the trees (species, height, trunk size and health condition) to be transplanted. The Lands Department and relevant departments will take these into account in considering the application for the consent. It is when transplanting is not considered to be technically practicable that proposals for compensatory landscaping or replanting will be considered. The Government would then examine the development need and impose requirements on compensatory landscaping or replanting as appropriate.

## Annex

| <i>No. of trees</i> | <i>Botanical name</i>         |
|---------------------|-------------------------------|
| 33                  | <i>Celtis sinensis</i>        |
| 20                  | <i>Litsea glutinosa</i>       |
| 19                  | <i>Livistona chinensis</i>    |
| 14                  | <i>Ficus microcarpa</i>       |
| 8                   | <i>Aleurites moluccana</i>    |
| 8                   | <i>Pinus massoniana</i>       |
| 7                   | <i>Morus alba</i>             |
| 3                   | <i>Plumeria rubra</i>         |
| 3                   | <i>Litsea cubeba</i>          |
| 2                   | <i>Homalium hainanense</i>    |
| 2                   | <i>Mangifera indica</i>       |
| 2                   | <i>Eucalyptus robusta</i>     |
| 2                   | <i>Melia azedarach</i>        |
| 2                   | <i>Ficus variegata</i>        |
| 1                   | <i>Cratoxylu ligustrinum</i>  |
| 1                   | <i>Eucalyptus citriodora</i>  |
| 1                   | <i>Pyrenaria championi</i>    |
| 1                   | <i>Cinnamomum camphora</i>    |
| 1                   | <i>Cassia surattensis</i>     |
| 1                   | <i>Eucalyptus torelliana</i>  |
| 1                   | <i>Crateva religiosa</i>      |
| 1                   | <i>Zanthoxylom cuspidutum</i> |

### **Curbing Proliferation of Mikania Micrantha**

15. **MR ALBERT CHAN** (in Chinese): *Madam President, on 22 May this year, I asked a question about the proliferation of Mikania micrantha in Hong Kong. I notice that the situation has been deteriorating instead of being under control, as many plants have withered after being strangled by Mikania micrantha. In this connection, will the Government inform this Council:*

- (a) of the locations and the total area of land affected by Mikania micrantha proliferation, and how the present situation compares with those six and 12 months ago respectively;*
- (b) of the names of the country parks affected by Mikania micrantha proliferation and the extent of the damage arising therefrom;*
- (c) whether it has measures to encourage land-owners to clear any Mikania micrantha growing on their land, with a view to curbing its proliferation; if it has, of the details; if not, the reasons for that; and*
- (d) when it will eradicate problem of the proliferation of Mikania micrantha; and whether it has devised active measures to curb the proliferation of the plant; if it has, of the effectiveness of these measures; if not, the reasons for that?*

### **SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President,

- (a) According to information available to us, the locations and the total area of land affected by Mikania micrantha have not changed much in the past year. Within country parks, the plant can be found at their fringes and along roadsides. The total area affected is about 20 hectares, or less than 0.05% of the total country park area. The plant can also be found in about 80 hectares of land outside country parks, mainly at derelict fields, roadsides and hillsides at Tai Po, North District, Yuen Long, Sai Kung and Pok Fu Lam.
- (b) Mikania micrantha can be found at the fringes and roadsides of Pat Sin Leng Country Park, Tai Lam Country Park, Shing Mun Country

Park and Tai Mo Shan Country Park. The Agriculture, Fisheries and Conservation Department (AFCD) closely monitors the situation and implements weeding programmes whenever necessary. The growth of the plant is kept under control. There are no signs of proliferation or serious damage to other plants.

- (c) The relevant government departments will seek landowners' support and co-operation where weeding of *Mikania micrantha* is required. For example, the AFCD has sought the concerned landowners' consent to clear the plant on some private land next to country parks and Sites of Special Scientific Interests (SSSIs). Weeding programmes have also been co-organized by other government departments and the residents of Belair Gardens in Sha Tin.

To enhance public knowledge about *Mikania micrantha* and encourage landowners to take proper action against proliferation of the plant, the AFCD is preparing an information note to tell members of the public the adverse impact *Mikania micrantha* can cause to other plants and how they could identify and remove it. The note will soon be available at the AFCD's website and made available to the public.

- (d) The relevant government departments will continue to do all that is practicable to keep the problem under control, particularly at sites of high ecological value. In addition, the AFCD and the Guangdong Forestry Bureau are conducting a joint study to explore more effective means for controlling the plant. The study is scheduled for completion by the end of 2003.

### **Assisting Local Telecommunications and IT Sectors in Developing Mainland Market**

16. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, according to the timetable for opening up the service industries committed by China on its accession to the World Trade Organization (WTO), the telecommunications service industry (including the information technology (IT) service industry) in the Mainland will gradually be opened up to foreign investments in the coming six years. In this connection, will the Government inform this Council whether:*

- (a) *it has evaluated the impact on the relevant sectors in Hong Kong of the opening up of the telecommunications service industry by the mainland authorities, and the competitiveness of the local sectors concerned and the overseas enterprises in the mainland market; if it has, of the details; if not, the reasons for that; and*
- (b) *it has formulated policies and specific measures to assist the local telecommunications and IT sectors in developing the mainland market; if it has, of the details; if not, the reasons for that?*

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

- (a) At present, the Mainland is gradually opening up its telecommunications and IT markets under its commitments on accession to the WTO. For the telecommunications market, the Mainland is gradually lifting and relaxing the restrictions on paging services, value added services, mobile/cellular phone services, local and international fixed network services and Internet service. For the computer and related services market, the Mainland will also fully or partially open up the consultation service on hardware installation, software implementation service and data processing service.

The potential of the mainland market is enormous. The gradual liberalization of telecommunications and IT markets will bring tremendous opportunities to the Hong Kong industries. For example, the Mainland is already the largest mobile market in the world, with 196 million subscribers at a penetration rate of 15% only. Besides, the number of Internet users has surged more than 70% from 26.5 million last year to 45.8 million this year. Despite the rapid growth, this is still less than 4% of the total population in the Mainland.

While many larger foreign enterprises have advantages in capital, human and technical resources, professional knowledge, experience in project management and implementation, and international

connection, Hong Kong enterprises also enjoy unique strengths in developing the telecommunications and IT markets in the Mainland. We have strong domain knowledge in trade, finance, logistics and transportation. In addition, we have a profound understanding and ample experience in doing businesses in the Mainland. When coupled with our excellent bilingual abilities, close cultural affinity and geographical proximity, we are well placed to explore the mainland market. Indeed, Hong Kong has strong competitiveness in the design of information products, business knowledge required for developing business software, project management, international sales and marketing, as well as developing mobile application services and content.

- (b) Our established policy is to promote the development of telecommunications and IT in Hong Kong, and enhance their competitiveness with a view to assisting them to explore the international and mainland markets. Specific measures are as follows:
  - (i) To implement outsourcing strategy — The Government takes a proactive role in outsourcing internal telecommunications and IT projects to build up a critical mass for the local market. This will in turn help sustain the development of telecommunications and IT in Hong Kong. At the same time, it will help accumulate experience and nurture local talents, with a view to enhancing the competitive edge of local companies in venturing into the mainland market.
  - (ii) To foster exchanges — We help the local telecommunications and IT sectors explore the mainland market by organizing various exchange activities with the Mainland from time to time, such as trade missions, exhibitions and conferences. For example, we hosted in Hong Kong the ITU TELECOM ASIA consecutively in 2000 and 2002. We also led a delegation of local suppliers of e-government services to participate in the e-Government China 2002 Expo held in Beijing in mid-December 2002. These exhibitions and conferences enable the local telecommunications and IT

sectors to showcase their products and services to the mainland Government and enterprises and to develop business networks.

- (iii) To facilitate access to information about the mainland market — In collaboration with Hong Kong Trade Development Council (TDC), we will add in the TDC's website a web page relating to the telecommunications and IT sectors next year to disseminate information on the business opportunities emerging from China's accession to the WTO. This will facilitate access by the local industries to information about mainland market. Besides, we will continue to co-operate with the Economic and Trade Office of the Government of the Hong Kong Special Administrative Region (SAR) in Guangdong, the TDC and the Hong Kong Productivity Council in providing the local IT sector with information relating to the IT market of the Pearl River Delta (PRD) and organizing business matching activities for Guangdong and Hong Kong. At the moment, the Office of the SAR Government in Beijing and the TDC are closely monitoring the preparatory work of the 2008 Beijing Olympics. We will disseminate information relating to telecommunications and IT to the local sectors to assist them in tapping the business opportunities therein.
  
- (iv) To strengthen co-operation in software industries — Through the promotion and assistance given by the governments of the SAR and various provinces in the PRD, the industry associations of the two places have signed a framework agreement on software co-operation and established a PRD software alliance. The alliance will conduct exchanges on exploring markets, technology development, financing and quality accreditation and work out plans on enhancing software technology transfer and outward processing. The SAR Government will continue to assist and organize industry participation in the joint projects. Looking ahead, we will strengthen the co-operation in software industries between the two places in areas of financing, market exploration and training. These measures will not only help the local

telecommunications and IT industries gain access to the mainland market, but also bring about synergy for both places in jointly exploring the international and the mainland market.

- (v) To enhance co-operation in e-commerce — An E-business Working Group has been established under the Mainland/HKSAR Joint Commission on Commerce and Trade to enhance co-operation in e-business regulations, e-government and enterprise e-business applications. We hope to formulate, in collaboration with the Mainland, a specific work plan to promote commerce and trade by electronic means between the two places.

### **Healthy Diet for Children**

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, it was reported that a recent research report in Britain had pointed out for the first time that excessive intake of salt for children and babies might increase their chances of developing high blood pressure in the future, and the report had also recommended the maximum amounts of daily intake of salt for children and new-born babies. In this connection, will the Government inform this Council whether:*

- (a) *it has studied the said research report; if so, whether it plans to promote such recommended amounts of intake among the people of Hong Kong;*
- (b) *the Student Health Service provided by the Department of Health (DH) includes measuring blood pressure for students; if so, of the relevant results in the past three years, together with a breakdown by age; and*
- (c) *it will strengthen civic education to remind parents of the need to maintain a healthy diet for their children?*

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



|            | 1999-2000   |          |              |          | 2000-01     |          |              |          | 2001-02     |          |              |          |
|------------|-------------|----------|--------------|----------|-------------|----------|--------------|----------|-------------|----------|--------------|----------|
|            | Systolic BP |          | Diastolic BP |          | Systolic BP |          | Diastolic BP |          | Systolic BP |          | Diastolic BP |          |
|            | Mean        | Standard | Mean         | Standard | Mean        | Standard | Mean         | Standard | Mean        | Standard | Mean         | Standard |
|            | (mm Hg)     | (mm Hg)  | (mm Hg)      | (mm Hg)  | (mm Hg)     | (mm Hg)  | (mm Hg)      | (mm Hg)  | (mm Hg)     | (mm Hg)  | (mm Hg)      | (mm Hg)  |
| Form Three | 113.1       | 13.0     | 63.0         | 7.1      | 112.6       | 12.8     | 62.1         | 6.7      | 113.1       | 12.7     | 62.3         | 6.7      |
| Form Five  | 113.7       | 13.0     | 63.8         | 7.2      | 114.1       | 13.7     | 63.2         | 7.2      | 114.2       | 13.6     | 63.2         | 7.0      |
| Form Seven | 113.7       | 13.8     | 64.2         | 7.5      | 114.0       | 13.6     | 63.8         | 7.3      | 114.0       | 13.3     | 64.0         | 7.1      |

- (c) "Healthy eating" is and will remain a key health promotion theme for the DH. Low salt diet and avoidance of processed foods are promoted in its maternal and child health centres. From 1999 to 2001, the DH conducted the Healthy Eating Movements in kindergartens, primary and secondary schools to enhance young children's awareness of healthy eating and encourage teachers to promote healthy eating. Less sugar, salt and fat but nutritionally balanced meals based on the food pyramid were advocated. Teaching kits and appropriate audiovisual aids were distributed to schools for adoption and incorporation into teaching programmes. Other means including health talks, workshops, exhibition boards, pamphlets and booklets are used to promote healthy eating and physical activity. In addition to promotion at schools, public education is enhanced through roving exhibitions, mass media and other forms of communication such as the DH's health education hotline and website.

The Education Department (ED) seeks to educate parents to promote healthy diet among their children through the following means:

- The ED launched the Parent Education Initiative in August 2001 to subsidize schools, Parent-Teacher Associations and non-profit-making organizations to conduct school-based parent education activities. To date, 18 of the subsidized programmes are related to promoting healthy diet among children.
- The ED works with the Radio Television Hong Kong in producing road show publicity programmes (being broadcast)

and radio programmes (broadcast on 22 September 2002) on issues of healthy diets.

- The ED is preparing pamphlets on how to promote healthy diet and healthy living habits in children and expects to distribute them to parents through secondary schools, primary schools and kindergartens in early 2003. The pamphlet and the related powerpoint file will be uploaded to the ED homepage so that parents and the public can have access to the information.
- The contents of education materials being developed for parents of pre-school children also include healthy diet and healthy living habits for children in order to help parents promote healthy diet and healthy living habit to their children at an early stage. The materials will be uploaded to the ED homepage for easy access by parents and the public.

### **Handling of Recyclable Wastes in PRH Estates**

18. **DR RAYMOND HO** (in Chinese): *Madam President, it was reported that some cleansing contractors of public housing estates had been found to have dumped at landfills the recyclable wastes segregated by residents for disposal, instead of transferring them to waste collectors. In this connection, will the Government inform this Council:*

- (a) *whether the cleansing contracts provide for the transfer of segregated recyclable wastes to waste collectors and the penalties for failure to do so;*
- (b) *of the number of cleansing contractors who were found to have failed to transfer segregated recyclable wastes to waste collectors in the past three years, as well as the penalties imposed on them; and*
- (c) *whether it has measures to tighten up the monitoring of these contractors to ensure that segregated recyclable wastes will be transferred to waste collectors; if so, of the details?*

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

Madam President, my reply to the three-part question is as follows:

- (a) In support of the Government's policy on waste recovery, the Housing Department (HD) stipulates in the contracts the requirements for its cleansing contractors to handle segregated recyclable wastes and other rubbish separately and to transfer the recyclables to recyclers. To monitor the actual situation, the HD also requires the contractors to report the amount of recyclables transferred to recyclers with supporting documents on a monthly basis. Contractors failing to fulfil these obligations will be given warnings which will be reflected in their performance assessment reports. Repeated non-compliances may lead to termination of contracts, one-year bar in tendering for new cleansing contracts or even removal from the relevant approved lists.
- (b) In the past three years, the HD has discovered three incidents of failure of cleansing contractors to transfer the collected recyclables to recyclers. The HD has taken immediate follow-up actions and issued warnings.
- (c) To further strengthen monitoring of cleansing contractors for public housing estates in the handling of recyclable wastes to ensure a more effective implementation of the waste recovery policy, the HD and the Environmental Protection Department (EPD) have introduced various new measures in recent months. The HD has not only introduced new requirements in the contracts for contractors to ensure the transfer of all collected recyclables to recyclers, it has also issued guidelines to ask its estate management office staff to be present in all such transfers to ensure the accuracy of the monthly reports on the amount of recyclables transferred. Besides, the EPD conducts surprise checks in public housing estates and alerts any malpractices of the contractors in this regard to the HD for follow-up and penalties. Such strengthened monitoring measures have so far been effective.

**Hospital Authority Obtaining Consent of Staff for Salary Reduction**

19. **MS EMILY LAU** (in Chinese): *Madam President, on 1 August this year, the Hospital Authority (HA) issued a letter of consent to each of its staff members for them to sign to give consent to follow the civil service pay reduction with effect from 1 October. It was reported that among the 50 000-odd staff, 99.9% replied that they accepted salary reduction while only about 50 staff members did not reply. In this connection, will the executive authorities inform this Council:*

- (a) *whether they know the number of meetings the HA held with its staff or staff representatives to explain the relevant arrangements and persuade them to accept the salary reduction;*
- (b) *whether they know the HA's arrangements for those staff who refused to accept salary reduction; and*
- (c) *given that the HA has obtained the consent of the vast majority of its staff for salary reduction through the above arrangement, whether, when implementing civil service pay reduction in the future, the authorities will consider allowing civil servants a choice between accepting or rejecting salary reduction, so as to avoid taking the legislative approach; if not, of the reasons for that?*

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

- (a) The HA organized an extensive communications programme to fully brief its staff on the pay reduction exercise. The Chief Executive of the HA held three meetings with Cluster Chief Executives and Hospital Chief Executives to explain the strategy of handling the exercise and to rally their support. He had eight special meetings with the various Staff Group Consultative Committees to explain to staff representatives the pay reduction exercise and listen to their feedback. He also paid 17 special visits to hospitals to answer questions raised by front-line staff. At the hospital level, about 100 briefing sessions were organized to brief staff members on the pay reduction exercise and to answer their enquiries. Each hospital also designated senior officers in its Human Resources Department to provide advice and counselling to individual staff members.

- (b) Of the four staff members who refused to give consent to the pay reduction, two have been and are currently still on injury-on-duty sick leave. The HA will follow up with the staff concerned at the end of their sick leave. As for the other two staff members, the senior management of the HA had thoroughly discussed with each of them their concerns and the consequences of their not accepting the pay reduction. In view of their decision not to accept the pay reduction, the HA terminated their contracts with effect from 1 October 2002 in accordance with the Employment Ordinance and the terms of their employment contracts.
- (c) The HA handled its pay reduction exercise earlier this year in accordance with the requirements of the Employment Ordinance, which governs the employment arrangements for the employees of the HA. The employment arrangements for civil servants, on the other hand, are not subject to the Employment Ordinance.

The Government will fully consult civil servants on any future civil service pay adjustment before taking a decision. If there is a prospect of a civil service pay reduction, we shall first explore with staff a practical and lawful mechanism for implementing it before taking a decision.

### **Processing of Applications for Remission of Charges for Medical Services of Public Hospitals**

20. **DR TANG SIU-TONG** (in Chinese): *Madam President, at present, patients who cannot afford the charges for public hospitals medical services may apply to medical social workers (MSWs) in hospitals for fee remission. In this connection, will the Government inform this Council:*

- (a) *of the vetting and approval process for such applications, the average time required for each case, and the party responsible for making the final decisions;*
- (b) *in respect of the past three financial years, of*
  - (i) *the number of applications each year;*

- (ii) *the number of MSWs responsible for processing these applications each year;*
  - (iii) *the average administrative cost for processing each case; and*
  - (iv) *the total number of approved cases, together with a breakdown by the grounds of approval and their respective percentages in the total number of cases; and*
- (c) *whether it has estimated the number of fee remission applications by patients of the accident and emergency (A&E) departments in the first 12 months following the introduction of A&E service charge; and how the workload of MSWs in that period will compare to that of the preceding 12 months; if it has, of the details?*

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

- (a) At present, there is an established mechanism for patients who have difficulties to pay for even the highly subsidized public health care services to seek financial assistance from the MSWs stationed in the public hospitals. The MSWs will, based on their professional judgement and on a case-by-case basis, consider the following factors and decide whether full or partial fee waiver should be granted to a patient:
- (i) the financial situation of the patient's household, taking into account its income and assets;
  - (ii) relationship problems between the patient and his/her relatives, which may render it difficult to obtain appropriate support from family members;
  - (iii) the nature of the patient's illness, frequency of consultation, treatment and duration of hospitalization; and
  - (iv) other financial and non-financial factors.

At present, we do not maintain statistics on the average time required to process each fee waiver application.

- (b) (i) The number of applications approved for fee remission in the past three years are as follows:

| <i>Financial Year</i> | <i>No of approved applications</i> |
|-----------------------|------------------------------------|
| 1999-2000             | 221 302                            |
| 2000-01               | 203 788                            |
| 2001-02               | 244 418                            |

The Hospital Authority (HA) has not maintained statistics on the number of unapproved fee waiver applications.

- (ii) The number of MSWs responsible for processing the applications mentioned in (b)(i) in the past three years are as follows:

| <i>Financial Year</i> | <i>Total No. of MSWs</i> |
|-----------------------|--------------------------|
| 1999-2000             | 508                      |
| 2000-01               | 504                      |
| 2001-02               | 503                      |

- (iii) Given that in practice, the processing of fee waiver application is part and parcel of the psycho-social and counselling service provided to patients and their relatives, it is difficult to provide an estimate on the average administrative cost for processing each fee waiver application.
- (iv) Please refer to part (b)(i) for the number of fee waiver applications approved in the past three years. Given the unique combination of financial and non-financial factors in each application, it is difficult to provide a breakdown of the approved applications by the grounds of approval.

- (d) Given the A&E service charge has only been introduced since recently (29 November 2002), there is no 12-months period for calculating the number of fee waiver applications by A&E patients, or for comparing the future workload of MSWs to the preceding 12 months. In fact, most recipients of Comprehensive Social Security Assistance and chronically ill patients who may also be frequent users of A&E services, but have difficulties to pay for their medical expenses, are already covered by the existing fee waiver mechanism and their applications for fee waiver of A&E service charge can be processed without additional assessment. Hence the HA's assessment is that the existing mechanism should be able to cover any additional workload for fee waiver applications as a result of the introduction of A&E service charges.

## **BILLS**

### **First Reading of Bill**

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

### **LAND TITLES BILL**

**CLERK** (in Cantonese): Land Titles 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.

### **LAND TITLES BILL**

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam President, I move the Second Reading of the Land Titles Bill.

The present land registration system in Hong Kong is a deeds registration system. Registration of a deed, however, does not confer validity on the property transaction document. Nor does the land register tell who the legal owner of the property is. In order to establish title to the property, the solicitor concerned must check all the title documents affecting the property transaction. This not only takes time, but adds to the costs of property transactions.

A Land Titles Bill was first introduced into the Legislative Council in 1994. Subsequently, we have made substantial amendments to the Bill in the light of the comments received from various sectors. I would like to outline some of the main points of the new draft Bill here.

First, the title register will be proof of property title. Once a person is registered as the owner of a piece of land, the title of the land shall be vested in him. With such conclusive information, title checking will be significantly more efficient than at present.

Second, when a person is registered as the property owner in the title register, his title will not be defeasible. In other words, the protection of title will be greatly strengthened.

Third, for conversion arrangements, we now propose a gradual conversion from the current deeds registration system to the title registration system. Properties will be brought under the title registration system on their first sale after the implementation of the Bill, new issue of government lease or voluntary application by a property owner. Properties not brought under the title registration system will be dealt with in accordance with the existing deeds registration system. Having considered carefully the views of interested parties, we believe that a gradual conversion will allow an orderly and systematic transition and provide time for the public and stakeholders to familiarize themselves with the new system. We will revisit the issue of automatic conversion when people have become accustomed to the title registration system. This more flexible approach has been adopted in a number of countries such as the United Kingdom, Australia and Canada.

Fourth, the Bill provides for an indemnity mechanism. Any person suffering loss of ownership because of fraud or loss due to mistakes or omissions

of the Land Registry staff will be eligible for compensation. Of course, this will not apply to those who have contributed to the fraud. A self-financing indemnity fund based on a levy on each registration will be established for this purpose. An upper limit will be set on any indemnity payment due to fraud affecting ownership. Our current thinking is that this limit will be \$30 million per claim. This will cover over 99% of all property transactions. Providing for a limit will not only reduce the risk to the indemnity fund, but will also avoid the inequity that might arise from imposing the insurance cost for a minority of very high-value properties upon the majority of property owners. We may further assess the level of this upper limit in due course.

Madam President, the Land Titles Bill aims to give greater security to interests in property and simplify conveyancing. A title registration system will reduce considerably title checking work and simplify registration procedures, thus reducing conveyancing costs. More importantly, the system will provide better assurance of title. The certainty of title as well as the clear and streamlined procedures under the new system will be beneficial to property owners, prospective buyers, and professionals and agencies providing conveyancing services, thus contributing to the economy of Hong Kong as a whole. The title registration system has been implemented in many countries. I recommend the Bill to Members and hope that it will be enacted as soon as possible to enable the introduction of the system in Hong Kong.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Land Titles 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.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

**LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001****Resumption of debate on Second Reading which was moved on 20 June 2001**

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

**MR JAMES TO:** Madam President, on behalf of the Honourable Audrey EU, Chairman of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (the Bills Committee), I wish to report on the work of the Bills Committee.

The Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (the Bill) contains a package of proposals to improve and update the Landlord and Tenant (Consolidation) Ordinance. These proposals aim to simplify tenancy renewable procedures, improve the basis of calculating compensation for tenants and sub-tenants upon repossession of premises for redevelopment by landlords, increase penalty for harassment of tenants and unlawful eviction, and streamline the statutory repossession procedures.

On tenancy renewal procedures, the Bill proposes to reduce the statutory period for a landlord to serve notice to terminate a tenancy or a tenant to serve notice to request a new tenancy by three months, and for the service of respective counter-notices by one month. The Bills Committee considers the proposal appropriate. Members also agree to the proposal of empowering the Commissioner of Rating and Valuation to provide tenancy information of comparable premises to the landlord terminating a tenancy and to the tenant seeking a new tenancy on application at a fee. Members, however, express concern about the possible abuse of the proposal to allow landlords to change or add grounds of opposition to a tenancy renewal application after the service of notice of termination or opposition. According to the Administration, the defence of a landlord will fail should the Court find that he has deliberately mis-stated his grounds of opposition.

On harassment of tenants and unlawful eviction of tenants, there is concern about the efficacy of heavier penalties given the limited number of past successful prosecutions and relatively low levels of penalty for harassment.

According to the Administration, harassment of tenants is a serious offence and should be addressed with due severity. The proposed penalties are appropriate to deter harassment of tenants. The Administration also confirms that the criminal liability of harassing acts leading to unlawful eviction applies to both landlords and their agents. As regards enforcement against harassing acts, members are informed that the police have included additional provisions in its internal guidelines to draw the attention of police officers to address the problem of unscrupulous behaviour of landlords and tenants that attracts criminal liability. The police will further revise the internal guidelines after the passage of the Bill.

On rebuilding compensation for tenants and sub-tenants, the Bill proposes to change the method of calculating the compensation payable by landlords to tenants and sub-tenants upon repossession of premises for redevelopment. The Bills Committee welcomes the proposal as tenants and sub-tenants are able to receive more assistance to alleviate their hardship arising from relocation.

On statutory repossession process, the Bill proposes to shorten the mandatory relief period for non-payment of rent from 28 days to a minimum of seven days. The Bills Committee agrees to the proposal but considers it necessary to limit the number of claims for relief from forfeiture by a tenant to prevent possible abuse. In this connection, the Administration agrees to amend the relevant sections under the High Court Ordinance and the District Court Ordinance to reflect its intent of forbidding a tenant to claim for relief from forfeiture more than once per tenancy unless with good cause as determined by the Court.

Apart from the proposed reduction of the relief period stage, members consider that the entire repossession process should be further streamlined to protect the interests of landlords. To this end, members have put forward a number of proposals for consideration by the Administration. The first proposal is to allow landlords to set down the case for hearing at the time of lodging an application for Order of Possession. According to the Administration, the proposal may result in a waste of court resources if no opposition is lodged against the application for Order of Possession. The second proposal is to enable automatic execution of a possession order by Bailiff without the need to apply to court for leave to issue a Writ of Possession. The Administration advises that the suggestion may deny sub-tenants' access to information of the proceeding between the landlord and the principal tenant, thereby depriving them of their rights of relief. The last proposal is to put in

place a similar summary judgement procedure as that in the High Court. The Administration's explanation is that the proposal may prolong rather than expedite repossession as an application for a hearing has to be made by summons supported by an affidavit to be served on the tenant not less than 10 clear days before the hearing date.

Not being convinced by the Administration's response, members reiterate the need for a fast-track procedure for repossession of premises. The Administration eventually agrees to introduce an implied forfeiture clause in the Bill to assist landlords who fail to put in the tenancy agreement a forfeiture clause in respect of persistent delay in payment of rent. The same will apply to the use of premises for an immoral or illegal purpose.

Members consider that measures should also be put in place to enable landlords to repossess properties on which tenants have constructed unauthorized building works. According to the Administration, it may be too onerous a burden to both landlords and tenants if they have to prove that there is no erection of unauthorized building works. While the Administration has examined a number of options to imply a forfeiture clause for unauthorized building works, these options are considered not feasible given the practical difficulties and additional costs incurred in making the erection of unauthorized building works a condition for implied forfeiture of tenancy. As an alternative, members agree that an implied forfeiture clause should be introduced to provide that no structural alteration should be made to the rented premises without the written consent of the landlord, failing which the landlord may forfeit the tenancy.

On enforcement of possession order, members consider that the present enforcement procedure is cumbersome and need to be streamlined. To this end, clear guidelines on the disposal of properties left in the premises by tenants after repossession should be worked out. Consideration should be given to imposing a fixed time limit within which tenants should remove their properties after repossession. According to the Administration, the Judiciary Administrator agrees to work out clear guidelines prescribing the power of the Lands Tribunal to dispose of properties left in the premises by tenants. The Notice of Application under the Landlord and Tenant (Consolidation) Ordinance (Form 22) will be revised to include applications for disposal of properties left by tenants. The time for making distress will also be extended from between 9 am to 5 pm to 9 am to 7 pm.

Another area of concern of the Bills Committee is the need to protect landlords against rogue tenants. Members suggest to include in the Bill a mandatory requirement for tenants to provide their personal information such as name, occupation and past rental records to landlords. Provision of false information will be subject to criminal liability. According to the Administration, the proposed mandatory disclosure requirement and the resultant criminal liability in the event of non-compliance do not comply with the provision of the International Covenant on Civil and Political Rights and fall outside the scope of the Bill. Notwithstanding the Administration's explanation, members remain of the view that the issue warrants further consideration. Given that a comprehensive review of the scrutiny of tenure provisions under the Ordinance will be conducted shortly, members request and the Administration agrees to include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants will be considered in the context of the review. Involvement of sub-tenants in the legal proceedings at which the principal tenant is in default of rent payment will also be included in the review.

Madam President, as the Bill will bring about improvements in the operation of the Ordinance, I would recommend the resumption of Second Reading debate on the Bill.

**MS AUDREY EU:** Madam President, one of the reasons why the Bills Committee has taken longer than it should and held more meetings than it should was that members generally feel that the improvements in the current Bill, in fact, do not go far enough to address the current bias in favour of the tenants.

The current Landlord and Tenant Ordinance was actually introduced at a very different time and has served a very useful purpose. However, there is a strong feeling, not only among members but also among the public in general, that the whole Landlord and Tenant (Consolidation) Ordinance should be looked at.

The problem in relation to "rogue tenants" (租霸) is a very real situation that the landlords are facing, in particular those who are suffering from the negative assets situation. But the Bill, in fact, does not address any of these concerns. However, some of the suggestions put forward by members fall

outside the ambit of the amendments to this particular Bill, and we very much welcome the Administration's intention to propose an overall consultation and, perhaps, an overhaul of the current Landlord and Tenant (Consolidation) Ordinance.

Thank you.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance (HKPA), I rose to speak in support of the passage of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. Since the interests of landlord and tenant are different, the new legislation may still be unable to satisfy their respective needs. However, generally, the new legislation is already a great improvement, for it has:

Firstly, changed the statutory period for the "service of notice by a landlord terminating a tenancy" and for "tenant requesting a new tenancy" from six or seven months to three or four months and shortened the period for the service of the respective counter-notices to one month. Such measures have greatly simplified the tenancy renewal procedures;

Secondly, increased the penalties on both landlords and their agents for harassing tenants on the one hand and streamlined the statutory repossession procedures on the other. Such streamlining includes shortening the relief stage from 28 to seven days, so as to minimize the possibility of abuse of the relief period by habitual defaulting tenants, thus balancing the interests of landlord and tenant as far as possible; and

Thirdly, amended the basis for the calculation of compensation for tenant and sub-tenant occupying premises to be repossessed by the landlord for redevelopment. This has been changed from calculation in accordance with the rateable value of the whole flat and then apportioned among the tenant and sub-tenant to calculation with reference to the rateable value of the actual portion of the flat occupied by the tenant or sub-tenant. Under this arrangement, tenants affected by redevelopment should be able to receive more assistance to alleviate their rehousing difficulties.

The HKPA thinks that the greatest effect of the new legislation is its enhanced deterrence and crack-down on "professional rogue tenants". In fact, the tenancy law of Hong Kong was enacted 20 or 30 years ago. At that time, people were generally poorer and there was a great demand for rental housing. It was commonplace that a tenement flat of six to seven hundred sq ft in area would be divided into five or six cubicles for sublease. In order to prevent ordinary citizens from being evicted by landlords and rendered homeless, the Government tended to adopt a tighter policy on landlords, and this is understandable. However, things are different now and situations where landlords are bullied by rogue tenants are quite common. Repossession and tenancy disputes cases handled by the Lands Tribunal have increased from about 3 000 in 1997 to 5 000 last year. So, the new legislation should help reduce such cumbersome disputes and give the public an incentive to purchase properties for rent collection purposes at a time when the property prices have dropped more than 60% and mortgage interest rates keep hitting new lows.

Madam President, I so submit.

**MR JAMES TIEN** (in Cantonese): Madam President, I am also a member of this Bills Committee.

On the problems between landlords and tenants, Members speaking before me have actually voiced their concerns. The current situation is very different from that of the past. In the past, we assumed that most landlords were rich and most tenants poor. Therefore, in enacting laws we would often take the interests of tenants into consideration. However, in the course of scrutinizing this Bill, we saw the case of the so-called "rogue tenants" and the situation is very serious. On the other hand, many landlords — I am not referring to landlords that are big consortiums, but rather the general public who have acquired properties — many of them would rent out those properties for rental collection purposes after acquiring them. When we first started the scrutiny of this Bill, Secretary Michael SUEN had not yet taken charge of this particular portfolio. However, among the major measures on stabilizing the property market, which were recently proposed by Secretary Michael SUEN, one of the measures was alluded to the necessity of reviewing the issue of tenancy agreements.

Madam President, we noted that the current proposals of the Government could only address the problem to a certain extent. We appreciate this and so the Liberal Party would support these proposals. However, on the whole, the time required for property repossession would only be reduced from 100-odd days to 70-odd days. We think the Government could still do more in this area.

Madam President, there are several points which I wish to mention in particular and they may have nothing to do with the Government for they are related to the administration of justice, that is, the Court. For example, it was stated that the notice of application for possession as specified in the Ordinance should be issued by the Bailiff between 9 am and 5 pm, and now it is proposed that it be extended to between 9 am and 7 pm only. However, if the Bailiff fails to serve a notice on the tenant on a certain day, then he will have to serve it again on the following day. Let us consider this. The tenant may have to go out to work, so if the notice is served at his home at 9 am, there will certainly be nobody to receive it. In the past, it was even said that the Bailiff would be off duty at 5 pm. But who in the business sector would only work from 9 am to 5 pm? Now, a middle-of-the-road approach was adopted in the proposal, but the time for serving notices was only extended to 7 pm. Since the tenant might not be home from work if the notice was served at the tenant's home at 7 pm, the Bailiff might have to go again on the following day if the tenant could not be located. As such, this might drag on for several months, but what needs to be done is only to serve the first notice of application on the tenant to notify him of the rents in arrears. We think there is really a serious problem with this procedure.

Furthermore, under our judicial system, the Court stipulates that the first step of the application requires 14 days, the second step can be taken only after those 14 days, while the third step can be taken only after another 28 days. I really cannot understand why all these procedures cannot be carried out concurrently. Some cases are even more ridiculous for a tenant may have voluntarily moved out of the premises in question and be prepared to return the rental unit to the landlord, but the landlord will still have to go through a number of procedures, plus a delay of 70 to 80 days, before the rental unit can be repossessed. This is extremely unfair to landlords, in particular, they may have taken out a loan from banks and have to rely on rental proceeds to repay the banks. Therefore, such situations would leave them in a dilemma.

For the above reasons, I hope Secretary Michael SUEN and Director Elaine CHUNG could review this Ordinance again at the earliest possible opportunity and the Legislative Council would also be very happy to follow up this issue.

Thank you, Madam President.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, the Landlord and Tenant (Consolidation) Ordinance was enacted back in 1973. At that time, since tenants were in a relatively disadvantageous position as opposed to property owners, the focus of the Ordinance was on protecting the interests of tenants. However, with development of times, property ownership has become commonplace and as the population ages, many elderly people have to rely on proceeds from leasing their properties to support their living. Besides, as the community becomes more and more complicated, the number of tenancy disputes has also increased in addition to the emergence of "professional rogue tenants". The old Ordinance has become unfair to landlords because the procedures on tenancy renewal and repossession of premises are too cumbersome and inflexible.

In proposing the Landlord and Tenant (Consolidation) (Amendment) Bill 2001, the Government seeks to simplify the existing tenancy renewal procedures, improve the basis of calculating compensation for the tenant and sub-tenant occupying small premises repossessed by the landlord for redevelopment, increase penalties for harassment of the tenant and unlawful eviction and streamline the statutory repossession procedures. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the direction of the Bill, and we have also proposed some amendments to certain details for we think that these arrangements should be amended and improved.

Firstly, on increasing protection against rogue tenants. According to the findings of a survey conducted by the Hong Kong Owners Club, among its 3 500 members, 98% has suffered from deliberate default rental payments by professional rogue tenants and the properties of 10% of its members have been vandalized by tenants. As regards protection against rogue tenants, the DAB opines that great efforts must be made in streamlining the statutory repossession procedures. The Bill proposes to shorten the relief period in relation to

forfeiture of tenancy rights from 28 to seven days. I trust this could reduce the possibility of abuse of the relief period by habitual defaulting tenants. But I think it still fails to effectively prevent tenants from repeatedly default on rental payments. I have proposed that the Government should put in place a fast-track procedure for landlords to claim repossession of premises as soon as possible. Moreover, the Government should also further limit the number of claims for relief from forfeiture by a tenant to prevent abuse. In response to our concern, the Government agreed to move Committee stage amendments to introduce an implied forfeiture clause in the Bill and to stipulate that unless with good cause as determined by the Court, a tenant could only claim relief from forfeiture once per tenancy. I believe these amendments will enhance the protection for the interests of landlords.

Secondly, to prevent unauthorized building works (UBWs) from being constructed on leased properties. Quite a number of small landlords complained that they were unable to take any actions even if it was discovered that tenants had constructed UBWs. In this connection, the DAB thinks that measures should be put in place to enable landlords to repossess properties on which tenants have constructed UBWs. We have also proposed that provisions be made to the effect that if the building works of tenants are in breach of the Buildings Ordinance, the landlord may forfeit the tenancy. However, the Government considers that this will lead to a large number of enquiries from landlords and tenants about whether building works carried out in the leased premises are in contravention of the provisions of the Buildings Ordinance and the resources of the Buildings Department might not be able to cope with them. In the light of enforcement and feasibility, it is proposed that an implied forfeiture clause should be added to provide that no structural alteration should be made to the leased premises without the prior written consent of the landlord, failing which the landlord may forfeit the tenancy. Since the effect of this amendment may also meet our requirement, we accept the Government's proposed Committee stage amendments. It is believed that, in the future, any leased premises where UBWs have been constructed or used as gambling or vice establishments can also benefit from this implied clause on forfeiture of tenancy.

Thirdly, we wish to improve the law enforcement procedures of the police. Another problem often encountered by small landlords is that when they seek assistance from the police over tenancy disputes, the police usually do not heed their request, thus rendering it impossible for them to seek redress. The past

practice of the police was not helpful at all to the effective enforcement of the Bill. The Government explained that there are established internal guidelines on the procedures to be adopted by the police in dealing with reports of alleged offences in connection with tenancy disputes between landlords and tenants, and in anticipation of the Bill, the police have included additional provisions in the guidelines to draw the attention of police officers to address the problem of unscrupulous behaviour of landlords and tenants that attracts criminal liability. However, in addition to this, we also think that the police should enhance the training of front-line police officers, in particular, on their attitude in dealing with tenancy disputes, so as to enforce the Ordinance to its spirit.

Fourthly, to increase the manpower and financial resources of the Lands Tribunal. As the number of tenancy disputes continues to increase, the Government should therefore provide the Tribunal with more manpower and financial resources, so as to help the Court to deal with such claims. For example, consideration can be given as to whether the practice of the Labour Department in handling labour disputes can be borrowed to vest the Rating and Valuation Department (R&VD) with power to deal with tenancy disputes not exceeding a prescribed amount of money, so as to expedite the process of handling tenancy disputes. We hope the Government can come up with a sound arrangement soon to implement this measure.

As regards the services of Bailiffs, according to government data, only 14% of the Writs of Possession can be executed within the usual timeframe of 30 days. This shows that in order to enforce the Ordinance effectively, it is necessary for the Judiciary to streamline its internal work process and increase its manpower.

By streamlining the tenancy renewal and repossession procedures, the Bill has not only enhanced protection for the interests of landlords, but also increased the penalties for harassment of tenants. The Bill seeks to strike a balance between the interests of landlords and tenants. It is believed that this would be beneficial to facilitating the development of the tenancy market.

However, I hope that after the passage of the Bill, the relevant departments would step up their efforts in publicity for I think that many clauses are difficult to understand. So, the Government should do more in publicity with the help of simple and user-friendly publications, so that both landlords and tenants can be

aware of their rights and relevant protection. This is vital to the enforcement of this legislation.

With these remarks, I support the Bill.

**MR ALBERT CHAN** (in Cantonese): Madam President, I rise to speak in support of the resumption of the Second Reading debate on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 and the proposals of the relevant Bills Committee in respect of the amendments.

Madam President, during the scrutiny of this Bill, I have raised a number of questions at the Bills Committee and also mentioned that the phenomenon of "rogue tenants" is a case for concern. At the meetings of the Bills Committee, I raised the issue of whether new clauses could be added to the effect that the provision of any false basic information like name, identity card number and income by any tenant might constitute a criminal offence. Unfortunately, at that time, the Government thought that such proposals were inconsistent with the amendments to the original clauses and outside the scope of the provisions, and could, therefore, not be further discussed.

Personally, I am of the view that the problem of rogue tenants has caused harm and serious losses to many small landlords and such acts are actually tantamount to fraud and the element of deceit is certainly there. By providing false information to the landlord, the tenant concerned tricked the landlord into leasing him the premises on the basis of such information and caused losses in rental payment to the landlord. Even if the landlord reported the case to the police, there was a 99.9% possibility that the police would definitely treat all such cases as civil disputes instead of criminal offences and the landlord had to deal with it on his own through initiating repossession procedures. Sometime ago when Secretary Michael SUEN talked about future issues that he would be facing, he mentioned that he would try to come up with new ways to help landlords to resolve landlord and tenant issues. I do not know whether there will be a tenth or eleventh measure in addition to "SUEN's Nine Strokes", to accord reasonable treatment to aggrieved Hong Kong residents. I hope that in the future some new provisions can be enacted to deal with the above issue. I also personally believe, as long as such acts are not criminalized, then no matter what measures are adopted by landlords to deal with such issues, they will first suffer losses before procedures can be taken to cut losses. And, despite all this,

landlords will eventually suffer losses and the tenant concerned could get off easily without being subject to any legal sanctions. I think this is really very unfair to landlords.

My comments on this subject are made on behalf of the Hong Kong Owners' Right Association and the Negative Equity Owners Alliance because in the past, members of these two organizations have faced problems that are common to many landlords. Many negative equity owners rely on the proceeds from leasing their premises to repay mortgage loans and if they fail to receive rental payments, they may have to default their loan repayments. And, at the same time, they are also faced with a whole series of legal liabilities and great financial pressures. Therefore, I think if we really wish to help negative equity owners and small landlords in general, there should be concrete and feasible measures to deal with the problem of rogue tenants, and criminalizing the relevant acts is an effective method.

However, before the relevant acts are criminalized and before this measure is formally proposed by the Government, I hope Secretary Michael SUEN can make arrangements to establish a form of emergency liaison with the Police Force or ask the Force to enhance their relevant guidelines, specifying that when someone provides false information to mislead or deceive other people with the intention of leasing their premises, then such act will actually constitute a criminal offence. When we discussed this issue with the police, they also agreed that if someone knowingly provides false information to gain the trust of the landlord in leasing his premises, then on the surface, this is already a criminal offence. Unfortunately, however, when it comes to actual enforcement, very often, no police officer is willing to initiate criminal proceedings against such cases.

Furthermore, some landlords have also raised other problems. For example, the leased premises might originally be leased with many appliances and fixtures including refrigerator, television set, air-conditioner and kitchen cupboards but when the tenants move out of the premises, it was often discovered that such appliances and fixtures had been criminally damaged or deliberately vandalized, or appliances like air-conditioners and refrigerators might be deliberately removed. However, when the assistance of the police was sought, they would not pay much heed for they regarded such cases as civil cases of tenancy dispute. We could see whether these are civil cases if I come to your home and remove your refrigerator and television set or if I go to the Police

Force office and remove their computers. So, we could see that sometimes the Police Force have not dealt with such issues in a proper manner. If I report to the police that I am the landlord of some premises and my tenant has removed my television set, then what kind of case could it be if it is not theft? However, the police would not deal with such cases. It is stated in the guidelines of the Police Force that the police should handle such cases, but in reality they would not do anything. It is evident that police officers have not followed the guidelines in enforcement. So, I hope that Secretary Michael SUEN can step up his efforts in urging the Police Force to do so. We would follow up such cases in future and ask the Police Force to submit a report on what they have done in this area over the past several years and to see whether they have enforced the relevant guidelines.

On the other hand, I have raised some issues during the deliberations by the Bills Committee in the hope that the Secretary would continue to take follow-up actions. Markets under the Housing Department have been awarded to contractors by way of single tender, but they are leased to stall operators by means of licences. Upon close examination, we can see that the terms of a licence agreement are, to some extent, identical to that of a tenancy agreement. However, in view of the legal arrangements, a form of licence management is adopted instead of tenancy management, and thus such markets are not subjected to the relevant Ordinance. Is this a proper way of dealing with such issues? There is really no justification for a government department to award the operation rights of the whole market to a single contractor by way of single tender and allow the contractor to exploit the loopholes to lease the stalls under a licence instead of a tenancy agreement. Thus, the Government should not condone such practices.

I hope that with the passage of the new provisions of the Ordinance, certain unfair arrangements in the past could be improved, but even so, there are still many unfair and unreasonable aspects. Therefore, I hope that amendments to be proposed in future or future recommendations of the Government can include more provisions on protecting the interests of small landlords. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 aims to achieve the following key objectives. First, in view of the complexity of the existing statutory procedures for tenancy renewal and the rigid requirements in respect of the time limits for the exchange of legal documents between landlords and tenants, the Bill proposes that the tenancy renewal procedures be simplified by shortening the time limit by three months for the service of a "Notice of Termination of Tenancy" or "Request for a New Tenancy", and by empowering the Lands Tribunal to hear applications lodged outside statutory time limits. The Bill also empowers the Rating and Valuation Department to provide rental information for landlords and tenants to help them reach an agreement on the new rental level upon tenancy renewal. Second, it is proposed in the Bill that the computation method for the statutory compensation payable to tenants and sub-tenants upon redevelopment of the premises be amended so that tenants and sub-tenants occupying smaller areas can receive more reasonable compensation. Third, to impose heavier penalties for harassment of tenants and for unlawful eviction. The Bill proposes that an offender will be subject to up to a fine of \$500,000 and imprisonment for 12 months on first conviction and a fine of \$1 million and imprisonment for three years on any subsequent conviction. Fourth, to streamline the existing repossession procedures. The Bill proposes that the minimum mandatory relief period following the granting of an "Order for Possession" for non-payment of rent be shortened from a minimum of 28 days to a minimum of seven days. It is also proposed that where no intention has been indicated by the tenant to defend his case, the landlord would be dispensed with the requirement of supporting an application to the Lands Tribunal for repossession with an affidavit. Fifth, the Bill proposes a number of amendments which include, *inter alia*, provision for the landlord to forfeit the tenancy if the tenant fails to pay rent within 15 days after the due date.

During the course of discussing the proposal on shortening the repossession procedures, the Bills Committee considered that the procedures could be further streamlined to shorten the lead time for repossession. The Administration appreciates Members' concern and has therefore examined each and every procedure with the Judiciary Administrator and the Department of Justice. It is concluded that all the procedures as proposed in the Amendment Bill are necessary to ensure a fair and just hearing for both landlords and tenants.

We understand Members' concern over the protection of landlords from the abuse of rogue tenants. Therefore, taking account of the views of the Bills Committee, we have proposed an amendment to the Bill by adding three implied tenancy forfeiture clauses to allow forfeiture of the tenancy by a landlord where the tenant misuses the leased premises under the following circumstances: the tenant using the leased premises for illegal or immoral purposes, causing unnecessary annoyance, inconvenience or disturbance to the landlord or other persons, or making structural alteration to the premises without prior written consent of the landlord. It is specified that persistent delay of rent payment is unnecessary annoyance, inconvenience or disturbance. With the introduction of these implied forfeiture clauses, landlords plagued by rogue tenants will be able to repossess their properties earlier than at expiry of tenancies.

The Government proposes in the Bill to empower the Lands Tribunal to dispose of properties left by tenants on the leased premises. As Members have raised concerns over the actual implementation of the proposal, the Government proposes to revise Form 22 so that landlords can apply to the Lands Tribunal for the disposal of properties along with an application for repossession. Taking into account of the actual situations of cases after enactment of the relevant provisions, the Court will have clearer directions for the implementation of the proposal.

In order to deter rogue tenants, the Bills Committee has requested to require tenants, by legislation, to provide the landlord with certain personal information, such as name, occupation, salary and past rental records, upon the signing of the tenancy agreement. It is further proposed that a tenant would be held criminally liable should he provide false information in this regard.

At the Bills Committee meetings, the Administration had pointed out the possible legal problems and practical difficulties pertaining to the implementation of the above proposals. In fact, the provision of false information involving fraudulent act has already been covered by the existing laws. The police have also committed that they would follow the same criminal investigation procedures in future for landlord-tenant disputes involving any criminal act. In view of Members' concern, the Administration will further examine the proposals in the context of the comprehensive review on the Landlord and Tenant (Consolidation) Ordinance to be conducted shortly.

Some Members have just now expressed concern over the rogue tenant issue. In fact, as pointed out by Members, security of tenure provision was first introduced in 1981 against the background of rental housing shortage and significant rental increase. As in the housing policy statement I made on 13 November 2002, we will undertake a thorough review of the Ordinance with a view to resuming the free operation of the private rental market, giving owners the flexibility and autonomy they deserve, and mitigating the difficulties in recovering flats for re-letting in the light of the current ample supply and falling rentals. Our objective is to relax excessive control in the rental market. After the passage of the Bill today, I undertake that we will consult relevant bodies over the proposal shortly, hoping to put a new bill to the Legislative Council for scrutiny next year.

Lastly, I would like to take this opportunity to express my gratitude to Ms Audrey EU, Chairman of the Bills Committee, as well as other Committee members for their efforts, comments and views on the Bill, which contributed to the smooth scrutiny of the Bill, and also for their support to the resumption of the Second Reading debate. I hope Members would support the Bill and the amendments to be introduced by me later.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

### **LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 2, 3, 5, 6, 9, 10, 12, 13, 14, 16, 17, 19, 20, 21, 23 to 36, 38 and 39.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 4, 7, 8, 11, 15, 18, 22 and 37.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese):  
Madam Chairman, I move the amendments to clauses 1, 4, 7, 8, 11, 15, 18, 22 and 37, as set out in the paper circularized to Members.

The proposed amendments have been scrutinized and endorsed by the Bills Committee. The amended clause 1 allows some provisions of the Bill to become law upon enactment by the Legislative Council, and to be effective upon gazettal, so as to benefit both landlords and tenants early. As for other provisions in relation to fees for new services to be provided by the Rating and Valuation Department (R&VD), they will come into effect separately after the Legislative Council has scrutinized the schedule of fees proposed by the authorities.

The amended clause 4 seeks to extend the time for Bailiffs to make distress between 9 am and 7 pm. This amendment is made with reference to recommendations made by members of the Bills Committee. Extending the time to make distress will suit the routine of modern life.

At present, clause 11 empowers landlords to revoke the tenancy agreement for non-payment of rent within 15 days of the due date. In the course of deliberations, the Bills Committee was concerned about circumstances including improper use of rented premises, repeated defaults on rental payment and the construction of unauthorized structures on premises. After taking into account the opinions of the Bills Committee, we propose to introduce an implied forfeiture clause in the tenancy agreement, so that landlords would be able to revoke the tenancy for abuse of rented premises. According to the amended clause 11, if the tenancy agreement does not contain any clause aiming at the above conditions relating to abuse of rented premises by tenants, or provisions expressly stating that landlords may revoke the tenancy agreement on grounds of abuse of the premises by tenants, then provisions would be introduced, with a view to enabling landlords to revoke the tenancy agreement if the premises is used for illegal or immoral purposes, or unnecessary annoyance, inconvenience or disturbance are caused, or any structural alteration is made without the prior written consent of the landlord. In the meantime, persistent delay of payment of rent will also be considered "unnecessary annoyance, inconvenience or disturbance", an implied forfeiture clause which landlords may invoke.

The other amendments of the Bill rest are purely technical in nature, with the purpose of giving the provisions greater clarity.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 1 (see Annex I)**

**Clause 4 (see Annex I)**

**Clause 7 (see Annex I)**

**Clause 8 (see Annex I)**

**Clause 11 (see Annex I)**

**Clause 15 (see Annex I)**

**Clause 18 (see Annex I)**

**Clause 22 (see Annex I)**

**Clause 37 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 4, 7, 8, 11, 15, 18, 22 and 37 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 35A                      Issue of warrant for  
   possession of premises.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese):  
Madam Chairman, I move that new clause 35A, as set out in the paper  
circularized to Members, be read the Second time.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That  
new clause 35A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 35A.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam Chairman, I move that new clause 35A be added to the Bill.

*Proposed addition*

**New clause 35A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 35A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam Chairman, I move that the Schedule be amended, as set out in the paper circularized to Members.

The existing section 21F of the High Court Ordinance and section 69 of the District Court Ordinance stipulate that if the landlord is granted an order by the Court to repossess the premises because the tenant has defaulted rent payments, the tenant may repay the rents in arrears within the mandatory relief period and continue to live in the relevant premises with the same tenancy. The amended Schedule and section 12 of the same stipulate that the tenant, unless with sound reasons, cannot enjoy claim to the mandatory relief period more than once.

Amended Form 22 has been added to section 9 of the amended Schedule to enable the landlord to apply to the Lands Tribunal for repossession of premises, and at the same time, to pursue repayment of other items such as rents, costs, interests, management fees and other miscellaneous expenses. The landlord may, by virtue of the power conferred on the Lands Tribunal by the Bill, apply to the Lands Tribunal in Form 22 to grant an order for disposal of properties left on the leased premises by tenants.

Thank you, Madam Chairman.

*Proposed amendment*

**Schedule (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

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

### **LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001**

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese):  
Madam President, the

Landlord and Tenant (Consolidation) (Amendment) Bill 2001

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

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

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Electoral Provisions (Miscellaneous Amendments) Bill 2002.

### **ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 2002**

#### **Resumption of debate on Second Reading which was moved on 9 October 2002**

**PRESIDENT** (in Cantonese): Mr IP Kwok-him, Chairman of the Bills Committee on the above Bill will address this Council on the report of the Bills Committee.

**MR IP KWOK-HIM** (in Cantonese): Madam President, I speak in my capacity as the Chairman of the Bills Committee on Electoral Provisions (Miscellaneous Amendments) Bill 2002 (the Bills Committee).

The main proposal of the Electoral Provisions (Miscellaneous Amendments) Bill 2002 (the Bill) is to increase the numbers of elected seats in respect of Islands, Sai Kung and Yuen Long District Councils (DCs) by one, three and six respectively. The existing numbers of elected seats for Islands, Sai Kung and Yuen Long are seven, 13 and 23 respectively.

The Bills Committee has requested the Administration to explain the justifications for its proposal. The Administration originally recommended that the existing district boundaries should be retained, and that the existing numbers of elected, appointed and ex-officio members in each DC should remain unchanged. As some Legislative Council Members and DC members have expressed concern about the significant population growth in the new towns of Islands, Sai Kung and Yuen Long Districts, namely Tung Chung, Tseung Kwan O and Tin Shui Wai, the Administration has proposed after discussions that extra elected seats should be added to Sai Kung, Yuen Long and Islands DCs.

The Administration has explained that in making the proposal, it has taken into account the consideration that the population of such new towns as Tung Chung, Tseung Kwan O and Tin Shui Wai would have grown 92%, 40% and 123% respectively by June 2003 and that the average population size per constituency of Sai Kung and Yuen Long would exceed the population quota by more than 25%. In addition, the Administration is of the view that if the number of elected seats remains unchanged, major changes to the boundaries of the existing constituencies in Sai Kung and Yuen Long would be unavoidable as each constituency would have to cover a larger population. It is also possible that some rural constituencies would have to be merged to provide seats in the new towns to cater for the population increase.

Most of the members of the Bills Committee support the proposal made by the Government. However, a member has pointed out that the projected population increase for the new towns of Tung Chung and Tin Shui Wai as at June 2003 would be 92% and 123% respectively, which is far more significant than other administrative districts. Therefore, assuming that the additional seats for Islands and Yuen Long in the proposals would be allocated to the new towns, the average population size per constituency in Tung Chung and Tin Shui Wai would still exceed the population quota. Thus, the member is of the view that the average population size per constituency should be kept as close to the population benchmark as far as practicably possible. In his opinion, the elected seats for Islands and Yuen Long DCs should be increased by two and nine respectively.

In addition, a member opines that one extra elected seat should be added to Sha Tin DC in the light of the population increase in Ma On Shan new town should be addressed. The Administration considers the proposal not justified because based on the projected population figures as at June 2003, the population of Sha Tin as a whole would be increased by 2%, however, the rate of increase is much less than that of Islands, Sai Kung and Yuen Long, which is 34%, 28% and 39% respectively. The increase of population in Sha Tin is the lowest among the five other administrative districts. The increase in population in Ma On Shan is also far lower than the increase in Tseung Kwan O, Tung Chung and Tin Shui Wai.

Some members have expressed serious concern that if additional elected seats are not provided for DCs with population expansion, the Electoral Affairs

Commission (EAC) would have to redraw the boundaries of some existing constituencies of the relevant DCs to provide seats for constituencies with population increase. They are particularly worried about the situation in Sha Tin where certain constituencies with less population would be merged to provide extra seats to cope with the population increase in Ma On Shan new town. Some members have pointed out that such changes would disrupt the community identities and local ties established in the areas since the 1999 DC elections. They are of the view that the boundaries of existing constituencies should be preserved as far as possible.

The Administration has advised members that the policy objective is that the existing overall district boundaries should be retained. Apart from increasing a small number of elected seats to cater for the population expansion of new towns in Islands, Sai Kung and Yuen Long DCs, the size of elected membership for the remaining 15 DCs should be maintained. As regards the delineation of boundaries for individual constituencies, that is for the EAC to make recommendation pursuant to the number of elected seats specified. The EAC is also empowered to allow the population in certain constituencies to deviate from the population quota by more than 25% if the departure is considered desirable after taking into account such factors as the community identities and the preservation of local ties. The EAC will conduct a public consultation early next year to invite public views on its draft proposals.

To address the concerns of members, the Secretary for Constitutional Affairs has undertaken to convey members' concerns about the delineation of constituency boundaries in certain DCs to the EAC. The Bills Committee notes that the Secretary for Constitutional Affairs has subsequently written to the Chairman of the EAC on this matter. In response to the request of the Bills Committee, the Secretary for Constitutional Affairs has agreed to give an account of this in his speech at the resumption of the Second Reading debate on the Bill today.

Madam President, the Bills Committee supports other parts of the Bill, including the amendment to the disqualification provisions in the District Council Ordinance and the amendments to the cycle for the compilation and publication of the provisional register and final register of electors. The Bills Committee also supports a technical amendment to be moved by the Administration later.

Madam President, with your permission I shall continue to speak in my personal capacity. I would like to comment briefly now, on behalf of the DAB, on the passage of the above-mentioned Bill.

Hong Kong is a fast-growing metropolis and its population is growing all the time. According to the findings of the Census conducted last year, there has been rapid growth in population in the new towns in the few years since the last DC elections in 1999. That applies especially to new towns like Tin Shui Wai, Tseung Kwan O and Tung Chung. Last year, the Constitutional Affairs Bureau consulted the various DCs on the arrangement in respect of seats in the 2003 DC elections. During the period, as a representative of the DC Functional Constituency, I took part in many of the discussions held in the DCs on this issue. When I attended the meetings in Yuen Long, Sai Kung and Islands DCs, I heard many strong views from DC members. They pointed out that it would be impossible to cater for the needs of the residents of new towns if the Government merely allows the population in each constituency to exceed the population quota by 25% without expanding the number of elected seats for those new towns with a fast-growing population. Some DCs even passed motions to express their wish to increase the number of elected seats and these motions are an expression of the strong demand from the DCs.

In connection with this, I have conveyed the wish to Mr Stephen LAM, the Secretary for Constitutional Affairs, many times and presented the pros and cons of the issue to him. I have also initiated joint signature campaigns in three DCs to demand that the number of elected seats in these three districts with dramatic population growth be increased to cater for the needs of residents there. The campaign was supported by more than 90% of the members of these three DCs. That shows the support given by the DCs on this matter. A more encouraging thing is that Secretary Stephen LAM has acceded to the request and added 10 elected seats in the three districts. This is commendable because the merits of the accountability system have come into full play. As to the accusation made by some Honourable Members that the seats arrangement in the DCs is not adequate and that this is "entirely in tune with the plans made by a certain party" and so on, I can only express my deep regrets. The DAB thinks that elections in Hong Kong are fair, open and just. Candidates running for the elections will only have their abilities to count when they want to win. Moreover, we believe that voters are smart and they will only choose candidates who can really work for them to become DC members. It would be futile for the Government to make any deliberate attempts to fix matters if the candidates do not possess the

calibre for the job. And those who do have the capabilities will compete in a fair election and win the seats to enable them to serve the people of Hong Kong.

The Bill also seeks to adjust the cycle for the compilation and publication of the register for electors in order to reduce the time gap between the publication of the voter registers and the polling day, so as to ensure the data on electors contained therein would be most up-to-date. This would also prevent people from not being able to register as electors when the deadline for entering information into the register expires. That is a commendable recommendation that can really kill two birds with one stone.

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

**MR ALBERT CHAN** (in Cantonese): Madam President, during the course of scrutinizing this Bill, I said that I intended to propose an amendment. However, due to misunderstanding in the administrative procedures and some personnel matters, I missed the deadline for proposing amendments. I feel very sorry about this mistake. Though I have missed the opportunity for proposing an amendment, even if that is proposed, I believe the chances of it being able to change the outcome would be small. It is because under the joint efforts of the ruling coalition and that the Government has tailor-made things for a certain political party, the chances of passing any substantial and meaningful amendments by people from the so-called opposition party like us would be minimal.

I would think that the proposal to increase some seats in the DCs is a necessity. With respect to the mentality held by the former Secretary for Constitutional Affairs that "nothing done is no mistake made", I would like to express my strong disapproval and denunciation. No sooner had he assumed office than Secretary Stephen LAM yielded to the lobbying efforts made by the ruling coalition, and the DAB in particular, and boldly proceeded with the amendments. His bold and decisive action should be commended, for the matter was completed within such a short span of time. However, it can be asserted the lobbying has influenced his decision. That without the benefit of a full picture of the district affairs, he has accepted the proposals made by the DAB in their entirety is fully attributable to the lobbying efforts of the DAB. For

they were able to make Secretary Stephen LAM accept all their proposals in such a haste while he did not have a full picture of the state of affairs.

It is a fact when I say that the increase of seats in Tin Shui Wai and Tung Chung is tailor-made for the DAB. For if the numbers of seats are not increased, there will be a fight among DAB members of the Tin Shui Wai DC and this increase in seats will prevent such an internal strife among DAB members. That is also a fact. I wish to tell Secretary Stephen LAM clearly that this is a hard political reality.

Madam President, the amendment concerned is a relatively less unreasonable move made under extremely unreasonable arrangements. However, there are still many unreasonable respects after the amendment is made, including the composition of the DCs, population distribution and the number of seats, and so on. Now I would like to focus on the constituencies in Tin Shui Wai, Yuen Long and Tung Chung, Islands. Why do I think that the new proposal is still unreasonable? In fact, I have had a heated debate with Secretary Stephen LAM during the Committee stage and it was really an emotive debate. Therefore, I wish we can be less emotive today and milder on this same issue. I would like to present some facts and figures only, so that the Council can compile an official record of the proceedings of the meeting and that when people look up the proceedings later, they can find out the truth and the relevant figures.

As we look up the reference materials, we will find that the population size in each constituency of a DC is specified, that is, there should be 17 000 persons in each constituency. That is a basic principle and it is a figure agreed by all of us as part of the rules of the game. If we are to work out the number of constituencies for DCs in a reasonable manner, then we have to stick to this figure of 17 000 persons for each constituency. This number should also be used to calculate the number of seats in DCs that should be increased and the total number of seats in the DCs. Take the example of Tin Shui Wai, if the population size for each constituency is taken to be 17 000, then there should be an additional nine seats instead of six. That should be clear enough to everyone, including the DAB. If that objective figure is distorted and compressed to six, then the average size of the electorate in the Tin Shui Wai constituency would be as many as 20 000 persons. This is a deviation from the specified 17 000 persons. Even if a 25% plus or minus in the population size is allowed, that would be reasonable and logical if that is a mere deviation in an individual

constituency within the district. But if an individual constituency has 13 seats and the population quota of 20 000 persons is adopted, that is a deviation from the methods and principles of delineating constituencies. So that is clearly a breach of the overall spirit and principles in respect of elections and planning.

There is a great deviation in Islands District, for the Government has made blunders in respect of the Tung Chung constituency. Tung Chung New Town now has two seats, but actually it has only one, as the other one is counted as a seat for Lantau South. When boundaries for the Tung Chung constituency were delineated, part of Tung Chung was included, that is, DC members of Lantau, Islands would be responsible for affairs in Lantau South, including Mui Wo, Cheung Sha, Tong Fuk, Tai O, plus Tung Chung Estate and Yat Tung Estate which is now included in the constituency boundaries. This is a blunder in boundary delineation and design because when DC elections were held in 2000, Yat Tung Estate was not yet occupied and so an erroneous move was made then to place Tung Chung in the Lantau South constituency.

Now the Government thinks that two seats in Tung Chung are not sufficient and so the number is increased to three. It is projected that the population of Tung Chung will increase to 60 000, and given the three seats there, that will mean the average population size for each constituency is 20 000. That is simply a wrong calculation. Why? Many housing estates, both private and public, have been occupied since the last DC election. These include Yat Tung Estate, private developments like Tung Chung Crescent, Caribbean Coast, Seaview Crescent and Coastal Skyline on which would be occupied very soon. According to government estimates, Caribbean Coast will be ready for occupation next March and by June next year, the population in Caribbean Coast will reach 2 000. I do not know if the estimation is correct, but I would think the population in Tung Chung Crescent, Seaview Coast, Yat Tung Estate, Caribbean Coast and Coastal Skyline alone would be no less than 40 000. When this figure is added to Fu Tung Estate and Yuet Tung Estate, there will be a population of 50 000 to 60 000 in Tung Chung New Town. If this population of 50 000 has two seats, that will mean at least 25 000 for each constituency. But if some parts of Tung Chung are delineated as Lantau South, that would mean a complete distortion of the basic principle in the delineation of boundaries for the Islands constituency and it would also distort the representativeness of Lantau South. This is because members of Lantau South will represent not only

Mui Wo, Cheung Sha, Tong Fuk, Shui Hau village and Tai O, but also part of Tung Chung New Town. The workload of these members would be very heavy indeed.

Another distortion is the adding of seats in Tung Chung New Town, for in so doing the distribution of seats in the Islands constituency would be distorted. The delineation of the boundaries for Islands is rather peculiar, for Tung Chung has a larger population because of the new town, but islands like Lamma and Ping Chau are rather sparsely populated. In the future delineation of constituencies, a DC will compose of members who represent constituencies of more than 20 000 persons, while some will represent only 5 000 to 6 000 persons. I do not know if in future the Electoral Affairs Commission (EAC) would, taking into account the present distortions, combine the two seats for the outlying islands, that is, Lamma and Ping Chau, into one, for the population on these two islands is only a little more than 10 000, and then allocate the other seat to Tung Chung. I do not know if that is possible. Will the Secretary or the DAB be able to force the EAC to accede to their wish? I am not sure about this. It seems to be not practicable in law either. Would the EAC follow their instructions when delineating constituency boundaries? I dare not draw a conclusion at the present stage, however, I oppose the idea that boundaries should be delineated with some political intentions in mind, for it is totally unacceptable in terms of logic, boundary delineation and population distribution. On top of all this, it is totally unreasonable in a democratic system that a member of a DC should represent 5 000 people while another should represent 20 000-odd.

Madam President, the fact that some amendments are proposed in this Bill is better than no proposals at all. But there are many areas in the amendments which are not convincing and reasonable. Having said that, I have to commend the Secretary for his efforts and boldness in completing the task in such a short time. Notwithstanding the fact that I do not agree with many of the analyses made by the Secretary and that I have had heated arguments with him, I would like to add in the end that, with respect to many things, it is better to do something than not doing any at all. But despite the things done by the Secretary, I am sorry that I cannot support his amendments.

Thank you, Madam President.

**MR ANDREW CHENG** (in Cantonese): Madam President, on behalf of the Democratic Party, I would like to express our view on two aspects of this Bill. The first is rather simple, as I know I cannot say much, that is, on the scope of the long title of the Bill and on the issue of appointed members and ex-officio members.

In the meetings of the Bills Committee, I have mentioned the following point and without sidetracking I would focus on this as much as possible and to criticize the Blue Bill — the Electoral Provisions (Miscellaneous Amendments) Bill 2002. Given that the long title carries the wording of "to change the number of members to be elected to the Islands District Council, Sai Kung District Council and Yuen Long District Council", we feel that the Government has been obviously smart to anticipate that Members from the democratic camp will probably propose amendments in respect of appointed members and ex-officio seats, and for this reason it has drafted the long title in such a narrow scope and objects so restrictive that we cannot propose any amendment to the Bill.

Although Mr Albert CHAN has withdrawn from the Democratic Party, I would agree to most of the points made in his speech. I was aware that in the meetings of the Bills Committee, Mr CHAN had said that he would propose an amendment and so I thought he would do so and that is why the Democratic Party has left the amendments on the Islands DC and Yuen Long DC to Mr CHAN. There is one thing, however, which is very correct in the remark made by Mr CHAN earlier, that is, whether or not he proposes any amendment would make no difference to the outcome of the Bill today, for in the end, Honourable Members of the ruling coalition and the majority of Members would vote in favour of the proposals made by the Government.

In any case, the Bill proposed by the Government focuses only on amendments to three DCs and this prohibits any amendments in respect of other DCs which have appointed members and ex-officio seats. I feel most sorry about this. It is also to my regret that the Government has adopted such a narrow perspective as regards this Amendment Bill.

Even when the issue of appointed members and ex-officio seats is put aside, both Mr LAU Kong-wah and I have raised the issue of elected seats in the Sha Tin DC in the meetings of the Bills Committee. We feel that if seats were to be increased in these three DCs, one or two seats should perhaps be added to the

Sha Tin DC. But, sorry, that is out of the question as this falls outside the scope of the Bill and its long title, for the Government is not prepared to add any seats to the Sha Tin DC and that shows how narrow-minded the policy is. For us, Article 74 of the Basic Law has really imposed an obstacle.

With your indulgence, Madam President, I should like to say something on the Sha Tin DC. I know we cannot say too much about this, but that issue has been raised in the Bills Committee. As that also involves other DCs, why has the Government sought to increase seats in these three DCs only? There is one argument presented by the Government and that is "community integrity". Madam President, about this question of "community integrity", figures from the Wan Chai DC show that the deviation from the population quota in Wan Chai is -19.05%. To say that Wan Chai District does not have a deviation exceeding 25% and so its integrity should be maintained is largely correct. The population of Sai Kung has increased greatly, so the Government thinks that seats in the Sai Kung DC should be increased. However, we also know that Ma On Shan is also a district with an increasing population and the Secretary has made repeated explanations on this. By the way, I must commend the Secretary for he has attended every meeting of the Bills Committee and I believe few Bureau Directors would attend all the meetings of a Bills Committee on a bill falls under his or her portfolio. He is really a hard working Bureau Director and he remembers well the criticisms and comments made by Members. He also argued with us that the population in Ma On Shan had not increased by such a margin that exceeds the population quota. He also raised the point that when boundaries were to be delineated, the EAC chaired by Justice WOO Kwok-hing will certainly hear our views.

However, Madam President, I wish to put this on record. I said in the Bills Committee that the EAC headed by Justice WOO would act according to the law and we should make our views on this Bill fully known. We should tell the Government that since it follows the principle of community integrity, we should point out that the population of the Sha Tin constituency has a deviation of +2%, and that the deviation from the standard population quota in some older constituencies would tend to be in the negative by a greater margin, while the deviation in Ma On Shan would likely to be positive. We are very worried that when the EAC considers the community integrity of the older districts in future, it would only look at the population factor that may as a result affect the existing number of seats in the Sha Tin DC. The existing relations between DC

members and the local communities may not be considered by the Government or the EAC, for they would only act according to population figures. The result is that the number of seats for Ma On Shan may have to be changed as the district has a greater rate of population growth. We are worried that, if this situation continues, the demarcation of boundaries of constituencies will be affected.

I hope the Government will understand that the long title and objects of this Bill serve not only to prevent us from proposing amendments in respect of appointed seats and ex-officio seats in other DCs, but also pre-empt the making of some constructive proposals or amendments to the Government in respect of other DCs. The Sha Tin DC is an obvious example. I hope that the Secretary, having heard our views, would stick to his stand on these issues when he discusses them with the EAC. It remains of course that I also believe that the Constitutional Affairs Bureau would also have a position on these issues. I hope that the Secretary can appreciate that we do not want to see any change in community integrity. It is because since the Government has not added seats to other DCs, we do not want to see any damage to be done to community integrity as well as the existing relations and links between DC members and the community. I think this should be a more desirable approach.

These are the views I would like to put forward on behalf of the Democratic Party. As Mr Albert CHAN has said, it would be very difficult for us to oppose or not lend our support to this proposal to increase the number of elected seats in these DCs by six, three and one respectively. In view of the problems of political appointment and ex-officio seats, and that the long title of the Bill is phrased in such a narrow manner, it is really very hard for us to vote in support of the Bill. So I can only say, "Sorry." With respect to this issue, the Democratic Party welcomes the increase in the number of seats, but we have to raise our objection to the conservative and narrow-minded approach taken by the Policy Bureau. For this reason, we will abstain from voting at the resumed Second Reading.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, the proposals in the Electoral Provisions (Miscellaneous Amendments) Bill 2002 are aimed mainly to increase the number of elected seats in the three DCs of Islands, Sai Kung and Yuen Long for the 2003 DC elections in view of the substantial growth in population in the new towns. According to projections, the population increase in these three districts as at June 2003 will be 34%, 28% and 39% respectively,

with the average population size per constituency exceeding the population quota in Hong Kong by more than 25%.

In view of this, the Liberal Party supports the proposal to, taking into account the population growth and the extent of its deviation from the population quota, increase the number of elected seats in the Islands DC, Sai Kung DC and Yuen Long DC from the existing seven, 17 and 23 seats respectively to eight, 20 and 29 seats respectively.

Moreover, in order to reduce the time gap between the publication of electoral registers and the polling day as far as practicable, the Bill proposes to adjust the cycle for the provisional register and final register of electors for geographical constituencies and functional constituencies and those of voters for Election Committee subsectors. In future, the deadlines for publication of provisional registers and final registers for DC and Legislative Council elections would be deferred by four months and two months respectively, such that the deadlines will be closer to the polling date.

In the opinion of the Liberal Party, the Bill will serve to better the electoral system and that the publication of voter information will be brought closer to the real situation. This will facilitate candidates in the elections to plan their electioneering efforts, deploy resources and assess the position. It will also help reduce confusions arising from the failure of voters to update their personal information on the registers promptly due to such reasons as change of address or other reasons.

With these remarks, Madam President, I state that the Liberal Party supports this Bill.

**MR LAU KONG-WAH** (in Cantonese): Madam President, as a member of the Bills Committee, I support the proposals in the Electoral Provisions (Miscellaneous Amendments) Bill 2002 (the Bill), in particular the proposal to increase the number of elected seats in three new towns. The three districts concerned are Islands, Sai Kung and Yuen Long. Initially, the Government's position was that no seats would be added to these districts and this aroused a great deal of concern among residents and elected DC members because the

indigenous population in the Islands, Sai Kung and Yuen Long Districts are relatively small and scattered. If no extra seats are allocated to the new towns, the original seats in these constituencies will be taken away and allocated to these new towns. This will damage the integrity of the communities in these three constituencies and the cohesion of the residents. Eventually, the Government heeded good advice and proposed to add several elected seats to the new towns in the relevant DCs with a view to preserving the integrity of the communities in these districts and, at the same time, allocating additional seats to the new towns in response to population growth. I believe this is the best solution.

However, Madam President, we should also bear in mind that there are in fact four so-called new towns in Hong Kong, that is, apart from the new towns of Tung Chung, Tin Shui Wai and Tseung Kwan O, there is also the new town of Ma On Shan. In the Ma On Shan New Town, the population is increasing, but regrettably, the Government has not increased the number of elected seats in the Sha Tin District in response to the population growth in Ma On Shan. This is indeed regrettable, and for this reason, the concern raised by Mr Andrew CHENG just now is indeed justified. If the aim of allocating additional elected seats to the other three new towns is to keep the communities intact and preserve their integrity then there is inconsistency in standard if the integrity of the indigenous communities in Sha Tin is affected because no extra elected seats are given to Ma On Shan. This will give rise to misgivings among the public. In fact, I noticed that at one point, the Government tabled a document to the Bills Committee with the conclusion that judging solely from the population growth in new towns, there is no sufficient justification to add an elected seat specifically for Ma On Shan in the Sha Tin District. If this conclusion is correct, then I believe the chances that the integrity of the communities in Sha Tin will be damaged in the future will not arise.

Madam President, another area which I find rather unfair is that there are at present 36 elected seats in the Sha Tin District whereas there are 37 elected seats in the Eastern District on Hong Kong Island. However, with the population changes in the next one or two years, the population growth in the Sha Tin District will overtake that in the Eastern District and the population in the latter will actually drop. Yet in the next election, the number of seats in the Eastern District will remain at 37 and the number in Sha Tin will also remain at only 36. This is a very unfair situation. Therefore, even if the Bill is passed

today, I believe both the Government and the EAC under Justice WOO Kwok-hing should take note of a motion passed by the Sha Tin DC calling on the Government to maintain the *status quo* and to retain the delineation and names of the constituencies. This is the principle upheld by the Sha Tin DC and also one of the more resolute proposals put forward by members of the Bills Committee. I hope all parties concerned are by now aware of this proposal.

In addition, Madam President, I also wish to respond to the issue of the so-called tailor-made arrangements mentioned by Mr Albert CHAN earlier. I wonder if Mr Albert CHAN has ever raised the issue of increasing the number of seats in meetings of the Panel on Constitutional Affairs. He said today that originally he had intended to move an amendment to increase the number of seats, but he could not do so due to a human error. However, if he had not raised his demand on increasing the number of seats at that time, why did he mention his intention to move an amendment on increasing the number of seats today? This is contradictory. It is certainly fine if Mr Albert CHAN has lobbied for increases in seats for all these new towns. But what difference is there in lobbying by him and by Mr IP Kwok-him? Why is lobbying by Mr IP Kwok-him considered as tailor-made arrangements, but not so with lobbying by Mr Albert CHAN? His point is hardly convincing. Since Mr IP Kwok-him is the representative of all DC members, he is duty-bound to do so and he must have heard the calls of the sector for such an effort. If he had not done so accordingly, he would have failed his duty. So he is being accountable to his constituents in doing so. As far as tailor-made arrangements are concerned, how can anyone know the results of an election before it has even taken place? I must of course thank Mr Albert CHAN for his appreciation of members affiliated with the DAB in representative councils. In fact, members affiliated with the DAB in representative councils are indeed working pragmatically in various districts and are helpful to residents. In the final analysis, in future elections, everything really depends on the choice of the people, and the so-called tailor-made arrangements are tailor-made only for the drastic increases in population in the new towns. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move the debate on Second Reading of the Electoral Provisions (Miscellaneous Amendments) Bill 2002 be resumed.

That the debate on Second Reading can be resumed today is attributable to the support of Honourable Members and the Legislative Council Secretariat. The Government tabled the Bill to this Council only on 9 October. Since Honourable Members were aware of the urgency of the matter, priority was given to the Bill and a Bills Committee was established to scrutinize it. In this connection, I wish to express my appreciation and gratitude to the President, Honourable Members and colleagues of the Legislative Council Secretariat.

In the course of deliberations, members of the Bills Committee have made a number of suggestions to the Government and debated some issues, all of them were quite interesting. Today, Mr Albert CHAN appears to be more tranquil, and we would continue discussing the issue with Honourable Members in the same mood.

First of all, I would like to talk about the thinking underlining our efforts dealing with this issue. In fact, the most important thing is the small adjustment being made in response to concern of District Councils (DCs), the Legislative Council and members of the public about the significant increase in population of new towns affecting the 2003 DC Election, in order to make our policy answer the views of various sectors. Thus we have this Bill before the Council. The original thinking of the Government was to maintain the existing DC system and make the least changes as the 2003 DC Election was imminent. For this reason, we have proposed this *status quo* proposal despite all outside changes. However, after consultations with the DCs, the Legislative Council, the Panel on Constitutional Affairs and the Panel on Home Affairs, we had already taken the dramatic population growth of new towns into account when we proposed the Bill. The Government proposed to add one elected seat to Islands District, three seats to Sai Kung District and six seats to Yuen Long District. The majority of members of the Bills Committee supported the proposal. However, individual members considered the numbers of additional seats for Islands and Yuen Long should be greater than the respective one and six seats proposed by the Government. In response to this alternative proposal, I wish to explain our thinking and ideas here once again.

Actually, we have thoroughly examined the population growth projection of the three new towns and their respective DCs by 2003. With regard to the rate of population growth in new towns of Islands, Sai Kung and Yuen Long, the average population per constituency in Sai Kung and Yuen Long would reach as high as 22 000 to 23 000 if the *status quo* were maintained; while the two constituencies of Islands District, including Tung Chung and Lantau, would have to cater for some 60 000 people in total. For this reason, the Government agreed that there should be a limited increase in the number of elected seats of the three districts. According to the Government's proposal, after the number of elected seats in the three districts is adjusted, their respective average population size per constituency will drop to a more reasonable level, but the average population of the two districts, that is, the average population returning one seat will still be the highest among all 18 districts, ranking the first and second before all districts. As for the Islands District, the Government is of the view that the additional elected seat for the district will suffice in catering for the rapid population growth in Tung Chung.

Madam President, several weeks ago, we wrote to the Legislative Council Secretariat to reiterate the Government's understanding of the population growth situation in Tung Chung by the year 2003. In fact, Yat Tung Estate has a population of 20 000, while the total population of the other five housing estates, namely Fu Tung Estate, Yu Tung Court, Tung Chung Crescent, Coastal Skyline and Caribbean Coast, which Mr Albert CHAN knows very well, is about 24 400. That is to say, unlike what Mr Albert CHAN has speculated, the combined population will total around 44 000 only, therefore it would not exceed the 50 000 threshold. However, perhaps the geographical reference employed by Mr Albert CHAN in estimating the population of that district is different from ours. Generally speaking, the population of Lantau Island, including Tung Chung New Town, would be around 60 000 by the year 2003. Accordingly, three seats should suffice.

Madam President, in the course of scrutinizing the Bill, many Members have expressed concern about the issue of demarcation of constituencies. In the past few years, population movements did take place in certain districts. Honourable Members have expressed concern about district boundaries, in anticipation of the need for the Electoral Affairs Commission (EAC) to adjust the district boundaries for certain districts in connection with the next DC Election. In particular, Mr LAU Kong-wah and Mr Andrew CHENG have conveyed the

opinions of Sha Tin DC and some Sha Tin residents. The Government has also discussed at length the sharp population growth in Ma On Shan. We have assessed the situation with Mr LAU in addition to making explanations and exchanging views. New towns such as Tung Chung, Tin Shui Wai and Tseung Kwan O will undergo a varied population expansion rate, ranging from 40% to 123%. The Government forecasts that population growth in Ma On Shan during the period of 1999 to 2003 will be 15%, therefore we cannot add one more elected seat to Sha Tin DC solely because of the population increase of this new town. In fact, population growth does take place in many other districts, for example, there are at least five DCs in North District having a population growth rate of 10% or less. The Government may adjust its policy and introduce this Bill in accordance with the rapid population growth in the three new towns, but after weighing all the circumstances, we are unable to propose the addition of one seat to Sha Tin DC merely because of the 15% population growth in Ma On Shan.

Madam President, Honourable Members are concerned about the situation of Sha Tin. They hope that the EAC can maintain the existing constituency boundaries in order to avoid affecting the community identity and the relations between DC members and residents since 1999. Honourable Members hope that such relations can be maintained, and they have asked the Government to convey their views to the EAC. Madam President, I have kept my word by writing to Justice WOO Kwok-hing to express the hope that the EAC can take reference of the views put forward by Honourable Members in relation to the delineation of constituencies. I believe the EAC would definitely consider the views of Honourable Members.

However, I have to emphasize again that the delineation of constituencies comes under the purview of the EAC, and the EAC should adhere to provisions of the Electoral Affairs Commission Ordinance in proposing the delineation of constituencies. The EAC will publish in January next year the initial proposal on constituency boundaries for public consultation. If Honourable Members still have any suggestions on constituency boundaries by then, they may feel free to put forward their opinions to the EAC.

Madam President, although today's debate mainly involves the scope of the Bill, since Honourable Members have mentioned the issue of appointed seats, I wish to respond to such comments.

In the course of discussions, that is, during deliberations on the Bill, a number of Honourable Members have expressed views on the appointed seats of DCs.

In fact, the policy intent of the appointment system, according to our thinking, is to provide professionals and persons intent on serving the community with a channel to participate in the work of DCs in order to do something for the community. These professionals and community leaders actually come from all walks of life and different strata of society. Their professional knowledge and distinctive views will be brought to DCs, fulfilling the goal of serving the residents within and outside DCs. In fact, they serve the function of diversification and balance, and may also help improve the efficiency and quality of DCs in discussing relevant matters.

Recently, a member of Wong Tai Sin DC told me that in the course of dealing with transport issues in the district, practical issues had been resolved efficiently with the help and co-ordination of an appointed DC member from the engineering profession. This is only one of the many examples, and I believe there are similar examples in various districts.

The major objective of the Bill proposed by the Government is to deal with the rapid population growth in new towns, not to deal with new amendments concerning the composition or other issues of DCs. Mr Andrew CHENG suggested that we have narrowed the scope of the long title, but this is not an issue of magnitude. As our thinking behind this policy is to cater for the rapid population growth in new towns, thus we must define the scope of the Bill in such manner.

Nevertheless, Madam President, I welcome Honourable Members to put forward their suggestions in this Chamber, and the Government will respond proactively.

I wish to mention several points before concluding my speech. Mr Albert CHAN is indeed a very outspoken person, for he would speak whatever comes across his mind. I do appreciate his forthrightness. However, I would like to reiterate several points for Honourable Members' test.

The electoral system in Hong Kong can be rated the cleanest, fairest and the most open in Asia. The SAR Government acts on the basis of the rule of

law and always lays emphasis on evidence. In fact, we have proceeded with this amendment exercise on account of the opinions received from the legislature and DCs. As I am not a tailor, I know nothing about tailor-making. Madam President, I have studied laws, which lay emphasis on principles and rationales. How can I prove to Mr Albert CHAN that our proposals are founded? Actually, many members of Sai Kung DC have expressed support for the proposal on additional seats with a view to catering for the rapid population growth in the district as well as other new towns. Mr Gary FAN, Mr SHEK Chi-keung and Mr LAM Wing-yin are members of the Democratic Party. They all supported the proposal of adding elected seats to the DCs in their submissions. Mr IP Kwok-him has also said that over 90% of DC members supported the proposal.

Madam President, I would also wish to express my regret that I could not accept the unfounded and groundless allegations made by Mr Albert CHAN.

I wish to speak more on that. In fact, in the arena of elections, different parties, different people, no matter they are independent or supported by political parties or groups, should adhere to one single principle, that is, to seek public trust, to seek a vote of confidence. Why should we fear the addition of seats? The only essential thing is a fair competition in the arena of elections.

From the view of the Government, we should firstly seek to add seats in accordance with the rapid population growth, and secondly, we should ensure the electoral system is clean and fair. In fact, which political party wins or which member loses does not matter in our view. What matters most is the system itself.

Madam President, I would like to clarify one or two points in response to the remarks made by Mr Andrew CHENG, notwithstanding he is not in the Chamber for the time being. I am somewhat surprised by the stance of the Democratic Party. It is because when we were conducting the consultations at the DC and Legislative Council level over the last few months, legislators and members from the Democratic Party and democratic camp were unremittingly calling for additional elected seats. Therefore I am surprised that the Democratic Party does not support today's Bill and states that it would cast an abstention vote. Why does the Democratic Party not support this Bill of positive significance to democratization? Why does the Democratic Party not support their own submissions put forward to DCs any more? Nevertheless,

Madam President, I would leave all of these questions to the Democratic Party, for my job is to state the position of the Government.

Today, we have explained the work we ought to do. Madam President, I believe the majority of Members generally support the proposals of the Bill. Besides, in the course of scrutiny of the Bill, it has been fully demonstrated that something can be done with the joint efforts of Honourable Members and the Government. Upon the passage of the Bill, we will launch other preparatory work for the 2003 DC Election, and we will ensure that the 2003 DC Election will, just like all other elections designed in Hong Kong, be conducted in a fair, open and impartial manner.

Finally, I beg Honourable Members to support the Second Reading of the Bill. Thank you, Madam President.

**MR ALBERT CHAN** (in Cantonese): Madam President, the Secretary for Constitutional Affairs has distorted and misunderstood my remarks. Can I make some elucidation?

**PRESIDENT** (in Cantonese): Mr CHAN, you can clarify only the part of your speech that has been misunderstood.

**MR ALBERT CHAN** (in Cantonese): Madam President, I wish to clarify that I oppose the unfair manner in which the number of seats to be added and I consider the increase to be unfair. However, the Secretary has said that I oppose an increase. Therefore the Secretary has mistaken my meaning.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Electoral Provisions (Miscellaneous Amendments) Bill 2002 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Electoral Provisions (Miscellaneous Amendments) Bill 2002.

Council went into Committee.

### **Committee Stage**

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

### **ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 2002**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Electoral Provisions (Miscellaneous Amendments) Bill 2002.

**CLERK** (in Cantonese): Clauses 2 to 11.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 1.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that clause 1 be amended, as set out in the paper circularized to Members.

This amendment seeks to stipulate the commencement date of the Bill. Madam Chairman, the Government has consulted the Bills Committee on the commencement date of the Bill before proposing this amendment. Specifically speaking, we propose that provisions related to the elected seats of the second term District Council election in this Bill, that is, clause 10 of the Bill, should become fully effective on 1 January 2003 only on the commencement of the second term of the District Council. Prior to this, the scope of application in relation to the commencement of the relevant clause should be restricted only to the relevant purpose of preparation for the 2003 District Council Election. Other clauses of the Bill will become effective on the day of gazettal. I urge Members to support this amendment.

*Proposed amendment*

**Clause 1 (see Annex II)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 1 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

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

**ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 2002**

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

Electoral Provisions (Miscellaneous Amendments) Bill 2002

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Electoral Provisions (Miscellaneous Amendments) Bill 2002 be read the Third time and do pass.

I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for three minutes.

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

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

Mr James TIEN, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN and Mr WONG Sing-chi abstained.

THE PRESIDENT, MRS RITA FAN, did not cast any vote.

THE PRESIDENT announced that there were 44 Members present, 30 were in favour of the motion and 13 abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Electoral Provisions (Miscellaneous Amendments) Bill 2002.

**MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to repeal the Patents (General) (Amendment) (No. 2) Rules 2002.

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

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I move that the resolution as set out on the Agenda be passed. The resolution is to repeal the Patents (General) (Amendment) (No. 2) Rules 2002 (the Rules) which was tabled at the Legislative Council meeting on 30 October 2002.

Before I go into the reasons for repealing the Rules, I would like to explain why the Rules were made.

Section 39 of the Patents (General) Rules requires that if the patent proprietor has obtained a court order under section 46 of the Patents Ordinance (the Ordinance) to amend the specification of his patent, he shall file with the Registrar of Patents (the Registrar) the order within one month after the order was made. The original rationale for setting the time limit is to ensure that the amendment can be recorded in the Register promptly for public inspection. Moreover, section 81(5) of the Ordinance provides that where such an order has been made by the Court allowing an amendment to the specification of a patent, no damages shall be awarded to the patent proprietor for an infringement of the patent committed after the date on which the order is made and before a copy of the order is filed with the Registrar.

In October this year, the Registrar made the Rules to amend the Patents (General) Rules. The main objective is to remove the one-month time limit. The reason for proposing the amendments is that if the patent proprietor fails to file the court order within the one-month period, the Registrar cannot accept the filing of the court order thereafter. As a result, the patent proprietor will never be awarded damages for any infringement of the patent committed after the date on which the court order is made. We consider the consequences of late filing of the court order too severe to the patent proprietor. In addition, since the

amended patent specification has not been recorded in the Register, the Register cannot effectively serve the purpose of disseminating up-to-date and reliable patent information.

We also consider that in normal circumstances, the provision about recovery of damages in the Ordinance has provided sufficient incentive for the patent proprietor to file the court order with the Registrar promptly in order to shorten the time period in which no damages will be awarded to him for infringement of his patent. For this reason, we consider that the one-month time limit is not necessary.

When we tabled the Rules at the Legislative Council in October, the Court of Final Appeal (CFA) was processing a case of late filing of court order. We understand that the CFA's major consideration in the case is whether section 39(1) of the Patents (General) Rules has gone beyond the Registrar's authority to make rules under the Ordinance. This is a legal issue in nature.

We consider that, from the policy perspective, we should remove the one-month time limit regardless of the CFA's judgement on the legal issue. Besides, the date of the CFA's judgement had yet been fixed when we decided to make the Rules, but we consider that we should proceed with the amendment of the Patents (General) Rules immediately in order to resolve the issue. In fact, legal practitioners dealing with patent registration are in full support of the proposal to remove the one-month time limit. In its judgement made on 5 December, the CFA also stated that the Government had appropriately considered that the one-month time limit should in any event be removed by legislative amendments.

Now, I would like to explain why the Government moves the motion to repeal the Patents (General) (Amendment) (No. 2) Rules 2002.

The CFA handed down its judgement on 5 December, pointing out that the original section 39(1) of the Patents (General) Rules made by the Registrar was *ultra vires*.

Since the CFA's judgement was made just about a week ago, the Government has to examine the judgement carefully to ensure that the proposed amendments to section 39 as well as other rules in relation to the amendment to

the specification of patent are consistent with the CFA's judgement. On the other hand, it will also take time for the Legislative Council to consider the Government's response to the judgement. In this connection, it is almost impossible to complete all these tasks before the statutory deadline for examining the Rules. Moreover, the CFA's judgement has, in effect, invalidated the one-month time limit. Therefore, there is no longer any urgency for making rules to remove the time limit. In these circumstances, we consider it appropriate to repeal the Rules and then study the matter further in detail. There is unanimous agreement to this approach in the Subcommittee on subsidiary legislation which is responsible for examining the Rules.

Madam President, the Administration is now studying carefully the CFA's judgement and reviewing the procedures of amendment to the specification of patent under section 46 of the Ordinance and section 39 of the Patents (General) Rules. This is to ensure that the procedures and the relevant provision reflect the legislative intent and that the provisions are not potentially *ultra vires*. We will also review other provision of the Ordinance in relation to the time limit which have given rise to concern among the relevant sector. We will report the outcome of the review to the Legislative Council Panel on Commerce and Industry and consult the Panel on the outcome.

Finally, I would like to take this opportunity to thank the Chairman, Miss Margaret NG, and members of the Subcommittee on the subsidiary legislation for putting forth useful and constructive comments in examining the Rules.

Thank you, Madam President.

**The Secretary for Commerce, Industry and Technology moved the following motion:**

"That the Patents (General) (Amendment) (No. 2) Rules 2002, published in the Gazette as Legal Notice No. 157 of 2002 and laid on the table of the Legislative Council on 30 October 2002, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Commerce, Industry and Technology, be passed.

**MISS MARGARET NG:** Madam President, I support the Government's motion to repeal the Patents (General) (Amendment) (No. 2) Rules. It is clearly the right thing to do. The Amendment Rules were introduced because the Government wanted to remove the requirement under Rule 39(1) for a court order allowing an amendment of patent specification to be registered within one month. The Government is of the view that this strict requirement is unworkable. The industry and practitioners support its removal. It was put before this Council as a perfectly straightforward technical amendment.

As it turned out, the matter was not straightforward, nor was it merely a matter of practicality. It transpired that there were proceedings going through the Courts on the very issue of Rule 39(1). At the hearing before the Appeal Committee of the Court of Final Appeal, the Court raised the question of whether Rule 39(1) was *ultra vires* and, therefore, unlawful and of no effect. The Government's reasons for not informing the Council of it are various. I regret that none of them is convincing. It is not convincing to say that the proceedings were irrelevant since the Government wanted to amend the Rules to remove the one-month restriction anyway. It is not convincing to say that it is not proper to comment on a case while it is still going on: What we needed was awareness, not comments. To my own mind, even if the Registrar conceded, it is highly relevant to know the reason why the Rule is *ultra vires*, because a correct identification of the problem is important for identifying the appropriate solution.

A Subcommittee of this Council was formed to discuss the Amendment Rules and to hear the views of practitioners. The discussion was largely focused on the desirability of time restrictions within the scheme of the Patents Ordinance and how the amendment would affect the balance, as well as how a practicable solution could be found. We considered whether providing for an extension of time would be feasible. Submissions from practitioners also called for attention to other problematic time restrictions. For example, the three-month restriction for registering an amendment of specification under Rule 35 pursuant to section 43 of the Ordinance is also unworkable because of the involvement of multinational organizations, and that takes time.

However, when the judgement was handed down on 5 December, the Court declared Rule 39(1) *ultra vires* on much more fundamental grounds. According to the Court's interpretation of section 46 of the Ordinance, the amendment of specification by court order is to be regulated by the Court, not by

the Registrar of Patents. Under the Ordinance, the Registrar simply has no authority to make rules requiring anyone to register a court order within any given time restriction, indeed whether with time restriction or not. It follows that although the unamended Rule 39(1) was *ultra vires*, the amendment introduced by the Government may well be *ultra vires*, too. What is needed is for rules of court to be made as soon as possible under section 103 of the Ordinance. In the meantime, the Court will direct the order to be registered.

In other words, much of what occupied the discussion of the Subcommittee was a waste of time. Worse still, we narrowly missed replacing an unlawful Rule 39(1) with another unlawful one.

As Chairman of the Subcommittee, I am very glad that at a further meeting of the Subcommittee held on 9 December to discuss the effect of the judgement, the Government agreed to withdraw the Amendment Rules in order to review the situation and to devise a more appropriate amendment. I urge the Government to take this opportunity to take on board the views voiced by the industry and practitioners, and to carry out a thorough review to make sure that the system under the Patents Ordinance would work well. It is there not just to protect the interest of patent proprietors, not even just the interests of the investing public. It is in Hong Kong's interest as an international business centre to ensure that our Register of Patents is up-to-date, and the system of protection of patented rights is effective. For those parts which lie within the Court's power and responsibility to regulate, I hope that the appropriate rules of court will not now be long delayed.

It is the Subcommittee's recommendation that the Government should, as soon as possible, inform this Council when it expects its review to be completed. The matter can then be discussed in the relevant panel or panels, with an invitation to members of the Subcommittee to attend.

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

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, the Hong Kong Progressive Alliance (HKPA) agrees with the government action of moving a motion to repeal proposed amendments to the Patents (General) Rules in response to the judgement of the Court of Final Appeal (CFA) and the opinion of the Subcommittee.

During the Subcommittee's deliberation of the Amendment Rules, the CFA was dealing with a case involving patent registration, but the Government did not give an account of the case in its document. After the Subcommittee had learnt about the case, the Government explained that the judgement would be irrelevant to the amendment. However, the CFA delivered its judgement at the beginning of this month and stated that Rule 39(1) was *ultra vires*.

The HKPA considers that the Government should draw a lesson from this incident that while it seeks to expedite the passage of legislation through the Legislative Council, it should pay attention to the quality of law drafting. The HKPA requests that before and after tabling any bill to the Legislative Council, the Government should keep an eye on whether or not the bill is related to any court proceedings, and give an appropriate account to the Legislative Council should it bear any relevancy, so that Members may give the matter fuller consideration in the course of deliberations as to whether it is the appropriate time to make the amendment or pass the legislation, and to study the bill in detail or propose suitable amendments with reference to the court judgement.

Madam President, I so submit.

**MS AUDREY EU** (in Cantonese): Madam President, I share the feelings of Miss Margaret NG and Mr HUI Cheung-ching, who have just spoken on the motion. I must and I hope to express my regret that the Government was fully aware that the Rules would be affected by ongoing court proceedings and the fact that they were related, but it chose not to disclose that to the Legislative Council. I must thank the Legal Adviser of the Legislative Council for telling us about that. We have to express our discontent and hope that the Government will not make the same mistake in future. I agree in particular with the point of Mr HUI Cheung-ching, that is, we often have the feeling that the quality of law drafting as well as the Government's attitude towards the rule of law should be improved. Madam President, I also wish to point out that this patent law clearly demonstrates that a lot of regulations and provisions should be reviewed. I hope the Government will speed up its work in this respect. Thank you, Madam President.

**MRS SELINA CHOW:** Madam President, I would like to place on record the dissatisfaction that Members have voiced in the House Committee when we were considering the motion before us, for reasons which I do not think I need to repeat here, because the other three Members have adequately and very clearly reflected them.

I would just like to make two points. The first point is that when we discussed this issue in the House Committee, the reasons given by the Administration for non-disclosure were not accepted by Members. The point was made that because this was a court case, and it was not appropriate for them to disclose the fact. But we believe that it is totally unacceptable and not right because in the past, we have always been alerted or informed of the court cases involving any legislation which may be ongoing. So long as we do not comment, debate or discuss the content of the case, I do not believe that there is anything inappropriate in the disclosure to Members.

The second point that I would like to make is that this is by no means just a criticism on just this Bureau which is responsible. This is a message that we would like the Administration to take up, so that for future cases and for other Policy Bureaux, it is equally important that similar situations do not recur.

Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Commerce, Industry and Technology, do you wish to reply?

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I do not need to reply.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2002 and the Poisons List (Amendment) (No. 5) Regulation 2002.

## **PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move that the Poisons List (Amendment) (No. 5) Regulation 2002 and the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2002 as set out in the motion on the Agenda be approved.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in

their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations, for the purpose of imposing control on four new medicines.

The Pharmacy and Poisons Board proposes to add one new substance to Part I of the Poisons List so that pharmaceutical products containing this substance must be sold in pharmacies under the supervision of registered pharmacists. In addition, the Board proposes to add three new substances to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations so that pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

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

**The Secretary for Health, Welfare and Food moved the following motion:**

"That –

- (a) the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2002;  
and
- (b) the Poisons List (Amendment) (No. 5) Regulation 2002,

made by the Pharmacy and Poisons Board on 25 November 2002 be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food 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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Three proposed resolutions under the Interpretation and General Clauses Ordinance to amend subsidiary legislation.

First motion: Amending the Chinese Medicines Regulation.

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

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move that the motion set out on the Agenda regarding

amendments to the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation be approved.

I am grateful for Members' support of the three Regulations which provide for the detailed arrangements for implementing the regulatory system for Chinese medicines, namely, the Chinese Medicine (Fees) Regulation, the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation. I would like to take this opportunity to thank members of the Subcommittee and the Chairman, Dr LO Wing-lok, in particular for their very careful scrutiny of the Regulations.

In the course of preparing the three Regulations, the Administration and the Chinese Medicine Council of Hong Kong have conducted extensive consultations with the Chinese medicines trade, the consumers and relevant parties. As noted in the Subcommittee report, the 16 Chinese medicine traders associations who met with the Subcommittee had acknowledged the thorough consultations made and expressed support for early commencement of the three Regulations in order to put in place the regulatory system for Chinese medicines.

After examining the Regulations at four meetings held between 19 November and 6 December, the Subcommittee has proposed some technical and minor amendments to the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation. These amendments are accepted by the Administration and the Chinese Medicine Council of Hong Kong.

The two Regulations proposed to be amended were made by the Chinese Medicine Council of Hong Kong. The Chinese Medicines Regulation sets out the licensing requirements and practising conditions of Chinese medicines traders as well as the registration and labelling requirements of proprietary Chinese medicines with a view to safeguarding public health. These requirements are considered practicable and acceptable to the Chinese medicines trade. The proposed amendments to the Chinese text of section 26(2)(e)(ii) and section 36 of the Regulation are primarily technical in nature, aiming at improving the clarity and readability of the sections.

The Chinese Medicines Traders (Regulatory) Regulation sets out the disciplinary procedures to be followed by the Regulatory Committee of Chinese Medicines Traders and the Medicines Board in handling complaints against licensed Chinese medicines traders. The motion proposes to amend sections

5(3)(c)(i), 6(4)(c), (5) and (6), 7(4)(a) and 10(1)(e) of the Regulation by removing the references to "statement in mitigation". The Subcommittee considered that these words were superfluous as, without them, the sections already provide that the licensed trader being complained against may make any explanation or representation to the Regulatory Committee of Chinese Medicines Traders and the Medicines Board in support of his case.

The motion also proposes to amend sections 6 and 11 of the Regulation to make it clear that the Regulatory Committee of the Chinese Medicines Traders and the Medicines Board may adjourn their meetings for considering a complaint, either on its own initiative or at the request of the defendant. Section 7(3)(c) is proposed to be amended so that the defendant is provided with the findings, recommendations and reasons for the recommendations of the Regulatory Committee, rather than merely a summary of them.

The motion also proposes to amend section 10 of the Regulation to provide that the defendant will receive, before the meeting, all documents, statement and report put before the Medicines Board for consideration of a complaint against him. This amendment will ensure that the defendant will have sight of all relevant documents to be considered by the Medicines Board and prepare for the meeting accordingly.

With these remarks, Madam President, I commend the motion to Members.

**The Secretary for Health, Welfare and Food moved the following motion:**

"That the Chinese Medicines Regulation, published in the Gazette as Legal Notice No. 160 of 2002 and laid on the table of the Legislative Council on 6 November 2002, be amended in the Chinese text -

- (a) in section 26(2)(e)(ii), by repealing "生產商" and substituting "製造商";
- (b) in section 36, by repealing everything after "114 條" and substituting

-

- (a) 由任何註冊中醫或表列中醫在其執業的處所合成或在其監管下合成的，但僅在該中成藥是為了向一名由他直接治理的病人施用或供應而正在使用的情況下方不適用；或
- (b) (i) 由負責人；或
- (ii) 在該人的監管下，

於有效零售商牌照所指的處所並按照任何註冊中醫或表列中醫開出的處方個別配製或合成的。".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed.

**DR LO WING-LOK** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on Chinese Medicine (Fees) Regulation, Chinese Medicines Regulation and Chinese Medicines Traders (Regulatory) Regulation (the Subcommittee), I would like to report on the deliberations of the Subcommittee on the three Regulations.

At the House Committee meeting on 8 November 2002, Members agreed that a Subcommittee be formed to scrutinize the Chinese Medicine (Fees) Regulation, the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation. The Subcommittee has held four meetings and listened to the views expressed by 16 Chinese medicines bodies.

In deliberating the Chinese Medicine (Fees) Regulation, members of the Subcommittee noted that the trade considered that the fees prescribed by the Regulation were reasonable. No objection to the Regulation has thus been raised by the Subcommittee.

Concerned about the licensing requirement, namely, "the premises are in all other aspects suitable" in sections 3(e), 4(d), 5(g) and 6(c) of the Chinese Medicines Regulation, the Subcommittee requested the Administration to give examples to illustrate such a requirement.

The Administration informed members that the following scenarios are within the purview of the "catch-all" provision:

- (i) the premises of certain traders should not be located in residential buildings which may cause nuisance to residents;
- (ii) manufacturers should not locate their premises adjacent to or near sources of severe pollution as this may lead to contamination of their products; and
- (iii) the Chinese medicines trader's facilities or equipment should be supported by special construction facilities.

Members of the Subcommittee considered that such examples should be incorporated into the practising guidelines for Chinese medicines traders to facilitate their compliance with the requirement. The Administration has undertaken to include the examples in the guidelines.

The Subcommittee has also proposed to amend the reference to "生產者的姓名" in section 26(2)(e)(ii) of the Chinese Medicines Regulation to "製造商", to make it consistent with the Chinese version of the same expression where it appears in the Regulation. It is also proposed that the Chinese text of section 36 of the Regulation be amended to make it easier to understand and closer to the format of the English text. The Administration has accepted the recommendations of the Subcommittee and will propose amendments accordingly.

I would now speak on the Chinese Medicines Traders (Regulatory) Regulation. Members were of the view that the wording of "statement in mitigation" in sections 5, 6, 7 and 10 of the Regulation might convey a wrong message to the defendant that it would be to his advantage to admit to a complaint or report against him. Acceding to the view of the Subcommittee, the Administration will move amendments to delete references to "statement in mitigation" in the relevant provisions.

Furthermore, the Administration has taken on board the recommendation of the Subcommittee to add section 10(2) to the Chinese Medicines Traders (Regulatory) Regulation to provide that copies of all documents, statements and reports to be put before the Chinese Medicines Board under section 10(1)(f)

would be furnished to the defendant before the meeting. The Subcommittee considered that this could help improve the fairness of the procedures for considering representation. It has expressed support for the Administration to move amendments to the Chinese Medicines Traders (Regulatory) Regulation and the Chinese Medicines Regulation.

Madam President, now I would like to give my personal views on the Regulations. Chinese medicines are generally trusted and used in Hong Kong. It can be said that Chinese medicines are part of Hong Kong and Chinese tradition. Given that a tradition of using Chinese medicines has been established, why do we have to regulate them through legislation? There are two reasons. First, Chinese medicines are used to cure patients, safeguard health, and even save lives. Therefore, they cannot be treated like other commodities. The spirit of regulation is to ensure that Chinese medicines sold in Hong Kong are true to their names in contributing to saving lives, curing illnesses and safeguarding health, so as to prevent users from being misled and cheated, and from even jeopardizing their lives and health.

The second reason for regulating Chinese medicines is to make the Chinese medicines trade more modernized, industrialized and globalized. To achieve this, three very important conditions must be met. First, the efficacy of the medicines must be verified scientifically; second, there is full quality assurance; and third, there is full safety assurance. After the relevant requirements are met and take effect, proprietary Chinese medicines must be registered before they can be sold legally in Hong Kong. To qualify for registration, all proprietary Chinese medicines must meet the requirements with respect to efficacy, safety and quality assurance. At the same time, they have to meet the requirements on labelling, description, expiry, and so on. To enable proprietary Chinese medicines to qualify for registration, the scope of the Regulations will be extended to cover manufacturers and wholesalers of proprietary Chinese medicines, licensees and persons in charge of Chinese medicines bodies. This will give better protection to users of proprietary Chinese medicines, that is, members of the public in Hong Kong.

Insofar as regulating Chinese herbal medicines is concerned, emphasis is put on the retailers and wholesalers of Chinese herbal medicines, as well as the licensees and persons in charge of Chinese herbal medicines bodies. We are indeed moving in the right direction for Chinese herbal medicines do not carry brand names. They can hardly be regulated in the same way as proprietary

Chinese medicines are through registration. Retailers and wholesalers of Chinese herbal medicines, as well as the licensees and persons in charge of Chinese herbal medicines bodies are essentially legally liable for the sale of the medicines, thus giving better protection to their users.

In the course of formulating the Regulations, I noted that the Government and the Chinese Medicines Board of the Chinese Medicine Council of Hong Kong were prepared to conduct in-depth and extensive consultation with members of the trade and the community. More than 30 seminars just for consultation purposes were reportedly held. I wish to put on record my full recognition of the efforts and achievements made by the Government and the Chinese Medicines Board in respect of this.

From cottage industry to modernized factories, the Chinese medicines trade has a very extensive coverage and divergent quality. It is a steep learning curve to strike a balance between giving full play to positive regulation, encouraging the trade to perfect itself in pursuit of modernization on the one hand, and safeguarding users, and reducing the negative impact of regulation to prevent the trade from losing its competitive edge and vitality on the other. I believe it is for these considerations that the relevant Regulations have been written a greater measure of flexibility. This is a good-intentioned attempt since it can cater for the needs of certain smaller Chinese medicines bodies operating in the traditional manner and help them continue with their operation as long as the basic requirements are met. However, such flexibility may also cause concern to the trade. Given the flexibility of the relevant Regulations, enforcement may differ from person to person and from body to body. Flexible provisions may thus turn into stringent laws. To ensure fairness and consistency in enforcement, the spirit of legislation must be reflected in enforcement. For this reason, it is essential for the Government to work in collaboration with the Chinese Medicines Board to formulate relevant practising guidelines to enable the trade to adapt to the relevant Regulations and allay its worries.

Madam President, I so submit.

**MRS SELINA CHOW** (in Cantonese): Madam President, I am glad to see that in the course of the drawing up of regulatory measures for the Chinese medicines trade out of nothing at all, the authorities have maintained an open attitude

towards the Chinese medicines trade and consulted the trade and the public widely.

Chinese medicines have a long history. Now the professionalism of the trade can be upgraded by way of regulation, consumers may enjoy a certain degree of protection. Thus the Chinese medicines industry fully supports the proposals and looks forward to their early implementation. The introduction and scrutiny of various Regulations this time are no exceptions. However, it is inevitable that the industry is concerned that such Regulation may impose on it requirements and constraints. For this reason, we should help consumers and the industry to achieve a win-win situation in terms of their interests. The pace and extent of Regulation should be endowed with flexibility, subject to adjustment when a practical need arises. Nevertheless, I am confident that the standard and acceptability of the Chinese medicines industry in Hong Kong will be significantly improved after the enactment and implementation of various legislation and regulations. I also undertake to listen to the voices of the industry constantly and serve as the bridge between the industry and the Government by constantly conveying the opinions of the industry to the Government.

Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, nowadays many people still trust Chinese medicine practitioners and Chinese medicines. This phenomenon is found not only in Chinese communities, but also in expatriate communities. In addition, an increasingly number of people have acquired a good body of knowledge about Chinese medicines and certain efficacy of Chinese medicines. A series of legislation, including the earlier Chinese Medicines Ordinance, have been passed by the Government over the years. Now a few relevant Regulations are tabled before this Council. The Government's active effort to regulate Chinese medicines, a traditional trade with a long history, is indeed good. We will definitely give our support.

Madam President, in scrutinizing the Regulations, government officials joining us in the scrutiny might probably find us fastidious somehow. Why? This is because many of the problems encountered by us in scrutinizing the Chinese Medicines Bill two years ago have all emerged. We had to argue with the Government nearly word by word, though these Regulations were not really extremely complicated. The Government has however acted in a very liberal

manner, as stated by Mrs Selina CHOW earlier. Even though we sometimes insisted on arguing about certain words and expressions relentlessly and even expressed our distrust, the Government was willing to make certain concessions at the end. This was rare according to my experience of scrutinizing laws over the past years.

It is good if traditional Chinese medicines can really be brought under regulation. To produce a good result, however, balance must be struck between all sides. Let us look at the Chinese Medicines Ordinance passed two years ago. There are still voices of dissatisfaction from practitioners from various fields, including bone-setters and acupuncturists, even today.

Madam President, a Subcommittee was set up by this Council recently as it was felt by several colleagues taking part in the scrutiny of Chinese medicines legislation that this traditional trade should be regulated liberally rather than strictly. After the legislation took effect, however, only more than 2 000 out of the 7 000 or so Chinese medicine practitioners qualified for registration. More than 5 000 .....

**PRESIDENT** (in Cantonese): Miss CHAN, this motion is about the Chinese Medicines Regulation, but you were talking about Chinese medicine practitioners. Could you speak on the subject of this motion?

**MISS CHAN YUEN-HAN** (in Cantonese): Fine, Madam President, I will speak as you wish.

What I precisely mean is, when we are trying to regulate a traditional trade like this, the Government must strive to give it vitality. It will be beneficial to the trade if the matter is handled properly. I therefore very much hope that the Government, when formulating these regulations (though these regulations are not primary legislation, they are more detailed, about the nuts and bolts), can sum up its previous experience and give this traditional industry more latitude in various aspects. As Dr LO Wing-lok, Chairman of the Subcommittee, said earlier, our objective is not to narrow the scope of the trade. Instead, we hope the trade can be upgraded and further developed.

Madam President, I support today's motion. Thank you.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, to strengthen the regulation of Chinese medicines and enhance public confidence in taking them represent an important step in the development of Chinese medicines towards professionalism. As such, the public and the trade generally identify with and approve of the relevant legislative exercise. Nevertheless, some of the provisions of the three Regulations pertaining to Chinese medicines to be passed today have still caused concern among Chinese medicine practitioners and traders.

Although the relevant Regulations are primarily targeted at retailers and wholesalers of Chinese herbal medicines as well as manufacturers and wholesalers of proprietary Chinese medicines, they will still have indirect impact on Chinese medicine practitioners. To start with, the Chinese medicines trade was consulted by the Subcommittee in the course of scrutiny. Although the trade considered the registration fees for proprietary Chinese medicines acceptable, Chinese medicine practitioners, as retailers of proprietary Chinese medicines, were worried that the relevant registration fees would eventually be passed onto them. It was proposed under the relevant Regulation that \$1,000 would be charged for the registration of proprietary Chinese medicines with a single active ingredient, and \$2,000 for those with more than one active ingredients. The ratio of cost recovery for these two types of proprietary Chinese medicines is approximately a quarter of the total cost. As the total cost is going to be recovered in five years, the registration costs for each proprietary Chinese medicine will range from \$3,500 to \$8,000. Chinese medicine practitioners were worried that such these exorbitant registration fees would probably be passed onto them in future. It is therefore hoped that the Government can consider reducing the cost of the entire registration procedure, so as to avoid affecting their business should the charges be really passed onto them in future.

Moreover, the Chinese Medicines Regulation requires the retail and wholesale of Chinese herbal medicines, and the manufacture and wholesale of proprietary Chinese medicines to be conducted in locations suitable for the relevant trade in all aspects. One of the criteria to be met is, as mentioned by Dr LO Wing-lok earlier, "the premises of certain traders should not be located in residential buildings which may cause nuisance to residents". This point has aroused the concern of Chinese medicines practitioners for many of them have had their clinics situated inside residential buildings. They are worried that the

relevant requirement will affect their business. Of course, the Government has undertaken that examples relevant to the requirements will be given in the practising guidelines for the reference of the trade. In this aspect, I would like to take up where Miss CHAN Yuen-han has left off and appeal to the Government to give more consideration to the practices and conventions of the trade, that is, the usual mode of operation of the trade, and try every possible means to accommodate it by a liberal rather than a stringent approach. In order to strike a balance, there is definitely a need to give more consideration to the situation of operators to avoid dealing them a heavy blow. In the meantime, attention must be paid to minimizing the nuisance caused to the people living in the vicinity. I hope the Government can give more consideration to these two aspects and handle the matter with care. Otherwise, the trade will be affected seriously. Miss CHAN Yuen-han pointed out just now that many Chinese medicines practitioners were already dissatisfied with the registration procedure. Their dissatisfaction will certainly grow if they find it difficult to operate because of this. This is not going to do any good. I hope the Government can handle this matter with care and focus its consideration on their current situation. Madam President, I so submit.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Health, Welfare and Food, please reply.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have nothing to add.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Amending the Chinese Medicines Traders (Regulatory) Regulation.

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

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move that the motion set out on the Agenda regarding amendments to the Chinese Medicines Traders (Regulatory) Regulation be approved. I have already explained the amendments to the Chinese Medicines Traders (Regulatory) Regulation in moving the motion on Chinese Medicines Regulation. I have nothing to add now.

Thank you, Madam President.

#### **The Secretary for Health, Welfare and Food moved the following motion:**

"That the Chinese Medicines Traders (Regulatory) Regulation, published in the Gazette as Legal Notice No. 161 of 2002 and laid on the table of the Legislative Council on 6 November 2002, be amended -

- (a) in section 5(3)(c)(i), by repealing ", any representations or any statement in mitigation" and substituting "or any representations";
- (b) in section 6 -
  - (i) in subsection (3), by adding ", either of its own motion or at the request of the defendant," after "may" ;

- (ii) in subsection (4)(c), by repealing ", representations or statement in mitigation" and substituting "or representations";
  - (iii) in subsections (5) and (6), by repealing ", representations and statement in mitigation" and substituting "and representations";
- (c) in section 7 -
- (i) in subsection (3)(c), by repealing "a summary of";
  - (ii) in subsection (4)(a), by repealing ", representations or statement in mitigation" and substituting "or representations";
- (d) in section 10 -
- (i) by renumbering it as section 10(1);
  - (ii) in subsection (1)(e), by repealing ", representations or statement in mitigation" and substituting "or representations";
  - (iii) by adding -
    - "(2) The Board secretary shall furnish to the defendant, before the meeting, copies of all documents, statements and reports to be put before the Board under subsection (1)(f).";
- (e) in section 11(1), by adding ", either of its own motion or at the request of the defendant," after "may"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food, be passed.

**DR LO WING-LOK** (in Cantonese): Madam President, I have spoken on the two motions together earlier. I have nothing to add now.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Health, Welfare and Food, is it true that you do not need to reply?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have nothing to add.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Third motion: Amending the Karaoke Establishments (Licensing) Regulation.

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed. The

motion makes a number of amendments to the Karaoke Establishments (Licensing) Regulation.

The Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation are made in pursuance of section 21 of the Karaoke Establishments Ordinance which was passed by the Legislative Council on 3 July 2002. The purpose of the Regulations is to provide for the details of regulation of karaoke establishments to facilitate the implementation of the new licensing system.

The Regulations were tabled before the Legislative Council on 30 October 2002. The Subcommittee concerned had subsequently held a total of four meetings and conducted detailed deliberations to further improve the Regulations. On behalf of the Government, I wish to express our sincere gratitude to the Chairman of the Subcommittee, Ms Audrey EU, as well as its members. After thorough discussion, we have secured the support of the Subcommittee for the Regulations and reached consensus with the Subcommittee on a number of proposed amendments to the licensing regulation, which cover mainly the following four areas:

Firstly, section 2 of the Karaoke Establishments (Licensing) Regulation requires that the location of all apparatus and equipment to be used for karaoke has to be shown on the plan accompanying an application for licence or permit. This requirement is made mainly out of the consideration for the possible blockage of emergency exits by apparatus of a substantial nature. In this connection, I propose to add "that are of a substantial and permanent nature" after "karaoke" in section 2(a)(iii) to enhance the clarity of the legislation.

Secondly, section 5 of the Karaoke Establishments (Licensing) Regulation provides that each part of the karaoke and all seating, fittings and apparatus in the premises shall be maintained in good order and condition. This maintenance requirement serves to protect public safety. I propose that section 5 be amended to expressly state that such criteria for maintenance responsibility is to ensure that the safety of persons using the premises will not be adversely affected.

Thirdly, on the question of penalty, the Subcommittee considered that the seriousness of the impact of contravening the offences under section 5, 6, 7 or 8

on safety varies. It is, therefore, inappropriate to adopt the same maximum penalty for contravening these sections. We agree that the offences under sections 6 and 8 may not be as serious as those under sections 5 and 7. Therefore, I propose that section 9 be amended, so that the maximum penalty for contravening sections 6 and 8 will be adjusted downwards. Moreover, the Subcommittee has also considered the fact that the offences under sections 5 to 8 are offences of "strict liability". So, there is a need to appropriately provide for statutory defence for the grantee or licensee. We agree to follow section 17(2) of the principal legislation to allow the grantee or licensee recourse to defence of no knowledge or reasonable diligence.

Fourthly and finally, I propose that section 2(12) of Schedule 1 be amended to expressly state the requirement of an emergency alert system which can, in case of a fire, interrupt the karaoke music and visual images and immediately produce visible and audible signals to alert customers.

With the passage of these amendments, the principal legislation and subsidiary legislation on the regulation of karaoke establishments will all be made, and the licensing authority concerned will also complete the preparatory work for implementing the new licensing system in a short period of time. The Government plans to give effect to the Regulations in early January next year. By then, the existing operators will be required to apply for a licence or permit within 12 months from that date and make necessary improvements to their karaoke establishments, so that the public can enjoy the fun of singing in a safe environment.

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

**The Secretary for Constitutional Affairs moved the following motion:**

"That the Karaoke Establishments (Licensing) Regulation, published in the Gazette as Legal Notice No. 153 of 2002 and laid on the table of the Legislative Council on 30 October 2002, be amended -

- (a) in section 2(a)(iii), by adding "that are of a substantial and permanent nature" after "karaoke";

- (b) in section 5, by repealing everything after "shall be" and substituting "properly maintained such that the safety of persons using the premises will not be adversely affected.";
- (c) in section 9 -
- (i) in subsection (1), by repealing everything before "grantee" where it first appears and substituting -

"(1) If -

- (a) section 5 or 7 is contravened; or
- (b) section 6 or 8 is contravened,

the";

- (ii) by renumbering subsection (2) as subsection (3);
- (iii) by adding -

"(2) Where a person charged with an offence under subsection (1) is -

- (a) a representative of a body corporate or a partnership whose name appears on the permit or the licence concerned; or
- (b) a grantee or a licensee who is an individual,

it shall be a defence for the person to prove that -

- (c) he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and

(d) he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.";

(iv) in subsection (3), by repealing "subsection (1)" and substituting "subsection (1)(a)";

(v) by adding -

"(4) A person who commits an offence under subsection (1)(b) is liable -

(a) on first conviction, to a fine at level 3 and imprisonment for 3 months; and

(b) on a second or subsequent conviction, to a fine at level 5 and imprisonment for 6 months,

and in the case of a continuing offence, to a further daily fine of \$300 for each day during which the offence continues.";

(d) by repealing section 2(12) of Schedule 1 and substituting -

"(12) An emergency alert system which can interrupt the music or other sound and visual images produced by the karaoke equipment and at the same time produce visible and audible warning signals in case of a fire alarm shall be provided."."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs be passed.

**MS AUDREY EU** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation (the Subcommittee), I would like to report on the deliberations of the Subcommittee.

At the House Committee meeting on 1 November 2002, Members agreed to form a Subcommittee to study the Karaoke Establishments (Licensing) Regulation (the Licensing Regulation) and the Karaoke Establishments (Fees) Regulation. The Subcommittee has held four meetings with the Administration.

The Subcommittee was most concerned about sections 5 to 9 of the Licensing Regulation.

Sections 5 to 8 deal with matters relating to the maintenance, hygiene, alterations to the layout of karaoke establishments and to the display of permits and licences. Section 9 provides that a contravention of section 5, 6, 7 or 8 is an offence punishable by a fine and imprisonment. Given different degrees of seriousness, the Subcommittee has suggested the Administration to, with reference to the penalty level for contravening provisions on the prevention of communicable diseases, lower the penalty levels for contraventions of sections 6 and 8 with respect to hygiene and the display of permits and licenses respectively.

After referring to section 19 of the Food Business Regulation with respect to the sterilization and storage of food utensils and section 34B of the Regulation with respect to the exhibition of food business licences, the Administration has agreed to lower the penalty levels for contraventions of sections 6 and 8 of the Licensing Regulation. The penalty for first conviction will be lowered from a fine at level 5 and six months' imprisonment to a fine at level 3 and three months' imprisonment.

The Subcommittee has also requested the Administration to consider amending the Licensing Regulation to the effect that a grantee or licensee commits an offence only if he or she commits offences under section 5, 6, 7 or 8 without reasonable excuse. After considering members' suggestions, the Administration has proposed to provide persons accused of contravention of section 5, 6, 7 or 8 with a defence identical to defence under section 17(2) of the primary legislation and will move an amendment to this effect.

In the light of the recommendations of the Subcommittee, the Administration has proposed to amend section 2(a)(iii) of the Licensing Regulation with respect to the submission of the location of apparatus and equipment to be used for karaoke, section 5 with respect to regular maintenance, and section 2(12) of Schedule 1 with respect to the requirements of the fire alert system, in order to improve the clarity of the relevant provisions.

The Subcommittee supports the Licensing Regulation, the Karaoke Establishments (Fees) Regulation and the amendments to be moved by the Administration.

Insofar as the Karaoke Establishments (Fees) Regulation is concerned, after referring to the cost computation of the licensing fees provided by the Administration, the Subcommittee has raised no objection to the fees. Thank you, Madam President.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, the passage of the Karaoke Establishments Ordinance (the Ordinance) through the Legislative Council in July this year concluded the scrutiny exercise that had lasted two years. In October this year, subsidiary legislation, namely the Karaoke Establishments (Licensing) Regulation (the Licensing Regulation), and the Karaoke Establishments (Fees) Regulation, was proposed by the Secretary for Security to further implement the Ordinance in detail.

It is entirely because of the substantial challenge brought about by the new legislation to the karaoke trade that representatives of the trade have paid close attention to the work carried out by the Bills Committee and the Subcommittee. The trade is of the view that the Ordinance and the Regulations should focus on the fire and building safety of karaoke establishments, rather than imposing unnecessary pressure on operators. Furthermore, karaoke establishments should not be regulated by ordinances governing vice, gambling and drug establishments.

The trade considers that the Administration has acceded to many of the suggestions made by members of the trade, and that this is reflected in today's resolution. The greatest concern of the trade about the subsidiary legislation is that the "strict liability" standard is adopted by the Administration in some provisions.

The fact that the concept of "strict liability" is adopted in the primary legislation means that the onus of proof is on the defendant. A defence clause was added when the primary legislation was enacted to allow a grantee or licensee recourse to defence if he could prove that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.

When the subsidiary legislation was under scrutiny, the Administration similarly employed the standard of "strict liability". Initially, there was no defence provision. It was added only afterwards to section 9(2) of the Licensing Regulation. I am positive about the Administration's attempt to strike a balance by giving the defendant a right to give excuse.

Insofar as penalties are concerned, the Administration has taken on board the suggestions made by the trade and Honourable colleagues by grading penalties according to the seriousness of offences, rather than imposing a standard penalty on all contraventions in a broad-brush manner. The new arrangement is considered by the trade to be more reasonable.

The Administration has also proposed to amend section 2(12) of Schedule 1 in relation to the provision on fire alert systems. Under the new proposal, the trade must install "an emergency alert system which can produce visible and audible warning signals", but televised "visual images" are not absolutely required. The new system is considered by the trade to be better able to meet the needs of the trade, for it can achieve a warning effect and is easier to implement.

I believe the trade will, where feasible, strive to meet the requirements of the primary and subsidiary legislation. After the new law comes into effect, a number of karaoke establishment operators will have to inject huge amounts of capital to carry out interior renovation and interior layout alteration, widen fire escapes, use more fire-resistant construction materials, and so on, to ensure fire and structural safety. For this reason, I would like to urge the authorities concerned to work in collaboration with other government departments, such as the Buildings Department and the Fire Services Department, in enforcement to offer proper assistance to operators of karaoke establishments. I will try my best to follow up every case to minimize the inconvenience caused and the

additional operating costs incurred as a result of compliance with the new Regulations.

Madam President, I so submit. The Liberal Party supports the resolution proposed under the Interpretation and General Clauses Ordinance with respect to the Licensing Regulation.

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

**MR LAU KONG-WAH** (in Cantonese): Madam President, being a member of the Subcommittee on the relevant legislation, I support the passage of the legislation.

The concern about the safety of karaoke establishments is basically attributed to a fire that broke out in a karaoke establishment several years ago. After a protracted period of consultation and scrutiny, the relevant primary legislation was eventually passed. Now it is time to "kick the ball into the goal". In other words, we are going to pass certain provisions related to fees and rules.

From the discussions about the primary legislation to the present discussion about rules, I have the feeling that all parties have been working very seriously, with Members of this Council demonstrating great prudence and the Government adopting a co-operative attitude. I have to confess that I have never met a trade which is so relentless. It has been keeping a close watch on our scrutiny from the very beginning. As each word and expression of the legislation is taken very seriously by all parties, I hope the outcome we have arrived at the moment can help strike a balance between the business environment of the trade and the safety and interests of the public.

It is definitely my hope that safety protection can be upgraded in future with the passage of all relevant regulations and legislation. In the course of deliberations, a number of standards were proposed by the Buildings Department and other government departments. These standards have enabled us to clearly understand that safety will be protected. It is hoped that, after the passage of these laws, standards and regulations, public safety can truly be protected in the event of fire.

Of course, I do not think licensing represents everything. What really matters is what comes after licensing. I would like to appeal to the trade to, after licensing, comply strictly with the regulations passed with respect to its safety awareness, maintenance of facilities such as hygiene facilities, and so on.

Given that licensing does not represent everything, we have to rely on the Government to take a stringent approach to crack down on unlicensed karaoke establishments in future. Otherwise, it will be unfair to licensed karaoke establishments to a certain extent.

Insofar as the public is concerned, licensing should not be taken as solution to everything. As users, members of the public should also pay attention to safety in karaoke establishments. I recall that it is stated in the Regulation that Announcements of Public Interest (APIs) will be broadcast. We will see these APIs telling us how to ensure safety before we start singing karaoke in the future. This is a way of reminding the public. I hope members of the public can, before singing karaoke, listen carefully to these safety messages which are beneficial to every one of us.

Lastly, Madam President, I would like to raise a point about fees. When we discussed about fees during our recent scrutiny of one or two bills, we found a marked difference between the fees levied in urban areas and the New Territories. Such a difference will lead to unfairness. I hope the Government can, in handling legislation related to fees, expedite the standardization of fees to prevent these old issues from being brought up again in future deliberations. Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (In Cantonese): I will call upon the Secretary for Constitutional Affairs to reply.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I have nothing to add.

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

(Members raised their hands)

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

(No hands raised)

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

### **MEMBERS' MOTIONS**

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

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

**MRS SELINA CHOW** (in Cantonese): Madam President, I move that the motion, as printed under my name on the Agenda, be passed.

At the House Committee meeting on 13 December 2002, Members decided to form a Subcommittee to study the Appeal Board on Closure Orders (Immediate Health Hazard) Rules tabled before this Council on 11 December 2002. To allow sufficient time for the Subcommittee to examine the Rules and report to the House Committee, I moved, in my capacity as Chairman of the

House Committee, that the scrutiny period of the Rules be extended to 12 February 2003.

As for the seven items of subsidiary legislation enacted under the Securities and Futures Ordinance and tabled before this Council on 11 December 2002, the House Committee agreed, at the meeting on 13 December 2002, that the scrutiny period of the seven items of subsidiary legislation be also extended to 12 February 2003 to allow Members more time to study the relevant Rules.

Madam President, I urge Members to support the motion.

**Mrs Selina CHOW moved the following motion:**

"That in relation to the -

- (a) Appeal Board on Closure Orders (Immediate Health Hazard) Rules, published in the Gazette as Legal Notice No. 200 of 2002;
- (b) Securities and Futures (Client Securities) Rules, published in the Gazette as Legal Notice No. 201 of 2002;
- (c) Securities and Futures (Client Money) Rules, published in the Gazette as Legal Notice No. 202 of 2002;
- (d) Securities and Futures (Associated Entities — Notice) Rules, published in the Gazette as Legal Notice No. 203 of 2002;
- (e) Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2002, published in the Gazette as Legal Notice No. 204 of 2002;
- (f) Securities and Futures (Registration of Appeals Tribunal Orders) Rules, published in the Gazette as Legal Notice No. 205 of 2002;
- (g) Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules, published in the Gazette as Legal Notice No. 206 of 2002; and

- (h) Securities and Futures (Collective Investment Schemes) Notice, published in the Gazette as Legal Notice No. 207 of 2002,

and laid on the table of the Legislative Council on 11 December 2002, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 12 February 2003."

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

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

(No Member responded)

**PRESIDENT** (in Cantonese): I now put the question to you as started. 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 Members should

be very familiar with the time limits on speeches, this Council shall now proceed to the first motion: Culture and Heritage Commission Consultation Paper 2002.

## **CULTURE AND HERITAGE COMMISSION CONSULTATION PAPER 2002**

**MR MA FUNG-KWOK** (in Cantonese): Madam President, I move that the motion, as set out on the Agenda, be passed.

Not long ago after the reunification, I moved a motion in the Provisional Legislative Council to urge the Government of the Hong Kong Special Administrative Region (SAR) to adopt an open and tolerant approach, mixing the essence of Chinese and Western cultures and formulate a holistic and yet pluralistic cultural policy. The motion was targeted at addressing the lack of transparency in the cultural policy practised during the colonial era. The motion was carried by a unanimous vote.

In April 1999 when the Government was prepared to abolish the two Municipal Councils, an opportunity emerged for conduct of a full-scale review of the development of culture and the arts in Hong Kong. It was also an opportunity to prevent the appearance of an "official-led" cultural scene. So I moved a motion again to urge the Government to set up an independent and highly transparent body tasked with the drawing up of cultural policies, promoting the development of culture and deploying related resources. Unfortunately, the motion was not carried as the topic touched on the controversy of whether the Municipal Councils should be scrapped or not.

Then in March 2000, the Chief Executive announced that a Culture and Heritage Commission (CHC) would be set up. The CHC is a high-level advisory body charged with two tasks, namely to draw up a set of principles and strategies for the promotion of a long-term cultural policy in Hong Kong, and to advise the Government on the setting of priorities in resources allocation in cultural matters. I was appointed to the CHC.

Since the establishment, the CHC has held a total of more than 90 meetings of various scales. Members of the CHC have made four trips to Singapore, Macao, Shanghai and Guangzhou to study the cultural scene in these

places. A number of committees on special areas of cultural matters have also been set up under the CHC.

Work in the CHC during the last two years or so has been very busy, but it is also a pleasure. Most members of the CHC are very committed to the CHC's work and they are open and frank in their discussions. Views are heard and members also put forward valuable ideas in improving the cultural landscape of Hong Kong.

At the beginning of 2001, the CHC released its first consultation paper, proposing *inter alia* six notions instrumental to the long-term cultural development of Hong Kong. These are "people-oriented", "pluralism", "freedom of expression and protection of intellectual property", "holistic approach", "partnership" and "community-driven". The CHC organized a number of large-scale public consultation seminars and members attended meetings in 14 District Councils, the Legislative Council and more than 10 various advisory bodies. Discussions were held with the sector. Members also attended many forums held by non-government organizations. The responses gathered were positive and partnership was forged between the CHC and various statutory bodies and non-government organizations.

In November this year, the CHC released its second consultation paper and made more specific policy proposals for public consultation. With this neutral motion today, I hope to bring this consultation into this Chamber so that Members can present their views freely for later reference in policy formulation.

The title of the consultation paper is "Diversity with Identity Evolution through Innovation". On the issue of Hong Kong's cultural position, the CHC recognizes that Chinese culture is rooted in history and its development is a historical process. There is no short cut to it. The Government should therefore promote Hong Kong's cultural identity through civic education. Hong Kong people's cultural identity should start from local culture, be founded on Chinese culture and tradition, and possess a global outlook. Hong Kong should position itself as a metropolis in China which is most capable of bridging China and the world. Hong Kong should also play an active role in reviving Chinese culture.

Madam President, education is both an inheritance from and a source of inspiration of culture. Education in culture and the arts is the major driving force of cultural development and this has been made the core of the consultation paper. In the face of globalization and the rapid development of information technology, such qualities as originality, appreciation, communication, judgement and adaptability are increasingly valued in a modern society. Education in culture, especially education in the arts, is most capable of cultivating these qualities, and for this reason it is highly regarded in the education sector across the world.

Education in the arts serves to promote appreciation for the arts and participation in artistic endeavours, and enriches a person's life. Such education has a very positive impact on the child in the course of growth, in particular the intellect and learning abilities. It can also enhance self-confidence and self-discipline in young people, foster their creative abilities and induce a respect for different opinions. It has great significance in promoting moral education and raising the cultural quality of society.

The CHC is of the view that work in this aspect should be linked with sustained development and continuing education, therefore it proposes that resources for education in the arts should be shared and that more importance should be attached to aptitude in the arts in the admission of undergraduates. In terms of school curriculum, there should be diversified development in areas other than music and fine arts. Efforts should be made to cultivate the cultural awareness among students. The assessment mechanisms should be improved. For arts education to be successful, teacher qualifications should be upgraded, teaching should be improved and more support be given to teachers. The CHC also proposes a strategy which encompasses the triple elements of the family, school and community. The family is seen as a driving force and the school as a platform for promoting community participation in cultural development. It is also pointed out that the media should play a very active role in this.

The CHC believes that education in culture and the arts would help students establish positive values and it therefore urges the Government to put efforts in encouraging schools, the family and other social organizations to promote studies and discussions on issues like personal conduct, the rights of other people, the responsibilities and commitment shared by the family and the community. This will help foster harmony and mutual respect in society.

As for cultural facilities, the CHC suggests that the public library should be positioned as a place where citizens are encouraged to acquire knowledge, broaden their horizons and improve themselves. It is therefore recommended that the public library be made a base which supports a wide variety of cultural activities. The "character" of individual libraries should be developed and focus should be placed on certain themes in their collections. Professional support for libraries should be enhanced and a statutory "Libraries Board" should be set up to administer public libraries, strengthen professional management and facilitate community involvement.

The CHC is of the view that there is overlap and lack of co-ordination in both art and Chinese heritage collections in different public museums. It recommends that museum collections be re-aligned so that individual museums will have their respective identities. It recommends that a "flagship museum" be established to showcase the cultural characteristics of Hong Kong and the region. Small-scale thematic museums should also be set up. Private sector participation should be introduced into museum operation. An extensive partnership should be forged between museums and private collectors, companies, the academic sector and other museums for purposes of resource development. A "Museums Board" should be set up to co-ordinate the overall development of public museums, define the role and positioning of individual museums and determine the allocation of government resources.

In respect of the operation and management of cultural and performance venues, the CHC is of the view that the role and positioning of each venue run by the Leisure and Cultural Services Department (LCSD) should be clearly defined. These venues should be classified into territory-wide/thematic venues and district venues. It is recommended that there should be more participation from the private sector. In respect of the operation of these venues, it recommends outsourcing the management of a territory-wide/thematic venue as a pilot scheme. "Arts groups-in-residence" are to be introduced to selected territory-wide/thematic venues with potentials of developing their own "character". The arts groups will be given the programming responsibility. District cultural and arts bodies should be invited to participate in the management of district venues. Measures should be introduced to encourage cultural and arts activities in school facilities, public space and private developments, thus fostering a community-wide cultural atmosphere.

With respect to the funding policy for the arts, the CHC is concerned about the fact that resources used to be heavily skewed towards the performing

arts, it therefore recommends that review should be made on the effectiveness of subsidizing the "flagship art groups". These groups should be encouraged to fight for resources in the private sector and there should be a gradual shift of more resources to heritage conservation, library collections, promotion of museum exhibitions, district cultural activities and more professional support.

In terms of institutional framework, the CHC recommends the setting up of a Culture Foundation which will be responsible for the funding of art groups, a function which is presently undertaken by the LSCD and the Hong Kong Arts Development Council (ADC). The Foundation will also take charge of processing applications for funding for arts and cultural programmes. The Foundation should be a statutory body, with the chairman and members being drawn from the private sector on appointment by the Government. There should be a system to ensure sufficient democratic involvement in the Foundation from the arts sector. The Foundation should have clearly defined roles and a single source funding mechanism should be adopted. Such a mechanism would facilitate macro and effective resources allocation, provide a level playing field and encourage diversity. It can also obtain resources from outside the Government in a more flexible manner. The consultation paper also sets out transitional arrangements for the ADC, public libraries and museums. The Government should consider the impact on services provided to the public and enlist support from the staff affected. The consultation paper suggests that the Hong Kong Academy for Performing Arts and the proposed visual arts academy should be funded by the University Grants Committee. The Music Office should expand its functions and change its mode of operation to use primarily schools as a base.

Madam President, with regard to the issue of Hong Kong developing into international cultural metropolis, the CHC is of the view that a city that neglects heritage conservation will never become a cultural metropolis. The Government must recognize this and make long-term commitment to heritage conservation. The CHC recommends that government planning departments and the Urban Renewal Authority should pay due consideration to cultural landscape in both the planning of new towns and the redevelopment of urban areas. The Government should formulate a policy to accord cultural use the highest priority in the use of old buildings. Cultural tourism should be promoted. The CHC also recommends that the Government compile the "Chronicles of Hong Kong" to facilitate more extensive knowledge of the customs and history of Hong Kong in a systematic manner. Heritage education should be promoted. The functions of the Antiquities and Monuments Office

should be strengthened. Historical buildings should be protected by statutory and administrative measures, and in conducting the heritage policy review, owners of private historical buildings should be encouraged to support protection of local heritage.

The CHC believes Hong Kong is in a favourable position to integrate Chinese and Western cultures, and this advantage must be brought into play in the vigorous promotion of cultural exchange. Hong Kong must enhance its understanding of the traditional Chinese culture and establish a distinct cultural character. Hong Kong should also become partners of cultural exchange of neighbouring Asian countries and Europe, and to establish closer interactive collaboration with the Pearl River Delta Region, focusing more on "city to city" exchange.

Madam President, while Hong Kong faces the challenge of economic restructuring, cultural pursuits can become an important link in our economic development. We have made remarkable achievements in movies, television, music and publication. The Government should take proactive measures to improve the business environment of these industries and train up talents to support the further development of these industries. In advertising, design and architecture, Hong Kong practitioners have already made many success stories on the Mainland. With the experience and expertise in our cultural pursuits, we can play an active role in opening up the mainland market. With regard to cultural and artistic endeavours, we can make good use of our international network and experience to assume a leading role in the Pearl River Delta Region.

Madam President, it has been more than five years since the reunification, and the CHC has been working for almost three years. During the period, I have come to realize profoundly that cultural development is never an easy task, but it is something that must be done. Cultural topics, which are never popular in this Council, do have very far-reaching impact. I hope Honourable colleagues can respond enthusiastically to this motion topic so that we can all contribute our part in formulating a cultural policy. I so submit.

**Mr MA Fung-kwok moved the following motion: (Translation)**

"That this Council notes the Culture and Heritage Commission Consultation Paper 2002."

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

**MRS SELINA CHOW:** Madam President, seven minutes are grossly inadequate for the debate of such a huge subject before us, especially when I am tasked with presenting the views and position of the Liberal Party, as well as the tourism perspective of the topic. So I beg your indulgence for my speedy delivery.

The Liberal Party is by and large supportive of the basic notions that underpin the strategies for cultural development. To a certain extent, these are motherhood and apple-pie concepts that few people would disagree with. However, when we come to the cultural position, we find one very important element that is conspicuous by its omission, and that is the unique history of Hong Kong as a British colony for one and a half centuries. This is what distinguishes our city from other Chinese cities, and is what makes Hong Kong so very appealing. Our fusion of East and West, our bilingualism, our urban cityscape that juxtapose the HSBC, the Bank of China and our own Legislative Council Building, Lan Kwai Fong and Hollywood Road, the luxury hotels of Tsim Sha Tsui only a stone throw from the Jade Market by day and the Temple Street stalls by night. Our claim as being Asia's world city surely does not stand on our traditional Chinese culture alone, nor does it survive on just our global vision. The heritage of our colonial past has become a part of our culture. We should not disown it. We should be proud of it.

And that recently asserted identity as Asia's world city should inspire us to aspire to a cultural diversity that spans not only horizontally but also vertically. By this, I mean that we should aim to maintain our cosmopolitan character, while at the same time go for the many strata of cultural activities that might appeal to the masses as well as the artistically discerning. We should set our sights high in terms of taste and quality. Opportunities should be offered to anyone and everyone who is talented and committed to the development of culture. We should welcome the best of the world to perform here. We should also have the enabling environment for our own creations to be among the best of the world.

For the creation, nurturing and appreciation of culture to grow and mature, the Government must recognize that it cannot and should not go it alone, as it has done in the past. The community must be involved. At the same time, the

Government must define its role very clearly, and seize every opportunity to forge partnerships wherever it can. Only by doing so can it minimize cost and maximize ownership.

The Government has always taken up the role of funding the construction of the infrastructure for art and culture. Considerable investment has been poured into the hardware, and although not many feel particularly proud of these public architectural projects, they have fulfilled a need. I can only hope that the care with which the Government of the Special Administrative Region has taken to build the West Kowloon Cultural Project will be repeated for future projects. I also hope that the private sector will be brought in as far as possible to alleviate the burden on the public purse, while at the same time enable the free flow of ideas from professionals in private sector.

But no matter how beautifully designed and well built the hardware, without the support of the software, it is without a soul. And the software depends entirely on people — people with ideas, skills, energy, enterprise and passion. But all these qualities would not come to anything fruitful until there are the leaders, the catalysts and the connectors. These are the key drivers and the champions of implementation. They initiate things. They gel talents together. They take risks. They are the promoters, the organizers and the producers of products. In the past, Hong Kong has not been kind to these people. The Government has been too keen to play these pivotal roles, leaving little room for these professionals to develop and mature. The Government has been monopolizing this field for far too long, promoting and producing presentations of local companies as well as overseas artistes. No one in the private sector can compete with the Government, especially when the latter is heavily subsidized in both resources and cash.

It is for this reason that we strongly support the proposal to shift the Government's role from that of administrator to facilitator. It is by so doing that resources can be freed from rigid bureaucratic straitjackets to flexible and imaginative deployment. At the moment, 73% of the \$2.2 billion spent on culture and the arts by the Leisure and Cultural Services Department is spent on staff remuneration and departmental expenses, while programming and subventions only take up 26%. The Hong Kong Art Development Council on the other hand only distributes \$107.5 million to promote arts development among non-government groups and individuals. These figures spell out a convincing case for the redistribution of resources.

The Liberal Party, therefore, sees corporatization as the way forward, provided that the boards constituted to oversee the corporate entities must have the business expertise to ensure their financial health. We accept that cultural services such as libraries and museums demanded by the public may not be commercially viable. We are, however, quite certain that running them as businesses will lead to savings and revenue that are totally alien to most bureaucracies. We also believe that such moves will also enable those dedicated professionals currently in the Civil Service to be freed from their present constraints. This could only favour their own career fulfillment as well as the overall enrichment of our cultural life. So we urge the Government to move boldly forward in this direction.

Madam President, cultural and heritage tourism has become a very important part of Destination Hong Kong for all visitors, wherever they come from. We may be a well-known shoppers' paradise, and our food still ranks a top attraction, but visitors nowadays want more. Mainland visitors are fascinated by our sophisticated city, our harbour and our peak. More and more business visitors from the north are coming back to enjoy our lifestyle as a world city. Taiwan visitors come whenever we have internationally famous stage shows. Tourists from the West are drawn by our unique heritage and our exotic stories of the past. All visitors are energized by our activity and our vibrancy. In my view, there is no need to cater specifically for tourists, as all tourists would like to do whatever locals do. It suffices that they are fed with up-to-date information, and arrangements for them to access places and activities are convenient and reasonably priced.

There is one area where more can be done. Business and up-market group travel is important to us, as these visitors tend to spend considerably more than the average tourist. Many of them are looking for memorable experiences in special venues, such as dining in heritage buildings and museums. They would also like to hold special activities in beautiful settings. Such events are very much encouraged in other cities. In the past, similar ideas have been blocked here and, therefore, discarded in favour of more commercial venues. I urge the Government to not only open up access, but actively seek event organizers to use these public venues, as they showcase our city very well and cast the most memorable impressions of Hong Kong on our guests from afar.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I seldom speak on cultural subject like the one under discussion today. However, I started to keep an interest in this recently, as I found that lots of problems do exist in this respect.

The principles of the Consultation Paper are, of course, very beautiful. At the very beginning, the gist of the proposals has recognized the following six principles: people-oriented, pluralism, respect for the freedom of expression, protection of intellectual property, holistic approach, partnership and community-driven. No one will dare to say that these six principles, with such beautiful wordings, are wrong; and no one will oppose these beautiful slogans. However, we will doubt, after studying the content in detail, if the entire course of putting such principles into practice will run contrary to these beautiful slogans, rendering them nothing but "substandard goods"? Take the slogan on pluralism as an example. The present recommendation on the establishment of a Culture Foundation, is in fact "slaying" the funding to the Hong Kong Arts Development Council (ADC) and the Leisure and Cultural Services Department (LCSD) by centralizing funding allocation under a single foundation, the Culture Foundation. However, is this contradictory to the principle of pluralism? Members of the Foundation will be appointed and their appointments are subject to the scrutiny of dedicated community groups. Is it possible that "a single dedicated community-led foundation will have overwhelming influence", leaving no traits of pluralism by that time? Some art groups have told me that, if funding was not approved by the LCSD, they might try the ADC; and if funding could not be secured from the ADC, they might try the LCSD, as different sets of criteria were adopted by the two organizations. However, allowing a single foundation to be responsible for the allocation of all funding may possibly result in uniformity of policy, further restricting the room for development. And the situation that "prospering those who are with us, and impoverishing those who are against us" may likely arise in the funding application process. Is funding arrangement of this kind not contradictory to pluralism?

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

Now let me turn to another slogan that no one will oppose. The Democratic Party often says that democracy should see community involvement

and be community-driven; no one will oppose this. However, it is most ironic that the CHC has unexpectedly put forward the principles on community involvement and community-driven. We should remember that, before the establishment of the present ADC, the then Urban Council and Regional Council were frameworks of democratic nature. The Government told us, after the "scrapping" of the two Municipal Councils, that there would still be community involvement despite the "scrapping" exercise. But what is the point of "scrapping" the two Municipal Councils if community involvement is still what it wanted? If elected frameworks like the then Urban Council and Regional Council had to be scrapped, why then the notion of community involvement is once again visited? The so-called community involvement mentioned by the Government is really questionable. With a closer look, we will know the intention of the Government. How is "community involvement" interpreted by the Government? According to the Consultation Paper of the CHC, libraries, museums and many cultural facilities of the LCSD are now managed by the Government, and "community involvement" means to contract out and corporatize such services. This is the first time that I have heard of such an interpretation of community involvement. According to this interpretation, street-cleansing work of Hong Kong should also be a form of community involvement, because such work is now undertaken by cleaning companies exploited by contractors, but not civil servants. By the same logic, does it mean that the employment of cheap labour to undertake services corporatized or contracted out by the Government would be considered as "community involvement" in the future? The meaning of community involvement has been entirely distorted. What surprises me is that such interpretation is explicitly stated in the paper. We can in fact refer to other consultancy reports. I know that the LCSD has conducted a consultancy study on corporatization. The report has given clear explanations on savings and productivity enhancement, stating that the replacement of permanent staff by contract staff could save costs, and that was community involvement. I can hardly believe that the Government is putting an equal sign between community involvement and part-time labouring, casual labouring and corporatization. Community involvement is equal to the non-involvement of civil servants. What kind of logic is it? This is most ridiculous.

Some people may say that they speak according to the request of their trade unions to oppose the outsourcing and corporatization of government services. The trade unions, however, do not oppose community involvement. To them, community involvement means community-led policy-making. They

have thus proposed the setting-up of a cultural and arts services department, to allow committees formed under the department to make decisions, rather than the setting up of a statutory body for the management of libraries and museums as proposed by the Government, for this is not community involvement, but merely corporatization. If decisions are made with the involvement of the community and implemented by civil servants, we found no contradiction in it. Now, the Consultation Paper of the CHC seems to regard the staff of the LCSD as part of the transitional arrangement, leading them to feel that the proposal is meant to kick down the ladder. That means, with the end of the transition period, the services concerned will be put under the so-called community involvement category for outsourcing or delivery by private enterprises. Apart from community involvement of this kind, the Government also regards non-government financing as community involvement; paying fares for admission to certain special complex can also be considered as community involvement. The consultancy report on libraries has made it very clear that exhibition galleries will impose charges in the future. This is a commercial practice of making money, but is now considered a channel for community involvement.

I urge the Secretary to listen to our views. Thank you.

**MR IP KWOK-HIM** (in Cantonese): Madam Deputy, living in this hectic and busy city, Hong Kong people very much need refreshment from cultural life outside their work. The Government has always worked hard to provide the people with a wide variety of cultural activities, in the hope that public aspiration for cultural life and their cultural standards will be consistently raised. The Consultation Paper has made many proposals in respect of the institutional framework, education in culture and the arts, the provision of libraries and museums, and so on. The Democratic Alliance for Betterment of Hong Kong (DAB) agrees with the broad directions of these proposals. But insofar as heritage conservation and cultural industries are concerned, the DAB considers that there is still a lot of room for government intervention and participation.

On heritage conservation, the DAB agrees with the Consultation Paper that, and I quote, "A city that neglects heritage conservation will never become a cultural metropolis" and that "heritage conservation is the responsibility of the Government", end of quote. It is also pointed out that although the Government has taken a lofty position on the conservation of historical buildings, its performance in actual implementation is grossly ineffective. The Kom Tong

Hall incident that occurred not long ago is a very good example which shows that the so-called heritage conservation policy has failed to enhance the public's understanding of the history of Hong Kong. Worse still, it has failed to play even the primary role of heritage conservation.

Certainly, Kom Tong Hall was declared a Grade II historical building as early as in 1990. In July this year, the owner of Kom Tong Hall filed an application with the Buildings Department for its demolition. It was only three months later that the incident was exposed. After mediation by various parties, and due to public pressure, the owner agreed in November to temporarily suspend the demolition plan and to come to the negotiation table to seriously discuss the various proposals with the Government. This incident shows that the Government is completely passive when it comes to the conservation of historical buildings.

There are at present 77 declared monuments and 1 000-odd historical buildings in Hong Kong. The former are protected by law and cannot be pulled down arbitrarily, but there is no such protection for the latter. If a historical building is privately owned and if the owner insists on its demolition, no one could possibly stop the owner from doing so. Even the Secretary for Home Affairs who is responsible for heritage conservation will only be at his wits' end. To protect these buildings, all that the Government can do is to declare them as statutory monuments. But this may involve a host of problems and is no easy task at all. Therefore, if the Government neglects the importance of co-ordination, the Kom Tong Hall incident might recur again and again in the foreseeable future.

With continued urban development, not only valuable buildings may be demolished. Even the history and folk stories relating to the buildings may also be forgotten very soon. Therefore, the DAB agrees with the proposal in the Consultation Paper of compiling the "Chronicles of Hong Kong" to record the stories and history of Hong Kong in a systematic manner. The compilation of the "Chronicles of Hong Kong" is just the beginning. How the Chronicles can be utilized for publicity and education purposes, so as to enhance the sense of belonging among the people and recognition of their identity is the important objective.

Madam Deputy, overseas experience can prove that it is entirely probable for the heritage, monuments, customs and stories of a place to become assets

capable of "laying golden eggs". This is echoed by the point made by you, Madam Deputy, about how this will be useful to tourism. Indeed, all places in the world are using their own culture, ancient buildings and works of art to revitalize tourism and develop the local economy. From the grand Imperial Palace of our Motherland, the Cologne Cathedral in Germany to the little ancient wooden bridge in Lucerne, Switzerland, all these attractions can attract tens of thousands of tourists every year. The DAB believes that given concerted efforts, Hong Kong absolutely has the conditions to enable local monuments and cultural heritage to "lay golden eggs".

In respect of cultural industries, the DAB agrees with the Consultation Paper that vibrant cultural activities not only bring considerable economic benefits, but also reflect the creative vitality of a place.

To nurture cultural industries, it is necessary to strengthen education in culture and the arts. To encourage schools and students to attach importance to the nurturing of culture, arts and sports, the DAB agrees that in the admission process, universities should take account of candidates' cultural, arts or sports attainments, apart from considering their academic performance. On the setting up of new institutions, the DAB considers that the Government should encourage the injection of private resources and the establishment of a visual arts academy. In respect of the curriculum, the DAB advocates the inclusion of dance, drama and multimedia as formal subjects in order to enhance students' knowledge of arts and their ability in arts appreciation and creation, and develop their ability to appreciate both local and overseas achievements in the arts. Moreover, the DAB also advocates that pilot schemes in arts education be implemented jointly by certain secondary schools or by secondary schools in a community, under which one or two teaching artists can be employed to provide arts education to students in the participating schools.

The DAB believes that so long as the Government attaches importance to and channels resources into this area of work, cultural industries in Hong Kong will certainly find growth and contribute to the cultural and economic development of Hong Kong. I hope that this Consultation Paper can bring new hopes and directions for cultural development in Hong Kong.

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

**MR ALBERT HO** (in Cantonese): Madam Deputy, the Culture and Heritage Commission Consultation Paper 2002 has proposed some basic notions of cultural development in the future, including pluralism, respect for the freedom of expression, protection of intellectual property, a holistic approach, forging of partnership, community-driven development, and so on. All these are lofty notions, and we do not expect any opposition to them in the community at large, for they have pointed to a good direction. But the major problem is how they can be implemented. The Consultation Paper has mentioned some other specific topics in respect of cultural policy. For instance, what Hong Kong's cultural position should be, the idea that it should be grounded in Chinese traditions and endowed with a global vision, and it has mentioned how education in culture and the arts should be promoted, whether our libraries and museums should develop their own character, how the Academy for Performing Arts and the Music Office can be improved in the future, and so on. I think these issues merit extensive discussions, and it is impossible to look into them comprehensively in just a few minutes today. I think the thrust of the entire Consultation Paper is to propose strategies for change. What are these strategies for change? They will fundamentally change the entire policy-making structure in respect of the cultural policy, transferring the funding power mainly to a Foundation which we know little about, and this Foundation will decide the entire development direction through the allocation of funding.

The Government said that this Culture Foundation will realize the notion of community-driven. But we have not been told as to how it will be realized. Yet, I am very clear about one thing and that is: Does our Government genuinely advocate community involvement? I have great doubts about this. Even for the two former elected Municipal Councils, the Government did not think that they reflected much community involvement and had therefore mercilessly scrapped them; and after the centralization of power, the Government had undertaken to devolve more powers to the District Councils but had ultimately gone back on its words. Today, the Government is telling us that there should be community involvement and that the powers of the central government will be delegated to the Culture Foundation. Can we believe it? Is it truly representative of the community or is it only made up by certain community organizations or representatives of the community favoured by the Government? Will they include organizations which tend to agree with the political ideology and stance of the Government, organizations or representatives that stand by the policies of the Government, and even representatives of the community who obediently follow the policies of the Government in many other aspects and the

instructions of Bureau Directors? No one can cast these questions aside. Therefore, is this "community" genuinely comes from the community, or to quote Mr LEE Cheuk-yan's words, is it a government-appointed community?

Yesterday, Chairman CHANG Hsin-kang said that a government-appointed community is better than an emperor. I absolutely take exception to this. While both are undesirable, a government-appointed community is probably an evil servant of the emperor, and the evil servants or eunuchs of the emperor are worse than the emperor, for the emperor will care about his own reputation in the hope that he can leave a good name in history and so, the emperor will take the whole situation into consideration. However, evil servants will only do the otherwise. They will exert themselves to exploit and to kill. Therefore, if I am not told about a specific approach as to how it is going to work, I have misgiving about this so-called community involvement.

Some people may ask: Is it better than civil servants? Honestly, I think the Secretary also knows that the arts groups do have complaints about civil servants. For example, they said that civil servants are rigid, inflexible, mechanical, that they do not understand the development needs of arts groups, and that their communication with arts groups is insufficient, and so on. I agree that there is certainly room for improvement on the part of civil servants. But civil servants at least have one merit and that is, they are loyal agents of policy enforcement and they are relatively neutral. If they are instructed to implement a policy, they will enforce it to the letter. And many a time, even given the power of discretion, they will not dare to abuse their powers because there is, after all, a system governing civil servants.

As far as we understand it, since the scrapping of the two Municipal Councils, major policies have continued to be followed and so, we have not seen great changes. Even though they may be inadequate and far from satisfactory, they still do not depart too far away from the policies made by the two former Municipal Councils. Now a complete overhaul is proposed. In what direction will it go? No one knows. Will it lead a black hole and how is this black hole going to work? No one knows. The resultant situation might be even worse. But the Secretary would tell us that this is not his business, for he has already delegated this area of work to a community-driven Foundation, in which case it would be even more difficult for us to hold him accountable. So, we consider this unacceptable.

Then what is our proposal? We think that community involvement should relate to a macroscopic policy level. Community involvement at this level includes participation in the entire strategy on cultural development, the direction of cultural development and the overall funding policy. In the course of policy enforcement, civil servants should make judgements on the basis of their professional training. Policy implementation should be subject to sufficient monitoring and endowed with full transparency. As for matters relating to the management of various venues, committees should be set up to monitor such management.

On the question of how such involvement can be embodied in the upper echelons, I think the current system adopted by the Hong Kong Arts Development Council of returning members through elections in the relevant sectors is desirable. It is worthwhile to include more elected representatives, representatives of public opinion who can truly represent the users. Only in this way will it have creditability. These are the proposals of the Democratic Party. Thank you, Madam Deputy.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, culture and education are very closely related. Whether it be the nurturing of talents in culture and the arts or the enhancement of cultural literacy of the public and youngsters, it all has to do with education. The Culture and Heritage Commission Consultation Paper 2002 has placed emphasis on education in culture and the arts education and school education. This is a correct direction, and it merits support.

The enhancement of cultural literacy and the nurturing of talents in culture and the arts must start at young age through education in schools. School education provides the best platform for launching education in culture and the arts. However, the level of cultural literacy of our young people nowadays is indeed worrying. Their knowledge in these fields is scanty and their cultural qualities are low. But there is a unique phenomenon in Hong Kong, that is, the percentage of students learning how to play piano and other musical instruments is so high that it is rarely seen in Asia. However, the student ticket sales of recreational, cultural and musical programmes is only 70% on average, or less than 40 000 tickets a year. Therefore, the enhancement of cultural and arts education for young people will serve the needs of giving equal importance to the five domains, namely, ethics, intellect, physique, social skills and aesthetics, and

promoting all-round education. It also caters for the need of students' development of multiple intelligence and nurturing students'.

To step up cultural and arts education in schools, I personally think that work should be carried out in three areas.

Firstly, the curriculum. At present, arts education is often regarded as an unimportant subject which is dispensable. It is not included in the core curriculum or regular curriculum in primary and secondary schools, and there is even a gap in arts education beyond the junior secondary level. According to the guidelines of the Education Department, arts classes should take up 10% to 15% of school hours in primary schools and 8% to 10% at the junior secondary level. There is no specific guideline for the senior secondary level. By rough estimation, about 30% of the schools do not provide arts classes at the senior secondary level. Moreover, the existing arts curriculum is subject to lots of restrictions and is usually confined to music and art. The scope of our curriculum is narrow and its contents tend to emphasize the training of skills more than the nurturing of the ability in arts appreciation and creativity, thus failing to meet the needs of the 21st century. The DAB considers that the Government should expressly require schools to provide arts classes for their senior secondary classes, enhance the coherence and continuity of the arts curriculum, and broaden the curricular spectrum to include other disciplines than music and art, such as dance, drama, multimedia arts, and so on. Efforts should be made to promote "One Art for Life" and also reading programmes. In respect of the contents of the curriculum, emphasis should be placed on Chinese culture and arts, with a view to enriching students' knowledge of Chinese culture and their ability in aesthetic appreciation.

Secondly, teacher training. At present, there is an obvious shortage of trained arts teachers in primary schools. Of the teachers teaching arts in primary schools, only about 50% of them have received relevant professional training. The situation is better in secondary schools, with almost 90% of arts teachers having received professional training. People who know arts do not have a diploma in education, whereas holders of diploma in education know nothing about arts. The DAB proposes that the Government should step up both pre-service and in-service training for arts teachers. It should provide more resources for the pre-service training of arts teachers and enhance the

professional training for in-service teachers, particularly those in primary schools, in collaboration with education authorities, tertiary institutions and cultural organizations, in order to gradually achieve the objective of having trained teachers teaching arts classes in all primary and secondary schools. We also support the proposal in the Consultation Paper to train "teaching artists" to support arts teachers in schools.

Thirdly, reforms in the admission criteria of universities. Compared with advanced countries or territories, the admission system of universities in Hong Kong attaches little importance to students' artistic performance. In the United States, for example, achievement in arts is one of the aspects considered for admission to universities in most of the states. In Singapore, scores in the advanced level examination only accounts for 65% of the admission criteria. In Taiwan, students can bring their own works to the interview at university, which means that the advanced level examination is not the only admission criterion. Although universities in Hong Kong now will consider the recommendation letters from secondary school principals in the admission process, the Joint University Programmes Admissions System has not yet clearly specified arts and sports as part of the criteria for admission to universities. If universities can take into consideration students' cultural and artistic achievements in the admission process, this would create a vital leverage effect in inducing the public to attach greater importance to arts. I have been given to understand that the Heads of the eight universities have agreed to give due attention to artistic and sports achievements and leadership on the part of students in the admission process. I hope that this proposal can be implemented expeditiously.

Moreover, the Government should step up the training of talented students in the areas of culture and arts. The subsidy system should be improved, so that the less well-off students and gifted students can be provided with the necessary subsidies for them to receive education in culture and arts.

Only with a multi-pronged approach can the cultural and artistic qualities of students be practically improved and the overall cultural ethos and cultural scene in society be upgraded. This will provide the soil, nutrition and talents for cultural development.

With these remarks, I support the motion.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, in November this year, the Culture and Heritage Commission published a Consultation Paper 2002 on the promotion of culture and arts. As Hong Kong has all along been described as a cultural desert, I hope that this Consultation Paper can draw public attention to culture and arts, thereby facilitating the promotion of cultural and arts development in Hong Kong.

The Consultation Paper mentioned that education in Hong Kong has been putting too much emphasis on academic subjects. For example, during the admission process, local universities attach little importance to students' artistic achievement, and only about 50% of the teachers teaching arts in primary schools have received relevant training. In view of this, no wonder Hong Kong's achievements in arts have been lagging far behind world standards.

In fact, culture and arts can have enormous impact on the cultivation of a person's character. The Hong Kong Government has been actively promoting courtesy campaigns. It is because while many people in Hong Kong have received nine years of free education, many of them in general still do not understand the importance of courtesy to individuals and to society. This reflects to a certain extent the inadequacies of education in Hong Kong. I think culture and arts can shape a person's temperament. If Hong Kong people are nurtured in culture and arts since young age, they will certainly grow up as refined and cultivated persons. In the long term, this will also be helpful to combating juvenile delinquency. Therefore, I support the promotion of culture and arts among primary and secondary students.

The Consultation Paper has made many proposals in respect of education in culture and the arts. They include setting up senior secondary schools which focus on culture and arts. While this is a good idea, I think implementation is difficult at the present stage, because most parents think that their children will have a prosperous future only if they study in grammar schools. Therefore, to promote cultural and arts development, we must start from the perceptions of parents by changing their views on culture and arts.

Libraries are vaults of culture and arts. Over the years, while the Government has worked to promote reading, publicity on libraries still lacks punch and so, reading has not been particularly popular in the territory. What is more, although the Government injects massive resources into the development of library services every year, libraries, to many people, are only a

place for reading and borrowing books. To avoid wasting resources, I think the Government should step up publicity on library facilities and collections to encourage patronage of libraries. Moreover, it is also a good idea to set up specialized libraries, for this can facilitate people in need finding books that meet their needs.

Of the many cultural facilities, museums are the best and the most significant showcases on the culture and history of a place. The Consultation Paper proposes a re-alignment of the collections of public museums and the setting up of a "flagship museum". Disregarding whether or not the proposals are accepted, I hope that the Government can step up publicity on museums in Hong Kong, because I think many people in Hong Kong still know little about local museums, such as how many museums there are in Hong Kong, where they can be found, the themes of exhibitions, and so on. If the proposal of a "flagship museum" is finally implemented, I suggest that it should be developed into a tourist attraction, so that tourism can be developed in parallel with the development of culture and arts.

On the institutional framework proposed in the Consultation Paper, I agree that some members of the Libraries Board, the Museums Board and the Culture Foundation should be drawn from the private sector. Disregarding whether or not the proposed new framework is accepted in the end, I think institutions responsible for culture and arts should avoid overlap of roles, in order not to waste resources.

Although Hong Kong is a commercial society, culture and arts are equally important to us. The main reason why culture and arts cannot thrive in Hong Kong is that Hong Kong people consider culture and arts as leisure activities only. Therefore, cultural and arts development in Hong Kong will hinge on a change of the mindset of Hong Kong people towards culture and arts. Otherwise, the many proposals made in the Consultation Paper would be of no avail.

Madam Deputy, I so submit.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, in the Consultation Paper released by the Culture and Heritage Commission (CHC) last month, several fundamental notions for cultural development in Hong Kong have been proposed, including "pluralism", "freedom of expression and protection of intellectual property", "holistic approach" and "partnership". These notions

will have a positive impact on the cultural development of Hong Kong, therefore the Democratic Party supports this direction. However, we are unable to support some other proposals made in the Consultation Paper, such as the notion of "community-driven" and "single source funding" mechanism (for example, the establishment of a Culture Foundation), and we also question the effectiveness of some proposals.

Madam Deputy, the Government first "scrapped" the two former Municipal Councils to do away with generally elected representatives, and now it is proposing to "kill" the Hong Kong Arts Development Council (ADC) in order to achieve a centralization of power. How can the Government convince the people that eventually there will be a community-driven development? The community-driven notion may well be a slogan that will never materialize, whereas community involvement may also be no more than a beautiful lie.

Firstly, on the issue of institutional reorganization. The Consultation Paper 2002 of the Culture and Heritage Commission (Consultation Paper) proposes to establish a Libraries Board responsible for the management of libraries, a Museums Board responsible for allocation of funds to major museums, and a Foundation to take up the present responsibility of the Leisure and Cultural Services Department (LCSD) and the ADC in allocating funds to all professional arts groups and processing all funding applications for cultural and arts programmes. The Consultation Paper even proposes that the chairman and members of the Foundation should be appointed by the Government from the private sector to handle matters relating to fund allocation. However, the Democratic Party opines that, if members of the Foundation are appointed by the Government, it will just create opportunities for the Government to control the operation of the Foundation indirectly. On the one hand, the Foundation holds the ultimate authority for allocation of funds to cultural and arts activities in Hong Kong. Yet, on the other hand, the authority of appointing members to the Foundation rests with the Government. I am afraid such an arrangement will only make it easier for the Government to control the cultural development of Hong Kong. If the Government eventually decides to establish the Foundation, its composition must encompass members elected by way of a democratic election, or some representatives of public opinion, in order to exercise checks and balances.

The Consultation Paper also mentions that, upon the implementation of the new framework, the ADC may be dissolved, and it is proposed that the

Foundation should operate a single source funding mechanism, out of the consideration that this arrangement would achieve holistic, macro and cost effective resource distribution, and also facilitate fair competition and pluralistic development. But the Democratic Party holds completely different views, and thinks that a single source funding mechanism would undermine the pluralistic development of arts in Hong Kong, and is not conducive to fair competition. The reasons are obvious. Subjective factors will inevitably exist in any funding mechanism. It is even more so for funding allocation for cultural and artistic activities, as there are no objective standards. Once the Foundation monopolizes the funding authority, it will become the only venue to compete for resources. If the performance of a certain arts group is not accepted by the Foundation, it will not have any other channels of funding. This is equivalent to strangling the vitality of some arts groups. In the long run, the single source funding mechanism will make some arts groups adjust their direction of development in order to cater to the tastes of members of the Foundation. As a result, the development of arts may take on a uniform pattern which is completely incompatible with the pluralistic nature of the community of Hong Kong. Besides, the scales of arts groups in Hong Kong vary substantially. Under the single source funding mechanism, groups of minority art forms will find it very difficult to compete for resources with major arts groups. This would stifle the development of groups of minority art forms. It may become very difficult to fulfil the ideal of "diversity with identity". For this reason, the Democratic Party opines that it is necessary to preserve the ADC in the framework so as to enable it to carry on with its role of allocating funds and conducting researches. This would provide a second channel for arts groups to apply for funding.

After the abolition of the two elected Municipal Councils, the Government proposed to abolish the Hong Kong Sports Development Board sometime ago. And now, through the CHC as a mouthpiece, it is proposing to abolish the ADC, or even the CHC itself. The Democratic Party is deeply worried by this trend, and is apprehensive that the proposals may represent an attempt by the Government to further centralize powers. We think that the establishment and development of statutory organizations do not take place overnight. We must allow such organizations sufficient resources and time to develop. Institutional problems can be solved through internal reforms or reorganization, or even by way of legislation. Yet, the Government should not resort to abolishing statutory organizations lightly. After going through the full text of the Consultation Paper, the Democratic Party still fails to find any justifications to

support the proposal of abolishing the ADC. Therefore, the Government must think carefully before making a decision on this.

Madam Deputy, I would also like to speak on the concern of the Democratic Party about the career future of the staff of the LCSD. On the one hand, the Consultation Paper praises the Civil Service as having "a team of excellent cultural administrators", and also "Hong Kong has a remarkable cultural scene..... This achievement is the result of the continued efforts of the Civil Service." But on the other hand, the Consultation Paper points out in an obviously misleading manner that, "Staff remuneration and departmental expenses of LCSD accounted for three quarters of the overall expenditure. Expenses on programme presentations, exhibitions, acquisitions and promotion were about one fifth." In fact, staff remuneration accounts for only 31% of the overall expenditure, which is similar to the remuneration of staff responsible for cultural and arts activities in other places. As for the so-called departmental expenses, they include expenses on electricity, maintenance, cleansing, security, and so on. These expenses have a direct correlation with venue users. We may say that such expenses are fixed costs as opposed to the organization of any activities. In short, the costs are in fact used directly on the various exhibition programmes and on keeping the venues open daily. But why did the Consultation Paper exclude such expenses from expenditure items arising from organizing the programmes and exhibitions? The Consultation Paper mixes up staff remuneration with the expenditure concerned, thus misleading people into believing that the administrative costs of LCSD are exorbitant. By employing such a tactic to "smear" civil servants, the Government will not bring about any benefit to the reform, it will on the contrary induce bad feelings among the staff. If a Consultation Paper boasts of high principles of civilization and culture should antagonize the civil servants of the LCSD and make them at loggerheads with the Government, it would be most ironical. I hereby urge the Secretary to consider the issue prudently before taking any action. Thank you, Madam Deputy.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Deputy, in the process of consultation in relation to the Consultation Paper 2002 of the Culture and Heritage Commission (Consultation Paper), the Government keeps on promoting its six principles and strategies: a people-oriented approach, pluralism, respect for freedom of expression, protection of intellectual property, a holistic approach,

building a partnership and a community-driven strategy. I like these principles and wordings very much. However, in reality, what they are actually? I have read this elaborate Consultation Paper very carefully.

I feel that non-government organizations keep a very keen interest in this. For example, the community-driven approach has now become a principle. Some colleagues have mentioned this point already. However, if the Culture Foundation becomes the only body that has full authority in allocating funds, then many small arts groups will feel worried. Recently, as I have to work on certain projects, I have had many opportunities to talk to them. I feel that they worry and wonder how they will be affected if the Culture Foundation becomes the only funding authority. This is because at the moment they can apply to different departments for funds to develop their cultural activities. But if the funding arrangements are centralized, they are not sure about the situation in future. This has caused them an enormous worry. Besides, on the reorganization and reform of the LCSD, members of the staff are also worried that they will be affected. Therefore, reading the Consultation Paper, I think it is necessary for the Government to consider the issue of institutional framework carefully and act cautiously.

Apart from this, I would also like to talk about another issue, that is, the specific issues of heritage and cultural industries. First, I would like to talk about the Culture Foundation. I just asked the question: If the Culture Foundation should take the place of the Hong Kong Arts Development Council (ADC) and the LCSD in exercising the function of allocating funds to all arts groups, what will the situation become? In fact, the present allocation of funds places greater emphasis on the performing arts. Some flagship arts groups are given substantial fundings every year. For example, the Hong Kong Philharmonic Orchestra, the Hong Kong Dance Company and the Hong Kong Repertory Theatre are allocated over \$200 million annually. To some arts groups that cater for the interests of minority audiences, the resources they receive are usually very limited. Therefore, I feel that their worries are justified if future funding is to be administered by one single source.

I very much hope that the Government can contemplate the issue carefully. If a single fund allocating body is to be established, the Government should take the opinions expressed by the people and non-government organizations into consideration, and examine whether some non-government appointees can be

brought into the management of the Foundation, so that the entire operation of the funding mechanism of the Foundation can be conducted in a fair, democratic and open manner. These issues have been raised by people of the non-government organizations all along. I earnestly hope that the Government can listen more to opinions from all walks of life on these issues, especially when the Government has proposed the people-oriented approach to the Culture and Heritage Commission. But how can this goal be attained? I personally think that it is necessary for the Government to explore this issue critically.

Besides, the Consultation Paper also proposes to establish two Boards which will be respectively responsible for the management of libraries and allocating funds to museums, whereas the LCSD will be responsible for the management of cultural and performance venues only. As these new proposals touch on different frameworks, so they have induced great repercussions. In fact, the LCSD has trained up many outstanding cultural and arts management talents who are specialized in the daily operation in their respective fields. After the reorganization of the institutional framework, I believe consideration should be given to making good use of their specialized skills. And in this reform, we cannot deprive them of their rights because of resources considerations, including such measures as abolishing their grades or dismissing them, or even deleting their posts. About a year or so ago, I assisted in solving labour disputes arising from the reorganization of certain government departments. I hope the Government can pay attention to such issues.

After speaking on two aspects in relation to institutional framework, I would like to discuss Chapter 5 of the Consultation Paper. It is the part on the proposal of transferring the Antiquities and Monuments Office (AMO) to the Housing, Planning and Lands Bureau. For a start, I really worry that the Housing, Planning and Lands Bureau may not understand what we are talking about, and I also worry that they may manage the AMO as a property development project.

Madam Deputy, the Consultation Paper also criticizes that the Government has granted very limited power to the AMO, and very often, the Government does not take the opinions of AMO experts seriously. I have heard of a joke — that the experts had repeatedly requested the Government to preserve certain heritage, but the Government said that it was not necessary, and that it would suffice by taking photographs of such monuments, storing them on computers

and later showing tourists such photographs on computers. If the Government dares to say something like that, I cannot imagine what may happen after the AMO is put under the management of the Housing, Planning and Lands Bureau.

Madam Deputy, why am I so worried? It is because I have been making great efforts on such issues for a long time. I think the Secretary may recall that he had once joined me in making a visit to the Nga Tsin Wai Village which has a history of six or seven hundred years. I have maintained contact with residents of that village since the geographical direct election in 1990. The villagers really hope that this monument can be preserved in the urban area. Of course, the only parts of the village that are above the ground level now are the statue of the Goddess Tin Hau and certain monuments. When the Japanese troops invaded Hong Kong, they once wanted to demolish the whole village. But at the request of the villagers, the Japanese agreed to preserve it. Instead, they tore down the surrounding walls of the village for materials to build the airport. For this reason, the village has not been able to meet the standards of monuments over the years. But in fact, there are still a lot of antique artifacts under the walls which had been torn down. Since the '90s, I have made repeated requests to the Government to preserve such monuments (some villagers started to make this request as early as the '80s). However, a property developer at the same time has since started to acquire lots in the village one after the other. Now, the village is derelict. I really wish to launch a "Save the Nga Tsin Wai Village Campaign" because the village can reflect the history that Hong Kong had once been ceded to Britain. I have once proposed to the Government to organize a "Community of Monuments arising from the Century-old Treaties Programme". Under the programme, the Nga Tsin Wai Village should stand on the left of the site, where researches have verified that the village used to be situated at the seaside. On the right of the site should be the Kowloon Walled City, a place once where the government hand could not reach and where soldiers of the Qing Dynasty lived. Right in the middle was the place where the British troops came marching in. Why can we not enact these episodes of history? These are existing monuments, but they are laid to waste now.

This Chapter has been least discussed. The problem faced by the Government is: the proposals may bring about changes, and then it has to consider relocating the monuments to some other places. I am gravely worried. I really hope that the Government can address the issue in its proper perspective. Macao has preserved monuments in a far more comprehensive and detailed

manner than we do here in Hong Kong. I hope that in the course of competition, we would not lose our original monuments and heritage as well as our natural resources.

Madam Deputy, I so submit.

**DR TANG SIU-TONG** (in Cantonese): Madam Deputy, Hong Kong is no longer a borrowed place in a borrowed time. Under "one country, two systems" and "Hong Kong people ruling Hong Kong", local residents now consciously regard Hong Kong as their root and home. However, they also face issues of identification in the historical and cultural contexts, such as the problem of repositioning themselves as either "Chinese in Hong Kong" or "people of Hong Kong of China". Such unique historical circumstances, coupled with the fact that we are living at the turn of the century amid rapid and drastic socio-economic changes, will easily induce Hong Kong people to rethink the way of life in the Hong Kong Special Administrative Region (SAR) now, the colonial rule in the past and the positioning of Hong Kong in China and in the international arena. In other words, a new environment with rich contents offers an invaluable opportunity for new cultural and artistic development in Hong Kong.

As we all know, the cultural awareness of Hong Kong has never been very strong, and cultural work has not been given due attention. So, subcultures are prevalent in the market, where classical music, drama, dance and literature are not popular. Hong Kong people are often criticized as excessively utilitarian and lacking in creativity. This warrants a serious review on our part. The most valuable asset of Hong Kong is its human resources. We do not wish to see next generation are all money-minded youngsters. We wish to see our next generation as young people with creativity and cultural visions. In addition, beautiful and prosperous cities like New York and London are also great cultural metropolises. If the Government wishes to make Hong Kong become New York or London of Asia, it must accord priority to the promotion of culture in Hong Kong.

Unfortunately, the Government has not grasped such opportunities offered by the cultural changes, as reflected by its proposal of reorganizing the arts institutional framework of Hong Kong as espoused in the Consultation Paper

2002 of the Culture and Heritage Commission (Consultation Paper). The proposal of the Government has three major shortcomings. Firstly, on the Culture Foundation, the body which shall take up the present responsibility of the LCSD and Hong Kong Arts Development Council (ADC) in allocating funds to all professional arts groups, the Government has not explicitly specified that the membership of the Culture Foundation will definitely include elected representatives of public opinion. This may be considered a retrogression compared to the funding arrangement of the two former Municipal Councils. Secondly, the proposal of the Government mainly deals with the institutional arrangements in respect of the management and use of cultural and arts resources, without attempting to answer questions on the interaction and mutual thriving of cultural development and the overall operation of Hong Kong. And thirdly, the Consultation Paper has not explored the roles of District Councils (DCs), which are councils penetrating most deeply into the social fabric of Hong Kong. Theoretically, in promoting ideas and policies on culture and arts, they should play the same front-line role. However, DCs have all along received very little resources, so little that they are practically unable to implement any major cultural and arts programmes. Now, in the eyes of the Government, the DCs have no role to play in the cultural and arts institutional framework. Before the Government proceeded with the scrapping of the two former Municipal Councils, it stressed that the role played by the DCs would be enhanced. However, obviously it has not honoured its promise. Such practices run counter to the principle of adopting an "holistic approach" in cultural and arts education as proclaimed in the Consultation Paper.

Pinpointing the three shortcomings of the proposal of the Government, I think that the Culture Foundation, being a statutory body not directly responsible to the Government, should fully embody the "community-driven" principle, apart from seeking resources from non-government sources in a more flexible manner. Therefore, I support that the Culture Foundation should encompass a wide representation; in particular, its membership should consist of elected representatives of public opinion.

In fact, culture means more than small-circle pursuits in literature, music, dance, movie, drama, and so on, it is also interrelated with the operations of economics, politics, management and so on. Cultural work should motivate the people to explore how the interactive and complementary forces work between culture and arts and our daily lives, and how the *modus operandi* of the Hong

Kong community can shape the various sets of cultural values. From cultural and arts activities to cultural life, there are so many different changes and variations that they could neither be adequately taken care of by the bureaucratic operation of the Government nor by the top-down style of governance. Therefore, it is imperative that the Culture Foundation must be independent of the Government and given the solid power to allocate funds. It would be even more desirable if the Foundation can be further strengthened by the injection of private resources and commercial sponsorship.

To realize the community-driven strategy, the Government should place greater emphasis on the functions of DCs. I am not just hoping that the future Culture Foundation can include a certain number of representatives from the DCs. In fact, I also hope that the Government can make good use of the community networks of the 18 DCs and the 500-odd DC members in strengthening the role of DCs in promoting culture in terms of positioning, policies and resources.

Madam Deputy, I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, according to the Culture and Heritage Commission Consultation Paper 2002 (Consultation Paper) entitled "Diversity with Identity Evolution through Innovation", Hong Kong should position itself as a metropolis in China which is most capable of bridging China and the world. Over the years, Hong Kong has been playing a significant role in the exchange of Chinese and foreign cultures thanks to its geographical advantage of being backed by the Mainland and facing the world. For this reason, I agree that we should take advantage of the cultural characteristics and position and bring them into play in this new millennium, with a view to embarking on a broad road of cultural development which best suits Hong Kong.

In Chapter 3 of the Consultation Paper, it states that education in culture and the arts provides the impetus for cultural development. I also agree that to develop Hong Kong into a cultural metropolis, we should start with education, that is, the cultural quality of the public should be fortified by strengthening their cultural knowledge and literacy, and in the end a diversified cultural curriculum will be developed. Among various stages, basic education should attract our attention most. The arts curriculum of the nine years of free education is the

weakest link, as most schools put more emphasis on intellectual development to the neglect of ethical and aesthetic literacy. The Consultation Paper points out "there is an obvious gap in arts education beyond the junior secondary level" and "it is estimated that about 30% of the schools do not provide arts classes". We should be aware of the fact that arts education could exert subtle influence on the enhancement of moral standard of students, refine their temperament and promote the overall development for a sound body and mind. For these reasons, I fully agree with the proposals of the Consultation Paper, such as "A Diversified and Comprehensive Curriculum", "Quality Support", "Partnerships and Community Involvement", and so on. As to specific implementation, we should stipulate the different teaching objectives and missions allocated to primary schools, secondary schools and tertiary institutions. For example, primary and secondary schools will become venues where arts curriculum standards are experimented, promoted and implemented while tertiary institutions should nurture and upgrade the aesthetic literacy and cultural qualities of students through curriculum research and various cultural and arts activities. Another platitude is about teacher training. We all know that the principal objective of training is to broaden one's horizons, strengthen scientific research in teaching and the capability of employing modernized techniques of instruction. If we fail to improve the quality of teaching, the so-called enrichment in the quality of education will be out of the question, and all of the tasks can never be accomplished.

Another topic mentioned in Chapter 3 is the role of the mass media. It has highlighted a concern of the public, that "mass media exerts tremendous influence over the society, especially in the shaping of social ethics and moral values." Some people equate cultural and arts activities with entertainment and leisure activities. Then those pretenders might as well dress themselves in a cloak of culture to boost up their "savour". In a commercialized society, individuals are encouraged to look at things from a functionality perspective, that is, to put emphasis on the material gains, to weigh things up in mere money terms and to pursue efficiency and benefits. Under the influence of this utilitarian mentality, the integrity of today's mass media is open to question. We can hardly expect them to take up the responsibility to carry forward culture and arts and advocate correct social ethics and moral values. I think the mass media should assume the responsibility in this respect in view of their long-term engagement in cultural work, since the promotion of cultural development in Hong Kong requires the joint efforts from all sectors. Only by shouldering the

same responsibility can the mass media and cultural institutions win the respect and trust of the public, and only by so doing can the cultural cause be carried forward with endeavours exerted by all sectors.

Madam Deputy, I so submit.

**MR HENRY WU** (in Cantonese): Madam Deputy, for historical reasons, Hong Kong was once referred to as a cultural desert where cultural and arts workers were not given general recognition by society. I am therefore very pleased to see the release of the Culture and Heritage Commission's Consultation Paper 2002 (Consultation Paper), for the Consultation Paper shows that the development of local culture and arts is beginning to receive social recognition and support.

However, on this road of ascendancy to an international cultural metropolis, besides the topics mentioned in the Consultation Paper, namely, Hong Kong's cultural position, education in culture and the arts, cultural facilities and review of resource deployment and institutional framework, the support from a comprehensive policy is equally important. This is particularly the case with the assistance and post-retirement prospects for artists.

When Prof CHANG Hsin-kang briefed a meeting of the Legislative Council Panel on Home Affairs on the consultation paper entitled "Gathering of Talents for Continual Innovation" released in 2001, I already emphasized that the Administration should provide adequate incentive and post-retirement work arrangements, so as to induce talented young people to pursue a career in dancing. I also said that this was very important to the development of culture and the arts. Unfortunately, the latest Consultation Paper has not given this point any detailed treatment. Undeniably, a vigorous promotion of education in culture and the arts will greatly facilitate the consolidation of cultural and arts development, but the absence of support from an integrated policy will render all efforts in vain. That is why I personally think that the Consultation Paper still leaves much to be desired.

Madam Deputy, though I am the Chairman of the Hong Kong Dance Company (one of the "flagships" mentioned in the Consultation Paper), I do not intend to say anything on behalf of the Company today because it will submit a

detailed representation on a separate occasion. I intend to voice the feelings of professional dancers today.

The Consultation Paper looks like an ornately and resplendently decorated stage. But back-stage support is even more important, and it even determines the success or otherwise of the whole performance. My point is the adequacy or otherwise of the support rendered by the Government or the relevant authorities may well affect the quality of cultural and arts development. Members may not realize that the career of an artist is very often not so long. In particular, a professional dancer's prime, or "lifespan", is just about 10 years at most. Without adequate support and prospects, how can we induce talented and quality artists to join the local cultural and arts industries? How can we thus assist in and promote the development of education in culture and the arts?

Why is the performing life of a dancer so short? It is because the performance of an elite, full-time dancer is a highly demanding endeavour in terms of physical strength and technique. One can cope more easily when young, but as one grows older, one will be constrained by physical conditions in the performance of difficult and complex steps and movements. The chances of sustaining injuries will thus increase. As far as I know, the greatest concern of many dancers is precisely their future prospects and the support available to them.

These dancers are very much like athletes — they were all selected in early childhood for long-term training. They will therefore reach their peak at the age of 16 or 17, by which time they will start their professional dancing career. But the actual life on stage cannot be very long, and they usually have to retire at the mere age of 26 or 27. How are they going to survive afterwards? This is not to mention the fact that because of their concentration on training, many such dancers actually lost their chances of learning when they were small. If they are not provided with appropriate assistance and support, they will find it rather hard to integrate into society and get a job on retirement from their dancing career. These professional dancers worked hard with toils and sweats for the development of culture and arts, but in the end, they may well be forgotten. This is a problem which warrants our concern and serious consideration.

Actually, when the Hong Kong Dance Company was making preparations for corporatization, that is, before the Culture and Heritage Commission (CHC) conducted its first consultation exercise, I already went to Canada on a fact-

finding trip and brought the CHC's attention to the retirement protection and support for professional dancers. I suggested the CHC to make reference to the practices adopted in Canada and other countries. Despite limited resources, these countries have still put place a mechanism on assisting dancers in integrating into society after retirement.

Madam Deputy, I note with regret that the Consultation Paper is silent on the prospects and support for professional dancers. Therefore, I very much hope that the CHC and the Government can give more thoughts to this issue and consider the policy reform for culture and the arts in a holistic manner. For example, while they introduce a mechanism on encouraging people to participate in and promote culture and the arts, they should also safeguard the interests of professional dancers and provide them with prospects and support. That way, these dancers will be able to know clearly that besides switching to instruction and choreography in the performing arts industry, they will be assisted in integrating into society and take up other occupations.

As the Chairman of the Hong Kong Dance Company, I can affirm that dancing is an art which can help promote community culture and arts. Actually, since its corporatization two years ago, the Company has been actively promoting the arts on the guiding principle of "using the family as a driving force and the school a platform to promote community involvement". We have also actively participated in community activities, true to the object of serving and repaying society. Coincidentally, this echoes the beliefs outlined in the Consultation Paper. Therefore, what we need now is a holistic and comprehensive policy which covers both artistic appreciation and participation. Only this can really encourage people to join the efforts of promoting the development of culture and the arts.

With these remarks, Madam Deputy, I support the major directions outlined in the Consultation Paper.

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, the Consultation Paper 2002 of the Culture and Heritage Commission (Consultation Paper) sets forth quite a number of principles and strategic directions, such as a people-oriented approach, pluralism, a holistic approach and a community-driven strategy. Basically, the principles set forth in the Consultation Paper, especially those involving general directions, are worthy of our support. However, principles

are after all just principles, and there is still the question of how they will be implemented. When we read the Consultation Paper, we may have the impression that its contents are rather "vague and abstract", very much like the colourful artwork on its cover — one may say it looks like a butterfly, or it does not look like anything at all. Therefore, the contents of the Consultation Paper are very worrying, especially in respect of how the cultural policies will be implemented and promoted in the future.

Moreover, there is also a deeper-level problem, for there are simply doubts about the motive and purpose behind the Government's release of the Consultation Paper at this particular historical juncture. Is the Government actually trying to centralize the control over our cultural development in the name of reform, so that it can lead and control our cultural development? Is it trying to use this opportunity to corporatize or privatize the relevant civil service framework, namely, the Leisure and Cultural Services Department? This is precisely the very dream of the Financial Secretary, Mr Antony LEUNG. With all these doubts about the motive behind, people lack confidence in many of the proposals advanced in the Consultation Paper. At the meeting of the Panel on Home Affairs yesterday, I also voiced my worries to Prof CHANG Hsin-kang. Is it possible that the CHC, in particular a much respected man of culture like Prof CHANG Hsin-kang, may end up doing something undesirable despite their good intentions? The CHC may have put forward some proposals which look good and merit support, but is it possible that all these proposals may become something else in the course of implementation? I have never doubted the enthusiasm of members of the CHC, particularly Prof CHANG Hsin-kang, nor have I ever doubted their love for the Hong Kong culture. But I have enormous misgivings about how the Government is going to implement and promote the cultural policies.

I think there are two major problems with the Consultation Paper. The first is the problem of institutional framework, and the second is that of the mechanism for promoting the cultural policies. I will make my points one by one.

The institutional reform for the cultural framework put forward in the Consultation Paper has come after the scrapping of the two Municipal Councils. I can remember that at the time of scrapping the two Councils, the Government did repeatedly pledge that following their demise, District Councils (DCs) would be allowed to take over some of the functions and responsibilities of the two

former Municipal Councils, including those relating to hygiene, sports and culture. In respect of culture, the functions and responsibilities will cover district-level cultural performance venues, civic centres and town halls. But the Government has deferred the review on the functions and work of DCs until after the DC Election next year. However, before the review, the Government has recently launched a series of reviews on the recreation framework, libraries and the current cultural policies. This impresses that the Government is trying to make all the decisions on the functions and work of the two former Municipal Councils before the review on DCs. With all these decisions made, by the time the review on DCs is conducted, it will be impossible for DCs to take over any work and functions of the two former Municipal Councils. I must voice my strong condemnation of the Government's "pre-emptive" approach, of its neglect of the development vitality of DCs and of its breaking of past pledges.

The second problem is about the framework for promoting the principles and strategies laid down in the Consultation Paper. The entire Consultation Paper gives people a strong feeling that the Home Affairs Bureau will become the "Big Brother". The formulation of policies and the deployment of manpower and financial resources will basically be controlled and determined by the Home Affairs Bureau. Certainly, the Home Affairs Bureau may appoint some working groups, committees or individuals to enforce the relevant work, but essentially, the promotion of culture as a whole and the provision of cultural services will all be determined by the Bureau. And, in the course of decision-making and implementation, the Home Affairs Bureau will not rely on the Civil Service as it used to. Rather, it will adopt a "community-driven" approach for some services, whereby the Home Affairs Bureau may appoint some "pro-government" people deemed to be trustworthy to perform the work of implementation. As a result, the political framework and the promotion and development of cultural activities will share one identical philosophy. A handful of people, people sharing identical beliefs, values and political stances will assume total control of the political and cultural affairs of Hong Kong. This is very dangerous.

To counteract and even prevent such a possibility, the Government should really consider the views put forward by the league formed by a group of cultural enthusiasts. That is to say, the Government has to consider the establishment of a culture and arts council. I hope that there can be representatives of the grassroots and various sectors on such a council for the purpose of counteracting

the dominance of the Home Affairs Bureau or the control of the entire framework by people sharing a political consensus.

Besides, Madam Deputy, I hope that the Government can really "keep its hands off" the future development of our culture. If the Government does not give a free hand to the community and the people, the local culture will only end up serving the Government and politics. A culture which is politically correct may not necessarily be the kind of culture Hong Kong needs, nor will it be a resplendent one either. We must provide the room and the right kind of air and soil to talented cultural enthusiasts to take forward the development of the local culture. This is the only way to give prospects and hope to the culture of Hong Kong.

The theme of the cultural policy under discussion is "Diversity with Identity Evolution through Innovation". I hope that this will not be reduced to "Monotony and Stagnancy". Thank you, Madam Deputy.

**MR TIMOTHY FOK** (in Cantonese): Madam Deputy, the Culture and Heritage Commission has released the Consultation Paper 2002 (Consultation Paper) entitled "Diversity with Identity Evolution through Innovation" to consult the public on the resource distribution and institutional reorganization relevant to the development of culture and the arts in Hong Kong. People's focus is generally on the reorganization of the whole institutional framework for culture, including the dissolution of the Hong Kong Arts Development Council (ADC) and the establishment of a Culture Foundation. However, in the long run, the key factor determining the prospects of the Hong Kong culture should be education, and what can lead the advancement of our culture should be cultural industries.

Hong Kong has put in place an arts policy since the 1980s, and currently, the Government allocates as much as \$2.8 billion annually for the relevant purposes. Unfortunately, the relevant policy has been marked by a lack of clear orientation, transparency and objectives. In terms of execution, many different bodies, as many as 10 government departments and other organizations are involved. In terms of the funding, 70% of it is used to meet administrative costs, and only some \$400 million is spent directly on arts and cultural activities. Moreover, the granting of subsidies is biased towards the performing arts. All of these factors have led to a lack of depth in the cultural development of Hong

Kong, which is thus denied an opportunity to bring their desired social functions into play.

The Consultation Paper proposes to "set free" the whole administrative framework for cultural activities by establishing a Culture Foundation to take charge of the funds allocation function which is currently shared by the Leisure and Cultural Services Department and the ADC and processing of all funding applications for cultural and arts activities. Thus the Foundation will become a one-stop funding organization for cultural and arts activities. It is believed that the new framework will be able to increase the flexibility and efficiency of the vetting and approval procedures, making it possible for cultural activities connected with current affairs and social issues to obtain timely funding. Besides, many more small groups dedicated to the promotion of cultural and arts activities will also benefit from this arrangement, which is conducive to the overall development of the local culture. In addition, the separation of library and museum management from the government framework and the outsourcing of the management of cultural and recreational venues will all introduce more flexibility into the existing mechanism, enhance cost-effectiveness and better realize the "people-oriented" and "holistic development" principles.

Madam Deputy, arts education is an important segment of the policy on culture and also the key factor determining the prospects of cultural development. But arts education is not accorded any due attention in Hong Kong now. Having spent their efforts on biliteracy and trilingualism as well as the subject of computing studies, schools all find it basically difficult to spare much time and room for the provision of arts education, with the result being that arts are often regarded as a subject of secondary importance, and there is even a "fault" in the secondary level of education. Actually, as an integral part of holistic education and intellectual development, arts education can nurture the student's creativity, imagination, self-possession and aesthetic values, so the Government needs to make it a part of basic school education. That way, schools and parents will attach more importance to arts education, and sufficient teaching resources will be allocated to it. I have to add, however, that the development of arts education is not as simple as the addition of several subjects or the raising of the teacher-to-student ratio. Nor is it as simple as the training up of a handful of elite artists. We must consider the development of education in a holistic manner and make sure that there is a balanced development of basic education, with equal emphasis on ethics, intellect, physique, social skills and aesthetics. At the same time, we must also give our students opportunities to get to know the

arts, participate in them, appreciate them and engage in artistic creation, with a view to making arts and culture become part of people's daily life. That is why apart from perfecting and upgrading arts education in schools, the Government must seek to improve the cultural quality of the people of Hong Kong by promoting their concern about and participation in culture and arts through district organizations and cultural bodies.

The development of cultural industries provides the ultimate guarantee required for the fostering of culture and arts. It is a pity that the foundation of cultural industries in Hong Kong is extremely flimsy. Most of our cultural and arts activities are publicly-funded, and donations from the commercial sector represent just a mere 1% of the funding received, in marked contrast to education and health care, which are always sufficiently funded. This is due very much to the commercial sector's inadequate understanding of culture and arts, but is also the result of the inadequate tax concessions offered by the Government in respect of arts donations. To change the situation, the only alternative is to develop the cultural industries by encouraging more commercial participation in and sponsorship of culture and arts.

Creative industries are currently receiving increasing attention, and they have come to be regarded as a future direction of sustainable development for society. The development of cultural industries and upgrading of our cultural competitiveness will depend on the following four conditions: the first is the capability of cultural innovation, meaning that while we explore the modern value of traditional cultural resources, we must also bring on an international outlook that can enable us to blend exotic cultures with our own to form a new body of cultural values; the second is the scale of economic participation in cultural industries and the intensity of high-tech support, which together can turn culture into a productive industry possessing unique cultural qualities; the third is the system and strategy of cultural production, management and operation; and the fourth is an adequate supply of quality talents of innovation and management personnel. It must be noted that cultural industries are not just economic activities. In fact, they are very important vehicles carrying different forms of values, ethnic concepts and the latest value judgements, something which influence people and bring them together. Therefore, the Government needs to co-operate with private-sector organizations to promote the cultural and arts development of Hong Kong. That way, ours will become a genuine world city in Asia.

Madam Deputy, I so submit.

**MR LAU PING-CHEUNG** (in Cantonese): Madam Deputy, as pointed out by the Consultation Paper 2002 of the Culture and Heritage Commission (Consultation Paper), since culture is rooted in people's daily life, it is only natural that it should develop constantly in response to social and economic conditions. The cultural industries constituting part of the economy include film-making, television, the media, publication, design and architecture. I shall focus on matters relating to architecture, the sector to which I belong.

Policy-wise, I support the three basic directions proposed in the Consultation Paper, that is, a "people-oriented" approach, community involvement and the changing role of the Government. The reason is that the adoption of a "people-oriented approach" as the underlying principle will ensure that the injection and deployment of resources as well as the provision of venues and facilities can develop with diversity to cater for the aspirations of people and the needs of the entertainment industry.

According to the reform proposals, a Libraries Board, a Museums Board and a Culture Foundation will be set up. The role of the Government will gradually diminish, with community involvement evolving into a community-driven approach. Such a direction can rationalize the "obese" bureaucracy, and, in particular, reduce the spending on civil servants' remuneration. As a result, resources can be spent directly on cultural and arts development, and artists can exert a heavier influence on policy-making. So, in the end, professional artists will be able to determine the direction of arts development in Hong Kong.

The biggest virtue of such a direction is that it can gradually reduce government influence and increase the participation of the various strata of society. Owing to the reduced constraints imposed by government participation, the policy-makers under the community-driven approach may seek funding and mobilize community efforts more flexibly. For instance, they may seek commercial financing for the construction of cultural and recreational venues. Resources are not my only concern here, because when they try to obtain funding, the policy-makers in the various committees will have to commend their performances and arts events to their prospective sponsors. That way, more people will come to understand their arts events and performances.

Madam Deputy, culture encompasses both heritage and development. Heritage includes the inheritance of cultural legacy. The buildings we now have were all constructed by our predecessors; many of them can reflect the

characteristics of their respective periods and are thus of immense historical and architectural value. They are worth preserving because they can reflect the life of Hong Kong people at different times.

Hong Kong is a metropolis, and it is true that, unlike other big cities, it lacks a heritage conservation policy. For this reason, I am going to move a motion in this Council later on to request the Government to formulate a comprehensive policy on heritage conservation. My motion is still on the queue, and I suppose its turn will not come until after the Chinese New Year. The Consultation Paper also points out: "The recurrent budget of the Antiquities and Monuments Office under the Leisure and Cultural Services Department, together with the non-recurrent funding for archeological excavations and the maintenance of historical buildings, amounts to \$40 million a year. This funding level by no way reflects the Government's emphasis on heritage conservation."

Madam Deputy, I wish to point out that while the lack of funding is certainly a serious problem, the absence of a heritage conservation policy on the part of the Government is an even more serious one. The reason is that the reliance on one single government department for funding to repair buildings of historical value will simply be unable to achieve the purpose of preserving such buildings.

For instance, the Kom Tong Hall incident, which aroused much public attention recently, simply did not involve the question of repairs. The title owners actually hoped to pull down the building for redevelopment, so as to satisfy their need in respect of the property. If the Government wants the title owners to give up their rights, it must provide them with an incentive, such as the transfer of plot ratio, so that they can be appropriately compensated to bring about a win-win situation. Unfortunately, the relevant government policy is still restricted to the transfer of plot ratio to an adjacent construction site. Adjustments are required before this policy can be implemented with more flexibility. I therefore support the recommendation of the Consultation Paper, that is, "to strengthen the efforts in heritage conservation, legislative and administrative measures in the areas of planning and land use should be adopted."

As for the hardware for cultural performances, that is, cultural performance venues, the Consultation Paper focuses on the West Kowloon

Reclamation Development, and says that in the next five to 10 years the project will mark "a new era of cultural development in Hong Kong." This is a very high expectation. I do not intend to say anything discouraging. I hope that the Government can change its past approach of developing cultural and recreational facilities and make more use of commercial participation, so as to expedite project implementation. If not, the West Kowloon reclamation may still remain a deserted construction site in the next two or three years, where the arts cannot flower at all.

I so submit.

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

(No Member responded)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Deputy, I am very glad that Mr MA Fung-kwok has proposed the motion today to provide an opportunity to the Legislative Council to discuss the second Consultation Paper of the Culture and Heritage Commission (CHC). Culture is the business of the people. The formulation of a cultural policy requires the active participation and consensus of the people. I believe it is only natural to have divergent viewpoints, or even controversies, on certain contents of the Consultation Paper 2002 of the Culture and Heritage Commission (Consultation Paper). The purpose of conducting a public consultation is to induce public discussions, so that the Government can listen to the views of the people, and eventually formulate a set of cultural policies with the consensus of society. I believe the opinions expressed by Members on the Consultation Paper today will be very useful to the CHC. I also expect that this motion debate by the Legislative Council will help to encourage and motivate the public to care about and discuss cultural policies.

(THE PRESIDENT resumed the Chair)

The CHC is a high-level advisory body appointed by the Chief Executive. The Government shall attach great importance to the policy proposals put forward by the CHC. Although, the CHC will study the opinions of the people

before presenting its Final Report to the Government after the consultation period is over, I still wish to make some responses now on several subjects which have attracted the greater attention of Members.

How should we understand and implement "the community-driven strategy"? The two public consultation exercises conducted by the CHC have triggered off a lot of discussions. Many opinions expressed are in support of the major direction of the community-driven strategy. But some others have raised the point that the non-government sector does not have the ability at the moment to "take over" and is not yet prepared to take the lead in this area; so if the community-driven strategy is implemented hastily, problems such as a market-driven situation, quarrels arising from conflicts of interests and the mismatch of resources may emerge. In addition, many people worry that the community-driven strategy is an excuse of the Government in reducing its commitment. And there is also the view that the Government should continue to take the leading role in the development of culture.

I wish to make three points in response. First, the proposal to introduce the community-driven strategy does not mean to deny all the previous contribution made by the two former Municipal Councils and the Civil Service. As proposed in paragraph 5.10 of the Consultation Paper, "The Government has been managing most of the cultural facilities and resources for historical reasons." And then, it says, "(Hong Kong) has a remarkable cultural scene in terms of diversity and artistic quality. This achievement is the result of the continued efforts of the Civil Service." To support the community-driven strategy is definitely not to "erase" past achievements and experience. This is the first point.

The second point, the community-driven strategy does not seek to negate the role of the Government in cultural development in the future. In the same paragraph, the Consultation Paper says, "The Government should continue to make broad-based policies and deploy resources for cultural development as well as enhancing inter-departmental collaboration. At the operational level, the Government should gradually shift from the role of an 'administrator' to a 'facilitator'." Therefore, the Government will and should play a significant role in the promotion of cultural development now and in the future.

Thirdly, the community-driven strategy is a long-term objective. The cultural development of each place is nurtured by its unique historical and social

factors. The development experiences in the participation of non-government organizations in cultural and arts activities of recognized cultural metropolises like New York and London are not entirely the same. In making reference to the experience of other places, we should also fully consider the realistic circumstances of Hong Kong. It is a very appropriate strategy for the CHC to propose adopting "community involvement" as a platform for transition to "community-driven".

Next, let us come to Chapter 5 of the Consultation Paper. The Chapter puts forward some proposals on the allocation of cultural and arts resources as well as the relevant institutional framework under the hierarchy of the Home Affairs Bureau. The speeches just made by Honourable Members also reflect the concern of some stakeholders the public about these proposals. For example, Mr LEE Cheuk-yan, Mr Albert HO, Mr Andrew CHENG, Miss CHAN Yuen-han and Mr Albert CHAN have spoken on issues related to the Culture Foundation and pluralistic development. I believe the CHC will surely study the opinions of Honourable Members in detail and make appropriate responses. We also fully understand that any proposals involving resources deployment and structural changes will have far-reaching consequences, so the Government must take all relevant factors and consequences into wholesale consideration. On receiving the Final Report from the CHC, the Government will devote ample time to considering the proposals contained therein. When we study the proposals involving the institutional framework, all the relevant factors would surely be taken into consideration prudently. Such factors include the maintenance and continuity of the quality of services provided to the public, the retention of professional talents, cost-effectiveness, and the opinions and legitimate interests of staff affected, just as mentioned by Mr LEE Cheuk-yan. Before the Government implements any proposals, it would fully consult the staff concerned. If a decision is made to implement any proposals, the Government will certainly make suitable arrangements to protect the legitimate and reasonable interests of the staff.

Besides, the Consultation Paper also touches on certain policy proposals of a relative macro level. Three consultancy studies commissioned by the Leisure and Cultural Services Department (LCSD) on library and museum services as well as cultural and performance venues will be completed one after the other. These studies will involve proposals on some specific services and the framework concerned. In considering the future institutional framework for culture and arts, the Government would also consider the Final Report of the CHC and the final proposals of the consultancy studies.

I would also like to respond to the issue of the staff remuneration to expenditure ratio of the LCSD to which Mr Andrew CHENG has alluded. Paragraph 5.14 of the Consultation Paper has quoted figures which are conventionally used in the categorization of government papers on budgeting. The staff remuneration of the LCSD accounts for about 30% of the total expenditure of the Department. The ratio is not at all high compared to the staff remuneration-expenditure ratio of the Government as a whole. I also wish to point out that this item of departmental expenditure mainly consists of fixed costs of cultural venues. Such expenses are recurrent expenses which cover the production of exhibitions and organization of cultural and arts activities. It is not appropriate to infer from the Consultation Paper figures that staff remuneration accounts for the greater part of the expenditure of the LCSD.

Mr Andrew CHENG also expressed concern about the question of whether the CHC and the Hong Kong Arts Development Council (ADC) should be dissolved. Both the CHC and ADC are advisory bodies and statutory organizations appointed by the Chief Executive. I believe the Chief Executive would make a decision on appointments to the CHC and ADC after he has received the Final Report from the CHC.

Most of the Members who have spoken support the proposals on education in culture and the arts. Indeed, just as Mr MA Fung-kwok, Mr IP Kwok-him, Mr YEUNG Yiu-chung, Dr Raymond HO, Mr NG Leung-sing and Mr Timothy FOK have said, cultural and arts education is a key to Hong Kong developing into an international cultural metropolis.

Chapter 6 of the Consultation Paper also touches on the relationship between cultural and arts education and cultural industries. Many Hong Kong people feel that the economic ills deserve more of our attention than culture. In fact, as pointed out by Mr MA Fung-kwok, Mr IP Kwok-him and Mr Timothy FOK, cultural industries can become an important element of economic development. Of the various cultural industries, creative industries possess the most enormous development potential. The Central Policy Unit is now conducting some studies on local creative industries, and plans to submit a paper in the first half of next year to provide some basic information on how best creative industries can be promoted.

Hong Kong is a liberal and open hub of cultural exchange. As Mrs Selina CHOW said, Hong Kong has a unique culture and history inherited from the colonial era. With such a cultural and historical background, coupled with its unique geographical position and advanced information network, Hong Kong possesses advantageous conditions for the development of creative industries. I very much agree with Mrs Selina CHOW and Mr IP Kwok-him that, by promoting local creative industries and cultural tourism, we will not just facilitate the economic development and restructuring of Hong Kong, but also, in the long run, enable Hong Kong to become a cultural metropolis true to its claim through full interaction between its culture and economy.

The CHC has to date released two Consultation Papers. The spirit behind both papers is to help Hong Kong people to put greater emphasis on culture and to develop Hong Kong into an international cultural metropolis. This is of course a long-term goal. The achievement of this goal we cannot rely on the strength of the Government alone. Instead, cultural workers, educational workers, parents, teenagers/students and non-government organizations should also make joint efforts to achieve it. I hope this Legislative Council debate may motivate the public to express concern about and discuss the cultural development of Hong Kong. Rightly as I said at the beginning of my speech, the Government will certainly give prime attention to proposals made in the Final Report of the CHC. We also believe that the CHC will carefully consider the views of the public and those of the Legislative Council when it writes up its Final Report.

Culture is life. Finally, I should like to conclude by quoting a paragraph from the Consultation Paper,

"If Hong Kong becomes a city where life is celebrated through cultural pursuit, a city where its people are enchanted by the arts, enlightened by different cultures and enriched by social diversity, we will certainly have a vibrant cultural scene. Our vision to turn Hong Kong into an international cultural metropolis will not be an unrealistic goal."

This is still my belief and my conviction.

**PRESIDENT** (in Cantonese): Mr MA Fung-kwok, you may now reply. You still have four minutes 13 seconds.

**MR MA FUNG-KWOK** (in Cantonese): Madam President, first of all, I must say that I am really very touched, because as many as 14 Members have stayed behind before the holidays to speak on my motion.

Members have raised many questions during the debate, and I suppose I cannot possibly respond to them all in a matter of three minutes. So, I will just discuss several points here.

The first point, a point discussed by many Members, concerns a confusion of the role of the Government and the Culture and Heritage Commission (CHC). I think clarification is called for. The long-held principle of the CHC is that whenever we know that anything can improve the cultural landscape and environment of Hong Kong, we will put forward bold recommendations. We will not consider whether the Government may encounter any difficulties in implementation. We believe this is a task for the Government's consideration after the release of the final document. After working for some two years, I have come to realize that the former Secretary for Home Affairs, Mr LAM Woon-kwong and Dr Patrick HO, the incumbent Secretary for Home Affairs, both very much respect the operation of the CHC. They have never attempted to exert any influence on us. Therefore, Members need not worry that the Government is trying to slip its ideas into any papers of the CHC.

Another concern of Members is the composition of a Culture Foundation. I am a bit puzzled as to why Members have failed to discern the actual intention of the CHC clearly. Actually, the establishment of a Culture Foundation as proposed in paragraph 5.34 of the Consultation Paper 2002 (Consultation Paper) is meant to obtain resources from outside the Government more flexibly, and to increase the fairness and transparency of funds allocation. The Consultation Paper also talks about the introduction of community involvement, saying that "the majority of the members of the Foundation should come from the private sector. The Government should consider the establishment of a system similar

to ADC's interests Representatives' to ensure sufficient democratic involvement in the Foundation." This is our interpretation. But many Members take this to mean preparation for a government take-over, or a proposal on our part to prepare for a government take-over. I think this is wide of the mark.

Many Members have questioned whether our proposal is a retrogression in democracy. We have also conducted many discussions on this. We used to have a democratic mechanism in the past. But in our debates on whether the two Municipal Councils should be abolished, many divergent viewpoints were advanced, and it was pointed out that a simplistic interpretation of democracy may not necessarily be a guarantee for sound cultural development. That is why we have put forward this proposal, in the hope that a relative balance can be struck, that while there is democratic participation, we can also ensure adequate cultural development.

Besides, in regard to the reorganization of the institutional framework, I understand that any such endeavours will inevitably affect some people. But I wish to point out that our aim is to find out objectively what is good to Hong Kong, and our proposals are in line with normal international practices. Naturally, we do note that the implementation of these proposals must not affect or excessively affect the rights and interests of existing staff. But we also think that the staff concerned are irreplaceable in the short run, which explains why we see the need to do so.

Regarding the participation of and funds allocation to district organizations, the Consultation Paper has put forward two respective proposals to increase the funds allocation to district cultural activities, and also to allow these organizations to take part in the management of government venues and facilities.

Lastly, I believe the CHC will definitely discuss the points raised in the debate today and seek to understand them thoroughly. It is hoped that we in the CHC can respond to Members' views in the final paper to be released. We also hope to make the best possible recommendations.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is : That the motion moved by Mr MA Fung-kwok 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: Implementing the International Labour Convention.

## **IMPLEMENTING THE INTERNATIONAL LABOUR CONVENTION**

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, this motion is the last motion in 2002. First of all, I wish every Member in this Chamber, and the President in particular, a happy new year and that all members of the public in Hong Kong will take their stride from 2002 into the new year happily. Insofar as this motion is concerned, I wish that all that began well will end well and that it will eventually be passed.

However, for workers and wage earners, the prerequisites for happiness are employment and a stable income. Their rice bowls have to be secure and their rice urns full. However, in retrospect, 2002 can be described as a disastrous year for workers. Apart from the unemployment rate, which at one point hit the record high of 7.8%, wage reductions, layoffs and extra working

hours continue to deal blows to the entire salaried class. The latest figures released by the Census and Statistics Department recently indicate a drastic increase of 20% in the number of wage earners making a monthly income of \$4,000 to \$7,000 and a decrease in the number of workers earning \$10,000 or more. It can be seen that there is an obvious downward shift in income from employment. On the other hand, the working hours are getting longer and longer, with an increase of over 10% in the number of people working over 60 hours per week. The present situation is that there is an increase in drudgery but a decrease in wages for workers.

Mr Martin LEE once criticized some people as "slavishly patriotic" and what he meant was their mentality. Nowadays, workers work like slaves and what I mean is their physical aspect. In moving this motion on affirming the right to collective bargaining, I hope that workers can be liberated from their slavish work and that through collective bargaining, their working conditions can become more reasonable, humane and stable, so that they can regain the dignity they deserve and the relationship between employees and employers can become more equal and democratic. In this way, a new equilibrium that will allow enterprises to develop healthily with due regard to the livelihood of workers can be established. I hope that all Members can support the motion and that Secretary Stephen IP will, having adopted a new mindset, take on board the views of the labour sector.

The previous Legislative Council enacted three ordinances before the reunification to protect the rights of workers. However, the predecessor of Secretary Stephen IP, in his old mindset, cast the three ordinances, which had come into being for less a month, into the refrigerator and kept them frozen until 29 October 1997, when the Provisional Legislative Council passed a "death sentence" on them. The three ordinances protected, respectively, the independent operation of labour organizations, workers from anti-union discrimination in employment and the right of workers to engage in collective bargaining with their employers.

The Hong Kong Confederation of Trade Unions (CTU) subsequently lodged a complaint with the Committee of Freedom of Association (the Committee) under the International Labour Organization. The conclusion of the Committee published in November 1998 pointed out clearly that by repealing the three ordinances, the Government had contravened two International Labour Conventions, namely, the Freedom of Association and Protection of the Right to

Organize Convention (ILC No. 87) and the Right to Organize and Collective Bargaining Convention (ILC No. 98). The Committee made a series of recommendations, including the subject of the debate today, that is, to request the Government of the Hong Kong Special Administrative Region (SAR) to put in place objective procedures for determining the representative status of trade unions for the purpose of facilitating and promoting collective bargaining.

Subsequently, the Committee reiterated the above recommendation four times in its follow-up reports in November 1999, March 2000, March 2001 and November 2001. However, the Government merely regarded it as "a whiff of wind blowing past the ears" and has not taken any substantial action in response to date. Members may find that it seems the Committee has not issued any follow-up report on the situation in Hong Kong this year. Is this because the Committee has forgotten about this matter, or the Committee is very satisfied with the performance of the Government? The answer is none of the above. Rather since the Government has made no progress whatsoever, therefore it simply did not bother to report its progress to the Committee. The Committee can only write in its report published in November this year that reply is still pending from the SAR Government. From this, we have an idea of how much respect the Government has for the International Labour Conventions.

Madam President, I can foretell that Secretary Stephen IP will say that International Labour Convention No. 98 only requires governments to promote and facilitate voluntary collective bargaining but not mandatory implementation through legislation, therefore the Government has not contravened the Convention. On 9 December 1998, in his speech on a motion of a similar nature, Mr James TO said that if the Government chose to take part in games such as the International Labour Conventions, then it had to observe the rules of the game laid down by everyone and respect the judgements made by the mechanism under the Conventions. If the Government continues to adhere to its own view and interpret the articles of the Conventions according to its own preferences, then it is flouting what is righteous and honourable and this will not be countenanced anywhere in the world.

Madam President, the Committee pointed out in its conclusion that the Government has the responsibility to take actions in two areas in pursuance of promoting collective bargaining through legislation. Firstly, the Committee mentioned that the present situation in Hong Kong furnishes a clear illustration of

the propriety of using provisions in law to lay down objective procedures for determining the representative status of trade unions for collective bargaining purposes. Will the Government, having considered this matter for four years, give us a definite reply to the question of whether it will or will not do so?

The other area is that the Committee believes that without statutory regulation, even if labour unions reach agreements with employers, the agreements may not be enforceable and this is not conducive to the development and promotion of a system of collective bargaining. One example this year is the Government's unilateral decision to reduce civil service pay through legislation, an act which has led the Government to damage the spirit of contract. At that time, civil service unions made it clear that they were willing to continue to negotiate with the Government on the issue of pay reduction. If no agreement could be reached, then the matter should be settled through arbitration. However, the Government was unwilling to do so. One of the reasons cited was that the Government believed that even if an agreement could be reached with civil service unions, or if the matter was settled through arbitration, the outcome may not be legally binding on all civil servants. The bill on collective bargaining tabled by me before the reunification carried a clause giving collective agreements and results of arbitration reached between employees and employers a clear legal status and making them legally binding on both sides. If the Government was willing to introduce legislation to implement a system of collective bargaining, then it would not have made the agreements reached with civil service unions in 1968 not enforceable, thus obviating the need for the Government to force through legislation on pay reduction and the organization of a rally in which 30 000 civil servants had taken part, thereby completely destroying the basis of trust between the Government and civil service unions. It can be said that Secretary Joseph WONG, in taking it upon himself to repeal the ordinances, has actually wrought the evil upon himself.

Secretary Stephen IP may also say that employees and employers have not yet reached a consensus on how to implement collective bargaining and employers strongly object to the implementation of collective bargaining through legislation, therefore it is not appropriate for the Government to act rashly. I hope the Government will note that the Committee has put down in black and white that the Government is obliged to explain to employees and employers the contents of the Convention, and that the lack of a consensus should not constitute an excuse for the Government to do nothing.

Madam President, I know that many employers still regard collective bargaining as a monster to be abhorred and trade unions as standing in the way of enterprises making changes in accordance with the fast changing market environment. I agree that without the participation of workers and trade unions, employers can do whatever they wish, coerce employees into submission and make decisions quickly. However, swift decisions may not necessarily be implemented smoothly, nor can the expected results be guaranteed. The reason is very simple. Without the participation of trade unions, workers will feel that their voices are not heard and feel that their interests are not protected. Naturally, they may resist changes decided by employers unilaterally. As a result, employers will have to double their efforts when implementing the decisions to achieve the desired results and the results may fall short of expectation. If workers resist passively, this will lead to a decline in productivity, which will in turn affect the business of companies and employers have more to lose than to gain.

Today is 18 December. I learned that a newspaper has asked its employees to sign letters of agreement to give up their double pay or agree to receive double pay with discretion. If the employees of the newspaper resort to the passive resistance mentioned by me just now, then they will have to publish more articles on collective bargaining in the newspaper today to let their employer know that to coerce employees into submission is not to be countenanced anywhere in the world.

If workers cannot engage in negotiations with employers on an equal footing through trade unions and hammer out employment arrangements beneficial to both sides together, it will only make workers feel aggrieved and lacking a sense of security about their prospects. This will not only affect their productivity and undermine the competitiveness of the enterprises, but also lead to other financial losses and social costs.

An increasing number of studies have demonstrated that direct or indirect financial losses as a result of work pressure must not be overlooked. For example, some academics have estimated that illnesses and decreased productivity as a result of work pressure have led to 40 million working days being lost per year in Britain, which is equal to 2% to 3% of Britain's annual gross domestic product. The study also pointed out that if workers cannot negotiate through trade unions with employers on an equal footing on matters such as work process re-engineering and arrangements on employment, they will

feel aggrieved and this is one of the major causes leading to a significant increase in work pressure.

In addition, without the protection of collective bargaining, workers will have a sense of insecurity. In order to prepare for leaner times, workers will keep working extra hours at the expense of their families, friends and health. The CTU recently conducted a survey and found that only 6% of workers of child-bearing age interviewed plan to have children in the next two years, whereas the other 94% have no plans to do so. The major reasons cited are unstable employment prospects, worries about unemployment or a deterioration of work conditions, and long working hours or low and unstable income. The birth rate in Hong Kong last year was 0.927%, which is one of the lowest in the world. A low birth rate will accelerate the ageing of the population and lead to a series of social problems, and this is not favourable to the sustainable development of Hong Kong.

The reluctance of Hong Kong people to bear children is directly related to their unstable job and income. If the Government does not face the crux of the problem, it will be entirely impossible to deal with this problem of low birth rate. The Government does want to deal with this problem, since Chief Secretary for Administration Donald TSANG has also mentioned this figure of 0.927% to me. Members may ask: What does reproduction have to do with collective bargaining? Do you mean collective bargaining can encourage people to have babies? Collective bargaining is of course not a fertility drug, but at least it can alleviate the unfavourable economic factors that affect the plan of wage earners to have children, since if they have more stable jobs and incomes, they will have greater confidence in the future and it will be easier to see the birth of more babies.

Madam President, the trend these days is to talk about a social division. I believe good labour relations are an important factor that will reduce division and enhance cohesion. The labour sector has all along lobbied the Government for legislation to implement collective bargaining. In doing so, it hopes that there will be dialogue instead of confrontation. No worker likes to adopt a confrontational approach in bargaining with employers. However, if the channels for collective bargaining between employees and employers are blocked, and if workers feel aggrieved for long periods of time, and if their concerns and views are not taken seriously, then eventually they will be compelled to resort to radical actions. Do Members wish to see barricades laid, traffic blocked and workers climbing up signposts in protest all the time? If there is no

communication, then such incidents will keep occurring. Therefore, I hope Members will give wage earners a present for the new year of 2003, and that is, to pass today's motion.

With these remarks, Madam President, I beg to move. Thank you, Madam President.

**Mr LEE Cheuk-yan moved the following motion: (Translation)**

"That, although the Committee on Freedom of Association of the International Labour Organization (ILO) has, for five times, requested the Government of the Hong Kong Special Administrative Region to put in place, in accordance with the Right to Organize and Collective Bargaining Convention (International Labour Convention No. 98), objective procedures for determining the representative status of trade unions for the purpose of facilitating and promoting collective bargaining, the Government has so far not taken any concrete actions in response, this Council urges the Government to respect the ILO's interpretation of the International Labour Convention and expeditiously implement the Committee's recommendation."

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

**PRESIDENT** (in Cantonese): Members, I wish to inform you that at this stage, I have decided that we will be able to finish all items on the Agenda of this meeting today.

**MR ANDREW CHENG** (in Cantonese): Madam President, concerning the subject of today's motion debate, that is, "Implementing the International Labour Convention", the Democratic Party made a point of browsing the webpages of the Labour Department, hoping to find information on the Government's policy planning and arrangements for implementing the International Labour Conventions. Five major policy areas of the Labour Department were listed in the website and one of them is its policy on employees' rights and benefits, which aims to achieve the following three objectives:

- (a) to ensure that Hong Kong has in place a comprehensive package of measures protecting employees' rights and benefits which strikes a reasonable balance between the interests of employers and employees.
- (b) to improve employees' rights and benefits in a way which is commensurate with the pace of Hong Kong's socio-economic developments and the conditions in our neighbouring economies; and
- (c) to maintain in Hong Kong a level of labour standards which compare favourably with that of our neighbouring economies.

The Government also states clearly in the website that in order to attain the above objectives, the Government will work along various lines, such as conducting regular reviews of the labour legislation on employees' rights and benefits, enforcing such legislation, adhering to the International Labour Conventions applicable to Hong Kong in the administration of labour matters, and participating in the activities of the ILO.

Concerning these objectives of the policy on employees' rights and benefits of the Labour Department, the Democratic Party has two queries. Firstly, concerning the repeal of legislation mentioned by Mr LEE Cheuk-yan all the time, how can a repeal of the relevant legislation ensure that improvements to workers' interests will not fall behind other countries? Up to now, as many as 152 countries have signed the Right to Organize and Collective Bargaining Convention (ILC No. 98), including some of our neighbouring countries like Japan, Singapore, Malaysia, the Philippines and Indonesia. If the SAR Government claims that it hopes to maintain in Hong Kong a level of labour standards which will, as it says, "compare favourably" with that of our neighbouring economies, the public will only feel that there is a hollow ring in the Government's claim, since even the former Hong Kong Government under British rule, which had always advocated and implemented a *laissez-faire* policy, was willing to sign the Right to Organize and Collective Bargaining Convention in 1975 and enacted the Employees' Right to Representation, Consultation and Collective Bargaining Ordinance before the reunification. In comparison, even such a development still lagged 22 years behind the neighbouring Japan and 10 years behind Singapore.

After the establishment of the SAR Government, not only have labour benefits and rights in Hong Kong seen no progress, on the contrary, they have been subject to retrogressions. Through the Provisional Legislative Council, three ordinances in Hong Kong relating to International Labour Convention No. 98, to which Hong Kong is a signatory, were hastily repealed. Was such a move aimed at improving the rights and benefits of employees? The Democratic Party believes that the repeal of the ordinances indicated that the Government will protect business interests at every opportunity and has reneged on the Labour Department's pledge to strike a reasonable balance between the interests of employers and employees. A more profound consequence is a curtailment by the Government the right and freedom of the public to form and join trade unions, and to strike as prescribed by Article 27 of the Basic Law, not to mention contravening and ignoring Article 39 of the Basic Law, which stipulates that the provisions of the International Labour Conventions as applied to Hong Kong shall remain in force.

The second query of the Democratic Party is on the role of the Labour Department. We believe the Labour Department has all along assumed the role of stifling the right to collective bargaining, hoping to replace the right to collective bargaining with its conciliatory skills, thus reducing unnoticeably the public's awareness on and support for the right to collective bargaining. Indeed, when the SAR Government was initially established, most workers were not aware of the problems lurking behind the repeal of the three ordinances relating to the right to collective bargaining with the favourable economic conditions and stable social environment. However, in recent years, due to the lack of statutory protection for collective bargaining, employers make no apologies in exploiting the interests of employees such as their benefits, salaries, leave and severance payment, and incidents of major and minor layoffs have cropped up one after another. The conciliatory efforts of the Labour Department, which used to be more than sufficient in coping, were put to the test and found to be powerless in the face of the deteriorating situation.

Madam President, we believe that the provisions of Part IVA of the Employment Ordinance entitled "Protection Against Anti-union Discrimination" can only have the effect of a guideline and is limited to providing legal redress. With the existing high unemployment rate, some employers use the economic recession as an excuse to propose reductions in wages, benefits and layoffs to employees. Worse still, some of them even make use of the existing loopholes

in the Bankruptcy Ordinance to declare bankruptcy once and for all, taking the opportunity to rid themselves of their due responsibilities to employees. Therefore, we believe that it is now the right time for the Government to right a wrong by restoring the Employees' Right to Representation, Consultation and Collective Bargaining Ordinance, which was repealed in 1997.

The Democratic Party hopes that the Government will no longer hide behind the excuse that introducing legislation on labour rights will stymie the business environment. In fact, the more well-developed an economy or advanced a country is, the greater the importance attached to workers' rights, and there are no signs indicating that this has affected the inclination of foreign businesses to make investments. Members may refer to the following information. Take the figures and information published in a report of the United Nations Conference on Trade and Development in September this year as an example. Of the countries and areas in the world that attracted the most foreign investment between 1998 and 2000, Hong Kong was in second place, but the other countries in the top ten places have all signed the Right to Organize and Collective Bargaining Convention No. 98. The other rankings list is the one on the freest economies in the world selected by the Heritage Foundation, which, incidentally, among the ten freest economies in the world, only Hong Kong is not a signatory to International Labour Convention No. 98. It can thus be seen that signing the Convention will not necessarily affect foreign investment and the degree of freedom of an economy, but will enhance the protection for the benefits and rights of local workers in a great measure.

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

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, it is the responsibility of every government to protect the legitimate interests of employees and to implement the International Labour Conventions according to the actual situation of their countries. The subject of today's debate is to request the Government to respect the interpretation of the Convention made by the Committee on Freedom of Association of the ILO and implement the recommendations of the Committee.

The DAB has always supported the implementation of a system on collective bargaining. In theory, collective bargaining can bring many benefits. Employees and employers can resolve disputes through dialogue and

make decisions satisfactory to both parties. Through encouraging participation, both parties can make decisions together on certain issues, such as those on discipline or redundancy and make difficult decisions more smoothly. Collective bargaining can also reduce the chances of labour unions resorting to industrial actions to solve problems and preserve the good relationship between employers and employees, as well as establishing mutual trust.

However, these advantages are only theoretical. Should Hong Kong put in place such a system through legislation as soon as possible? About this question, the DAB has some reservations.

The DAB believes that, in the light of the realistic circumstances in Hong Kong, there is no pressing need for legislation. Firstly, legislation cannot help workers under the present situation of unemployment and pay reductions and improve their disadvantaged position, since the present disadvantaged position of workers is mainly the result of economic recession and restructuring. Secondly, legislation will not be conducive to establishing a harmonious relationship between employees and employers. Only by tiding over the difficult times together and improving the economy can the situation of workers be fundamentally improved. Thirdly, legislation will not offer substantial protection to workers in collective bargaining, since employers can easily find other excuses to sack employees if they wish.

On the contrary, the introduction of legislation will have other side-effects. For example, firstly, workers will have high expectations on collective bargaining and make excessive demands, leading to unnecessary confrontation and suspicions which will affect the relatively good relationship of the past between employees and employers. Secondly, to legislate now may mislead investors and affect their investment sentiment, thus leading to the opposite effect of pushing up the unemployment rate further. Thirdly, a tense relationship between employees and employers and its effect on investments will affect Hong Kong's reputation as a free market economy and its favourable investment environment, in detriment to Hong Kong's economic revival and future economic development. In the final analysis, this is not conducive to improving workers' socio-economic status.

We have a different understanding of the recommendations of the ILO Committee on collective bargaining: the International Labour Convention does not require Hong Kong to legislate on this matter. The Committee considered

that the Government's refusal to legislate on this issue had contravened Article 4 of International Labour Convention No. 98 and an important factor in the freedom of association, that is, employees have the right to freely negotiate with employers on working conditions. In fact, Article 4 of International Labour Convention No. 98 provides that, "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

Our understanding is that, firstly, the Article does not mandate a country or area to implement a collective bargaining system through legislation. Secondly, in encouraging and promoting collective bargaining between employers and employees and their organizations, the Article stresses the phrase "where necessary" and the adoption of "measures appropriate to national conditions". Therefore, we consider that the conclusion of the Committee is not correct, since even though the Government does not legislate on this matter, it does not follow that it has contravened the International Labour Conventions.

Therefore, the DAB will abstain from voting on today's motion. Thank you, Madam President.

**MS LI FUNG-YING** (in Cantonese): Madam President, Article 27 of the Basic Law specifies that Hong Kong residents shall have freedom to form and join trade unions. Collective bargaining is one of the three principal rights of trade unions, but regrettably, these three rights of the trade unions are still far from complete to date. The motion debate of the Legislative Council today on the implementation of the International Labour Convention (ILC) in relation to the Right to Organize and Collective Bargaining Convention is a goal which many veteran labour unionists have been striving to achieve all their lives. Rapid changes in the Hong Kong economic environment and incomplete rights of trade unions have resulted in scenes after scenes of stark misery, whereby the working class who have no bargaining power are exploited by the market.

All along, the Government has resolved labour disputes through the so-called tripartite communication and co-operation among employers, employees and the Government. At a time when the economy of Hong Kong was

blooming and developing and when profits could be made by the employer, such a fragile form of tripartite consultation among employers, employees and the Government has already encountered difficulties in solving labour disputes, and, it looks even frailer under the existing economic climate. Take PCCW as an example, the company has already launched three successive redundancy exercises just in this year, and 1 653 employees have been laid off. Though many trade unions have been formed within the PCCW, has the employer ever consulted them in relation to ways on resolving problems confronting the company? No. Has the employer ever made arrangements for consultations with the trade unions? No. Have the trade unions ever been given any say on issues involving the significant interests of workers? The answer is still no. The only right they have got is for the chairman of the trade union to voice his concerns for the future living of laid-off workers with tears in his eyes and between sobs; the only right they have got is for workers who have served in the company for several decades to lament with a sigh; and the only right they have got is for workers who have not yet been made redundant to worry that whether they would be the next to go. The Cable and Wireless (Hong Kong) Limited, the predecessor of PCCW, is a rare example among private organizations that recognizes the trade unions' right to collective bargaining. However, since the bargaining power still remains a voluntary provision, which the Government has so emphasized, without protection under the law, the bargaining power of the trade unions has gone without a trace with the reorganization of the company.

A frustration is that the Labour Department has not really maintained an impartial stance in settling labour disputes. In many labour disputes, the employers have maintained a hostile attitude and rejected the participation of trade unions. However, not only has the Labour Department failed to offer an explanation for the reasonable actions of trade unions, but it has also added fuel to the fire by siding with the employers and keeping the trade unions away from the negotiation table. This is actually in contravention of the minimum standard applicable to Hong Kong under ILC No. 98. It has been proven that the tripartite committees of different trades under the leadership of the Labour Relations Promotion Unit could not replace collective bargaining, a virtual consensus that cannot protect the interests of workers. Take the catering industry as an example, the consensus of the industry is only an empty document since it is not legal binding; and in the example of the transport industry, the level of protection achieved through tripartite consultation is even lower than that offered under the Employment Ordinance. So in the end, the employees refused to sign the agreement.

Madam President, when the Financial Secretary delivered this year's Budget, he quoted the lyrics from "Under the Lion Rock" to encourage Hong Kong people to work hand in hand to overcome ills, and I support the views of the Secretary. Since we have to work together, the employer could not simply pay lip service. If there is no mutual understanding between employers and employees, it is hard to imagine that the employer and employees of an enterprise could work together to overcome the existing difficulties of Hong Kong. The community could really write the story of Hong Kong only by recognizing the status of trade unions and realizing the right to collective bargaining.

Unfortunately, I cannot see any sincerity on the part of the Government in this respect. As the largest employer in Hong Kong, the SAR Government has not shown that it is willing to overcome ills side by side with civil servants. While there is still repercussions from effecting the civil service pay reduction by way of legislation, disputes over civil service pay adjustment for next year have arisen again. The Secretary for the Civil Service recently said that civil servants are duty-bound to ride out the storm with the public and he has not ruled out the possibility that there will be a further pay cut for the Civil Service. The way in which the Government addresses the views of civil service unions on the pay reduction issue will show whether the Government is willing to overcome the ills side by side with civil servants. Though the working class is willing to go hand in hand with the employers to overcome the ills, this ideal could not simply be achieved through the Financial Secretary's lead in singing several lines of "Under the Lion Rock". This ideal could be realized only by allowing trade unions to enjoy the right to collective bargaining. Otherwise, it would be just empty talk and the Government would continue to be criticized by the ILO.

I so submit. Thank you, Madam President.

**MR KENNETH TING** (in Cantonese): Madam President, on behalf of the Liberal Party, the Federation of Hong Kong Industries and the industrial and commercial sector, I oppose today's original motion. Several debates have been conducted in this Council on the right to collective bargaining and matters concerning labour relations in the past few years, but the debates have failed to pass through this Council. There is really nothing so particular about this topic that is worth discussing.

Nevertheless, given that Hong Kong is now facing an economic downturn, unionists may think that this is a good opportunity to revisit the issue of collective bargaining. However, we are of the opinion that it is wrong to regard collective bargaining as a panacea for protecting labour interests. The greatest problem is, unions with the right to collective bargaining do not have to consult each and every member before taking industrial actions. In other words, once they object to an agreement, the unions can call for a general strike by its members within a short time. This makes it easy for strikes to take place, thus exerting far-reaching impact on the operations of enterprises and the economy.

Let us take the United States West Coast port strike which took place earlier as an example. The union, exercising its right to collective bargaining, called on all members to go slow after talks with the employers had broken down. As a result, freight forwarding was paralysed, causing the United States a loss of almost HK\$100 billion. The strike even seriously affected the shipping trade in the Asia-Pacific Region, causing the Hong Kong economy a loss of as high as HK\$8 billion to HK\$10 billion. This has dealt a heavy blow to the weak local economy, very much like rubbing salt into a wound.

Taking the case in which the United Airlines filed an application for a bankruptcy order as yet another example, it came as a result of the union abusing the mechanism of collective bargaining to force the company to give an exorbitant salary raise to pilots the year before, although such a move was not allowed under the then economic circumstances. Subsequently, after the September 11 incident, this airline company, which was once the second largest airline of the United States was knocked into the fate of bankruptcy. Not only were the employers and the employees victimized, but also innocent workers who had not joined the union.

At present, the Hong Kong economy is poor. What we need most is to develop our economy so as to attract investors, and social stability is an essential condition for investment. Hong Kong is a tiny place. If strikes occur frequently, it will only scare away investors and their capital, causing greater loss to the economy. As a result, more companies will go bankrupt and more employees will become unemployed. This will run counter to our present objective of actively reviving our economy.

Furthermore, if we accept the past proposals of the unionists, making collective bargaining applicable to enterprises with more than 50 employees and recognizing unions that have secured 15% of the total number of employees as members as statutory consultative bodies, I am afraid an enterprise may have up to five or six unions with collective bargaining right. If the employer enters into an agreement with one of them, the other unions may raise objection. This will only lead to greater confusions or perhaps even further divide labour interests.

Madam President, the Right to Organize and Collective Bargaining Convention also allows the signatories to implement appropriate measures in accordance with their individual circumstances. In view of the present condition of Hong Kong, since there is no legislation to protect the rights of those who do not want to strike and the non-unionists at the same time, our business environment and labour relations will be harmed to the benefit of none if we act rigidly according to the Convention.

In fact, since the existing laws of Hong Kong have already conferred representative status on trade unions, they have the right to discuss with the employers how to improve labour interests. Their power and status will therefore not be worse than that of overseas unions with collective bargaining right. We think that as long as employers and employees can work closely and uphold the spirit of co-operation, it will be the best protection for labour interests. Otherwise, a blind pursuit of labour interests will only scare investors away. If the workers' rice bowls, which represent the most basic labour interest, cannot be secured, how can we talk about protecting other interests? Thus, we reiterate that we think there is actually no need to establish any mandatory system for collective bargaining.

With these remarks, Madam President, I oppose the original motion.

**MR LEUNG FU-WAH** (in Cantonese): Madam President, I fully agree that the SAR Government is obliged to implement the provisions of Article 4 of ILC No. 98. The relevant provision, taking into consideration the actual and historical factors of various countries and regions in the world, require them to encourage the set-up of a system on collective bargaining according to their national conditions. This Convention is both justified and reasonable and thus has our support.

In the labour sector of Hong Kong, a trade union can be formed with a membership of only seven workers, therefore, there are altogether 600-odd trade unions in Hong Kong. At the same time, there are several chambers of commerce in Hong Kong that have a long history and are representative. Furthermore, there is an even greater number of business association that are classified by trades, type of businesses and the nationalities of their members, and hundreds of thousands of small and medium enterprises with a staff of less than 20 in Hong Kong. Therefore, under the circumstances where the number of staff employed by most enterprises is relatively small, we really need to think hard and deep in designing an effective collective bargaining mechanism in accordance with the actual circumstances of Hong Kong.

I think what the Government has done on this subject is far too little and its thinking still remains at that of 20 years ago. Has the Government ever looked into the labour relations of the community after the reunification to see whether they have changed and developed? For example, in the recent incident of civil service pay cut, the entire focus of the Government was on the legal and financial implications. In simple terms, can a bargaining mechanism be established for the Government and civil servants instead of a consultative mechanism? Since there are different views among civil servants, can the Government promote collective consultation so that members who are genuinely representative can be elected to take part in the negotiations? Is it not a good thing if a mutually acceptable proposal can be reached through consultations and negotiations between the Government and civil servants?

On the other hand, the Federation of Trade Unions (FTU), with the many years of experience, has come to realize that legislation is not the only means to collective bargaining. The truly effective protection of workers' interests relies on unity among workers, but this unity cannot be achieved simply by means of a piece of legislation, rather through the long-term and painstaking work of trade unions. For trade unions, this is a difficult and arduous task. Similarly, if we think that employers can be forced to come to the negotiation table by way of legislation, then will the employers truly be sincere in conducting the negotiations? In the absence of the two factors mentioned above, how can the results of the negotiations thus achieved be genuine, permanent and effective? Instead of firing away blank cartridges and engaging in empty talk in this Chamber each and every time, I think it would be more realistic for us to take concrete actions against unscrupulous employers and take matters into our own hands. If we were to focus only on idle talk, how would employers

acknowledge our presence? The more we debate, the less respect people would have for the labour sector.

Madam President, let me quote a simple example. As a result of the Asian financial turmoil, the workers of the airport freight terminal were the first to suffer from its impact. In 1999, the company proposed pay cuts and layoffs that would render more than 100 workers jobless overnight. Workers were only given the option of accepting the pay cut, entering into a new contract or being laid off. Since the trade union must act according to the wishes of the workers, we accepted the pay reduction back then in the spirit of riding out the storm together, and the company managed to survive that financial crisis. Two years ago, in the light of a reviving air freight industry in Hong Kong, the union took the initiative to propose a pay increase. Through consultations between employers and employees and after 12 hours of negotiations, we secured a 7% pay increase which was rarely seen in those days. Honourable Members may have also heard about this incident. Last month, at a function to celebrate the anniversary of the trade union, the senior management of the company announced that double pay and bonus would be awarded this year and the company was actively looking into the issue of pay increase. This announcement was met with the applause of the workers. This incident took place at a time when the economy has gone through both high and low and several struggles have taken place between employers and employees through negotiation, collapse of negotiation, consultation, compromise and final arrival at a consensus. Each of these processes has enabled both employers and employees to grow and develop. When the economy was bad, the trade union had stepped up its union building efforts, liaising with members and expanding its membership for the purpose of fighting for their interests in the future. Therefore, the later pay increase and double pay awarded by the company do not come by easily, but rather they are the fruit of the union's preservation in building work.

Madam President, many of such examples can be found in the FTU and its affiliated unions, and I have only quoted a case at random to illustrate the actual situation of our fight for workers' interests and bargaining status. To fight for legislation is only one of the many means to this end.

The trend of outsourcing in the labour market is a cause for concern. The mode that is commonly adopted in the construction and service industries has already found its way into large enterprises. More than 1 000 workers of the

PCCW were transferred to an outsourcing company and the original employer and employee relationship has thus vanished. The trade union's original target of negotiation no longer exists. This is an important and pressing subject that we have to look into in relation to the protection of labour interests.

Mr LEE Cheuk-yan referred to a specific case reported in one of the newspapers today. I call upon the workers who have to fight for their interests to lodge a complaint with the FTU, so that we can work together, fight together and fear not together. They should not make their complaint quietly and bear the unfair treatment in silence. Fellow brothers and sisters of the working masses should rise and fight, and we are prepared to fight with them.

Madam President, I hope that the Government can adopt a new thinking to keep up with the pace of social development and the times and seriously address this perpetual issue in labour relations.

I so submit. Thank you, Madam President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, if I am asked the question of what is the most important subject today in Hong Kong, I think the answer is social cohesion. I believe unity of the community to tide over the economic difficulties is the only way to lift Hong Kong economy out of the doldrums.

However, in promoting social cohesion, it is imperative that room for rational discussion be made. Unfortunately, the actions taken by the Government recently have run counter to the expectations of the community. On the political front, the Government is adopting a high-handed approach. We can see from the issue of enactment of laws to implement Article 23 of the Basic Law that the Government is quite reluctant to make the room for discussion, thus arousing public grievances. On the economic front, the Government allows employers to exploit workers arbitrarily, resulting in the deterioration of labour relations. The Government has even taken the lead to cut civil service pay, and instead of striving for an agreement with the civil servants, it has tried to solicit political force in the community to pressurize civil servants into accepting the pay cut. All these actions demonstrate that the Government is the initiator to split the community, driving Hong Kong to the brink of collapse.

Today, the motion proposed by Mr LEE Cheuk-yan seeks to put an end to this poor situation, to rebuild the rational communication among the different strata of the community as a channel for resolving problems, using labour relations as the start.

At present, many employers have capitalized on the opportunity offered by the poor economy and the adverse social atmosphere to lay off staff, cut salaries, increase employees' workload and reduce their benefits. This has already become a common phenomenon in society. According to the General Household Survey, the number of employees earning less than \$4,000 monthly has increased from 215 000 in the first quarter of 1998 to 380 000 in the third quarter of this year. Moreover, as mentioned by Mr LEE Cheuk-yan, the number of persons working more than 60 hours every week has also increased from 463 600 in the third quarter of 1998 to 730 000 in the same period this year. It is thus evident that the conditions of employment are deteriorating. The grievances held by employees against their employers have intensified rather than subsided. I worry that if such grievances were not promptly vented, serious social conflict may occur. I believe this is the last thing that every member of the public would wish to see. For this reason, I think that the establishment of a mechanism for collective bargaining which will enhance communication between employers and employees is a pressing task that must be pursued in solving the problem today.

As mentioned by Mr LEE Cheuk-yan earlier, the mechanism of collective bargaining had actually been established five and half years ago. Unfortunately, the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance enacted by the previous Legislative Council, and two other amendment ordinances related to the rights of trade unions had been repealed by the then Provisional Legislative Council. The Secretary for Education and Manpower at the time, Mr Joseph WONG, had reiterated in a debate of the first Legislative Council that the Government had no intension to resubmit the three ordinances repealed by the Provisional Legislative Council to the Legislative Council for renewed deliberations. It shows that the Government has paid no respect to the then Legislative Council's decision on enacting such ordinances.

In fact, as stated in the motion, the International Labour Organization (ILO) has for five times — five times — requested the SAR Government to put in place, in accordance with the International Labour Convention, procedures for

promoting collective bargaining. Unfortunately, the Government is still turning a deaf ear to this plea, disregarding the opinions of the international community. Of course, turning a deaf ear to the voice of the international community has been the Government's usual practice, and the recent situation related to the legislation on Article 23 of the Basic Law has spelled out the case.

The Government's disregard for the views of the ILO is not without precedents, and there is nothing strange about this. However, it is surprising that it would even violate the Basic Law. Article 39 of the Basic Law provides clearly that provisions of the two covenants on human rights and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the SAR, and that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. The legislation related to collective bargaining was enacted in accordance with the International Labour Convention before the reunification, meaning that citizens of Hong Kong were already enjoying the right to collective bargaining before the reunification. Therefore, the abolition of such rights by the Provisional Legislative Council through legislation certainly imposed restriction on such right in breach of the letter of the Basic Law. The SAR Government has all along put emphasis on the implementation of the Basic Law, then why has it violated the Basic Law in respect of this issue? We hope the Government, as well as colleagues in this Chamber, will support the implementation of the undertaking stated in Article 39 of the Basic Law with the spirit they have shown in supporting the Article 23 legislation, to protect the right of workers to collective bargaining.

Madam President, the most important task now is to promote social cohesion and economic development. We indeed need a mechanism that allows all stakeholders to have an equal footing in negotiations, so that problems may be addressed through mutual understanding and accommodation. To achieve this, the Government could no longer put up the excuse that employers and employees should enter into voluntary negotiation. It should take proactive measures to put an end to the unfavourable position of workers. It should enact legislation to recognize the status, representativeness and the right to be consulted of trade unions, and then establish the collective bargaining system.

If employers keep on threatening their staff with layoffs and wage cuts, those wage earners may eventually be forced to take industrial actions. Instead of resolving the issue through institutions, the Government is now using social pressure to force civil servants into accepting the pay cut. Given that, I worry

that grievances in the community will aggravate; once a crisis breaks out, it will run out of control. I very much hope Members of this Council can do their part to strive for greater harmony and less hostility in society, and give a Christmas present to the people of Hong Kong by supporting the right to collective bargaining.

Madam President, I so submit.

**MR ABRAHAM SHEK:** Madam President, I would like to point out that this motion raised by the Honourable LEE Cheuk-yan today is strongly biased against the Government's continuous efforts to improve workers' rights and benefits. It is a fact that the Committee on Freedom of Association of the International Labour Organization (ILO) has, on five occasions since November 1998, urged the Government of the Special Administrative Region in its reports, to create standard procedures for determining the representative status of trade unions for collective bargaining purposes. In response, the Government has submitted four progress reports to the Committee — from May 1999 to August 2001 — detailing Hong Kong's position and explaining the Government's measures.

Frankly speaking, it is difficult to say whether local trade unions have fewer rights and representative status than those in Western countries. Different countries have different cultural backgrounds, different social and political circumstances, economic structures, modes of production and per capita income. Moreover, different systems are adopted by different societies in their provision of employment rights, benefits and protection. I am quite certain that the benefits enjoyed by local employees are, in general, no worse than those in advanced Western countries.

As for collective bargaining rights, the Government has encouraged and promoted voluntary collective bargaining, in line with local conditions. As a matter of fact, paragraph 845 of the ILO's *Freedom of Association* states that "collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which alter the voluntary nature of such bargaining".

Madam President, a reckless introduction of mandatory collective bargaining in Hong Kong will not promote political and social stability, nor will it make Hong Kong a more business-friendly environment. What I recall is the

deep wounds which ruthless collective bargaining and industrial actions inflicted on Western economies and societies during the 1970s and the early 1980s.

Collective bargaining itself is not a bad tool for improving workers' rights and conditions, but often enough, it is manipulated for political purposes. If misused and abused, collective bargaining not only damages the harmonious relationship and open communication between workers and management, but it also disrupts normal socio-economic activities and creates unnecessary hardships. In general, this has been the rule rather than the exception. We see activities associated with collective bargaining like strikes, disputes and work-to-rule actions causing major loss in economic productivity and loss of earning also for workers.

Unionists and collective bargaining militants might romanticize about their supposed socialist achievements, saving jobs in tough times of high unemployment and economic stagnation. But it is a cold hard fact that hundreds, if not thousands, of miners and printers in the United Kingdom lost their jobs in the 1980s as a result of the greedy demands made by their union leaders through collective bargaining.

Right now in Hong Kong, the problem that most workers face is job insecurity due to a high unemployment rate. With the global economic downturn and corporate restructuring, companies are forced — often reluctantly — to implement layoffs and salary reduction in order to streamline their operation, cut costs, to survive ultimately in a highly competitive market. PCCW's recent massive layoff is one example of cutting a bleeding wound to save the patient. But, the move has led some critics to denounce PCCW as a corporation without a sense of social responsibility, and these critics have advocated the Government to create legislation which unduly empowers unions and forces the management of companies to give way to collective bargaining. However, history tells us that when excessive power is handed to trade unions, such power is dangerous, and often abused. It could turn unions into a hurricane, destroying everything along its treacherous path. This is evidenced by the high profile battle fought by the powerful pilots union of Cathay Pacific, which demanded exorbitant wage increases and enacted — or threatened to enact — industrial action to inconvenience the public, particularly at a time when the global commercial airline industry was already vulnerable financially. It should also be noted that this union has little actual support from the general public.

In my view, the plight of workers in the present economic downturn cannot be redressed by the introduction of collective bargaining. What they need is work and more work than threat of non-working. Any threat of industrial action by union leaders will only harm Hong Kong's business environment and put off foreign investors. Moreover, the introduction of a compulsory collective bargaining system cannot avoid future layoffs and wage reduction. Since Hong Kong is an open free market where capital can flow in and flow out freely, the Government should have no control or power to stop businesses from moving into or departing Hong Kong. Plus, if we do not allow wages to rise and decrease with market demand and supply, productivity will not increase or improve, and more investors will simply move their businesses out of Hong Kong. And when businesses fold up their shops and move their operations, all of their employees — union members or not — will become redundant. I fail to see how collective bargaining rights can change these decisions. In this regard, I support the Government's present policy of promoting voluntary collective bargaining in line with local conditions. Hong Kong's economic success is not simply due to dedicated hardwork, entrepreneurial spirit and creative business minds. It also involves employees and employers working together in friendly coexistence, mutual respect and understanding for Hong Kong's business condition to improve. It is this mutual understanding, mutual respect between our workers and management that our past, present and future success is built on, and the fruit of success is shared not only by businessmen, but also by workers.

Thank you, Madam President.

**MR MICHAEL MAK** (in Cantonese): Madam President, in view of the economic slump, wage earners feel so insecure and so worried about dismissals that they have to accept unreasonable treatment by their employers and swallow every disgrace and humiliation. After all, the continual economic downturn is only one of the factors. The more important factor, which has greatly undermined the bargaining power of workers, is the lack of right to collective bargaining of trade unions. Moreover, trade unions are impeded in many aspects, and the interests of workers are not adequately protected. I therefore support Mr LEE Cheuk-yan's motion to implement the International Labour Convention. I hope the Government will address squarely the functions of trade unions and the rights of workers, and expeditiously implement the ILC.

If the statutory representative status of trade unions in collective bargaining is established, the bargaining power of the staff side will be enhanced, thus putting employers and employees on an equal footing in negotiations and consultations. Take the sector I represent as an example. At the end of June this year, the Hospital Authority (HA) passed a resolution to cut its staff pay according to the civil service pay cut with effect from 1st October this year. The HA, without prior comprehensive staff consultations and before the draconian legislation to cut civil service pay was passed by the Legislative Council, quietly cut the remunerations of its staff. It also issued the agreement on pay cut in August, in which neither the outcome of refusal to sign nor the rights of employers and employees were mentioned. The HA has, by hook or by crook, cut the pay of its staff. It merely gives attention to the outcome without considering the process. It just forces its way through, depriving the right of our peers to negotiate, forcing its staff to accept the pay cut. In fact, I issued a questionnaire in July this year to gauge the views of the sector. Over a thousand of recipients had responded, among which 75% had indicated that they would sign the agreement on pay cut. However, of this 75%, 80% indicated that they had accepted it reluctantly. Insofar as the above case is concerned, if we have the right to collective bargaining, the rights of employees would not have been sacrificed so easily. With employees and employers having an equal footing in negotiation, employees will have their dignity upheld, and will not be insulted flagrantly and openly. Much as water can carry a boat, it too can turn it over, and thus the dignity of employees should never be looked down upon.

Madam President, the fact that Hong Kong lacks natural resources highlights the importance of its human resources. Therefore, the Government should make every effort to protect this precious resource. The right to collective bargaining is no scourge, but a mere shield to protect our human resources against excessive exploitation. People often say, "Anything you do for me will be more than reciprocated." If employers recognize and respect the rights of employees, employees will also respect their employers and double their effort in work. I believe this will help to reinforce the mutual trust between employers and employees, and will definitely lift the productivity of the respective organizations and the entire community significantly. Given that a "three-win" situation will be attained, why do we not go ahead with it? I therefore urge the Government to acknowledge the right of trade unions to collective bargaining and to recognize the rights of workers.

Although the Government has stated that there are provisions in the Employment Ordinance to protect trade unions, those provisions are not adequate in protecting trade unions against discrimination. We cannot simplify the issue of discrimination against employees to mean unreasonable dismissals only. The Committee on Freedom of Association of the ILO has pointed out that discriminatory acts should include all discrimination experienced by an employee during his service, in particular those related to redeployment, demotion and any other acts hazardous to the employee. I agree with this very much. In the survey conducted by me previously, many members of the sector had expressed the concern that they might be pressurized by their supervisors or be "dealt with afterwards", if they refused to sign the agreement on pay cut. Given this, members of the sector worry not only about dismissal, they are also panic-stricken by the numerous uncertainties. Therefore, the Government should review the existing Ordinance carefully, with a view to ensuring that due protection for employees are given by the legislation, thus casting away the worries and restraints of trade unions in their negotiations with employers.

The existing Trade Unions Ordinance imposes numerous restrictions on trade unions, such as stipulating that their funds should not be used for political purposes, which is in fact impairing their function. However, in overseas countries, many trade unions have established ties with political parties such that they can solicit their support in protection of labour rights. This is, in fact, justifiable.

Regarding the restrictions on the qualifications of trade union officers, the Government referred to section 17(2) of the Trade Union Ordinance. The provision stipulates that any person who is or has been engaged or employed in a trade, industry or occupation with which the trade union is concerned may be an officer, or say executive officer, of trade unions. Moreover, those who have never been engaged or employed in the trade, industry or occupation concerned may, with the consent of the Registrar of Trade Unions, serve as officers of the relevant trade unions. The Government should expeditiously review the occupational requirements on officers of trade unions to refrain from impeding the exercise of this right of trade unions, and to uphold the autonomy of trade unions to facilitate their performance of functions. I hope the Government will implement the ILC to show its respect for the autonomy of trade unions, and to respect the spirit of freedom of association.

As a member of the ILO, Hong Kong has the duty and obligation to comply with and to implement the relevant provisions of the ILC. Here, I urge the Government to fulfil its obligations laid down in Article 39 of the Basic Law, and to assume its obligation in signing the ILC. The Government should implement the ILC it signed to protect trade unions from discrimination and to uphold the autonomy of trade unions.

Madam President, recently, the Government has employed a hard-sale approach in legislation on Article 23 of the Basic Law. However, it remains indifferent to the implementation of Article 39. This spells out its attitude that "national security is on the top of the agenda, while the rights of workers can be totally ignored". I have to express my deep regret over this.

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

**MR AMBROSE LAU** (in Cantonese): Madam President, all along, employees in Hong Kong have been so enthusiastic in their work, employers have spared no effort to participate in competition in the market, and the Government has concentrated resources on economic development and social construction. All these should be attributed to the effort exerted by employers and employees to stay away from confrontations that are economically ineffective. Hong Kong is now affected by a serious economic slump, and is experiencing dramatic socio-economic changes; this is a time for employers and employees to pull together.

Implementing compulsory collective bargaining through legislation will deprive employees of the right they now enjoy in holding direct negotiations with employers, and may even stir up rivalry among the various trade unions within a company for the exclusive right to collective bargaining. Moreover, labour relations in Hong Kong have all along been harmonious, and the number of working days lost due to work stoppage is among the lowest in the world. To make collective bargaining compulsory may adversely affect these relations. Instead of promoting a co-operative and cordial relationship between employers and employees, this may provoke confrontations between both parties. At present, employers and employees tend to resort to direct and voluntary negotiations, coupled by the mediation services provided by the Labour Department. All this, together with monitoring by the Labour Advisory Board, embodies a mechanism that is more flexible.

The Hong Kong Progressive Alliance is of the view that the most pressing problems that the labour sector has to address at the moment are unemployment and underemployment. Therefore, to find ways to encourage employers and employees to pull together in times of difficulty, to give impetus to the revival of the economy for the benefit of more job opportunities and to enhance the employability of our labour force amid the ongoing economic restructuring, are particularly what the Legislative Council and the Government should and must do.

Madam President, I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam President, collective bargaining between employers and employees is of course one of the ways to resolve labour disputes, but it is not the only way. In Hong Kong, small and medium enterprises (SMEs) are in the majority, accounting for 98% of all enterprises. In the case of these SMEs, it is simply impracticable and unfair to resolve labour disputes by recourse to collective bargaining between trade unions and employers. In the handful of big enterprises with larger numbers of employees, there are already some relevant trade unions which have been playing an active role in negotiations with employers and the fight for employees' interests. There have been many concrete examples of this. As pointed out by some Honourable colleagues, there has always been trade union involvement in the labour disputes connected with airlines, telecommunications companies, and so on. However, it should be noted in general that collective bargaining can at most ensure trade union involvement; it cannot guarantee that employers and employees can always reach an agreement. Nor can collective bargaining guarantee that when labour relations turn sour, employees can always achieve an outcome to their satisfaction. The bargaining power of employees actually depends pivotally on the changing supply and demand situation in the labour market, instead of collective bargaining itself. Whenever labour disputes arise, it is most important to ensure that the specific rights and interests of both employers and employees under the existing laws and the relevant employment contracts are given protection. Therefore, given the actual context of Hong Kong, the voluntary and direct negotiations between employers and employees with mediation by the Labour Department can be described as an appropriate and effective mechanism of resolving labour disputes, one which has come only after years of prosperity.

The report of the Committee on Freedom of Association under the ILO, when dealing with the promotion of collective bargaining, requests the SAR Government to seriously consider the formulation of objective procedures to recognize the representative status of trade unions. I personally think that the making of the request is just meant to propose an option for serious consideration by the SAR Government. The proposal itself is not intended to be an interpretation of the International Labour Conventions, and it does not imply that unless legislation is enacted on the mandatory adoption of collective bargaining, the SAR Government cannot be regarded as having discharged its obligations under the International Labour Conventions. Nor does the proposal imply that the current practice adopted in Hong Kong is in violation of any specific provisions of the International Labour Conventions. In fact, Article 4 of ILC No. 98 provides that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements." This Article tells us that the conditions in different countries and places do vary, and so, there is no rigid provision requiring the countries or places concerned to legislate on the mandatory adoption of collective bargaining. I also think that by encouraging and promoting voluntary negotiations between employers and employees or the relevant organizations, we can also achieve the same object espoused in the relevant provisions of the Conventions.

Finally, insofar as the provisions of the ILC on collective bargaining are concerned, I think the SAR Government should respect the concerns of the relevant body under the ILO. If the relevant organization puts forward any proposals for the SAR Government to consider, it must do so very seriously. But as long as no relevant provision of the International Labour Conventions is violated, even if the final decisions of the SAR Government are not entirely in line with the proposal, such decisions should still be regarded as reasonable and normal.

Madam President, I so submit.

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

**DR LUI MING-WAH** (in Cantonese): Madam President, after the reunification, the Democratic Party moved motions in 1998 and 1999 respectively to demand legislation to introduce a collective bargaining system, but both motions were negated. However, Mr LEE Cheuk-yan has moved an identical motion now.

On issues relating to labour relations, the Government has all along put emphasis on voluntary participation and self-determination by employers and employees. It has assumed the roles of protector of primary rights of workers and promoter of negotiations between employers and employees, facilitating voluntary and direct negotiations on the corporate level. The Labour Department, in addition, provides mediation services on that front. This arrangement has all along been very effective, and constitutes the basic element that helps to minimize labour disputes and the days of strikes and slowdowns.

Hong Kong has applied The Right to Organize and Collective Bargaining Convention in full since 1975. The Government has taken measures to promote voluntary negotiation and harmonious communication between employers and employees in full compliance with the provisions of the Convention. In 1998, the Labour Department set up the Workplace Consultation Promotion Unit to reinforce the promotion of collective bargaining at the corporate and industry level. The Labour Department has also set up tripartite trade committees comprising representatives of trade unions, employers and the Labour Department. So far, nine such committees have been formed to provide a favourable environment for the conduct of collective bargaining.

In fact, the right to collective bargaining is not a kind labour right *per se*, but a mechanism for negotiation between employers and employees, and also a mode of corporate decision management. In respect of the adoption of collective bargaining, eligibility for participation in collective bargaining, and responsibilities of both parties involved in bargaining, there are no hard and fast rules, and a broad-brush approach should not be implemented. Such aspects should be determined with regard to the corporate and industry culture, the mode of economic activities of the community, as well as labour relations pattern. It is not feasible for the Government to legislate on collective bargaining under the prevailing situation in Hong Kong, and the reasons are as follows.

First, collective bargaining means the negotiation between a trade union and a business association or an organization, and the consensus so reached is

applicable to members of the respective business association and trade union. If that is the case, conditions of service for employees of various industries in different organizations will basically be the same, and the mode of operation of organizations of different industries will largely be standardized. This would then erode the vitality and competitiveness of the free economy of Hong Kong.

Second, if the right to collective bargaining is confined to internal negotiation within an organization, the legislation on compulsory collective bargaining is not at all meaningful to large corporation, for trade unions would have already been set up in most of these corporations with an elaborate negotiation mechanism for employers and employees. To the large number of small and medium enterprises, in which trade unions have not been formed or the number of employees is so small that trade unions can hardly be formed, the provision of the right to collective bargaining will merely be in name only. Moreover, it is not practical and not in line with the free economy and labour relations in Hong Kong to require all the corporations to form trade unions, or to require all employees to join trade unions. Besides, some corporations have more than one trade union. If compulsory collective bargaining is implemented, a serious of follow-up negotiations among different trade unions may be triggered off easily, and negotiations will thus become tangled and complicated.

Third, implementation of compulsory collective bargaining may unnecessarily intensify labour antagonism within an organization, hampering the negotiation mechanism and exposing the harmonious labour relations to challenge.

Hong Kong industries are now undergoing a comprehensive restructuring and facing the challenge of globalization of the world economy. There have been major adjustments in many industries and production distribution, hence flexibility, productivity enhancement and restructuring have become the rules for survival. The request for implementation of compulsory collective bargaining is a hankering for power rather than a striving for consultation. It is obviously a mistake to put forward such a wrong idea in times of difficulty. In the end, both employers and employees will suffer and the rights of workers sacrificed for no good reason.

The adverse economic situation in Hong Kong will not pick up in the short term. Employers and employees should put aside their own interests, stand by

each other, and seek to minimize unnecessary confrontation and internal conflict. They should go hand in hand in times of difficulty, striving to improve the overall investment and business environment of Hong Kong and to promote employment. Hong Kong economy will hardly revive with strained labour relations. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the subject of collective bargaining has been debated in this Council on many occasions. I believe Honourable Members are very familiar with the arguments both for and against the motion. Nevertheless, I have to reiterate the position of the Government, though it is already well known to all.

Since 1998, the Government of the Hong Kong Special Administrative Region (SAR) has made five successive submissions and progress reports in response to the recommendations of the Committee on Freedom of Association of the International Labour Organization (the Committee), giving detailed explanations of our position and measures we have taken in respect of the Committee's recommendations. I wish to emphasize that the Government has been actively promoting voluntary collective bargaining, but we do not agree that we should legislate to introduce compulsory collective bargaining. Now, I would like to explain why the Government does not agree to introducing compulsory collective bargaining by way of legislation.

Firstly, the existing practice of voluntary and direct negotiations between employer and employee at the corporate level, underpinned by the conciliation by the Labour Department has been working well. Labour relations in Hong Kong have been harmonious. Last year, the average number of working days lost as a result of labour disputes was 0.26 day per 1 000 salaried employees and this is one of the lowest figures in the world. From this, we can see that our long established mechanism of voluntary consultation, with the support of the conciliation service of the Labour Department, has been working well and there is no need for changes to be made now.

An Honourable Member said earlier that the Labour Department had not been impartial in handling labour disputes and trade unions were kept away from the negotiation table. I believe this saying is unfair to the staff of the Labour Department. As a matter of fact, the trade unions have sat through the negotiations of the recent relatively major labour disputes.

Moreover, while the parties concerned may be forced to engage in collective bargaining by means of legislation, we must not forget that there is no guarantee that an agreement could be reached through collective bargaining. Thus, to provide for compulsory collective bargaining in law, especially in the face of the strong opposition from employers, may result in a more confrontational and legalistic system of labour relations that is harmful to negotiations and this may run counter to the objective of the legislation.

Many Members said earlier that we should strike a reasonable balance. I fully agree with this point, but I believe a reasonable balance can be achieved only through negotiations between employer and employee, instead of by imposing pressure on either side.

Paragraph 845 of the *Freedom of Association*, a publication of the International Labour Organization (ILO) states that: "collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which alter the voluntary nature of such bargaining". Honourable Members may wish to note that this is from the ILO's own publication, so it is evident that collective bargaining must be voluntary, otherwise it would be fruitless.

Generally speaking, the more restrictions there are in the labour market, the less attractive is Hong Kong to overseas investors. Thus, to effect collective bargaining by legislation may put employees in a disadvantageous position. Under the current economic environment, in which the unemployment rate is still high, we hope more investors can come to Hong Kong for investment and create more job opportunities. We think this is not the right time to introduce collective bargaining by way of legislation, so as to prevent the business environment from being damaged, and the creation of job opportunities in the private market and the employment opportunities of employees from being adversely affected.

I just heard Members say earlier that the fact that the Government does not legislate to introduce collective bargaining means Hong Kong has violated the

provisions of ILC No. 98 on the Right to Organize and Collective Bargaining. I would like to point out that we have already adopted appropriate measures in relation to the relevant Committee's recommendation on the principle of respecting the freedom of association under ILC No. 98.

Article 4 of ILC No. 98 stipulates that: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements". This Article embodies two main elements, that is, the public administrative authority should adopt measures to implement collective bargaining and to encourage and promote voluntary consultations, meaning that both employers and employees enjoy autonomy. This Article also recognizes that different countries and regions may have very different circumstances. The ILO pointed out in its publication, *Freedom of Association*, that Article 4 of ILC No. 98 does not stipulate that the Government has the responsibility to facilitate "compulsory" collective bargaining among specific organizations; such interventions would obviously change the nature of negotiations. It is evident that the Convention does not stipulate that the SAR Government has strict liability to put in place procedures for determining the representative status of trade unions for the purpose of facilitating and promoting collective bargaining.

In fact, the SAR Government has already adopted this measure to encourage voluntary negotiations between employers and employees and their relevant organizations. All along, it is our practice to encourage employers and employees to resolve labour issues through internal consultations. If a labour dispute cannot be resolved through voluntary consultation, then the Labour Department will offer assistance through conciliation and urge all stakeholders (including trade unions) to come together and settle the dispute. In the course of consultations, the Labour Department encourages all stakeholders to try to put down all the terms of the settlement in a written agreement.

In order to encourage and promote voluntary consultations and effective communications, and to enhance the promotion of voluntary collective bargaining at the corporate and industry level, the Workplace Consultation Promotion Unit was established by the Labour Department in 1998. At the

corporate level, we encourage employers to engage in effective communication with employees and trade unions in relation to employment issues. At the industry level, we are actively putting in place tripartite committees, which comprise representatives of trade unions, employers and the Labour Department, to discuss labour relations issues and general matters of the industry concerned. So far, the Labour Department has set up such committees for nine trades. We believe these tripartite committees could provide an effective channel for employers and employees to discuss issues of common interest.

Madam President, the SAR Government attaches great importance to the role of trade unions in promoting labour relations, and at the same time, it also encourages trade unions to participate in tripartite dialogues at the industry level and encourages enterprises and trade unions to participate in labour consultations at the corporate level. In fact, many major labour disputes have been settled through the conciliation of the Labour Department and the active participation of employees' unions. All six employees' representatives on the Labour Advisory Board are members of trade unions and they have an important role to play in labour policies and legislation.

The SAR Government has already offered adequate protection in the Employment Ordinance for the rights of employees in respect of trade union membership and activities. The Employment Ordinance provides that employees enjoy the right to be officers of a trade union, the right to take part in the activities of the trade union and the right to associate with other persons for the purpose of applying for the registration of a trade union in accordance with the provisions of the Trade Unions Ordinance. The Employment Ordinance also protects employees against unlawful and unreasonable dismissal, including those caused by discrimination against trade unions.

In studying the proposals on all labour legislation, the SAR Government places emphasis on the principles of tripartite consultation and mutual benefits for both employers and employees, so as to strike a reasonable balance between the interests of employers and employees. We would also fulfil our obligations under provisions of the ILC that are applicable to the SAR. We have already fully considered the views of the Committee, but as I explained earlier, we do not agree to the recommendation of the Committee on legislating to introduce a collective bargaining mechanism. However, we would continue to fulfil our

obligations under ILC No. 98 in actively promoting voluntary collective bargaining.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han has requested to speak. As Mr LEE Cheuk-yan has not yet spoken in reply, I give Miss CHAN permission to speak at this stage.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, I am sorry. Just now, I was occupied with other business that I had to be out of the Chamber.

Madam President, the FTU supports the legislation on collective bargaining. When the Basic Law was drafted, the labour sector had expressed that issues relating to retirement protection and collective bargaining should be stipulated in the Basic Law. However, given the circumstances at that time, only retirement protection could be included in the Basic Law, and the right to strike was not stipulated in the Basic Law. We consider that the right to collective bargaining for workers or trade unions could in fact reflect the status enjoyed by workers in the community. If the community recognizes the existence of both employers and employees, why are divergent views expressed when legislation on such a system is proposed? In fact, the prevailing economic difficulties in Hong Kong signify what we have been striving for in the past, and make it clearer that we need to establish a system for this.

The economy of Hong Kong has been declining in the past few years. Since 1998, many companies, in view of the economic difficulties, have adopted measures to cut salary and staff benefits. At that time, we requested the Government to ensure that such cuts in salary and benefits should be implemented only when both parties too had been given the opportunities to express their opinions. Unfortunately, the Government considered our request unnecessary. I remember that in 1998, a series of labour disputes occurred as a result of several large enterprises cutting the salary of their staff. The Government also sensed the pressure. In October of the same year, the Commissioner for Labour at that time, Miss J A WILLIS, issued a code of practice on how to handle pay cut and benefit cut. The code of practice has not

gone through any legislative procedures and is not legally binding; it just provides instructions to employers and employees that such measures should be implemented only under mutual consent. However, in the objective reality, when workers in the labour market lack bargaining power, such codes of practice issued by the Government would hardly be implemented. This also reflects that without statutory protection for such a system, the aim to put both parties on an equal footing cannot be achieved, even if the Government has good intention, or has set up task committees to handle labour relations.

Moreover, I wish to say that some members of the industrial and commercial sector in this Chamber may consider the provision of the right to collective bargaining unnecessary. However, I would like to cite an example, though it might not be relevant, it was in fact my personal experience. That is the case on PCCW. As the company has to undergo reorganization, it carried out three rounds of pay cut and layoff between last year to early this year. The then Hong Kong Telecom was willing to negotiate with its staff, however, after the merger, no more discussions were carried out with the trade unions. Thus, trade unions, employer and staff had run into a lot of disputes in the course. Early this year, over 800 staff members were laid off, and all of them were very angry that they had not been informed in advance. After a series of layoffs, what has the situation become? The employer has taken some measures to help the staff, like allocating a sum of \$30 million for organizing training programmes and providing assistance. However, labour relations in the company remained tense at that time, as those measures were not the result of negotiation between the employer and employees.

Reform in the PCCW has continued for sometime, in June this year, some new reforms were launched. Recently, a new company has been set up, and 3 000 staff members of PCCW were transferred to the new company, and 529 were laid off. This time, the company has conducted negotiations with the trade unions. Whether the result of negotiation is acceptable is in fact a separate issue. But, at least, the company was willing to conduct formal negotiations with the trade union, and a result was finally reached with the participation of both parties. I have all along been observing this case, and I find that the company has done better in the latest exercise than the other time early this year, and the staff members concerned did feel better this time.

Madam President, we often say that we should pull together in times of difficulty and that employees should be more understanding when a company is

in trouble. We often admire that Singapore has put in place an automatic salary reduction or adjustment mechanism. But I believe Members also know that a mechanism for collective bargaining is also in place in Singapore. I think the establishment of a mechanism for collective bargaining should not cause anxiety to those who fear that such a mechanism will let trade unions and workers reign over the scene, because this will not be the case. In a civilized society, the establishment of these mechanisms will precisely facilitate mutual understanding in times of difficulty, allowing the parties involved to consider the problem from each other's angle. If employers and employees stand on either side of a divide in dealing with problems, the operation of the company itself may also be affected.

Therefore, the FTU considers it important to legislate on collective bargaining, which in a way will allow trade unions and workers to gain a very important status. I hope that the Government will discard the opinions it used to have on this issue. Regarding the ways to put collective bargaining in practice, we can hold further discussions. At present, we only have the Labour Advisory Board (LAB), which is a non-statutory body and its power is limited. Since the Government has allowed the setting up of the LAB, why can a collective bargaining system not be established on this foundation? Why can a system acceptable to us, somewhat comprehensive (centralized), representing industries or corporations not be established? Hong Kong is now in a difficult position, I hope that everyone can accept this concept in times of difficulty. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, you may now reply and you have up to three minutes 40 seconds.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I wish to thank Honourable Members for their speeches. Now I wish to make my final remarks.

At first, the FTU supported the motion. Unfortunately, Mr LEUNG Fu-wah constantly said that my criticisms were empty shots. A legislature indeed has to make criticism. Last week, the Democratic Alliance for Betterment of Hong Kong (DAB) was bombarded by Mr Albert CHAN. This week I have to criticize the unscrupulous government, which has been exploiting

the workers of their right to collective bargaining. The legislature has to make criticisms on issues like this.

As to those colleagues who have raised their opposition, I would like to talk about several points. Mr Kenneth TING emphasized industrial actions in his entire speech. It seems that once the workers are given the right to collective bargaining, industrial actions will take place. In fact, we have to make our concept clear. What is the purpose of getting the right to collective bargaining? The purpose is to prevent industrial actions. Since too many industrial actions were so difficult to deal with in the past, therefore the labour side was embodied in the basis for negotiation in order to reduce the incidence of industrial actions. Actually, although strikes do take place in European and American countries, these countries have already been accustomed to a system of collective bargaining. Employers and employees are on an equal footing in negotiations, therefore a balance can be struck.

Hong Kong also has had such experience in the past. For example, the labour union of the Coca-Cola Company was yet to be founded a decade ago, workers therefore would stage industrial actions on a yearly basis in order to fight for their rights. However, since the labour union was founded, even though there were some disputes between the management and workers, the number of strikes was reduced in the past decade. Therefore, we should not always associate the right to collective bargaining with industrial actions, since it is a conceptual mistake.

Mr Kenneth TING also said that mutual dependence was the best safeguard, while Dr LUI Ming-wah said that we had to give up personal benefits. However, the problem is we could see no mutual dependency, all we could see is oppression. Given this, how could people give up personal benefits and seek mutual dependence? Has the business sector ever given up its own benefits? Has the business sector ever seriously thought of the situation of workers? If workers feel that the business sector has already taken their situation into account, then we may say that we are thrilled to see the silver linings. However, I do not believe that it will happen to our world. What is the world in my belief, anyway? That is, everybody will defend his personal interest and try to find a new point of balance. I only hope that in the course of defending our personal interest, the rights of both sides could be relatively equal, and talks could be held on a equal footing, instead of having one side overwhelming the other side.

Just now Mr Abraham SHEK has mentioned PCCW. I do not agree with what Miss CHAN Yuen-han has just said, that is, the consultation this time around was quite good. It is because before Miss CHAN and I met the representatives from trade union and had conducted negotiations with the employer, 529 employees had already been sacked. However, I have to emphasize that no consultation had been held beforehand. With regard to the suggestions we made during the meeting, I do not know whether PCCW was trying to muddle through or else, they said that if our suggestions were adopted, the repercussions would have probably been smaller. Honestly, it was just being wise after the event. But we can see that if they were willing hold consultations beforehand, some other proposals might have come out of the consultations to allow the employer to achieve its objective and reduce the pain of employees. For that reason, the experience of that occasion demonstrates that if workers are granted the right to collective bargaining, and if negotiations could be conducted earlier, the problem could be solved.

Mr Abraham SHEK said earlier that if trade unions were given excessive power, they would become a hurricane. I wish say this to him in reply: If employers have excessive power, earthquake will take place from time to time and workers would fall apart and fall into dire straits.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEE Cheuk-yan 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 LEE Cheuk-yan rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan 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, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the motion.

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

Mr WONG Yung-kan and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN and Mr WONG Sing-chi voted for the motion

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

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr YEUNG Yiu-chung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 26 were present, six were in favour of the motion, 18 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 14 were in favour of the motion, five against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I congratulate Honourable Members on managing to finish all items on the Agenda before eleven o'clock. May I wish you all a happy holiday.

I now adjourn the Council until 2.30 pm on Wednesday, 8 January 2003.

*Adjourned accordingly at twelve minutes to Eleven o'clock.*

**Annex I**LANDLORD AND TENANT (CONSOLIDATION)  
(AMENDMENT) BILL 2001**COMMITTEE STAGE**Amendments to be moved by the Secretary for Housing, Planning and Lands

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 1(2)          | By deleting the clause and substituting -<br><br>" (2) Subject to <u>subsection (3)</u> , this Ordinance shall come into operation on the day it is published in the Gazette.<br><br>(3) Sections 3, 14, 19, 21, 34, and 38 (in so far as it relates to new section 144(1), (2) and (3) of the principal Ordinance as added by this Ordinance), shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette." . |
| 4             | By deleting "5" and substituting "7".  |
| 7             | By deleting "Secretary for Housing" and substituting "Chief Justice".  |
| 8             | In the proposed section 114A(1), by deleting "this Part" and substituting "section 75A(3)(a)".   |
| 11            | By deleting the proposed section 117(3) and substituting -<br><br>" (3) In the case of a tenancy entered into on or after the commencement of this subsection -  |

ClauseAmendment Proposed

- (a) if the tenancy does not contain a covenant to pay the rent on the due date, then there shall be implied in the tenancy -
- (i) a covenant to pay the rent on the due date; and
  - (ii) a condition for forfeiture if that implied covenant is broken by virtue of non-payment of the rent within 15 days of the due date;
- (b) if the tenancy -
- (i) does contain a covenant to pay the rent on the due date; but
  - (ii) does not contain a condition for forfeiture if that covenant is broken by virtue of non-payment of the rent,
- then there shall be implied in the tenancy a condition for forfeiture if that covenant is broken by virtue of non-payment of the rent within 15 days of the due date;
- (c) if the tenancy does not contain a covenant substantially to the effect that the tenant not use, or suffer or permit the use of, the premises or any part thereof for an immoral or illegal purpose, then there shall be implied in the tenancy -
- (i) a covenant that the tenant not use, or suffer or permit the use of, the

ClauseAmendment Proposed

premises or any part thereof for an immoral or illegal purpose, and

(ii) a condition for forfeiture if that implied covenant is broken;

(d) if the tenancy -

(i) does contain a covenant substantially to the effect that the tenant not use, or suffer or permit the use of the premises or any part thereof for an immoral or illegal purpose; but

(ii) does not contain a condition for forfeiture if that covenant is broken,

then there shall be implied in the tenancy a condition for forfeiture if that covenant is broken;

(e) if the tenancy does not contain a covenant substantially to the effect that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person, then there shall be implied in the tenancy -

(i) a covenant that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person; and

ClauseAmendment Proposed

(ii) a condition for forfeiture if that implied covenant is broken;

(f) if the tenancy -

(i) does contain a covenant substantially to the effect that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person; but

(ii) does not contain a condition for forfeiture if that covenant is broken,

then there shall be implied in the tenancy a condition for forfeiture if that covenant is broken;

(g) if the tenancy does not contain a covenant substantially to the effect that the tenant not make any structural alteration to, or suffer or permit any structural alteration to, the premises without the prior written consent of the landlord, then there shall be implied in the tenancy -

(i) a covenant that the tenant not make any structural alteration to, or suffer or permit any structural alteration to, the premises without the prior written consent of the landlord; and

(ii) a condition for forfeiture if that implied covenant is broken; and

ClauseAmendment Proposed

- (h) if the tenancy -
- (i) does contain a covenant substantially to the effect that the tenant not make any structural alteration to, or suffer or permit any structural alteration to, the premises without the prior written consent of the landlord; but
  - (ii) does not contain a condition for forfeiture if that covenant is broken,

then there shall be implied in the tenancy a condition for forfeiture if that covenant is broken.

(4) For the avoidance of doubt, it is hereby declared that, for the purposes of subsection (3)(b)(ii), (d)(ii), (f)(ii) or (h)(ii), a tenancy mentioned in that subsection which contains a condition for forfeiture which may not be exercised solely on the ground mentioned in that subsection is, notwithstanding that, still a tenancy which contains a condition for forfeiture mentioned in that subsection.

(5) It is hereby declared that -

- (a) subsection (3)(a) and (b) shall have effect subject to section 58(4) and (10) of the Conveyancing and Property Ordinance (Cap. 219) (and notwithstanding subsection (14) of that section);
- (b) subsection (3)(c), (d), (e), (f), (g) and (h) shall have effect subject to section

ClauseAmendment Proposed

58(1) to (13) of the Conveyancing and Property Ordinance (Cap. 219) (and notwithstanding subsection (14) of that section);

- (c) for the purposes of subsection (3)(e) and (f), the persistent delay of payment of rent is unnecessary annoyance, inconvenience or disturbance."

15 In the proposed section 119C(2) -

- (a) in paragraph (b), by adding "將來的" after "該";
- (b) in paragraph (i), by adding "by the Tribunal or by a valuation surveyor appointed by the Tribunal" after "for determination".

18 (a) By adding before paragraph (a) -

"(aa) in subsection (1)(a), by repealing "住宅用的用地安排，或增加非住宅用的用地安排" and substituting "作住宅用途的地方，或增加作非住宅用途的地方";".

- (b) In the Chinese text, by deleting paragraph (a), and substituting -

"(a) 在第(2)(a)款中，在兩度出現的“宅”之後，加入“及作其他用途的地方";".

- (c) In the Chinese text, by deleting paragraph (b)(ii)(B) and substituting -

"(B) 廢除“分租客在內”而代以“租客或分租客";".

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
|               | (d) In paragraph (b)(iii)(B), in the proposed definition of "premises", by deleting "matter".  |
|               | (e) In paragraph (c), by deleting "in subsection (5), by adding -" and substituting -<br><br>"in subsection (5) -<br><br>(i) in paragraph (a), by repealing "用地安排" and substituting "建立的地方";<br><br>(ii) by adding -". |
| 22            | In the proposed section 119N(3)(b), by deleting "be a" and substituting "be the".  |
| New           | By adding -<br><br><b>"35A. Issue of warrant for possession of premises</b><br><br>Section 131 is amended, in the proviso, in paragraph (a), by repealing "5" and substituting "7".                                    |
| 37            | In the proposed section 135A(1), by deleting "this Part" and substituting "section 128A(3)(a)".  |
| Schedule      | (a) By deleting section 1 and substituting -<br><br><b>"1. Relief against forfeiture by action for non-payment of rent</b>   |

ClauseAmendment Proposed

Section 21F of the High Court Ordinance (Cap. 4) is amended -

(a) in subsection (1), by repealing "This" and substituting "Subject to subsection (1A), this";

(b) by adding -

"(1A) Where during the term of a lease the application of this section has prevented a lessor from enforcing against a lessee a right mentioned in subsection (1), then during that term this section shall not be applicable again to prevent the lessor from exercising that right against the lessee unless the Court is satisfied that there is good cause why this section should apply in favour of the lessee.";

(c) in subsection (3), by repealing "4 weeks" and substituting "7 days";

(d) by adding -

"(3A) The Secretary for Housing, Planning and Lands may, by notice published in the Gazette, amend the number of days specified in subsection (3)

Clause

Amendment Proposed

by substituting another number therefor."."

(b) In section 9, by deleting "The Schedule is amended by adding -" and substituting -

"The Schedule is amended -

(a) by repealing Form 22 and substituting -

"FORM 22

[r. 68]

**NOTICE OF APPLICATION UNDER LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE**

Pursuant to section .....

No. ....LD.....

Applicant's Name : ..... \* (Landlord/Tenant/Sub-tenant)

and Address: .....

Respondent's Name : ..... \* (Landlord/Tenant/Sub-tenant)

and Address : .....

Address of premises : .....

User of premises : ..... \* (Residential/Business)

Duration of tenancy : From ..... To ..... Existing Rent : \$ ...../month

Nature and particulars of Application :

\* Application for new tenancy. / \*Application for determination of prevailing market rent.

\* Application for recovery of possession of the suit premises and rent as the respondent has

failed to pay rent from the day of ..... and application for order for mesne

profits, costs, \*interest, \*management fees, \*rates/Government rent,

\*water/electricity/gas charges and \*other utility charges.

\* Application for disposal of properties left in the premises by the respondent.

Clause

Amendment Proposed

Dated this ..... day of .....

.....  
+  
.....  
(Signature of \*the authorized representative of Applicant)  
Full Name of authorized  
representative : .....

To : 1. The Registrar, Lands Tribunal.  
2. The Respondent.

Address for service of the applicant : .....  
.....

+ If the applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

\* Delete whichever is inapplicable.

Note : If the respondent intends to oppose this application, he must personally attend at the Lands Tribunal Registry within 14 days of the date of service of this notice, and file a notice of opposition (Form 7).";

(b) by adding -".

(c) By deleting section 12 and substituting -

**"12. Relief against forfeiture  
by action for non-payment  
of rent**

Section 69 of the District Court Ordinance  
(Cap. 336) is amended -

(a) in subsection (1), by repealing  
"This" and substituting "Subject  
to subsection (1A), this";

(b) by adding -

ClauseAmendment Proposed

"(1A) Where during the term of a lease the application of this section has prevented a lessor from enforcing against a lessee a right mentioned in subsection (1), then during that term this section shall not be applicable again to prevent the lessor from exercising that right against the lessee unless the Court is satisfied that there is good cause why this section should apply in favour of the lessee.";

(c) in subsection (3), by repealing "4 weeks" and substituting "7 days";

(d) by adding -

"(3A) The Secretary for Housing, Planning and Lands may, by notice published in the Gazette, amend the number of days specified in subsection (3) by substituting another number therefor." . "

**Annex II****ELECTORAL PROVISIONS (MISCELLANEOUS  
AMENDMENT) BILL 2002****COMMITTEE STAGE**Amendments to be moved by the Secretary for Constitutional Affairs

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 1             | <p>(a) In the heading, by adding "<b>and commencement</b>" after "<b>title</b>".</p> <p>(b) By renumbering the clause as clause 1(1).</p> <p>(c) By adding —</p> <p style="padding-left: 40px;">"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.</p> <p style="padding-left: 40px;">(3) Section 10 (except in so far as it relates to the purpose of enabling arrangements to be made for the holding of the District Council ordinary election in 2003) shall come into operation on 1 January 2004.</p> <p style="padding-left: 40px;">(4) In subsection (3), "District Council ordinary election" (區議會一般選舉) means elections to elect persons to fill the vacancies caused by the expiration of the term of office of the elected members of District Councils."</p> |

## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary Economic Development and Labour to Mr Henry WU's supplementary question to Question 2**

Please find below a breakdown on the number of self-employed persons in the financing, insurance, real estate and business services sector for Members' reference.

Number of self-employed persons engaged in the financing, insurance, real estate and business services sector by industry, 2000 to 2001 and Quarter 1 to Quarter 3 2002

|  | <i>2000</i>   | <i>2001</i>   | <i>2002</i><br><i>Quarter 1 to</i><br><i>Quarter 3</i> |
|--|---------------|---------------|--|
|  | <i>('000)</i> | <i>('000)</i> | <i>('000)</i>  |
| Financing  | 0.6           | 1.1           | 1.4  |
| Insurance  | 2.9           | 7.3           | 9.5  |
| Real estate  | 1.2           | 1.6           | 2.1  |
| Business services  | 6.9           | 8.4           | 10.2   |
| Financing, insurance, real estate and business services* | 11.7          | 18.4          | 23.1   |

\* Figures may not add up to the corresponding totals owing to rounding.

**Appendix II****WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Mr LAU Ping-cheung's supplementary question to Question 5**

Since the establishment of the Electrical and Mechanical Services Trading Fund (EMSTF) in August 1996, the EMSTF has strived to improve its electrical and mechanical services to various government departments by offering better services and at lower costs. In the past six years, the EMSTF has already offered to cut its price by more than 15%. The extent of the price reduction on each and individual contract would be subject to different situation and conditions. The EMSTF has also introduced various free value-added services, for example, the setting up of a "one-stop shop" without additional charge to its clients.

The EMSTF untying programme commenced in August 1999 and client departments were included in the programme under different phases. Once included in the programme, the client department can opt to select the EMSTF or other services provider in the market for their services through competitive tendering. The programme was completed in August 2002 and the market of the EMSTF became fully opened since then. The EMSTF, though has lost some contracts in the past tendering exercises, has still managed to win several major E&M contracts. Overall speaking, the result has been satisfactory. This implies that the tender price for the EMSTF is close to the market level and is competitive in the open market.