

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 24 March 2004

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.

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., 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, J.P.

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, G.B.S.

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

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

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBER ABSENT:

THE HONOURABLE LAU PING-CHEUNG

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE FINANCIAL SECRETARY

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

THE HONOURABLE 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

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE AMBROSE LEE SIU-KWONG, IDSM, J.P.
SECRETARY FOR SECURITY

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

CLERKS IN ATTENDANCE:

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments *L.N. No.*

Shipping and Port Control Regulations (Amendment of
Eighteenth Schedule) Notice 2004..... 42/2004

Animals and Plants (Protection of Endangered Species)
(Exemption) (Amendment) Order 2004 (L.N. 5
of 2004) (Commencement) Notice 2004 43/2004

Animals and Plants (Protection of Endangered Species)
Ordinance (Amendment of Schedules) Notice 2004
(L.N. 6 of 2004) (Commencement) Notice 2004 44/2004

Other Papers

No. 73 — AIDS Trust Fund 2002-2003 Annual Accounts
together with the Director of Audit's Report

No. 74 — Audited Statement of Accounts of the Hong Kong Rotary
Club Students' Loan Fund together with the Director of
Audit's Report for the year ended 31 August 2003

No. 75 — Audited Statement of Accounts of the Sing Tao Foundation
Students' Loan Fund together with the Director of Audit's
Report for the year ended 31 August 2003

Report of the Bills Committee on Copyright (Amendment) Bill 2001 and
Copyright (Amendment) Bill 2003 in respect of the second bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Certificates of Origin Under CEPA

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

- (a) *of the number of applications for Certificates of Origin under the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) made to the authorities since its implementation, broken down by type of trades;*
- (b) *whether there were rejected cases among such applications; if so, of the number of such cases and the main reasons for rejection; and*
- (c) *whether the applicants for Certificates of Origin under CEPA have sought assistance from the authorities in connection with the submission or rejection of their applications; if they have, of the number of such cases and the major issues on which they require assistance?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, my reply is as follows:

- (a) Since the implementation of CEPA and as at 22 March 2004, the Trade and Industry Department (TID) and the Government Approved Certification Organizations have received a total of 488 CEPA Certificate of Hong Kong Origin (CO(CEPA)) applications involving products of a number of sectors. In terms of product types, 13 broad categories are involved. Detailed breakdown is set out in Annex.
- (b) So far there have only been three unsuccessful CO(CEPA) applications, which were due to (1) incorrect information provided by the applicant, and (2) failure of the product in fulfilling the relevant CEPA origin rule.
- (c) So far we have not been approached by CO(CEPA) applicants for assistance in connection with the rejection of applications.

Number of Applications for CO(CEPA)

<i>Product Type</i>	<i>Number of Applications</i>
Food	3
Chemical Products	21
Pharmaceutical Products	146
Cosmetics	1
Colouring Matters	43
Plastics and Plastic Articles	27
Paper and Printed Articles	11
Textiles and Clothing	172
Jewelry and Precious Metals	2
Electrical and Electronic Products	49
Toys	1
Metal Products	9
Clocks and Watches	3
Total:	488

MR KENNETH TING (in Cantonese): *Apart from the existing 374 items exempted from tariff, what is the estimated number of new items that can be added this year? What are the schedule and arrangements for consultations between the SAR Government and the department responsible for trade and commerce on the Mainland?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the TID issued a notice in November last year to notify Hong Kong manufacturers of the mechanism for and formalities of applying for zero tariff in the next phase of CEPA. On the formalities, manufacturers can submit their application forms to the TID from 1 January 2004 onwards. The closing date for submitting applications was originally 31 March, however, the TID has recently announced a postponement of the closing date for submission of applications to the end of April.

As at 22 March, the TID has received a total of 94 applications covering quite a wide range of goods, including food and beverages (including the mooncake manufacturing industry we visited yesterday), electrical and electronic products, textile and clothing, metal products, plastics articles, optical products, and so on. The TID has begun to verify the information in the applications. We hope that the processing and verification of the applications can be completed before 1 June and to submit the applications to the Ministry of Commerce in Beijing before that date, so that consultations on the criteria of the origin rules for the goods concerned can commence. We hope that by the end of this year, that is, some time before 1 October, the results of the consultations can be announced (Appendix 1) and the new series of products enjoying zero tariff can be introduced on 1 January next year.

MR HUI CHEUNG-CHING (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that there were 488 applications involving 13 product categories. May I ask the Secretary of the amount involved in these 488 applications covering 13 categories?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): The 488 applications for Certificates of Origin are just applications. Of these, 438 have been approved by us and the goods that have benefited from the arrangement are valued at about \$200 million. However, we have to understand that the effective period for these Certificates of Origin is 120 days and manufacturers will decide whether or not to ship the goods according to commercial considerations and then undergo customs clearance on the Mainland, or decide against doing so for some other reasons. Given the time limit, I can tell Members that as at the end of February, a total of 156 CO(CEPA) passed customs clearance on the Mainland, involving goods valued at about \$80 million in total.

MR JAMES TIEN (in Cantonese): *Madam President, we notice that the 400-odd applications listed in the Annex are made up mostly of applications from major industries in Hong Kong, such as the clothing, toys, clocks and watches and pharmaceutical products. We can also see that there are 170 applications for textile and clothing products as well as pharmaceuticals. However, why is it*

that applications from two other major industries, that is, the toys industry and clocks and watches industry, accounted for only one and three applications respectively? I think it is possible to attract a lot of manufacturers in these two industries back to Hong Kong, so as to create more employment opportunities. May I ask the Secretary what special reasons have contributed to the significantly smaller number of applications from the toys industry and clocks and watches industry as compared with those from the textiles and clothing industry?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the arrangements for application for Certificates of Origin have been implemented for less than three months, therefore, so far, we have yet to observe any particular trend. I cannot tell Members with certainty the reasons. I think this may be related to the time when orders are placed. At the moment, I cannot tell why there were only one application and three others for the respective industries.

MR HENRY WU (in Cantonese): *Madam President, it was pointed out in the main reply that a total of 488 applications had been received and certificates had already been issued for some of them. May I ask the Secretary of the longest period of time required for issuing a certificate? On average, how much time was required? This may have a bearing on the interest of manufacturers in submitting applications. In addition, I also wish to follow up another matter. Does the time required for issuing certificates at present meet your original anticipated target?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, as far as I understand it, the pledge of the TID is to issue a certificate in not more than two weeks after receiving an application. As regards the second part of the supplementary, that is, the number of applications anticipated by us, the answer is that we did not make any estimation. That depends on the need of the commercial sector. Therefore, we did not make any estimation in this regard.

PRESIDENT (in Cantonese): Mr Henry WU, has your supplementary not been answered?

MR HENRY WU (in Cantonese): *My supplementary was: Concerning the several hundred applications being processed now, can a figure showing the average number of days required for processing be provided to me? Has it failed to meet the target of two weeks as mentioned by him?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): So far, the time required did not exceed our target.

MISS CHOY SO-YUK (in Cantonese): *Madam President, may I ask the Secretary how long it takes for an application to be approved from the time it is submitted? During the interim, how does the Government ascertain if an application meets the CEPA requirement of being manufactured in Hong Kong?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): As I said in reply to Mr Henry WU, the time required is about two weeks, that is, not more than two weeks from the submission of an application to its approval. As regards the actual vetting and approval criteria, they are also very simple. Firstly, it is necessary for the business to have a factory registration, that is, production is carried out in Hong Kong; secondly, all goods produced must comply with the origin rules of CEPA; and thirdly, all information required in the application form must be correctly filled in. If these three requirements are met, then a Certificate of Origin will be issued.

MR NG LEUNG-SING (in Cantonese): *Madam President, after looking at the Annex, Mr James TIEN believed that there were only very few applications from some major industries. In terms of proportion, the number of applications from the pharmaceutical industry and the textiles and clothing industry is quite large. May I ask the Secretary if the Government can arrange for some meetings or seminars, so that by having the organizations and chambers of commerce concerned present their success experience, other industries will be encouraged to submit applications?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): This is a good suggestion. We will consider it.

MR CHAN KAM-LAM (in Cantonese): *Madam President, we can see that the applications for Certificates of Origin have so far come from only 13 industry categories. After some time, will the Government carry out a survey to understand which categories in the more than 300 industry categories involved are encountering difficulties? Will the Government adopt promotional or facilitating measures so that CEPA can really serve its purposes?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the 374 tariff headings of the Mainland for the year 2004, as published in CEPA, are not product categories. Although I mentioned in the main reply that there were 13 product categories, in fact 43 different tariff headings were involved. However, the Honourable Member has made a good suggestion and we will also carry out an analysis on this.

MR JAMES TIEN (in Cantonese): *Madam President, I am glad to be given another opportunity to ask one more supplementary. Madam President, I wish to follow up the supplementary asked by Mr CHAN Kam-lam just now. At present, applications for Certificates of Origin fall under 13 product categories or 43 tariff headings, however, there are 400.....sorry, it should be 374 tariff headings. That means no applications have been submitted for most of them. Is it the Secretary's view that this is only transient and applications will perhaps be submitted in a few months time, or is it necessary for the Government to do something more to encourage the people concerned to do so or to explain to them what they do not understand?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I believe the industries concerned will make greater efforts in this area. We can see from the applications that the number has been picking up slowly: in January, we received only 110 applications, after a month, that is, in February, the applications increased to 196, and in the first three weeks of March, we have already received about 180 applications, so it can be seen that the number has been picking up slowly. The New Year has passed

and I believe the number will be different from now on and there will also be increases in the number of products or in other areas.

MR LEUNG FU-WAH (in Cantonese): *Madam President, can the Secretary estimate how much savings in terms of tariff these 400 applications will bring to Hong Kong businesses?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I have explained earlier on that the 400 applications are just applications. After obtaining the certificates, they still have 120 days to decide if they will ship the goods. Therefore, we cannot provide a figure merely by looking at the 438 certificates. However, as far as the first two months are concerned, 156 certificates passed customs clearance on the Mainland. I can provide some figures as far as these certificates are concerned. The total value involved in these 156 certificates was \$80 million and the amount of saving in tariff was about \$5 million.

MISS CHOY SO-YUK (in Cantonese): *Madam President, can the Secretary tell us how many additional production processes have been established in Hong Kong as a result of these applications? How many additional employment opportunities have been created?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): We are not in a position to calculate these figures.

PRESIDENT (in Cantonese): Second question.

Collection of CSSA Payments on Behalf of Elderly

2. **MR WONG SING-CHI** (in Cantonese): *Madam President, regarding the collection of Comprehensive Social Security Assistance (CSSA) payments by guardians or appointees on behalf of the elderly living in residential care homes, will the Government inform this Council of:*

- (a) *the number of cases in which CSSA payments are currently collected by guardians or appointees on behalf of the elderly residents concerned, broken down by their relations to the elderly concerned;*
- (b) *the number of cases reported to the authorities in each of the past three years in which the guardians or appointees were suspected of embezzling CSSA payments to the elderly residents concerned, together with a breakdown of these cases by their relations to the elderly concerned; the average amount of CSSA payments involved in each case, as well as the follow-up actions taken in respect of such cases and the results thereof; and*
- (c) *the monitoring measures to prevent the embezzlement of CSSA payments to elderly residents, and whether it will consider appointing social service agencies as their guardians or appointees?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, under the CSSA Scheme, where an applicant aged 18 or above is medically certified to be unfit to make a statement on his own, an appointee will be appointed by the Director of Social Welfare to act on his behalf. Normally, a close relative of the applicant who is considered to be a suitable and trustworthy person can act as an appointee. If there is no suitable person to act on behalf of the applicant, a social worker of the Social Welfare Department (SWD) will be appointed to act on behalf of the applicant.

On the questions asked by Mr WONG Sing-chi, the answers are as follows:

- (a) According to the SWD's statistics, there are currently about 11 000 CSSA cases where payments are collected by appointees on behalf of elderly recipients living in residential care homes. According to available information, about 83% of the appointees are immediate family members or close relatives of the recipients, and about 7% are social workers. A few appointees are friends of the recipients. One of the main responsibilities of the appointee in these cases is to receive CSSA payment and to pay the home fees on behalf of the recipients.

- (b) We are aware of 12 cases over the past three years (five in 2001, one in 2002 and six in 2003) in which the appointee was alleged to have misused the CSSA payment and failed to pay the home fees for the recipients. An average amount of \$22,000 was involved in these cases. Eleven appointees concerned were relatives and one was a friend of the recipient concerned. The SWD has followed up these cases and arranged for the appointees to pay up the home fees and for any outstanding overpayments to be recovered. In view of the doubts over the suitability of these persons to continue acting as the appointee, the SWD has reappointed social workers to act as appointee in nine cases, another trustworthy relative to act in one case, while follow-up is still underway in the other two cases.
- (c) An appointee is required to maintain a separate bank account and to ensure that the account is used solely for the purpose of receiving and administering CSSA for the applicant. The appointee is also required to keep accurate accounts of receipt and expenditure and other records of the administration of the CSSA payments for the applicant. The SWD will carry out targeted random checks on these cases to ensure that CSSA payment is properly spent for the benefit of the recipient.

If an elder is staying in a residential care home which is run by a statutory organization and there is no suitable person to act on his behalf, the residential institution can, subject to its agreement, be appointed as the appointee.

MR WONG SING-CHI (in Cantonese): *Madam President, in part(c) of his main reply, the Secretary indicates that if there is no suitable person, the residential institution can, subject to its agreement, be appointed as the appointee. May I ask the Secretary whether the Government will consider arranging for a third party or a representative from another social welfare agency instead of the residential institution to act as the appointee?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to current practices, only residential care homes run by statutory organizations (such as the Tung Wah Group of Hospitals, Po

Leung Kuk, Yan Chai Hospital, Pok Oi Hospital, and so on), but not any residential care home, can be appointed as appointees. I will also request colleagues in the SWD to review the entire policy, study how to implement it and find out the best way to do it. In general, since there is bound to be a conflict of interest given that the elder is living there, residential care homes should also have a mechanism. However, the SWD's social workers will also frequently carry out random checks on the accounts of residential care homes. We have to study again whether it is the best arrangement or not.

MR WONG SING-CHI (in Cantonese): *The Secretary has not yet answered my question. My question is whether representatives from some social welfare agencies other than these statutory residential care homes can be appointed as appointees. It is not necessarily to be those statutory organizations, is it?*

PRESIDENT (in Cantonese): Secretary, I think you have already answered his question, but perhaps you should repeat your answer.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, in fact, I pointed out in my reply just now that we would review the existing arrangement.

DR LAW CHI-KWONG (in Cantonese): *Madam President, it is said in the main reply that 83% of the appointees are immediate family members or close relatives. I believe the Secretary also realizes that the average CSSA payment to an elderly person is over \$3,000, of which \$1,800 is paid for the home fees and the remaining amount will usually be embezzled by family members. In fact, has the Government considered reviewing this policy to prevent some people from embezzling CSSA payments to family members living in residential care homes to gain benefits?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, in fact, we also agree that it is necessary to review the arrangement for the disbursement of CSSA payments to those elderly persons living in residential care homes. We will follow up the review in this regard.

MR FRED LI (in Cantonese): *Madam President, at present, there is no law against "elderly abuse". However, the existing problem reveals that some people have embezzled their property, including the misuse of CSSA payments to them. So it is actually one of the situations where the elderly are abused. In this regard, does the Government have any means to prevent these close relatives or friends from continued embezzling CSSA payments to the elderly for their own use?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, regarding the prevention of embezzlement which is illegal, the SWD conducts a regular survey each year to investigate how some appointees and recipients handle CSSA payments. In this regard, I have already enquired with the SWD colleagues. They have indicated that there is no major problem concerning the usage of the monies as indicated by the general survey. As regards these cases involving the embezzlement of CSSA payments, I believe that regular random checks must be conducted to find out how CSSA payments are disposed of. CSSA payments should be spent on the elderly. However, sometimes it will be difficult to do so. As Dr LAW has said, since the elderly live in residential care homes, they do not need much cash and therefore some cash will be left. However, the appointees must present the bank statements to the SWD. In fact, this practice can also pre-empt the embezzlement of CSSA payments. I will ask the SWD to discuss, review and study whether it is the best preventive measure.

MR LEUNG FU-WAH (in Cantonese): *Madam President, may I ask the Secretary whether there are any requirements on the appointees? For example, can a person act as the appointee of several elderly recipients concurrently? Moreover, has he ever heard of some residential care homes giving rebates to those appointees of elderly recipients?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to the information on hand, there is no indication of a person being the appointee of several elderly recipients concurrently, but I will confirm with the SWD. (Appendix I) As far as I know, there is no such case. As to whether some residential care homes give rebates to appointees in some

cases, we do not have such information on hand. At least, no such cases are reported. However, if anyone who knows any such case and reports to us, we will carry out investigation.

MR WONG SING-CHI (in Cantonese): *Madam President, in part (b) of the main reply, it is said that if an appointee is found to have misused the CSSA payment to the elderly recipient, the Government will reappoint a suitable person to act as the appointee to collect CSSA payment instead. Besides that, will the Government consider prosecuting or punishing those appointees who misused or embezzled CSSA payments to the elderly?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, in fact, those cases normally involve close relatives. Among those 12 cases handled by the SWD colleagues, one of them has already been referred to the police to decide whether it is necessary to initiate any prosecution or investigation in the future; and another one is being investigated to see if there are any procedures that should be handled by the police. Some of the cases will be referred to the police for investigation and determination whether it is necessary to initiate any prosecution.*

PRESIDENT (in Cantonese): Third question.

Manpower of Ambulancemen

3. **MR LEUNG FU-WAH** (in Cantonese): *Madam President, it has been reported that the Hong Kong Fire Services Department Ambulancemen's Union has reflected the shortage of ambulancemen to the Administration, and its adverse impact on the quality of accident and emergency (A&E) service. In this connection, will the Government inform this Council:*

- (a) *of the current number of serving ambulancemen, the average numbers of times and hours per shift for which they are deployed to provide A&E service, and how these figures compare with those 12 and 24 months ago;*

- (b) *of the planning details of the A&E service for the next three years, including the performance pledge and staffing establishment; and*
- (c) *whether, other than the recruitment of 28 ambulancemen earlier to fill some of the vacancies, it plans to recruit more ambulancemen to relieve the work pressure of the serving staff; if so, of the details of the plan; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) The Fire Services Department (FSD) currently has 2 322 ambulance staff. The table below shows the average number of times per shift for which the ambulancemen were deployed to provide emergency ambulance service in 2003, and the corresponding figures in 2001 and 2002. The FSD does not have data on the average number of hours per shift for which the ambulancemen were deployed to provide emergency ambulance service. According to past statistics, on average it takes about an hour to handle an emergency ambulance call.

<i>Year</i>	<i>Average number of times per shift for which ambulancemen were deployed to provide emergency ambulance service (12 hours per shift)</i>
2001	5.2
2002	5.2
2003	4.9

- (b) The performance pledge of the FSD is to arrive at the scene within 12 minutes of the emergency ambulance calls for at least 92.5% of such calls. To further enhance the emergency ambulance service, the FSD plans to deploy Emergency Medical Assistants on all ambulances for full provision of paramedic ambulance service in the first quarter of 2005.

In the coming three years, a number of ambulance depots will be commissioned or constructed. These include the Braemar Hill and Penny's Bay Depots which will be completed this year, the Mong

Kok and Kwai Chung Depots which have been allocated funding, and the depot in Kowloon Tong which is under planning. The FSD will also procure seven ambulances in 2004 and 2005. Moreover, the Third Generation Mobilizing System at the Fire Services Communication Centre will be commissioned in the second quarter of this year. This would enable the FSD to deploy its ambulance resources more effectively.

In the light of the above developments, we will closely monitor the demand for ambulance service and response time performance each year and consider whether adjustment to staff establishment is required.

- (c) Despite the need to reduce government expenditure and the civil service establishment, the FSD has been granted special approval to recruit 28 ambulancemen. This shows the importance that we attach to the ambulance service. The recruitment exercise is underway and is scheduled to be completed by July 2004.

To further improve the ambulance service and better utilize the existing resources, the FSD has introduced a series of measures, including the "staggered shift system" and "strategic move-up arrangement", as well as flexible deployment of ambulance resources in response to demand from the various districts. The Department will seek to improve workflow by studying the feasibility of introducing a criteria-based dispatch system for the emergency ambulance service. In addition, it will procure additional equipment and introduce new technology with a view to upgrading the quality of the service. With the commissioning of the Third Generation Mobilizing System in the second quarter of this year, ambulance resources can be more effectively deployed. We believe that the above measures will help to relieve the work pressure of front-line ambulancemen and improve their working conditions.

MR LEUNG FU-WAH (in Cantonese): *Madam President, according to part (b) of the Secretary's reply, it is planned that a number of ambulance depots in*

Braemar Hill, Penny's Bay, Mong Kok and Kwai Chung and Kowloon Tong will be commissioned in the future. However, in the entire main reply, why is there no mention of any planning for a proportional increase in staff establishment?

SECRETARY FOR SECURITY (in Cantonese): Madam President, the main purpose of constructing new ambulance depots is to provide more expeditious emergency ambulance service to residents in the respective districts. The FSD will consider this matter from the angle of the overall ambulance resources and take corresponding measures to tie in with the commissioning of the new ambulance depots through flexible deployment of manpower and resources.

MS LI FUNG-YING (in Cantonese): *Madam President, can the Secretary clarify whether the 28 new recruit ambulancemen are intended to meet the requirements arising from the new ambulance depots or are they really intended to relieve the present workload of front-line staff?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the 28 ambulancemen to be recruited in this financial year, that is, in 2004-2005, are intended mainly to enable the FSD to enhance its flexibility in the deployment of ambulance resources overall. I think that this measure is intended on the one hand to meet the increase in workload in the future, and it will on the other enable the Director of Fire Services to have greater flexibility in the deployment of resources to meet demands in the future.

MR LAU CHIN-SHEK (in Cantonese): *Madam President, it is stated in part (b) of the main reply that the performance pledge of the FSD is to arrive at the scene within 12 minutes of the emergency ambulance calls for at least 92.5% of such calls. May I know if this is the performance pledge or the actual performance now? If this is the actual performance now, then how much is the time required to arrive at the scene for the remaining 7.5% of calls? With the provision of an additional 28 persons, can this problem be solved?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we do not have any information on this. At present, what we can achieve is to arrive at the scene within 12 minutes of the emergency ambulance calls for at least 92.5% of such calls. As regards how long it takes in the remaining percentage of cases, I do not have the relevant information on hand.

MR LAU CHIN-SHEK (in Cantonese): *Could the Secretary provide the additional information in writing? However, I still wish to ascertain if it is the performance pledge to arrive at the scene within 12 minutes of the emergency ambulance calls for at least 92.5% of such calls or has this already been attained? If this is not the performance pledge, then what is it?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this is our performance pledge and what we have accomplished is that we have fulfilled the pledge. In 2003, the services provided by us actually achieved better than this performance pledge. In 2003, our performance was that we arrived at the scene within 12 minutes of the emergency ambulance calls for 93.2% of such calls.

PRESIDENT (in Cantonese): Secretary, could you provide a written reply to the Honourable Member?

SECRETARY FOR SECURITY (in Cantonese): I have to go back and check it up. If we have the information on this, a written reply will be provided. (Appendix II)

PRESIDENT (in Cantonese): Mr LAU Chin-shek, has your supplementary not been answered?

MR LAU CHIN-SHEK (in Cantonese): *Yes. The Secretary has not answered if the additional 28 persons will bring about any improvement to the remaining 7.5% of cases.*

SECRETARY FOR SECURITY (in Cantonese): We hope that with the additional 28 persons, the present performance pledge can at least be maintained. It would be most desirable if we could over achieve.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, may I ask the Secretary how many complaints there were in the past three years against the late arrival of ambulances, thus leading to delays in rescue or even deaths?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I wish to give the additional information in writing, for I do not have the information on hand. (Appendix III)

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, the Secretary mentioned in the main reply that ambulance depots would be constructed in Braemar Hill, Penny's Bay, Mong Kok, Kwai Chung and Kowloon Tong, but the number of ambulances would increase only by seven. May I know if these seven ambulances are adequate for so many ambulance depots?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I said just now, at present, we have to deploy the overall resources flexibly to cope with the work arising from these new ambulance depots. We all know that the finance of the Government is very tight. We hope to cope with the additional work in future with the limited resources. We certainly hope that we can maintain the present level of service provided to the public as far as possible, that is, to fulfil our performance pledge. We consider it sufficient to have seven additional ambulances for the several new ambulance depots in the next few years.

MR JAMES TO (in Cantonese): *Madam President, part (a) of the main reply by the Government indicates that for the last three years, if calculated on the basis of 12 hours per shift, there has been a decrease in the average number of times*

per shift for which ambulancemen were deployed to provide emergency ambulance service. That means each ambulanceman is deployed for a lesser number of times per shift. Judging from these figures, it seems the situation is improving. May I know, when the Government showed these figures to the Ambulance Officers Association, what comments it got concerning the fact that the average number of operations per shift was 4.9? Did the Association indicate what level of work should be reached before they consider it appropriate? What are the figures or quantifiable indicators that can really reflect the actual manpower shortage?

SECRETARY FOR SECURITY (in Cantonese): Madam President, I take regrets to say that I have not discussed with the Association about the manpower increase. Nevertheless, since I have received a letter from the Association, and as far as I understand it, their major complaint was that the anticipated increase of 72 posts for ambulancemen for the year 2003-04 had not materialized. This was mainly because the Director of Fire Services had made efforts to flexibly deploy manpower and streamline procedures in the year 2003-04, so the FSD managed to make use of the limited resources to fulfil the present performance pledge. I understand that the principal demand of the Association has to do with why the anticipated increase in the number of ambulancemen posts did not materialize. To my understanding, what they took issue with was not the number of operations per shift that they consider appropriate.

MR JAMES TO (in Cantonese): *Madam President, if the Ambulance Officers Association has suggested any quantifiable figures, could the Government provide the information to us in writing? As I have asked, has the Government ever received any such quantifiable figures from the Ambulance Officers Association indicating that they were overloaded with work and short of manpower? Apart from the planned increase of 72 ambulancemen posts as mentioned by the Secretary, are there any other data? If yes, can a written reply be given to us?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I will be glad to provide such information if there is any. (Appendix IV)

MR MICHAEL MAK (in Cantonese): *Madam President, I am aware that the FSD has earlier on launched a service called the First Responder Scheme (I cannot recall its Chinese translation). Under this Scheme, firemen will be the first ones to arrive at the scene and attend to the injured. Has the shortage of ambulancemen anything to do with this scheme?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, "first responder" is translated as "先遣急救員". The roles of first responders are assumed by front-line firemen who have completed an advanced ambulance course and passed the examination. They must complete four weeks of ambulance training which consists of one week of classroom training and three weeks of paramedical practical training on board an ambulance. The course mainly trains officers how to keep patients' airways free of obstruction, as well as maintaining respiration and blood circulation when tendering care to patients, so as to prevent any further deterioration in their conditions. First responders must also receive training on how to operate an automated external defibrillator. The main purpose of launching this First Responder Scheme is to send these firemen with first-aid training to provide appropriate first-aid to the injured or the sick before the arrival of ambulancemen at the scene, so as to increase the patients' chances of survival. They are not intended to replace the ambulancemen. The main purpose is to enhance service quality, not to reduce the quantity of service.

MR NG LEUNG-SING (in Cantonese): *Madam President, part (c) of the main reply refers to a "strategic move-up arrangement". May I ask the Secretary to introduce to us what kind of special strategy is this "strategic move-up arrangement"? Will it be extended to other operational teams?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, in fact, for one moment, I could hardly make any sense out of the translation for "strategic move-up". It refers mainly to the cross-district deployment of our ambulances and ambulancemen. Sometimes, when a disaster unfortunately strikes in a certain district, most or all of the ambulancemen or ambulances will already have been deployed. In order to cope with emergency situations in that particular district, we have to deploy ambulances and ambulancemen from other districts,

where the workload is not so heavy, to the district that has a greater need of them. That is what is meant by "strategic move-up".

PRESIDENT (in Cantonese): We have already spent 16 minutes on this question. Last supplementary question.

DR TANG SIU-TONG (in Cantonese): *Madam President, it is mentioned in part (b) of the main reply that the Braemar Hill and Penny's Bay Depots will be commissioned this year. May I know how many ambulancemen will be required on their commissioning?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I will give a written reply to the Honourable Member. (Appendix V)

PRESIDENT (in Cantonese): Fourth question.

Unoccupied HOS Flats

4. **MR ALBERT HO** (in Cantonese): *Madam President, the authorities concerned have ceased selling Home Ownership Scheme (HOS) flats since 2003, and indicated in October the same year that no unsold and returned HOS flats would be offered for sale as subsidized housing before the end of 2006. They also invited Expression of Interest from the public on the option of converting into hostels two unoccupied HOS blocks which have never been offered for sale. In this connection, will the Government inform this Council:*

- (a) *of the respective overall amounts of maintenance fees, management fees, and other expenses pertaining to the unsold and returned HOS flats since their completion to date, and from now to the end of 2006;*
- (b) *other than selling unsold and returned HOS flats to Green Form applicants in the future, whether the authorities concerned have*

other specific plans to dispose of these flats; if so, of the details of the plans; if not, the reasons for that; and

- (c) *of the concrete proposals raised in the Expression of Interest received by the authorities concerned on the conversion of two HOS blocks into hostels; whether they have shelved this disposal option for unoccupied HOS flats; if so, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):
Madam President, my reply to the three-part question is as follows:

- (a) In the light of the increasing overlapping between the private property market and the subsidized housing market, the Government and the Housing Authority (HA) decided to cease the sale of HOS flats in November 2002 to address the imbalance between demand and supply of residential flats in the market. The HA has to pay management fees and government rents for the surplus HOS flats. We also envisage that some costs may be incurred for touching up some of the flats before their resale to Green Form applicants. It should be noted that the costs for maintaining the surplus HOS flats differ according to their nature and the manner of their future disposal.

Up to March 2004, the management fees and government rents incurred by surplus HOS flats were in the region of \$120 million. Since no unsold or returned flats in existing HOS courts had been put up for sale during the period, no touching-up costs had been incurred.

From April 2004 to end 2006, it is envisaged that the management fees and government rents incurred by returned and unsold flats in existing HOS courts will be in the region of \$230 million. Moreover, before the new flats in existing HOS courts are put up for sale in future, a one-off cost of about \$5 million will be required for touching-up works. Returned flats require more substantial refurbishment due to previous occupation. However, given that

refurbishment is necessary for them irrespective of the timing of their resale, such cost is not a holding cost for surplus HOS flats. As for the flats in unsold HOS developments, we are considering various options to dispose of them. Practicable options will be implemented expeditiously. Therefore, we have not made any projections of their future holding costs. A detailed breakdown of the cost estimates is at Annex.

- (b) We consulted the Legislative Council Panel on Housing in March and November 2003 on proposed disposal arrangements for the surplus HOS flats. Apart from some 11 000 unsold and returned flats in existing HOS courts which would be sold to Green Form applicants in future, three main options have been put forward for disposing of some 12 000 flats in eight unsold HOS developments. Progress to date is outlined in the following paragraphs.

First, some 2 100 HOS flats of Hiu Lam Court in Sau Mau Ping were transferred to public rental housing last year. We will seek the HA's approval to transfer another 3 000 flats to public rental housing. About half of the surplus HOS flats will ultimately be used as public rental housing.

Second, we plan to use about 4 000-odd HOS flats for reprovisioning aged staff quarters of the disciplined services and the land released could be put to alternative uses. Our discussion on financial and administrative arrangements with the relevant government departments is underway and now at a final stage.

Third, we have suggested to convert about 700 HOS flats into guesthouse or similar uses. We invited expression of interest in October 2003 to ascertain the feasibility of the proposal. We are examining in greater detail proposals which appear to be practicable.

We will expedite follow-up actions along the directions mentioned above and will continue to explore other disposal options for the remaining flats.

- (c) As mentioned above, we invited expression of interest last year on the proposal to convert some HOS flats into guesthouses. The invitation was couched in open terms so as to allow a greater scope for interested parties to put forward innovative and commercially viable proposals. A total of eight proposals were received from organizations of different natures and scales. Proposals put forward included hostels, hotels and guesthouses, as well as bulk purchase of surplus HOS flats for use as "time-share" holiday homes. We have examined the feasibility of the proposals with a view to devising a unified implementation arrangement. In reply to an oral question raised by Mr Abraham SHEK in December 2003, I advised the Council that the HA had sought in-house and external legal advice on the feasibility of the proposal to transfer HOS flats into guesthouses. While the advice indicated that the proposal is generally feasible, it is necessary to examine the detailed arrangements carefully from a legal perspective to ensure that the proposal is legally sound in all aspects.

We note that some sectors of the community take the view that use of surplus HOS flats as "time-share" holiday homes for mainland visitors is conducive to tourism and economic development of Hong Kong. However, there has been concern about possible impact of the proposal on the hotel industry. We sounded out the industry recently and it seems that its previous concerns have somewhat lessened. We will therefore explore the disposal arrangement for the remaining 3 000-odd surplus HOS flats along this direction. Given that "time-sharing" is a relatively new concept in Hong Kong and in the absence of legislation to define or regulate "time-sharing" operations, we need to examine the proposal from both practical and legal perspectives with relevant Policy Bureaux and government departments. Issues to be considered include lease control, regulation of "time-sharing" operations as well as impact on the hotel industry. I wish to emphasize that if it is decided to implement this proposal, the flats will be sold by way of open tender to ensure that they are disposed of at reasonable market price. We will also consult the HA on the detailed proposal.

Estimated Costs for Withholding HOS Flats from Sale (as at 29 February 2004)

Type of Flats	No. of Flats	Disposal Option	Costs incurred (in \$ Million)			Expected costs (in \$ Million)		
			From date of completion/buy-back to March 2004			From April 2004 to December 2006		
			Management Fee	Government Rent	Touching-up Costs	Management Fee	Government Rent	Touching-up Costs
Returned flats	5 095	For sale to Green Form applicants after 2006	19.4 M ⁽¹⁾	7.6 M	N. A.	75.3 M ⁽¹⁾	30.7 M	N. A. ⁽³⁾
Unsold flats in sold/partially sold HOS courts	6 082		52.0 M ⁽¹⁾	20.7 M	N. A.	90.4 M ⁽¹⁾	32.4 M	5.0 M ⁽³⁾
Flats in unsold HOS developments ⁽⁴⁾	10 264	Different disposal options are being considered for implementation as and when ready	18.1 M ⁽²⁾	4.4 M	N. A.	N. A.	N. A.	N. A.
Total No. of Surplus Flats	21 441	Total Costs	89.5 M	32.7 M	-	165.7 M	63.1 M	5.0 M
			122.2 M			233.8 M		

- (1) The management fees for returned and unsold flats in sold/partially sold HOS courts are calculated on the basis of the management fees charged under the terms of the Deed of Mutual Covenants executed for the various courts. As the flats, whether in sold blocks or unsold blocks, form part of existing HOS courts, the Housing Authority as their owner is obliged to pay the full amount of management fees for them in accordance with the Deed of Mutual Covenants. The average management fees is \$450 per flat per month.
- (2) The average cost of managing the flats in unsold HOS developments is about \$150 per flat per month, mainly used for security services.
- (3) New flats in sold/partially sold HOS courts only require simple maintenance works such as surface and occasional minor repairs. The average estimated touching-up cost for each flat is around \$820. With 6 082 flats in this category, the total one-off touching-up cost is about \$5 million. On the other hand, the 5 000-odd returned flats would require more substantial refurbishment due to previous occupation, at about \$7,500 per flat. Given that this cost item is necessary irrespective of timing of sale, it is not a withholding cost. For flats in unsold HOS developments, no refurbishment is required pending decision on disposal arrangements.
- (4) The figure has excluded the 2 100 flats in Hiu Lam Court in Sau Mau Ping which have been converted to public rental housing.

MR ALBERT HO (in Cantonese): *Madam President, the losses incurred by the full-scale suspension of the sale of public housing units will not be as small as some \$200 million as mentioned by the Secretary in his main reply, for the 20 000-odd units may lead to a loss of rental close to \$1 billion each year and this sum has not been factored into the calculation. Madam President, the proposed disposal options for the unoccupied HOS flats as mentioned in the main reply have not been implemented. These included converting these flats into staff quarters for civil servants or guesthouses, and even turning most of them into public rental housing units. This gives people an impression that the Government only discusses the issue but does not make any decisions and even if decisions are made, they are not put into practice. Therefore, it leads to losses in public coffer and aggravates the deficits of the HA. May I ask the Secretary if he would, as an accountable principal official, think that he should bear some responsibility in this matter personally?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as regards matters of housing policy, I would certainly bear all the responsibilities personally. However, as I have explained on various occasions, the suspension of the sale of HOS flats in 2002 was part of the general policy, an integral part to it. We had to consider the conditions at that time as we had to reposition our housing policy so that people would know why there were confusions. Then we tried to address the problem. At that time, our prime consideration was to introduce a policy which would stabilize the property market in Hong Kong and to arrest the incessant fall in property prices at that time. Seen from this perspective now, it seems that the stabilizing effect of our policy and the impact from various external factors have served to revitalize the property market. For many owners of negative equity assets, their situation has improved. And for the many issues which we used to worry very much, they are no longer deteriorating and some have even shown signs of improvement.

I would therefore think that all these events would have to be examined as an integral whole and we should not isolate any part or an important link of policy and to view it from a narrow perspective and determine how much loss has been incurred in this particular part of the housing policy. If we are to

make such an assessment, should we not do this from the overall situation of Hong Kong, that is, how much of the market value lost has been recovered now? Of course, some people would hold a different view, but I think that if we are to measure the effectiveness of government policies, a fair approach must be taken and from a holistic perspective too. Having said that, I know that if our policy had managed to achieve the desired goals and results on a macro front, and if various details on a micro front were well taken care of, then Members would not have asked me these questions today. I think that would be most desirable. And when we go about with our work, we must ensure that all those undesirable and unfavourable elements are reduced to the minimum. From this perspective, it would not be true to say that cutting our losses in this regard would be entirely out of the question. For example, the market may take a turn for the better after we have sold the flats in future or if these flats are sold at a better price than before, that is, last year. All the things we are saying now are purely speculative. And before the final result appears, we cannot say with dead certainty that it will be a failure or a success.

PRESIDENT (in Cantonese): Honourable Members, as the two questions raised by Mr Albert HO and the two replies given by the Secretary have taken up 12 minutes, so I would use my discretion to extend the length of the time for this question, for there are eight Members waiting for their turn to ask supplementary questions.

MR FREDERICK FUNG (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply three proposed disposal arrangements for surplus HOS flats. May I ask the Secretary whether a comparison can be given in figures, that is, a comparison between the revenue from these flats if they are sold by the HA vis-à-vis if they are disposed of according to these three arrangements? That is to say, the annual rentals receivable if the HA leases these 2 100 flats originally scheduled for sale, or if these flats are converted into staff quarters for civil servants, the amount of income receivable from the Government per annum. Ultimately, would these two arrangements bring more income to the HA or less? If less income is expected, would the Government give any subsidies to the HA?*

PRESIDENT (in Cantonese): Secretary, this supplementary question is somewhat hypothetical as Mr FUNG would like you to make some prediction. Please answer this to the best of your ability.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Secretary, as I have said earlier, as we are not able to predict the trend of property prices with sufficient accuracy, that would affect the selling price when these flats are put up for sale. As I said in reply to Mr Albert HO's question, if things went well, a higher price could be fetched, that is, if the property market continues to fare well or if property prices continue to rise. Even if property prices can rise to a level at several tens of percentage points of the prices in the past, that would mean a great rise as compared to prices at present. But we will never know what will happen in the next few years. So it would be very difficult for me to give a concrete reply to Mr Frederick FUNG's question. But I can put it this way and most members of the public would agree with me and that is, we hope very much that this boom in the property market will not be short-lived and that it can be consistent with the pace of economic development in Hong Kong. Granting this, we may be able to sell these flats at better prices.

MR ABRAHAM SHEK (in Cantonese): *Madam President, the Secretary said in the last sentence of the last paragraph in his main reply that the HOS flats would be sold for "time-sharing" purposes, I oppose this on behalf of the sector.....*

PRESIDENT (in Cantonese): Mr SHEK, please raise your supplementary question instead of giving your opinion.

MR ABRAHAM SHEK (in Cantonese): *I was explaining why I opposed this proposal. If the Government really tries to do that, we hope that it will do as it said in the last sentence of the main reply, that an open tender would be adopted so that the property sector could be invited to take part and no conditions would be imposed on this for some specific purposes.....*

PRESIDENT (in Cantonese): Mr SHEK, you should be raising your supplementary question instead of saying what you are hoping for.

MR ABRAHAM SHEK (in Cantonese): *May I ask if the Government is under any political pressure from any mainland units that it must go ahead with this?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, we are not under any political pressure to do this. Maybe Members can note from my main reply that we are aware of the concern of the sector about this issue. However, when we discussed this with the sector recently, as I pointed out in the main reply, we found that the concern seemed to have abated. That is the message we got from the sector recently. In this regard, we can assure Mr SHEK that if we are to put this proposal into practice, and as I said in the main reply, we will adopt the open tender approach. We will not impose any restrictions on any party and bar Hong Kong companies from taking part.

PRESIDENT (in Cantonese): Mr Abraham SHEK, has your supplementary question not been answered?

MR ABRAHAM SHEK (in Cantonese): *Yes, Madam President. As he mentioned my sector, I would have to make a clarification, for I am a representative of my sector.....*

PRESIDENT (in Cantonese): Sorry, Mr SHEK, please sit down. Members can only raise questions during question time.

DR YEUNG SUM (in Cantonese): *Madam President, the Government in a hasty attempt to sell the Hunghom Peninsular did not mind agreeing on a price of just a few hundred million dollars at a time last year when property prices were surging. However, the Government has not yet come up with any concrete plans to dispose*

of unoccupied HOS flats. Would this not be unreasonable and would it not lead to a wastage of public resources?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, Members must be aware that we have held two special panel meetings for the Hunghom Peninsular case where we explained why that issue had to be resolved as a matter of urgency. It is because we are under time constraints and litigation is involved. As I already gave an account on the issue in detail at these two meetings, so I would not waste Members' time in going over this again. About the proposals we have raised here, Members may note that with respect to, for example, staff quarters for the disciplined forces, we have already held discussions within the Government and some problems have been identified, such as pricing and availability of funds. Take the Security Bureau as an example, as it has limited financial resources, so such financial arrangements would have to be made with great care. And as I said in the main reply, the relevant discussion has come to a new stage which is close to conclusion. We need to take time to handle this.

As for other disposal proposals such as by way of tender, these will have to undergo some procedure. We need to consider the response of the sector and when we have received their submissions, we will analyse them. If the sector thinks there are some problems with this, we will consult the sector. This process is still in progress.

As for converting these flats into public rental housing, actually work in this regard is being carried out gradually. Now 2 100 of these flats have been turned into public rental housing and 3 000 others are being prepared for conversion. So we must adjust our policy in the light of the overall situation.

MR HOWARD YOUNG (in Cantonese): *Madam President, the issue of converting HOS flats into guesthouses was already mentioned by Mr Abraham SHEK earlier. That is a very controversial issue and I do not wish to talk about what the sector thinks about it for the travel agencies and the hotels have different views. I would like to ask a question on the "time-sharing" concept. As the Secretary says, there is no legislation on this in Hong Kong, but I would like to ask the Secretary this question. Has the Government looked into the case*

in some countries where there are "time-sharing" operations to see if there are examples of success? As the mode of "time-sharing" usually involves a whole holiday resort or a block of building, would the Government consider the concept along this line? For if only half a block of building is used for such a mode, then it would simply be chaotic.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, I can confirm that we are beginning work in this respect, such as making reference to relevant laws in other countries, and so on. As to whether or not this mode of operation will be used on whole blocks of buildings, we are certainly considering that instead of adopting a mode of operation in which just half a block of building is used. The main reason is to minimize the problem implied by the Member just now.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. Last supplementary question.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, with respect to "time-sharing" holiday homes, as far as I have learnt from newspapers or related organizations, the scale of such projects would be quite large. But for the 18 000 unoccupied flats available at present, the number would drop to just a few thousand if some flats are converted for other purposes. The actual number remaining may be far less than what people have initially expected. As far as I know, the relevant units on the Mainland say that they accept the approach of open tender. But will this be a prompt move to take as they have expressed their interest for so long and we are responding so late? Another point is that these mainland units may want to have some 10 000 flats for that purpose, but now there are only a few thousand of these flats available. That may make them lose their interest in the project. Would you think that this has made Hong Kong miss an opportunity to attract an inward investment?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, as I tried to explain a while ago, when we are to begin work on this, especially when it is such a novel venture, we would need time for

careful consideration. At the beginning, these organizations said that they wanted tens of thousands of these flats. Then they said they could make do with some 10 000. We have told them the latest developments and also the many policy considerations that we should make, as well as the practical needs. Now only a few thousand flats are available for that purpose and we have asked these organizations if they are still interested in the project. The message we got from them is that they are still interested.

PRESIDENT (in Cantonese): Fifth question.

Elderly Property Owners of Tenement Buildings

5. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, a number of elderly property owners living in tenement buildings in old districts have reflected to me that there are no lifts in their buildings, which makes it difficult for them to go up and down. The rates and government rent of these properties also pose a heavy burden on them and drive them into straitened conditions. In this connection, will the Government inform this Council:*

- (a) *of the number of elderly property owners living with their elderly spouse or alone in old tenement buildings of over 30 years;*
- (b) *whether it has plans to provide assistance to those elderly owners in tenement buildings who have difficulties getting about, so as to solve their problems in daily life; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has plans to waive the rates and government rent for poor elderly owners in tenement buildings who do not receive Comprehensive Social Security Assistance (CSSA), so as to alleviate their financial burden; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, my reply to the three-part question is as follows:

- (a) We do not have statistics on the number of elderly owner-occupiers in tenement buildings of over 30 years of age. Nonetheless, according to a survey conducted by the Census and Statistics Department on "Foot health of older persons" between March and May 2002, there were about 10 000 elderly households, that is, households with all members aged 60 or above, in Hong Kong living in self-owned flats in private multi-storey buildings without lifts. Details are at Annex.
- (b) Non-government organizations subvented by the Social Welfare Department (SWD) have all along been providing various support services for individuals who are frail, including elders who have difficulties getting about and are living in tenement buildings without lifts. These services fall into two main categories, namely, community support services and residential care services.

Community support services include "Integrated Home Care Services" and "Enhanced Home and Community Care Services". Service providers provide elders with a wide range of support services, such as home care, rehabilitation and nursing care, in accordance with their individual needs and degrees of frailty so as to enable them to continue to live in a community environment familiar to them. In addition, the Support Teams for the Elderly are providing support through volunteers by making regular phone calls and visits to the elders in need. The volunteers also help the elders out in some simple personal assistance such as accompanying them to clinics, doing simple domestic chores for them, and so on. Those who are too frail to continue to live in the community may apply for residential care services, including care-and-attention home and nursing home services.

Furthermore, elders having difficulty to attend follow-up treatment at hospitals or clinics may apply to the hospital or clinic for pre-arranged free non-emergency ambulance transport service. The service covers carrying patients downstairs or upstairs.

- (c) It is the Government's established policy to assist families in financial distress through the CSSA Scheme. In line with this

principle, it is inappropriate for the Government to waive the rates and government rent of individual elderly property owners. Through CSSA, the SWD provides rent allowances to assist eligible elders in paying rates and government rent so as to alleviate their financial burden.

Annex

Number of elderly households living in self-owned flats
in private multi-storey buildings without lifts

<i>Type of elderly households</i>	<i>Number of households living in self-owned flats</i>
Singleton households (Single elders aged 60 or above)	4 300
Two-person households (All members are elders aged 60 or above)	5 200
Households with three or more persons (All members are elders aged 60 or above)	500
Total :	10 000

MR TAM YIU-CHUNG (in Cantonese): *These elderly property owners actually wish to move into buildings with lifts, unfortunately, it is very difficult to sell these tenement flats, whereas the Housing Department (HD) disallows elderly property owners' application for public rental housing (PRH). May I ask the Government how it can help these elderly property owners? Will it require the HD to relax the application requirements for PRH?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the HD has conducted thorough discussions and studies, in the context of eligibility for PRH, the question of whether a property owner should be allowed to make an application. Members should understand that the main purpose of the public housing programme is to help low-income households in need of housing, and by definition, an applicant has already failed our basic requirement if he is a private property owner. For that reason, if the applicant were a property owner, it would be quite difficult in principle to consider him eligible by treating him as an exception.

As we all know, in the past, the requirement had it that an applicant must not own any residential property within 24 months immediately before the lodge of application. Although the applicant may not be an owner of any property at the time he makes an application, yet, he is not allowed to own any property 24 months prior to that. Nevertheless, because of financial difficulties in recent years, a lot of property owners have to sell their properties, thus they may have difficulties in housing after selling their properties. For that reason, the Housing Authority (HA) relaxed the relevant restriction in 2001 and allowed property owners to register on the General Waiting List (GWL) provided that they could meet the income and asset limits. Under that circumstance, if elderly property owners could meet the criteria after selling their properties, they may apply for PRH by virtue of this relaxation of policy.

However, a recent consultation of elders shows that some of them are unwilling to sell their properties while some are unable to sell their properties due to a number of reasons. Certainly, there will be problems. Under such circumstance, we are trying to remedy this and work out a plan. In fact, this is very much an initial idea that requires further consideration. We are studying with the SWD a further relaxation in policy, with a view to helping these elderly property owners. Our idea is to make a transitional arrangement for elderly property owners, which allows them to move into the Housing Society's sheltered housing for the elderly for one year on recommendation by the SWD under the compassionate rehousing scheme, so that they may have one year's time to dispose of their own residential properties. Certainly, this arrangement will be made according to their circumstances and will. If they are still eligible to register on the GWL for PRH after they have disposed of their properties, their applications will be processed. If they are unable to dispose of their properties within the year of their temporary stay, or they are still trying to dispose of their properties, we will consider exercising our discretion to extend their stay until they have disposed of their properties.

Of course, this is only initial idea, we still have to deal with some of the details, and we may not achieve some of the objectives for the time being due to the difficulties. Nevertheless, we will keep on trying our best to consider how best this plan can be implemented so that we may be able to provide the assistance to elders which suits their needs in this respect.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned various social services in the main reply, including Integrated Home Care Services, Enhanced Home and Community Care Services and Support Teams for the Elderly. May I ask the Secretary how many elders have been provided with these three categories of services every year?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Health, Welfare and Food.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, among different services, the Integrated Home Care Services currently provide 15 800 working places to care for 26 800 elders, and 1 120 additional places for frail elders, thus there are 11 630 places in total (Appendix 2); the Enhanced Home and Community Care Services and Support Teams for the Elderly provide 2 189 places for frail elders. Moreover, some of the support services which serve 57 800 elders are provided by volunteers.

DR LAW CHI-KWONG (in Cantonese); *Madam President, having listened to the reply given by Secretary Michael SUEN to the question of Mr TAM Yiu-chung, may I ask whether the Secretary will consider a proposal, that is, entrusting the properties of the elders to intermediary organizations such as the Housing Society or non-government organizations (NGOs) for sale? As we all know, the sale process may take a long time, hence after elders have signed the power of attorney, it is tantamount to them being eligible for compassionate rehousing and would not be affected by the time limit of the sale of their properties. May I ask whether the Secretary will take this proposal into consideration?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, certainly we can take that proposal into consideration, but our preliminary view is that it will involve various legal issues, any inappropriate action may result in litigation in future, for example, the channels to sell the properties and issues relating to the transfer of title. Even though they have signed the power of attorney, should we sell their properties when the property market is good or poor? If we are authorized to make the decision on their

behalf, then when the market fluctuates, I believe every one of us can imagine that it would cause various problems. For that reason, it appears this suggestion can be taken into consideration, but besides taking it into consideration, we should find a proper solution to avoid causing disputes in future. We will continue our discussion on this suggestion, but I will not pin too much hope on it.

MR FREDERICK FUNG (in Cantonese): *I welcome the suggestion made by the Secretary in the supplementary information, perhaps it is unnecessary for me to raise this supplementary if that suggestion has been included in the main reply.*

With regard to the Secretary's supplementary information, I wish to raise a follow-up question, that is, these elders are actually waiting for a similar compassionate scheme which would allow them to move to a different place with a better living environment. May I ask how long the study of the relevant scheme will take before it is implemented?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said just now, we have to discuss the idea with relevant departments. Since I have no involvement, I have not enquired about the problems and the time it will take. Nevertheless, I can say that we will take care of that as soon as we can. However, even we will take care of that as soon as we can, I cannot say right here how long it will take.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Housing Society's Senior Citizen Residences Scheme is in fact very popular. May I ask whether the Government will consider allowing these elders to exchange their old units for the Housing Society's units and the latter may decide when these properties should be sold or disposed of on its own once these units are acquired, so as to enable these elders to live in a better environment?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the Housing Society's Senior Citizen Residences Scheme operates on a self-financing and "user pays" basis. For that reason, we assume

to a large extent that after the units are sold, the amount would be sufficient to pay for the expenses under the self-financing mode of operation. As I said in a reply to a supplementary just now, we are unable to ensure whether or not this objective could be achieved. If we are unable to fetch the requested selling price, what should we do? This will cause great disturbances to us. For that reason, we have not taken this proposal into consideration for the time being.

We will first solve the basic problems relating to the issues mentioned by Dr LAW Chi-kwong in his supplementary just now. Granting that they are resolved, we would take this scheme into consideration. However, as I said just now, I am not optimistic that we could find an answer.

PRESIDENT (in Cantonese): Last supplementary.

MR MICHAEL MAK (in Cantonese): *Madam President, among these 10 000 elders, is there a precise number of elders who have difficulties getting about? With regard to the three types of support services provided by the Government, may I ask the Secretary of his assessment of the physical, mental, social and spiritual needs of these elders?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Housing, Planning and Lands.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): As I said just now, these are the findings of the survey on the "foot health of older persons". Personally, I have not read the survey in detail, but I guess the major reason for conducting this survey is to take the foot health of elders into consideration, the premise being the assumption that they have foot health problems since they are living in tenement buildings, therefore we should show concern for that. For that reason, I presume that these 10 000 elders have actual difficulties of some measure or really need our assistance in this respect.

MR MICHAEL MAK (in Cantonese): *Madam President, the Secretary has not answered my supplementary. I asked how he would assess these three types of*

support services in meeting the physical, mental, social and spiritual needs of the elders?

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, with regard to the information in respect of this survey, although we do not have a clear picture of the daily life of elders, the SWD has specific programmes to assess the service need of the elderly population through referrals by NGOs or individuals. For instance, for elderly persons who can take care of themselves and who live alone, volunteers may visit them and thus provide them with visiting service; as to community support services such as "Integrated Home Care Services" and "Enhanced Home and Community Care Services", physical health assessment of elders will be made before social workers or health care workers visit them and provide them with services specific to their needs. When cases of elders are referred to the SWD, the Department will deliver the service according to their needs.

PRESIDENT (in Cantonese): Last oral question.

Role of University Grants Committee

6. **MR ABRAHAM SHEK:** *Madam President, in its document published in January this year, the University Grants Committee (UGC) pointed out that it should strengthen its role in strategic planning and policy development, so as to advise and steer the higher education sector, and that it would introduce performance and role-related funding mechanism into the UGC funding methodology for the 2005-08 triennium. In this connection, will the Government inform this Council:*

- (a) *how it ensures that the academic autonomy of tertiary institutions under the UGC's purview will not be undermined by implementing the above funding mechanism;*

- (b) *whether it knows if the UGC has consulted these institutions in the course of drafting the document; if it has, of the views of individual institutions; if not, the reasons for that; and*
- (c) *whether it has assessed if the scope of the UGC's responsibility of advising the Government on the development and funding needs of higher education institutions includes steering the higher education sector; if such steering work is assessed to fall outside the UGC's scope, whether the authorities will review such responsibility?*

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, I shall answer parts (a) and (b) together.

First and foremost, I have to emphasize that the Administration and the UGC attach great importance to the academic autonomy of institutions. We have no intention — and I repeat — no intention whatsoever to change this principle and will not attempt to do so.

Guided by this principle, the UGC published the document entitled "Hong Kong Higher Education — To make a Difference, To Move with the Times" at the end of January this year. It seeks to follow up and implement the blueprint for the further development of higher education in Hong Kong announced by this Administration in 2002. The blueprint was based on the recommendations of the Higher Education Review conducted by the UGC in the same year, which included the recommendation to strengthen role differentiation among the UGC-funded institutions to promote diversity and excellence.

To take forward this initiative, the document published by the UGC in January 2004 sets out clearly that each institution should fulfil a unique role based on its strengths, and collaborate deeply with other institutions to develop a diversified but interlocking system. In this way, the local higher education sector may assist in making Hong Kong Asia's World City, driving forward economic and social development, and developing Hong Kong into the education hub of the region.

As a first step, the UGC has worked together with the UGC-funded institutions to review their individual role statements. There had been in-depth discussions and exchanges in the process, having due regard to the institutions' views. The new statements are based on the strengths of each institution, and reflect more clearly the distinctive roles of each institution in the system. Every institution has clearly indicated that it welcomes the above document and its own role statement.

On the other hand, the Higher Education Review also recommends sharpening the funding mechanism by which the UGC allocates funding to the UGC-funded institutions, supports role differentiation and rewards good performance. More specifically, the improved mechanism will put greater emphasis on performance and role-related funding. The scheme was first carried out in 2000, and the UGC is now working on the second round of the scheme. Under this scheme, institutions will assess their own performance against certain indicators, some of which will be suggested by the institutions themselves. The assessments will be made according to the criteria and related benchmarks and measures suggested by the institutions. The Assessment Panel under the UGC will consider and seek to verify the assessment results submitted by the institutions. The evaluation process will be conducted in a consultative manner. The UGC will consult the institutions, invite their full participation, and seriously consider their views and submissions.

- (c) The UGC has been working in accordance with its terms of reference (which are set out at Annex). Apart from advising the Government on the application of funds for the sector, the UGC also has to advise the Government on other aspects of higher education, and keep under review institutions' development plans in the light of the needs of community. This is exactly what the UGC is doing.

It is in the wider interest of the community as a whole that the UGC should play a more proactive role in steering and facilitating the development of the entire higher education sector. At a time when

our higher education sector is facing keen competition internationally, effective co-ordination among institutions is all the more important. The UGC playing a more comprehensive role at the system level is beneficial to the role setting of individual institutions, enabling them to strengthen their own positions and that of the entire system. This should not be viewed as an attempt by the UGC or the Government to interfere with the academic autonomy which institutions ought to have.

Annex

UNIVERSITY GRANTS COMMITTEE

Terms of Reference

The UGC is appointed by the Chief Executive of the Hong Kong Special Administrative Region with the following terms of reference:

- (a) To keep under review in the light of the community's needs:
 - (i) the facilities in Hong Kong for education in universities and such other institutions as may from time to time be designated by the Chief Executive;
 - (ii) such plans for development of such institutions as may be required from time to time;
 - (iii) the financial needs of education in such institutions; and
- (b) To advise the Government:
 - (i) on the application of such funds as may be approved by the legislature for education in such institutions; and
 - (ii) on such aspects of higher education which the Chief Executive may from time to time refer to the Committee.

MR ABRAHAM SHEK: *Madam President, I thank the Secretary for giving me such a commitment to uphold the principle of academic freedom in our universities. On behalf of the students up there, I express my thanks to you. But I look forward to seeing the Secretary fulfil his words with action. In the third paragraph of parts (a) and (b) of his main reply, he said and I quote, ".....the UGC in January 2004 sets out clearly that each institution should fulfil a unique role" — a unique role — "based on its strengths, and collaborate deeply with other institutions to develop a diversified but interlocking system." The meaning of this phrase is to indirectly challenge the setting up of a system which deprives the institutions of the freedom to decide within their means on what to teach, how to teach, and whether or not to teach. If this is not a challenge to academic freedom, could the Secretary explain clearly?*

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, I am delighted to have the opportunity to explain to Mr SHEK. What that statement clearly means is that there are a lot of strengths in our institutions, but there are also duplication of courses and of our expenditure and resources. In this way, we feel that if the institutions could work closely together, this would be beneficial in the sense that they could have a much greater critical mass in the areas of their expertise. This is neither imposed by the Government nor the UGC onto the institutions. Rather, it is a consultative process whereby the institutions come to the UGC and discuss with the UGC where each institution feels its areas of strengths lie. In that way, the institutions could emphasize their areas of particular strengths, and they could check with the other institutions, or the UGC could co-ordinate with the other institutions, to see if there could be collaboration among the institutions. This is the so-called interlocking system of complementing each other's strengths. So, I do not see that the UGC will tell the institutions what courses or programmes they should carry out or what they should not. It merely points out together with the institutions, and works out with them this blueprint which actually has the full support of the institutions and is welcomed by them.

MR LEE CHEUK-YAN (in Cantonese): *I think the crux of the problem is to ensure academic autonomy on the part of the institutions. The first sentence of the main reply does give definite recognition to this. However, it follows very clearly that the direction to be taken by the institutions is fully guided. What we*

have been discussing all along is whether there should be specialization among the institutions, that means some institutions will concentrate on research work while others will concentrate on teaching. Those responsible for research only may be inadequate in teaching, while those responsible for teaching may lack the foundation for research work, which may in turn affect the effectiveness of teaching. The entire discussion is somehow leading, resulting in the loss of autonomy of institutions. May I ask the Secretary whether he agrees that he controls the funding allocation? In fact, institutions have lost their autonomy completely owing to the Government's control over funding; some institutions have already been forced to concentrate on research, while some others have been forced to concentrate on teaching. How can there be academic autonomy any more?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):

Madam President, under no circumstances will the Government force institutions to do anything. The Government has made it very clear that it has not differentiated institutions into research-oriented or teaching-oriented; it is the topics of research different institutions prefer to conduct that matters. Some institutions, considering their excellence lies in research of certain subjects, may decide to conduct research in those areas, and they may prefer teaching to research work in other subjects. This shows that an institution may assume different roles at the same time. These roles are defined by the institutions themselves but not the UGC or the Government on their behalf. Once they have defined their roles, we will support them. However, if it so happens that some institutions propose the building and launching of a rocket to the moon, does it mean that all the people of Hong Kong or taxpayers have to sponsor the expenditure to be incurred? This is a question. We think the UGC has the responsibility to discuss with the institutions concerned whether there is a genuine need to make the rocket and launch it to the moon. Can they think about not doing this and leave it to others? I consider it the duty of the UGC.

MS AUDREY EU (in Cantonese): *Madam President, of course, we are not talking about something like flying to the moon or making missiles, we are concerned about one practical issue, the academic autonomy of institutions. In parts (a) and (b) of the main reply, the Secretary said that a panel had been set up under the UGC responsible for considering the assessment reports submitted*

by these institutions. The Secretary stated that the panel would consider the assessment results and "seek to verify" them. Does it mean to state clearly to us that though institutions may propose their way forward in future, whether they are allowed to follow that way depends on the decision of the UGC. In other words, it is for the UGC to decide whether certain institutions have achieved their goal and whether they should be punished. It is because your proposal stated that if the UGC found the performance of any institution dissatisfactory or deviated from the specified direction, they would be punished by a 10% funding deduction. In fact, will the 10% or more funding deduction be used as a means to guide the future direction of institutions, and to assess whether they are on the wrong track or following the right direction? The Secretary, in the early part of his main reply says, "..... to support role differentiation and to reward good performance of institution", and the term "reward" instead of "punish" is used. May I ask the Secretary whether consideration will be given to granting reward to institutions rather than punishing them or deducting 10% of their funding? That is to say, instead of deducting from their original funding, institutions would be awarded additional resources if their performance is good.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):

Madam President, the scheme was in fact launched in 2000. When the scheme was first launched in 2000, the institutions only needed to take out 2%, \$70 million, of their funding. At that time, together with the institutions, we had set a target; when the target was achieved in all aspects, the institutions could get back that 2% funding. It is definitely good if the institutions can perform well. When the UGC assessed the performance of the institutions in the year 2001-02, the UGC found that many institutions, five institutions in fact, had done better than just meeting the target, with particularly outstanding performance. At that time, the UGC thus decided to grant, in addition to the \$70 million, \$25 million to those institutions as an incentive and reward for their good performance. That means the scheme has already been launched. What is the difference between this scheme and the present one? The only difference is the percentage the institution has to take out is 10% instead of 2%. Other than this, every aspect remains the same as the previous one.

MS AUDREY EU (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. First, I asked if the UGC is the one*

responsible for assessing whether the institutions have achieved the target. If this were the case, it would mean that the UGC has control over the institutions, but not that the institutions enjoy autonomy. Second, I asked the Secretary whether he would consider methods other than punishment. Not to mention the 10% deduction — I understand that the original deduction is only 2%, but now it is 10%. Will the Secretary consider rewarding the institutions? That means the institutions will be allocated the same amount of funding, but if their performance is better than the target, they will be rewarded. Will the Secretary consider abandoning the "deduction" or "punishment" method?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I think I have already answered the supplementary question. Regarding the granting of rewards, we at all times hope to give rewards to the institutions. No one has ever mentioned the imposition of punishment. In my main reply, I have not use the word "punishment"; we do not consider the institutions should be punished in this regard. As to the assessment of the performance of institutions, I think the process is a joint effort. First, the institution will tell us the aspects covered by their targets and the achievement they want to make. Then, after some time, we will find an opportunity to let them come together to discuss the assessment made by the Assessment Panel of the UGC regarding their performance. Assessment must be conducted. Even if we want to encourage them to improve their performance, there must be an assessment panel to keep track of their performance to decide whether incentives should be awarded.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, is the new mechanism applying to institution funding a rewarding system or a punishment system? Recently, Dr Alice LAM, Chairman of the UGC, in requesting the institutions to commit to the role funded by the UGC, said that the 10% funding deduction was used to remind the institutions to "stay alert" and "if you are not obedient when you are deducted two dollars, you would do so when you are deducted ten dollars". Does Dr Alice LAM's remark represent the position of the Government? Will the institutions be punished if they do not obey Dr Alice LAM of the UGC? By doing so, will the UGC be regarded as intervening institutions' autonomy by means of funding allocation? By doing so, will it be regarded as punishing institutions for their disobedience?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, under no circumstances do we consider that institutions should be regarded as obedient or disobedient, for the institutions have autonomy. We do not want to say that they should be obedient or not. Therefore, our position in this respect is very clear. As to the matter of reward or punishment, I think it is inappropriate to use these two terms. We do not aim to punish or reward institutions. To state it clearly, we have to take out part of the funding. You say that they have taken out "two dollars", and they will be punished if their performance is dissatisfactory. But this is definitely not the case. Last time, we took out 2% from their funding. Subsequently, as the institutions made outstanding achievements, not only did we return the 2% deduction; we also gave them \$25 million in addition. So, do you think this can be regarded as reward? Yes, you can say so. But, in another way, this may not necessarily be called a reward, for the institutions can only make good achievement when they are provided with the necessary resources. Therefore, I consider this a correct and fair approach.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. Dr Alice LAM said that the 10% funding deduction was meant to remind the institutions to "stay alert", and that "if you are not obedient when you are deducted two dollars, you would do so when you are deducted ten dollars". Is "passive obedience on funding deduction" a saying representing the position of the Government? Is deduction a kind of punishment in itself?*

PRESIDENT (in Cantonese): Secretary for Education and Manpower, do you have anything to add?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I have nothing to add.

(Some noises from the Mr SIN Chung-kai's seat)

PRESIDENT (in Cantonese): Mr SIN Chung-kai, please put that unknown object down (*laughter*). This is the Chamber, not an IT room.

This Council has spent more than 17 minutes on this question. Last supplementary question.

(Some noises from the public gallery)

Those on the public gallery, please keep quiet.

MS EMILY LAU (in Cantonese): *Madam President, several weeks ago, a meeting was held by the Panel on Education to discuss this issue. On that occasion, some professors from the institutions told us that the UGC was something that can rarely be found elsewhere in the world. They therefore cast grave doubts on the practices now adopted by the UGC. In fact, we are comparable to other places with quality universities, which are also moving in the direction of diversification. May I ask the Secretary whether those places also have organizations like the UGC, and adopt the reward and punishment method to force their universities to strive for diversification? Are they using more civilized alternatives to achieve this goal?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): The UGC has a difficult role to play. On the one hand, it has to represent the institutions to seek resources from the Government. On the other hand, it has to take account of the position of the Government in this respect, the need of the community at large, and to discuss and negotiate with the institutions. The UGC is thus a middleman. On the issue of whether or not the UGC should continue performing its current functions, and how this can be done if it continues to run, I have had discussions with most of the institutions. A majority — an overwhelming majority — of Vice-Chancellors consider the current functions performed by the UGC very useful. They wish the UGC could be retained to continue to perform its current functions. However, I do not rule out the possibility that some Vice-Chancellors are against the UGC. But without the UGC, the Government will have to deal with the institutions direct. If this is the case, it may, on the contrary, be more risky in respect of funding and other aspects, for assertion of government intervention in institutions via resource allocation may then be raised. The UGC is in a way a

buffer between the two parties, so that there is an independent body safeguarding the autonomy of the institutions.

MS EMILY LAU (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. First, I asked the Secretary whether he had looked into the issue raised by some professors, that is, the UGC is a product left behind by the colonial rule which can rarely be found elsewhere in the world? Second, do other places adopt more civilized alternatives in promoting the diversification of institutions? Has the Secretary looked into all this? Can he share with us?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): *Madam President, in respect of overseas experience, in Britain, though it does not have an organization directly comparable to the UGC, it has established a University Funding Council. The duties of the Council are similar to that of our UGC. Now, the only country that still has a UGC is India, and its functions are exactly the same with our UGC.*

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

WRITTEN ANSWERS TO QUESTIONS

Policy on Employment of Doctors

7. **DR LO WING-LOK** (in Chinese): *Madam President, it has been reported that in response to the campaign of the Frontline Doctors Union, the Hospital Authority (HA) has agreed to employ all the 300 interns graduating this year and to renew the contracts of all resident doctors who will acquire specialist qualifications this year. In this connection, will the Government inform this Council whether the Administration will ask the HA to review the arrangement of determining on a yearly basis the number of doctors to be employed, as well as to formulate a set of long-term policies on the employment of doctors, having regard to the manpower requirement of public hospitals and the HA's responsibility to train specialists; if such a review will be conducted and policies formulated, of the details; if not, of the measures in place to ensure that the HA*

will train up an adequate number of specialists and that the quality of public health care service will not be affected by the sense of insecurity of contract doctors?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): Madam President, the Government ensures that the supply of doctors, including specialists, in Hong Kong is broadly in line with the longer-term requirements of the population by monitoring and reviewing the manpower planning for medical and health professionals regularly, taking into consideration the changing demographics, changes and advances in medical technologies and in the context of the development of the local health care system. As the major provider of systematic training for doctors in Hong Kong, the HA is committed to supporting the Government's manpower planning by providing training to a sufficient number of specialists to meet the needs of the community.

Having regard to this commitment, the HA works closely with the Government, the Hong Kong Academy of Medicine and its Colleges in deciding the number of new Residents to be admitted for specialist training. The factors to be considered include the projected specialist requirements, the projected supply of specialists in the light of the number of trainees completing training, the turnover rates, the HA's plan on service development, the training capacities in the HA hospitals and the applicants' suitability for specialist training.

The training period for specialist trainees in various clinical specialties is usually six years, and an extra year would be flexibly administered to suit individual trainee's progress and requirements of the Colleges. Individual trainees may also be given further contract extension depending on appropriate justification and circumstances. For Family Medicine (FM) trainees and Residents on the vocational general practice programme, two-year contracts will initially be offered. Suitable FM trainees will be offered a second two-year contract for community-based training after completion of the first contract. Upon completion of specialist training, the specialists have to exit the HA training system. They may apply for specialist posts in the HA available at the time. They may also apply for Associate Consultant and Consultant posts or go into private practice.

The number of doctors, including specialists, to be employed by the HA varies from time to time and depends on the prevailing service needs and staff

turnover. The HA considers that the current arrangement for specialist training has functioned well to fulfil its specialist training commitments as well as to allow flexibility for adjusting the number of specialists in consideration of these factors. Nevertheless, the HA is keeping the arrangement under regular review to ensure that the needs of the community and the organization's requirements in terms of the number of specialists are well met.

In the process of determining the number of new Resident positions to be made available each year, the HA has already taken into consideration the projected specialist requirements amongst other factors. Thus, there will be a sufficient supply of specialist for both the HA and the community, and the trained specialists are likely to enjoy sufficient employment opportunities within or without the HA on completion of training.

To ensure that the quality of specialist services is maintained through the retention of experienced specialists, the HA will re-examine its succession plan for specialists. The HA will also examine mechanisms to enable longer-term career planning by doctors. In the year of 2004-05, the HA is planning to renew the contract of around 100 Residents, after they have completed their specialist training and attained Specialist qualification, as Resident Specialists.

The HA will continue to strengthen communication with Residents by informing them of the HA's recruitment plan in the coming year in a timely manner. The HA will also organize talks for all contract doctors regularly on the career opportunities available in the HA and in the private sector.

Assistant Clerical Officer

8. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, the assistant clerical officer (ACO) is a rank of the clerical grade in the civil service establishment. In recent years, the grade has been experiencing wastage due to the implementation of the Voluntary Retirement Schemes (VRS) by the Government. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of ACOs and those who departed through natural wastage or by joining the VRS in each of the past five years;*

- (b) *whether it plans to abolish the rank and replace existing ACOs by contract staff or through internal redeployment of staff from other grades in the Civil Service; if it has, of the justifications; and*
- (c) *if it has the plan mentioned in (b), how the authorities will deploy the existing ACOs, for example, whether they will be promoted or arrangements will be made for them to receive internal training and transfer to other civil service grades?*

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

- (a) The number of ACO and those who departed through natural wastage or by joining the VRS in each of the past five years are listed below.

<i>Year</i>	<i>No. of ACO departed through natural wastage</i>	<i>No. of ACO departed through voluntary retirement</i>	<i>Other addition/ reduction(note)</i>	<i>No. of ACO (Position as at 31 December of the year)</i>
1999	(93)	-	4	9 735
2000	(50)	(2)	(68)	9 615
2001	(65)	(708)	166	9 008
2002	(49)	(363)	50	8 646
2003	(32)	(123)	1	8 492

Note: In addition to natural wastage and voluntary retirement, the number of ACO would be adjusted upon promotion of some ACOs to the rank of Clerical Officer and when other staff joined the rank of ACO through the In-service Appointment Scheme.

- (b) and (c)

At present, the Administration has no plan to abolish the rank of ACO and replace serving ACOs by contract staff or through internal redeployment of staff from other grades in the Civil Service.

Accident and Emergency Services of Public Hospitals

9. **MS CYD HO** (in Chinese): *Madam President, with effect from 29 November 2002, the Hospital Authority (HA) has charged each patient \$100*

for each attendance at the accident and emergency (A&E) departments of public hospitals. In this connection, will the Government inform this Council whether it knows:

- (a) the number of persons who used the A&E services of public hospitals each month since the introduction of the charges up to the end of February this year, broken down by triage category (that is, critical, emergency, urgent, semi-urgent, non-urgent and unclassified), as well as their respective percentages in the total number of persons who used such services;*
- (b) the average waiting time for the relevant services in each month of the above period;*
- (c) the total amount of A&E service charges collected by the HA during this period and the respective sums of revenue apportioned to the Government and the HA; and*
- (d) the uses of the revenue mentioned in part (c) above; if such sums have not been wholly used for provision of medical services, whether the authorities will consider requiring the relevant sums to be used for such purpose?*

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

- (a) The number of attendances at the A&E Department in public hospitals broken down by the triage category, together with their respective percentages as compared with the total number of attendances in the same month, are shown in the table below:

<i>Month</i>	<i>Critical</i>	<i>Emergency</i>	<i>Urgent</i>	<i>Semi-urgent</i>	<i>Non-urgent</i>	<i>Un-classified</i>	<i>Total</i>
December 2002	1 572 (0.9%)	3 493 (2.0%)	46 218 (26.1%)	107 802 (60.9%)	17 239 (9.7%)	653 (0.4%)	176 977
January 2003	1 732 (1.0%)	3 898 (2.2%)	48 060 (26.6%)	108 137 (59.8%)	18 025 (10.0%)	942 (0.5%)	180 794
February 2003	1 348 (0.8%)	3 498 (2.0%)	43 987 (25.3%)	104 007 (59.8%)	20 277 (11.7%)	861 (0.5%)	173 978

<i>Month</i>	<i>Critical</i>	<i>Emergency</i>	<i>Urgent</i>	<i>Semi-urgent</i>	<i>Non-urgent</i>	<i>Un-classified</i>	<i>Total</i>
March 2003	1 420 (0.7%)	3 555 (1.8%)	45 110 (23.2%)	111 889 (57.6%)	30 860 (15.9%)	1 405 (0.7%)	194 239
April 2003	1 301 (1.1%)	2 410 (2.1%)	29 001 (24.7%)	69 379 (59.1%)	14 751 (12.6%)	610 (0.5%)	117 452
May 2003	1 316 (1.3%)	2 293 (2.2%)	28 020 (26.7%)	64 674 (61.7%)	7 957 (7.6%)	510 (0.5%)	104 770
June 2003	1 236 (1.1%)	2 322 (2.0%)	30 787 (26.2%)	73 888 (62.9%)	8 619 (7.3%)	544 (0.5%)	117 396
July 2003	1 264 (0.9%)	2 676 (1.8%)	36 957 (25.5%)	91 149 (62.8%)	12 458 (8.6%)	547 (0.4%)	145 051
August 2003	1 246 (0.8%)	2 637 (1.8%)	38 571 (26.0%)	93 639 (63.0%)	11 748 (7.9%)	694 (0.5%)	148 535
September 2003	1 249 (0.8%)	2 735 (1.8%)	39 965 (25.8%)	95 599 (61.8%)	14 177 (9.2%)	951 (0.6%)	154 676
October 2003	1 321 (0.8%)	2 847 (1.8%)	41 063 (26.0%)	96 179 (61.0%)	14 094 (8.9%)	2 135 (1.4%)	157 639
November 2003	1 320 (0.9%)	2 915 (1.9%)	39 558 (25.8%)	94 264 (61.4%)	13 395 (8.7%)	1 975 (1.3%)	153 427
December 2003	1 588 (1.0%)	3 223 (2.0%)	42 832 (25.9%)	98 770 (59.8%)	16 023 (9.7%)	2 688 (1.6%)	165 124
January 2004	1 635 (1.1%)	3 212 (2.1%)	40 695 (26.2%)	95 343 (61.4%)	12 662 (8.1%)	1 851 (1.2%)	155 398
February 2004	1 605 (1.0%)	2 987 (1.9%)	40 400 (26.0%)	95 514 (61.5%)	12 392 (8.0%)	2 329 (1.5%)	155 227

- (b) The average waiting times by triage category in the first 12 months from the introduction of A&E charges (that is, from December 2002 to November 2003) are as follows:

<i>Triage Category</i>	<i>Minutes</i>
1 Critical	0
2 Emergency	5
3 Urgent	16
4 Semi-urgent	48
5 Non-urgent	75
Average	42

- (c) and (d)

In line with established resource allocation practice, the annual requirement of the HA has generally been met by the provision of subvention by the Government and the HA's income from various

sources, including medical charges. With the introduction of A&E charges on 29 November 2002, the Government agreed with the HA the exceptional arrangement that the HA would, in addition to the resources allocated having regard to its annual requirement, be able to retain half of the A&E charges collected for the provision of health care services. The total amount of A&E charges retained by the HA under this arrangement between 29 November 2002 and 29 February 2004 amounted to \$79.8 million.

Urban Renewal Strategy

10. **DR LAW CHI-KWONG** (in Chinese): *Madam President, in October 2001, the Government issued to the Urban Renewal Authority (URA) the Urban Renewal Strategy (URS), which specified that the Strategy would be reviewed and updated regularly every two or three years; whereas the Urban Renewal Authority Ordinance provides that the URA shall follow the guidelines set out in the Strategy when preparing its five-year corporate plans. In this connection, will the Government inform this Council:*

- (a) *of the reasons for not having completed the first review on the URS and the latest position of the review; and*
- (b) *whether it has consulted the public on how the contents of the URS should be reviewed and updated, including consultation with the residents affected by the redevelopment projects and local organizations; if it has, of the outcome of the consultation; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): Madam President, in accordance with the Urban Renewal Authority Ordinance, the Secretary for Housing, Planning and Lands may prepare from time to time an URS for the purpose of carrying out urban renewal. The URS provides policy guidelines for the URA in the implementation of the urban renewal programme, and the URA shall follow these guidelines when preparing its draft five-year corporate plans. The first URS was published in November 2001 after wide public consultation.

My replies to the two parts of the question are as follows:

- (a) The Administration has indicated in the first URS that the document will be reviewed and updated regularly (every two to three years). In his 2004 policy address, the Chief Executive has pointed out that urban renewal involves wide-ranging implications, and we will consider various practicable options and promote discussion on urban renewal in the community. In this regard, we will commence a comprehensive review of the urban regeneration policy, covering (i) the review and updating of the URS; (ii) how to facilitate private developers' participation in urban renewal; and (iii) the Government's support at the policy level.
- (b) We are now studying internally on how to take forward the subject. We plan to come up with various options for public consultation around the end of this year.

In this connection, proper building management and maintenance forms an integral part of the overall policy to arrest building neglect and expedite urban renewal. At the end of last year, we launched a public consultation exercise on the subject, which will last until mid-April this year. The views collected will contribute towards the comprehensive review of the urban regeneration policy.

Press Releases Issued by Hong Kong Monetary Authority and Office of the Commissioner of Insurance

11. **MR HENRY WU** (in Chinese): *Madam President, will the Government inform this Council of the respective numbers and dates of press releases issued by the Hong Kong Monetary Authority (HKMA) and the Office of the Commissioner of Insurance in each of the past three years, the numbers of those which were on enforcement actions, and also provide a breakdown of the violation involved in each of the actions set out in these press releases, the legislation or rules breached, the dates at which the violations were committed and the disciplinary actions taken?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, we have consulted the HKMA and the Insurance Authority (IA) (that is, the Office of the Commissioner of Insurance) on the question.

The practice of the HKMA has been to publish aggregate number of breaches of key provisions of the Banking Ordinance in its Annual Report. The table below shows the numbers published/to be published in the HKMA Annual Report from 2001 to 2003. It should be noted that all these breaches were technical and unintentional in nature, were promptly rectified by the institutions concerned, and did not result in any risk to the interests of depositors or creditors.

	<i>2001</i>	<i>2002</i>	<i>2003</i>
Number of breaches of the requirements relating to large exposure under section 81 of the Banking Ordinance	7	6	2
Number of breaches of the requirements relating to connected lending under section 83 of the Banking Ordinance	17	8	15
Number of breaches relating to liquidity requirement under Part XVIII of the Banking Ordinance	Nil	1 (due to a technical mistake)	Nil

As for insurance, the principal function of the IA under the Insurance Companies Ordinance (ICO) is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policyholders. The ICO mainly focuses on the solvency of the authorized insurers.

In the past three years from 2001 to 2003, there had been one case of non-compliance with section 8(3) of the ICO concerning the solvency of authorized insurers. This case involved three authorized insurers belonging to the same company group. To protect the interests of policyholders, the IA had

exercised its power under section 35(2)(b) of the Ordinance to give a direction on 2 April 2001 that the affairs, business and property of the relevant insurers shall be managed by the Manager appointed by the IA. Furthermore, as required under section 35(6), the notice of the direction was published by the IA on the same date.

Reduction of Subsidies for Private Residential Care Homes for Elderly

12. **MR MICHAEL MAK** (in Chinese): *Madam President, it has been reported that with effect from next month, the Social Welfare Department (SWD) will reduce the subsidies for the private residential care homes for the elderly (RCHEs) under the Enhanced Bought Place Scheme (EBPS). In this connection, will the Government inform this Council:*

- (a) of the subsidized items affected and the rate of reduction in respect of each item;*
- (b) of the justifications for reducing the subsidies;*
- (c) of the respective numbers of RCHEs and subsidized places affected, and the average amount of subsidy reduced for each RCHE;*
- (d) of the amount of public funds saved each year as a result of the reduction of subsidies;*
- (e) whether there are plans to further reduce the subsidies concerned; and*
- (f) whether it has assessed the impact of subsidy reduction on the services of RCHEs; if it has, of the assessment results; if not, the reasons for that?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): Madam President, under the EBPS, the Government has purchased 6 041 places from 122 private residential care homes for the elderly (EBPS homes) as at

March 2004, and is providing these homes with a unit subsidy ranging from \$5,072 to \$6,617 per month per place, taking into account their spacing and staffing standards, and locations. In 2004-05, the Government will purchase an additional 237 EBPS places from the existing 122 EBPS homes. Hence, there will be 6 278 EBPS places in 2004-05.

The amount of subsidies which a EBPS home may receive under the EBPS depends on the number of places which the Government has purchased, and the unit subsidy of the places.

Our replies to the specific questions are as follows:

- (a) The unit subsidy for EBPS places will be subject to efficiency savings of 2.5% in 2004-05. The revised unit subsidy for EBPS places for 2004-05 will range from \$4,943 to \$6,448 per month per place with effect from 1 April 2004.
- (b) The Administration has a responsibility to ensure that limited public resources are used in the most optimal manner to meet the primary needs of the community, in particular when the Government is striving to keep expenditure within the limits of revenues and restore fiscal balance by 2008-09. No policy area is immune from the aforementioned fiscal challenge. For the SWD, efficiency savings will apply, among other things, to subvention allocations to non-governmental organizations (NGOs) and the unit subsidy for EBPS places in 2004-05.
- (c) The revised unit subsidy for EBPS will apply to all the 6 278 EBPS places in 2004-05, involving 122 EBPS homes. The amount of subsidy to be reduced per EBPS home will vary, as the number of EBPS places in each EBPS home varies.
- (d) We expect that about \$10 million will be saved from the expenditures on EBPS in 2004-05 under the revised subsidy level *vis-a-vis* the existing subsidy level. Notwithstanding the revision in the subsidy level of EBPS places, there will be an increase of 1.4% in the recurrent expenditures on direct welfare services for the elders in 2004-05.

- (e) The SWD will review the subsidy level on EBPS in the process of working out the Estimates for 2005-06, taking into account the then efficiency savings targets of the department.
- (f) The service performance of EBPS homes is, and will continue to be, governed by the EBPS Agreement, which sets requirements on aspects such as space, staffing, and quality management. The Licensing Office of Residential Care Homes for the Elderly of the SWD closely monitors the service performance of individual EBPS homes to ensure that the EBPS requirements are fully complied with. EBPS homes are required to continue to deliver services which meet the requirements of the EBPS Agreement in future. To achieve this, they may have to further enhance productivity and control costs.

Prices of Air Tickets

13. **MR FRED LI** (in Chinese): *Madam President, regarding the prices of air tickets, will the Government inform this Council:*

- (a) *of the numbers of public views and complaints received by the government departments concerned and the Consumer Council respectively regarding the prices of air tickets in each of the past three years;*
- (b) *how the per flight-mile prices of air tickets to and from Hong Kong compare with those to and from other major Asian cities; and*
- (c) *whether it has examined if the prices of local air tickets are affected by our aviation policy, and whether such policy has undermined our competitiveness in the international tourism and aviation industries; if it has, of the results?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): Madam President, in the past three years, neither the Hong Kong Civil Aviation Department nor the Consumer Council have received any views or complaints from the public regarding air ticket prices. The Government has not

conducted any study to compare the unit prices per flight-mile for air tickets to and from Hong Kong with those to and from other major Asian cities.

The "full fare" air ticket prices on routes between Hong Kong and other cities are in general discussed and adopted by airlines at regular conferences of the International Air Transportation Association (IATA). Both local and overseas airlines have to submit these air ticket prices to the aeronautical authorities of the cities concerned and may only implement such prices after the authorities concerned have given approval. Taking into account the prevailing market circumstances and their sales strategy, airlines may also, after imposing certain restrictions and conditions on the air tickets, adjust the full fare ticket prices downward. Airlines may also vary the air ticket prices during different periods to promote their services. These air ticket prices also need to be approved by the aeronautical authorities of the cities concerned. Generally speaking, air ticket prices are affected not only by the flight distance but also by factors such as airlines' overall operating costs, the living standard and price levels of the concerned cities, exchange rates, and so on. The level of service provided by airlines, such as the routes operated, frequency of flights, cabin services and even frequent flyer programmes, and so on, may also influence air ticket prices. Therefore, it is not meaningful to compare air ticket prices in different cities purely on the basis of the unit price per flight mile.

The Government's aviation policy is to progressively liberalize the air services market to allow local and other airlines to provide services to meet market demand, to give consumer more choices and to strengthen Hong Kong's position as an aviation hub. Under this policy of progressive liberalization, there is a high degree of competition in our air services market, and the air ticket prices reflect the market situation. At present, the Hong Kong International Airport has 72 airlines operating about 4 100 scheduled flights to and from over 130 destinations per week. We will continue to implement the policy of progressive liberalization to enable airlines to operate in a competitive environment.

Criminalization of Production of Devices to Circumvent Copy-protection

14. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, under the Copyright Ordinance (Cap. 528), the persons concerned can seek civil remedies against a person who knowingly makes or sells devices specifically designed or*

adapted to circumvent the copy-protection employed. In its report published in September last year, the Working Group on Digital Entertainment set up by the Information Infrastructure Advisory Committee under the Commerce, Industry and Technology Bureau recommended that the Government should consider criminalizing such offences. I have learnt that such offences have already been criminalized in the Mainland and other countries such as the United States, Australia, Malaysia and the Netherlands. In this connection, will the Government inform this Council whether:

- (a) it has studied the situation of the above offences in Hong Kong; if it has, of the findings; and*
- (b) it will accept the above recommendation of the Working Group; if it will, of the legislative timetable and other relevant details; if not, the reasons for that?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): Madam President, my reply to the two parts of the question raised by the Honourable SIN Chung-kai is as follows.

According to section 273(2) of the Copyright Ordinance, it is unlawful for a person to make or sell any device or means specifically designed or adapted to circumvent a copy-protection measure, or to publish information intended to enable or assist other persons to circumvent a copy-protection measure, if the person knows that the device, means or information will be used to make infringing copies. Under this provision, a copyright owner and other right holders may seek civil remedies against the person who has allegedly breached the law.

We understand that there have been cases where copyright owners have successfully obtained civil remedies through the above provision. However, some copyright owners take the view that the Government should further consider making the aforementioned unlawful acts a criminal offence. The Working Group on Digital Entertainment also put forward a similar proposal. The Government has undertaken to study these views. In the course of the study, we will examine whether these unlawful acts are prevalent in Hong Kong and to this end, we will require assistance from copyright owners.

The Government has also previously undertaken to review, after the passage of the Copyright (Amendment) Bill 2003, certain provisions in the existing Copyright Ordinance. These provisions include, *inter alia*, provisions relating to the scope of both end-user criminal liability and permitted acts. In the course of this review, we intend to study as well the issue of criminalizing the infringing acts under section 273(2). We will consult the relevant industries in the process. Based on the outcome of the review, we will decide whether it is necessary to amend the law and the appropriate legislative timetable.

Technology Transfer

15. **MR ALBERT CHAN** (in Chinese): *Madam President, in connection with the transfer of relevant technology from foreign consultancy firms engaged in the 10 Airport Core Programme (ACP) projects to local construction firms and professionals, will the Government inform this Council:*

- (a) *of the types and details of the technology transferred;*
- (b) *of the numbers of local professionals and companies to whom the technology has been transferred;*
- (c) *whether it knows if local professionals to whom the technology has been transferred are now engaged in the relevant work; and*
- (d) *whether it has evaluated the effects achieved in these projects in terms of technology transfer, if it has, of the evaluation criteria and outcome?*

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

- (a) For the ACP projects managed by the Government in the '90s, consultants were employed to provide services including project and construction management, design and supervision of construction

works. Both local and overseas consultants were employed. In fact, the majority of these overseas consultant firms have been operating in Hong Kong for many years and have employed many local professionals and technical staff.

When local expertise and workers participate in large-scale infrastructural projects, even if the projects are carried out under the name of the overseas construction companies, their participation will gradually result in technology transfer. Actually, in recent years, more and more project partners and engineers of consultancies and project managers of construction contracts are local professionals.

For the ACP projects, it can be broadly summarized that the following knowledge and skills have been introduced into the local construction industry:

- (i) Project and construction management — The overall management of large-scale infrastructure projects called for special expertise on project management and co-ordination. New types of procurement strategies such as the Design and Build contract; programme and cost control methods; payment methods such as the milestone payment against the traditional re-measurement ones; dispute resolution techniques; and insurance arrangements such as the Owner-Controlled Insurance Programme, and so on, were introduced;
- (ii) Design philosophy — The design and construction of long span cable-supported bridges were unprecedented in Hong Kong before the ACP. A typical example of technology transfer is the Ting Kau Bridge which was managed by a team led by government staff. The project owed its success to the fact that these staff had participated in the ACP projects, such as the Tsing Ma Bridge and the Kap Shui Mun Bridge and had absorbed the relevant experience. Apart from the design philosophy, application of bridge health monitoring and

maintenance system were also developed. Other new types of design forms may include non-standard building articulations such as the canopy at the Airport Passenger Terminal Building; heavy structural steel works as against traditional reinforced concrete construction; large diameter tunnels; and large-scale reclamation methods, and so on;

- (iii) Construction site supervision — Comprehensive safety management system covering all areas of safety measures and control were first introduced to Hong Kong during the ACP period. New quality assurance mechanisms were also introduced.
- (b) It would not be easy to keep track on the exact number of staff benefited from the technology transferred during the whole ACP period which spanned over almost 10 years. A rough estimate shows that more than 400 professional positions in the various works departments plus the supporting technical staff had direct involvement in the ACP works and adopted ACP procedures and practices.

The Government does not possess figures on the number of beneficiary in the private sectors.

- (c) As all the ACP projects were just completed around six to seven years ago, most of the government staff who have participated in the projects are still retained in the various works departments. The Government does not maintain records on whether the local staff of the consultant firms and contractors who participated in the ACP are still working in the construction industry.
- (d) We consider that technology transfer by consultants participating in the ACP to be very effective. The successful implementation of the Ting Kau Bridge and the launching of the several major infrastructural projects afterward such as the Hong Kong-Shenzhen Western Corridor and the Stonecutters Bridge bear testimony to the effectiveness of the technology transfer.

Heated Swimming Pools

16. **DR RAYMOND HO** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *whether requests for more heated swimming pools have been received from the public over the past three years; if so, of the number of such requests;*
- (b) *how the operational costs of heated swimming pools compare to those of non-heated ones; and*
- (c) *whether it has plans to build new heated swimming pools in the next three years; if so, of the details; if not, the reasons for that?*

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

- (a) According to the record of the Leisure and Cultural Services Department (LCSD), we had received 25 requests from District Councils and individual members of the public or organizations for increasing the provision of heated swimming pools in the past three years.
- (b) The normal opening period of non-heated swimming pool is from April to October each year. For a heated swimming pool, it is open all year round. Taking a standard non-heated 50-metre pool as an example, the operating cost for the opening period from April to October is about \$4.2 million (including staffing and other expenses). That is about \$600,000 per month. If the pool is heated and open for the rest of the year (excluding one month closure for annual overhaul), the additional cost is about \$2.8 million (including fuel, staffing and other expenses). That is about \$700,000 per month.
- (c) The following two indoor heated swimming pool projects have been included in Categories A or B of the Public Works Programme

(PWP) and are expected to be completed or commence in the next three years:

- (i) The Tai Kok Tsui Municipal Services Building which is now under construction will include one 25-metre heated training pool and one leisure pool. This project is expected to be completed in mid-2005.
- (ii) An indoor heated 50-metre main pool will be added to the existing Hin Tin Swimming Pool. This project will be presented to the Legislative Council for funding approval this year. Construction is expected to start in early 2005 and will be completed in mid-2007.

Border Crossing Facilities at Lok Ma Chau Control Point

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, it has been reported that since the implementation of 24-hour passenger clearance at the Lok Ma Chau (LMC)/Huanggang crossings in January last year, the number of passengers who cross the boundary via the crossings has been rising continuously. To increase the passenger-handling capacity at Huanggang Port, the Shenzhen authorities are considering rearranging the cross-boundary facilities there. In this connection, will the Government inform this Council:*

- (a) *of the average hourly numbers of passengers who crossed the boundary via the LMC Control Point at various time slots in each month of last year, how the growth rates in the numbers of such cross-boundary passengers compare with the Administration's forecast made before the implementation of 24-hour passenger clearance; and*
- (b) *whether it knows the details of the Shenzhen authorities' plan to rearrange the cross-boundary facilities at Huanggang Port, and whether it has assessed if the facilities at the LMC Control Point will match the new facilities at Huanggang, and how the control of passenger flow at the LMC Control Point will be affected; if no assessment has been made, of the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) The Immigration Department's statistics on passengers passing through the LMC Control Point are broken down into two periods, that is, the overnight period (from midnight to 6.30 am) and the other period (from 6.30 am to midnight). The average number of passengers crossing the LMC Control Point in an hour, broken down according to the above time periods and for each month of last year, are set out at Annex.

When the Administration introduced 24-hour passenger clearance at the LMC Control Point, the initial estimate was that there would be about 6 000 passengers during the overnight period every day. From 27 January 2003, when round-the-clock operation commenced, to June 2003, there were about 6 370 overnight passengers per day which is close to our initial estimate. The number of overnight passengers has since shown an upward trend. From July 2003 to February 2004, the average number of overnight passengers per day had risen to around 9 800. Owing to extension of operating hours, the total number of passengers passing through the Control Point has also increased. In 2003, the Control Point recorded some 24.48 million passengers (or a daily average of about 67 000), representing an increase of 46.4% over 2002. This is higher than the original estimate of a 28% increase (the average increase over the five years from 1998 to 2002).

- (b) We understand from Shenzhen authorities that, having regard to the fast increasing cross-boundary passenger traffic at Huanggang in recent years, they are considering improvement works at the Huanggang Port to facilitate traffic management and to better align with the increased handling capacity of the LMC Control Point on the Hong Kong side following completion of improvement works there. Major works under planning include converting the first level of the Carport (south of the Huanggang Port) into a departure clearance hall, and the existing Joint Inspection Terminal into an arrival clearance hall. When these works are completed, the waiting area for passengers and the handling capacity of the Huanggang Port will both be enlarged. We understand that the

plan is still under consideration and has not yet been finalized. The plan will still have to go through procedures for approval, project creation and funding by the Shenzhen Municipal Government before it can be implemented.

Improvement works at the LMC Control Point on the Hong Kong side were completed in September 2003. Since then, the number of passenger counters has increased from 28 to 50 (handling capacity increased from 4 200 to 5 500 passengers per hour) and the number of kiosks for vehicles has increased from 14 pairs to 24 pairs (handling capacity increased from 19 000 to 32 000 vehicles per day). In addition, the number of cross-boundary coach lay-bys has increased from 36 to 64. Ancillary facilities for passengers such as travellers and an electronic coach parking information system have been introduced. Forthcoming improvement initiatives at the LMC Control Point include construction of eight additional private car kiosks in two phases (the four northbound kiosks are expected to be completed in September this year, and the four southbound kiosks around the latter half of 2005). Moreover, starting from the end of this year, the Immigration Department will progressively roll out the Automated Passenger Clearance and Automated Vehicle Clearance systems at control points. We believe that the facilities of the LMC Control Point, both in terms of hardware and manpower, will be able to cope with projected passenger and vehicular traffic in the next two to three years. We will continue to maintain close liaison with mainland authorities on matters relating to the future expansion and improvement at Huanggang. We believe that continuous enhancement and improvement of cross-boundary facilities on both sides will create more room for mutual co-operation to tackle the large volume of cross-boundary vehicles and passengers.

By the end of 2005 and mid-2007, when the Hong Kong-Shenzhen Western Corridor and the Sheung Shui to LMC Spur Line will respectively be commissioned, we expect that some passenger flow will be diverted to these new crossings and this should help ease the busy traffic at the LMC Control Point.

Statistics on Cross-boundary Passengers at Lok Ma Chau Control Point

<i>Average number of cross-boundary passengers in an hour</i>	<i>2003</i>											
	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>
Overnight period (from midnight to 6.30 am)	1 041	1 051	1 010	786	929	1 121	1 288	1 410	1 366	1 473	1 598	1 607
Other period (from 6.30 am to midnight)	2 946	3 119	2 896	2 188	2 297	2 964	3 585	4 108	3 849	4 087	4 375	4 561
Average number of cross-boundary passengers in a day	49 964	61 421	57 245	43 402	46 235	59 151	71 111	81 044	76 243	81 106	86 959	90 268

Annex

Implementation of Article 107 of Basic Law

18. **MS EMILY LAU** (in Chinese): *Madam President, Article 107 of the Basic Law provides that "the Hong Kong Special Administrative Region shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product". While the Financial Secretary, when presenting this year's Budget, forecast that the Gross Domestic Product (GDP) will grow by 6% in real terms in 2004 with a 3.8% real economic growth over the medium term, he plans to implement a year-on-year reduction of government operating expenditure in the following five years. In this connection, will the executive authorities inform this Council:*

- (a) of the implementation of Article 107 of the Basic Law since the reunification;*
- (b) whether they have assessed if the Budgets for the past seven years complied with the requirement for keeping "the budget commensurate with the growth rate of its gross domestic product", as stipulated in the above Article; if so, of the assessment result; and*
- (c) given that despite forecasting a 6% growth for this year's GDP, the Financial Secretary still needs to exercise stringent control over expenditure in order to achieve fiscal balance, whether or not the authorities have assessed if this situation reflects that the above Article is self-contradictory; if the assessment result is in the affirmative, how the authorities will address the issue; if the assessment result is in the negative, of the justifications for the finding?*

FINANCIAL SECRETARY (in Chinese): Madam President, the Government of Hong Kong Special Administrative Region (SAR) is committed to upholding the principle stipulated in Article 107 of the Basic Law and has been striving to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of the GDP. Each and every post-reunification Budget has been prepared with due regard to this Article and has clearly elaborated on the importance of prudent financial management.

Article 107 of the Basic Law does not impose any rigid requirement on the SAR Government to achieve a fiscal balance every year or to match expenditure growth with the growth rate of GDP every year. We have emphasized in a number of the Budgets that we need to put our medium-term finances on a healthy footing while fostering the prospects of economic recovery. Over the years, the SAR Government has strictly upheld the relevant requirements in the Basic Law when formulating its budgetary strategy. While taking into full account the then prevailing state of the economy (including the financial turmoil, economic restructuring, high unemployment rate, SARS, and so on) and the aspirations of the community, the Government has striven to achieve a fiscal balance and keep the expenditure growth in line with the growth of GDP.

In the course of preparing the Medium Range Forecast for 2004-05 to 2008-09, the Government has seriously considered whether it should ease its control over government expenditure in the light of the economic recovery. However, the operating account of the SAR Government has successively registered a deficit since 1998-99. With the exception of 1999-2000 when a small surplus was recorded, the Government's Consolidated Account has also registered successive deficits since. In order to demonstrate our determination to eliminate the deficit, we must stringently contain government expenditure, especially operating expenditure. Our target is to reduce operating expenditure to \$200 billion by 2008-09. The justifications for the Government to exercise vigorous control over expenditure are very clear. Without such control, the deficit problem can hardly be solved in the medium term.

Continuing Education Fund

19. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the operation of the Continuing Education Fund (CEF), will the Government inform this Council:*

- (a) *of the total number of applications received and the total amount of subsidy committed since the CEF was open to applications in June 2002;*
- (b) *among the applications and total amount of subsidy mentioned above, the number of applications submitted by degree holders and the amount of subsidy they were granted; and*

- (c) *whether it will abolish the upper age limit of CEF applicants, so as to allow people aged over 60 to qualify for the subsidy for continuing education and training in order to promote lifelong learning; if not, the reasons for that?*

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

- (a) From the implementation of the CEF in June 2002 to end-February this year, a total of 81 648 applications were received. Of these, 73 852 have been approved, 4 819 rejected as ineligible and the rest are being processed. Based on the ceiling of \$10,000 per applicant, the total amount of subsidy committed has exceeded \$738 million. As at end-February this year, the actual amount of subsidy claimed and reimbursed was about \$113 million.^{Note}
- (b) The eligibility criteria of the CEF have been relaxed to include degree holders since 1 September last year. Before that, applicants were required to declare that they had no university degrees. The declaration requirement was removed following the relaxation. As such, we have no statistical information on the number of degree holders applying for subsidy and the corresponding amount of reimbursement granted.
- (c) The CEF is introduced to assist our workforce to be better prepared for the change in manpower requirements during our transition to a knowledge-based economy. To achieve this goal and to effectively enhance the overall competitiveness of Hong Kong with limited resources, we have to set appropriate parameters on the eligibility criteria, including the age limit. The existing age limit for CEF applicants was laid down upon consultation with various stakeholders (including academics, the business community and legislators). In view of the objective of the CEF, we have no plan to change the age limit.

^{Note} Each eligible applicant is entitled to a subsidy of \$10,000 and a maximum of two claims of reimbursement within a valid two-year period.

We recognize the need for continuing education and training of all age groups. People aged over 60 who have the aspiration to pursue continuing education can also benefit from other programmes of continuing education and training provided with public resources. For instance, the publicly-funded adult education programmes offered by non-government organizations include tailor-made courses for people aged 55 or above. People aged over 60 may also enrol in the various education and continuing education programmes as adults of other ages.

Speeding by Cyclists

20. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the respective numbers of cyclists who were prosecuted and convicted for speeding over the past three years and the details of the penalties imposed by the Court;*
- (b) *whether those who were convicted and who also held vehicle driving licence incurred points under the Driving-offence Points System; if so, whether the authorities have assessed if the system is unfair to them; if they have, of the results; and*
- (c) *whether it has reviewed the existing legislation that regulates speeding to see if there are defects in the provisions regulating cyclists; if the review results indicate such defects, whether the authorities will amend the relevant legislation?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): Madam President, in the past three years, no cyclists were prosecuted for speeding.

In case a cyclist is convicted of a traffic offence which falls within the Schedule to the Road Traffic (Driving-offence Points) Ordinance, he will incur the driving-offence points specified for that offence. The system is fair as it applies to all motorists, including cyclists.

The existing legislation that regulates speeding applies to motorists and cyclists alike. We do not consider it necessary to amend the legislation.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First reading.

MERCHANT SHIPPING (SECURITY OF SHIPS AND PORT FACILITIES) BILL

AIRPORT AUTHORITY (AMENDMENT) BILL 2004

CLERK (in Cantonese): Merchant Shipping (Security Of Ships And Port Facilities) Bill
Airport Authority (Amendment) Bill 2004.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

MERCHANT SHIPPING (SECURITY OF SHIPS AND PORT FACILITIES) BILL

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I move that the Merchant Shipping (Security of Ships and Port Facilities) Bill 2004 be read a Second time.

The Bill seeks to give effect to the new maritime security provisions of the International Convention for the Safety of Life at Sea, 1974 and the associated International Ship and Port Facility Security Code adopted by the International Maritime Organization. These maritime security provisions will be binding on Hong Kong upon commencement on 1 July 2004 as the Central People's Government is a contracting government to the Convention which is applicable to Hong Kong by extension.

To fulfil the obligations under the international convention, we are required to give effect to the requirements through domestic legislation. Since the existing merchant shipping and port control legislations do not deal with security issues nor cover any port facilities that are located on land, we propose to enact a new legislation to provide for clarity and consistent implementation of the security provisions. The enactment of the Bill and its subsidiary regulation will empower the Director of Marine to implement the security requirements on Hong Kong registered ships and port facilities in Hong Kong, and impose security control measures on foreign ships visiting the port of Hong Kong.

Madam President, the Bill is supported by the local shipping and port industries and is essential to maintaining Hong Kong's status as an international maritime centre and a regional hub port. With these remarks, I would like to seek Members' support in early passage of the Bill into law.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Merchant Shipping (Security of Ships and Port Facilities) 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.

AIRPORT AUTHORITY (AMENDMENT) BILL 2004

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam President, I move that the Airport Authority (Amendment) Bill 2004 (the Bill) be read the Second time.

The objective of the Bill is to amend the Airport Authority Ordinance to enable the capital of the Airport Authority (the Authority) established under that Ordinance to be reduced so as to allow the Authority to restructure its capital base to an optimal level.

Clause 2(2) of the Bill provides for the reduction of the Authority's capital by means of a resolution of the Legislative Council made on the recommendation of the Financial Secretary after consulting the Authority. If the Bill is passed, we will move a resolution at the Legislative Council to reduce the authorized share capital of the Authority by an amount of HK\$6 billion, for the distribution of that amount to the Government and for the cancellation of shares of an equivalent value in the Authority held by the Government.

At present, the debt to equity ratio of the Authority is relatively low, when compared with utilities in Hong Kong and airports around the world. The Bill will provide for a mechanism for the Authority to restructure its capital base to an optimal level so that the cost of capital of the Authority can be reduced. The Authority cannot proceed with this type of capital restructuring if we do not amend the Airport Authority Ordinance.

We expect that the passage of the Bill will not have any impact on the general public. We have consulted the Legislative Council's Panel on Economic Services and received its general support.

I hope Members will support the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Airport Authority (Amendment) Bill 2004 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 Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Copyright (Amendment) Bill 2003.

COPYRIGHT (AMENDMENT) BILL 2003

Resumption of debate on Second reading which was moved on 12 February 2003

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Copyright (Amendment) Bill 2001 and Copyright (Amendment) Bill 2003 (the Bills Committee), I am now presenting the report on the Copyright (Amendment) Bill 2003 (the 2003 Bill).

The Bills Committee has held a total of six meetings to study the 2003 Bill. In the course of deliberation, nearly 70 organizations and individuals have submitted views to the Bills Committee. As the deliberations of the Bills Committee and the latest progress have already been detailed in the written report, I shall just report on the main points.

One of the most controversial proposals in the 2003 Bill is the proposed section 118A which seeks to make permanent the arrangements under the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance). In short, end-user criminal liability for the use of infringing copies of copyright works in business is confined to the Four Categories of Works, namely, computer programs, movies, television dramas and musical recordings. Several organizations that are primarily copyright works users such as the educational sector, professional bodies and the local trade sector support the proposal, and consider that the proposal could clearly define the copyright protection for computer software and audio-visual works and would facilitate teaching activities and the dissemination of information. On the other hand, copyright owners strongly object to the above proposal. The publishing industry, the newspaper industry, some copyright organizations, and some international and foreign chambers of commerce do not agree that criminal liability should apply only to the use of infringing copies of certain categories of copyright works in business, thereby providing greater copyright protection to such works. The publishing industry strongly requests that the scope of

criminal liability under the proposed section 118A should also cover printed works.

The publishing industry and the newspaper industry have pointed out to the Bills Committee that the proposed section 118A may not be consistent with Article 61 of the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) of the World Trade Organization. However, the Administration considers that the relevant article only spells out a general requirement which requires members to provide for criminal procedures and penalties to be applied to cases of wilful copyright piracy on a commercial scale. However, it does not stipulate specific measures to be taken. The Bills Committee also notes that some copyright owners and users have suggested that the Administration should refer to "fair use" provisions in the Copyright Act of the United States.

The Bills Committee also notes the public worry that the criminal liability for employees in relation to the proposed section 118A may be too harsh. The Bills Committee understands that the Administration has already incorporated a defence into the 2003 Bill, that is, an employee may invoke this defence if he is charged with an offence where the possession of an infringing copy of the Four Categories of Works occurs in the course of his employment and the infringing copy is provided to him by his employer. However, the Bills Committee also understands the concern of some chambers of commerce which think that there is a possibility that the defence might be abused.

Another major proposal in the 2003 Bill is the removal of criminal and civil liabilities of non-commercial dealings in relation to parallel imports. Both the publishing industry and the music industry object to the proposal, expressing the view that it will hamper the development of the local film and music industries. On the other hand, the Consumer Council, educational organizations and certain local trade associations support the proposal. The film and music industries point out that, though under the existing section 27 of the Copyright Ordinance, if a person plays or shows a film or a record in public without the authorization of the copyright owner, he shall be civilly liable, they consider the remedy inadequate and urge the Administration to maintain the present criminal and civil liabilities in relation to parallel imports.

The Bills Committee has examined carefully the arguments for and against the proposal in the 2003 Bill relating to end-user criminal liability and notes that

views among various stakeholders are very much divided. Therefore, the Bills Committee urges the Administration to continue its dialogue with copyright owners and users. Although the discussion has shown some progress, it cannot be completed in the near future. As such, the Bills Committee supports the Administration's proposal of deleting provisions involving end-user criminal liability at the present stage, so as to enable the various parties to have more time for negotiations, and eventually the Administration may, with reference to the outcome of the negotiations, review the scope of end-user criminal liability, and then put forward the relevant proposals on legislative amendment. Before the negotiations could produce any outcome, the Bills Committee also supports a resolution to be moved by the Administration to extend the effective period of the Suspension Ordinance to 31 July 2006. During the interim, the end-user criminal liability to be interpreted under the present Copyright Ordinance and the Suspension Ordinance shall remain unchanged.

After making the amendment, the proposal that has to be dealt with in the 2003 Bill is confined to only the tightening of criminal sanctions against illicit copyshops. Pursuant to the proposed section 118C(2) of the 2003 Bill, a person commits an offence if, for the purpose of or in the course of a business that includes the providing of a copying service, he possesses two or more substantially identical reprographic copies of a copyright work as published in a book, magazine or periodical. The Bills Committee has conducted in-depth discussions on whether the proposal could effectively curb illicit photocopying activities so as to achieve the intended policy objective. In response to the request made by the Bills Committee, the Administration, upon further consultation with photocopying service operators and the publishing industry, proposes a comprehensive amendment to the criminal liability under the proposed section 118C(2) to provide that a person commits an offence if, for the purpose of or in the course of a copying service business, he possesses an infringing copy of a copyright work as published in a book, magazine or periodical, being copies that are infringing copies of the copyright work. The Bills Committee is also gravely concerned whether the defence provided for the offence under the proposed section 118C(2) is reasonable and feasible. After discussions, the Administration agreed to amend the defence provision to avoid making the scope of the defence too wide in order to not to cover situations which are not related to the copying service business. The Bills Committee has also requested the Administration to clarify the liability of copyshops in some common scenarios, for example, the copyshop is being requested by a student to copy a project which contains a reprographic copy of a copyright work.

The Administration has also explained to the Bills Committee that, the scope of the proposed section 118C includes all copying service business conducted for profit. As most illicit photocopying services are operated on a commercial scale, the Administration considers that the current proposal targeting illicit copyshops can achieve its policy objective; as such, at the present stage, it will not extend the criminal liability to cover non-commercial photocopying services.

The Bills Committee has no strong objection to the amendments made by the Administration to criminal liability and the defence under the proposed section 118C, but is concerned whether the relevant provisions can gain the understanding and acceptance of copyshop operators. According to the Administration's briefing to the Bills Committee, copyshops which have been consulted are basically aware of the criminal liability involved for the provision of copying service. They also hope that they could further discuss the licensing arrangements with the relevant copyright owners in relation to their photocopying services. In response to the concerns of the Bills Committee, the Administration undertakes that, after the 2003 Bill is passed, it will upload some frequently asked questions to websites for public reference.

The Bills Committee supports the Committee stage amendments proposed by the Administration. If the 2003 Bill is passed, the Bills Committee will also support the Administration's proposal of extending the effective period of the Suspension Ordinance for 24 months, so as to enable it to proceed with the necessary consultation and law drafting.

Madam President, I shall next discuss this aspect of the issue on behalf of the Democratic Party. Insofar as the 2003 Bill is concerned, the approach of the Government has been appropriate, albeit it is still not very good (because there will be a suspension of the relevant laws from 2001 to 2006, that is, the suspension shall last for a total of five years). But still I believe this is already the best option under the present circumstances. In the next two years, there will be a very important task to complete — I hope the Administration could co-ordinate between the copyright owners and users in order to discuss the introduction of the so-called "fair dealing" concept, that is the concept of "legal use", and see whether the knot could be untied, thereby making both parties accept the new amendments. In fact, different arguments are supported by different justifications, because the suspended provisions are drafted in such a way that copyright works are classified into different categories. There are the

so-called "Four Red Categories", which are given special protection, while others do not enjoy such great protection. This is really not in line with the international practice. If this approach is made permanent, some people in the publishing industry will voice objection. However, if this approach is not adopted, and instead the past practice is implemented, under which all the works receive the same treatment, then users will react very strongly to the liability they will have to bear. Then, actually what are acceptable to copyright owners, which at the same time are also acceptable to copyright users? We shall have to rely on the Government to bring these two groups of people together for discussion. I hope the Government can make use of this period of time to deal with certain copyright issues as well as some problems which the Government must take into account. I hope the Government can complete drafting the legislation within one year and table it to this Council, so that this issue could be deliberated in the next term of the Legislative Council.

With these remarks, I support this 2003 Amendment Bill.

MR CHAN KAM-LAM (in Cantonese): Madam President, as an international commerce and trade centre, Hong Kong must establish a legal system to protect intellectual property rights. The Democratic Alliance for Betterment of Hong Kong (DAB) fully supports the principal objective of the amendments to the Copyright Ordinance, which is to combat illicit reproduction and infringement of copyright works.

As we all know, the variety of copyright works is vast, and there are all forms of infringement copying of copyright works. The infringement acts and means in respect of different types of copyright works can be totally different. Thus, it can be understood that the Copyright Ordinance does have an extensive impact on the community and profound influence on the business environment. The implementation of Copyright (Amendment) Ordinance 2001 has caused social controversies. Learning from this experience, we agree that the regulatory scale and the scope of coverage prescribed by the Amendment Ordinance must be accepted in principle by the industry and end-users.

As views from various stakeholders of these issues are still greatly divided, it is indeed not appropriate to enact a law in haste at this stage, so as to avoid causing controversies again. Therefore, we agree with the Government's approach of extending the effective period of the Copyright (Suspension of

Amendments) Ordinance 2001 to 31 July 2006 to allow more time for further consultation and discussion on the proposed scope of end-user criminal liability.

Another main point of this Second Reading is about the criminal sanctions against illicit copyshops. Indeed, mass reprography of books by copyshops was once extremely rampant in Hong Kong. Copyshops making mass reprography of textbooks for students once lined the streets in such school districts as To Kwa Wan and North Point. They even openly distributed publicity pamphlets to promote their business. In order to improve Hong Kong's international image, and to teach the next generation to respect intellectual property rights, we should enact a law to control the illicit reprography of books by copyshops for profit.

Initially, the Copyright (Amendment) Bill 2003 (the 2003 Bill) proposed to provide that a copyshop will be held criminally liable only if it possesses two or more substantially identical infringing copies of a copyright work of a book. We would like to point out that the legislation is aimed at infringement acts, not the number of infringing copies involved in the course of infringement. For this reason, the amendment introduces a more stringent provision, that the mere possession of even one such infringing copy will constitute an offence. The main objective to be put forward is that the mere reproduction of one infringing copy will constitute an offence.

We are also concerned that the tightening of the scope of criminal sanctions to the mere possession of one infringing copy of a copyright work will impact on the operation of copyshops. It is proposed to incorporate a provision into the Bill, stating that the photocopying business shall be conducted for profit. That is, the copyshops concerned shall be criminally liable only if it is proved that the infringing copies of copyright works seized are reproduced for profit. It can thus prevent copyshops from easily falling into the criminal net. We believe this amendment can strike a balance between the protection of intellectual property rights and the stability of the business environment of copyshops. Therefore, we will support this amendment and the Bill.

Madam President, I so submit.

MR MA FUNG-KWOK (in Cantonese): Madam President, despite the prevailing poor financial situation, the Financial Secretary has earmarked \$250 million for the creation of a fund to develop the design industry of Hong Kong.

This fully reflects the great significance attached by the Government to the creative industries. In fact, Hong Kong does possess many conditions for the development of creative industries. However, if our work in protecting intellectual property rights is inadequate, the interests of original authors will be affected. Should that happen, the creative industries would never prosper, no matter how many incentives in terms of money and administration are introduced.

In the early 1990s, pirated music records were rampant in Hong Kong, and the trend even once threatened the survival of the local record industry. Later, with the great effort made by the Government in cracking down on piracy, the amount of such records dropped sharply by 90%. Only after this could the local record industry manage to survive. From this, we can see the significance of the work of curbing piracy. Later on, the Government actively proceeded to enact laws to protect intellectual property rights. Unfortunately, such initiatives met with a setback in 2001. Provisions in the Bill specifically making it a criminal offence for using infringing copies of printed works in business affected the educational sector and non-profit-making organizations in their copying of books and publications. There was substantial repercussion in the community. The Government was thus forced to suspend the implementation of the provisions which govern the use of infringing copies of printed works.

From this, we can see that the enactment of laws to protect intellectual property rights is more complicated than envisaged. We must hold thorough discussions and conduct in-depth studies and researches before we can proceed to enact laws. We must also consider carefully the scope to be affected and balance the interests of different parties. Although the legislative progress in this aspect has not been satisfactory, both the industry and the public consider it acceptable to suspend the implementation of some controversial provisions pending the forming of a consensus.

Of course, we need to learn from the lessons to ensure that the enactment of laws would not cause great disturbance to the people. However, we cannot simply abandon the original intention of legislation simply in the interest of avoiding causing public discontent. In fact, I think there is no conflict between the protection of intellectual property rights and such principles as public interest and the dissemination of information. For example, the issue of criminal liability for copying of books and publications may affect schools and non-

profit-making organizations. However, if the industry could work out a proper exemption mechanism, under which the public is exempted from criminal liability for copying books and publications for educational and study purposes, then it will safeguard the interests of the publishing industry and at the same time assure public interest. What the Government should do is to uphold the legislative principles while educating the public of the spirit behind the legislation, so as to guide the public to discuss and realize the significance of enacting laws to protect intellectual property rights.

In regard to the provisions drafted under this Bill, the Government has finally decided to suspend the legislative proposals on the removal of civil and criminal liabilities of persons who use parallel imported copies of copyright works due to the great controversies involved in the issue. I support this direction, but I hope the present temporary suspension arrangement could be made permanent because parallel imports, be they related to business or otherwise, will cause excessively great damage to the creative industries. The Administration says that the original proposal would only remove the liability of non-commercial activities, and the criminal punitive measures shall continue to apply to the relevant commercial activities. In fact, there is a major loophole in this approach. In short, how do we define "non-commercial activities"? For example, does the screening of movies in venues like shopping arcades, hotels and restaurants as an attraction fall within the definition of commercial activities? This is very difficult to define, and the interests of the industry will definitely be injured.

This small loophole, once opened, will deal an extremely great blow to the local movie and music publishing industries. People in the movie industry have pointed out that if this restriction is removed, coffee shops and restaurants will play parallel imported video compact discs in their shops even before such movies have ever been shown in local cinemas; by then, movie-goers will be much less inclined to watch such movies in cinemas. Although the Administration claims that the movie industry may still claim damages through civil proceedings, this will be very difficult in practice. How can the movie industry find such enormous manpower and resources to inspect all the shops? What is more, once a movie has been played in public, damages have been done. How should we assess the damages before we initiate our civil claims? I am afraid it will only be a waste of time and effort. After the Bill is amended, there will be only one measure left, namely, the curbing of illegal photocopying

service. I think this direction is correct. According to the data supplied by the industry, illegal photocopying activities have been very rampant and are directly threatening the survival of the industry. As reflected in the data supplied by the industry, the illegal copying of books and publications has caused an annual loss of over \$70 million to the educational publishing industry. Over 70% of tertiary students admitted that they had illegally photocopied textbooks. From these, we can see that it is really imperative to impose severe punishment on people involved in illegal copying activities.

In the course of scrutinizing the Bill, the Bills Committee also proposed defence provisions which were agreed by the Administration. If the copyshops do not know that they are copying infringing copies, and that the infringing copies are not made for a profit or a reward, they may invoke this as defence. It is believed that this should adequately safeguard the interests of the copying industry. Besides, earlier on, the Hong Kong Reprographic Rights Licensing Society suggested that the copyshops might join the Society, so that they might continue with their profit-making photocopying business under legal authorization.

Finally, I hope the Government can adopt an attitude that is in keeping with the times in its effort of protecting intellectual property rights. It should actively study and start drafting legislation with a view to curbing the increasingly rampant piracy activities on the Internet. Only by doing so can we protect intellectual property rights in a comprehensive manner.

With these remarks, I support the Amendment Bill. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, I would like to state here that the Liberal Party also agrees very much with some views presented by Members earlier. The Copyright (Amendment) Bill 2003 seeks to narrow the original coverage to a very small scope, which only aims to combat some illicit photocopying activities. Although it is not a very good solution, I believe it may be the only desirable solution.

Whereas our last discussion on the amendments to the Copyright Ordinance caused considerable controversies, we in fact do not want to see the

same thing happen again, that is, being compelled to return to the beginning eventually. I believe that this still remains fresh in our memory. However, I would like to tell Members that ever since I personally became involved in the Copyright Ordinance in 1997, as far as I can recall, almost every discussion has caused great disputes because our discussion topics are about the conflicts and arguments of various interests.

We have just talked about the views of copyright owners from a business perspective. Now we need to consider the other side, that is, other commercial interests. Users will also strive to ensure that their interests can be protected when using these copyright works or products. This is where the basic conflict lies. For this reason, I believe these controversies will not disappear simply because we will allow two more years for discussion, and that such discussion will still be heated in the next two years. Of course, there are some fundamental principles I think we all agree with. Under the current circumstances where the Government supports creative industries, the protection of property rights, in particular intellectual property rights, is vital to Hong Kong.

At the same time, I believe we are actually aware of some phenomena of imbalance in the past. Since Hong Kong's creative industries are not so well developed, users have to contribute a lot, but gain little in return. That is, we have to contribute a lot, but basically Hong Kong industries may not gain a lot from such protection. Therefore, I hope this discussion can make us recognize the real attractions of creative industries and realize why we need to start with the basics. We need to encourage creative industries and ensure that our own creative industries in Hong Kong can fully benefit from the major premise that we have to recognize the protection of property rights and intellectual property rights.

As we all know, the extension of the effective period of this temporary suspension of amendments by two more years will make the extension period add up to five years altogether. In fact, it is not a very good arrangement. However, as I have just said, we all accept this arrangement because it seems to be the only solution. I also hope that we can seek a suitable balance. Nevertheless, we have to be prepared that when it comes to the question of copyright, I believe it is really hard to have a cool and rational discussion.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce, Industry and Technology to reply.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:

Madam President, I would like to express my sincere gratitude to the Honourable SIN Chung-kai, Chairman of the Bills Committee, and members of the Bills Committee for the time and efforts they have spent on the Copyright (Amendment) Bill 2003 (the Bill). The Bills Committee has offered many valuable opinions during its scrutiny of the Bill. We have taken on many of these suggestions, and we have proposed a number of amendments to the Bill which I shall move later on during the Committee stage. Now, let me first recap briefly the background of and the various issues contained in the Bill.

When we introduced the Bill in February last year, one of our primary objectives was to make permanent the temporary arrangements for the end-user criminal liability provided under the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance).

Under the Suspension Ordinance, the end-user criminal liability applies only to four categories of works, namely, computer programs, movies, television dramas and musical recordings. We worked out the arrangements in response to expressed public concerns that the original scope of end-user criminal liability which first came into effect on 1 April 2001 was too wide. The Suspension Ordinance was enacted in June 2001 and took retrospective effect from 1 April 2001. At that time, we undertook to work out a long-term solution following wide consultation.

Based on the outcome of the extensive public consultation exercise which we conducted at the end of 2001, we consulted the Legislative Council's Panel on Commerce and Industry, and we proposed to make the temporary arrangements long-term measures. Accordingly, we introduced the Bill.

During subsequent discussions in the Bills Committee, the publishing industry strongly advocated the inclusion of its works in the scope of end-user criminal liability as well. On the other hand, copyright work users in the education and business sectors were concerned that an expansion in the scope of end-user criminal liability would impair the dissemination of information.

We have, therefore, engaged copyright work owners and users in a series of constructive dialogues, with a view to narrowing their differences and finding common ground. There has been some progress. Some users in the educational sector have agreed to continue to explore the possibility of expanding the scope of end-user criminal liability if the existing "permitted acts" provisions in the Copyright Ordinance are revised along a non-exhaustive "fair use" approach. They also proposed that guidelines should be drawn up to supplement the "fair use" provisions, and that the circumstances which would give rise to end-user criminal liability in respect of works of the publishing industry should be clearly defined. The publishing industry has also agreed to continue discussion on this basis. We need more time to allow for such discussions to proceed.

Accordingly, following consultation with members of the Bills Committee, we have proposed to delete from the Bill all the clauses relating to end-user criminal liability, including a newly proposed employee defence and the proposed removal of end-user liability associated with parallel imported copyright works. This means that only the copyshop offence, which is not related to end-user criminal liability and is aimed to facilitate enforcement action and prosecution work against illicit copying by copyshops, will remain in the Bill.

We shall continue to discuss with copyright owners and users on the feasibility of expanding the current scope of end-user criminal liability, and on other issues such as revising the "permitted acts" provisions in the Copyright Ordinance. In the meantime, we propose to extend the effective period of the Suspension Ordinance for two years, ending on 31 July 2006. I shall move later on a resolution to approve a notice to extend the effective period of the Suspension Ordinance. We aim to use the two-year extension period to conclude the discussions with copyright work owners and users, introduce a new bill reflecting the outcome of the discussions, and seek the Legislative Council's approval. The proposed arrangements, endorsed by the Bills Committee, have received the support of both the copyright work owners and users.

Now, I would like to turn to the proposed copyshop offence which is the remaining substantive proposal in the Bill. I shall explain in greater detail the proposed offence during the Committee stage. But very briefly, we propose to make it an offence for a person to possess an infringing copy of certain published copyright works for the purpose of, or in the course of, a profit-making copying service business, but he will be given certain statutory defences. These defences are aimed at ensuring that he will not be convicted if the infringing copy in question was not made for the purpose of and in the course of the copying service business, or the copy was not made for profit and reward. I would like to point out that under the existing Ordinance, it is already an offence for any person, including a copyshop, to make an infringing copy for sale or hire. Therefore, practically speaking, the proposed offence would not change the scope of the existing offence as far as they are concerned. However, it will facilitate enforcement action and prosecution work.

During our consultation with affected parties, some copyshops indicated that they would like to obtain authorization from copyright owners to ensure that their copying operation is legal. At their request, we have made arrangements for them to meet with copyright owners. Such discussions are still ongoing. We are also aware that some copyshops consider the licensing fee proposed by copyright owners on the high side, and the extent of copying allowed too restrictive. We shall continue to facilitate discussion between the two sides, and encourage them to come up with a mutually acceptable arrangement.

Madam President, I shall move a number of amendments to the Bill during the Committee stage to effect the proposals which I have mentioned earlier on. All amendments have been discussed and endorsed by the Bills Committee. Subject to the passage of these amendments, I recommend that the Bill be passed.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Copyright (Amendment) Bill 2003 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): Copyright (Amendment) Bill 2003.

Council went into Committee.

Committee Stage

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

COPYRIGHT (AMENDMENT) BILL 2003

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Copyright (Amendment) Bill 2003.

CLERK (in Cantonese): Clauses 1 to 13.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:
Madam Chairman, I move the amendments to clauses 1 and 4, and the deletion of clauses 2, 3 and 5 to 13.

Instead of empowering the Secretary for Commerce, Industry and Technology to appoint the commencement date in a separate notice, we propose to specify in the Bill the commencement date which is 1 September 2004. The proposed amendments to clause 1(2) seek to effect the proposal.

Clauses 2 and 3 seek to remove end-user liability associated with parallel-imported copies of copyright works. Since we now propose to review the end-user criminal liability with copyright work owners and users in a separate exercise, the subject matter of these clauses should also be considered in that exercise. We, therefore, propose to delete these clauses as well.

The amendments to clause 4 seek to remove all provisions relating to end-user criminal liability, and amend the copyshop offence.

Under the amendments, the copyshop offence provision is renumbered to become the proposed section 119A. The content of the copyshop offence will also be amended. Under the existing Bill, it is an offence for a person to possess two or more substantially identical infringing copies of a copyright work as published in a book, magazine or periodical for the purpose of, or in the course of, a business which includes the provision of a copying service. This has given rise to a misconception that making one infringing copy is allowed, and has caused confusion in the existing offence where the making of one infringing copy for hire or sale attracts criminal liability. The defence provided for the proposed offence in the existing Bill has also caused confusion.

To address these problems, we propose to revise the offence. We propose that a person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy which is an infringing copy of the copyright work. "Copying service business" is defined to mean a business conducted for profit, which includes the offering of reprographic copying services to the public. Where the business offers reprographic copying services to the public at more than one place, it means any part of the business carried on at such a place.

The amendment will facilitate enforcement and prosecution work against illicit reproduction of certain published copyright works by copying service businesses because it would be easier to prove the act of possession. However, to ensure that a person would not be caught for possessing an infringing copy which is not made by the copyshop, for example, a source copy left by a customer for copying service, we propose to provide a defence for the person charged to prove that the infringing copy of a copyright work in question is not made for the purpose of, and is not made in the course of, the copying service business.

Since the offence targets illicit copying for profit-making purpose, we also propose to provide another defence so that a person in a copying service business would not be caught for possessing an infringing copy if the copy was not made for profit and reward. For instance, if the copy was made by the copying service business for its own use, the person may invoke the defence. During its scrutiny of the Bill, the Bills Committee considered that copying for token reward should not be caught. We agree with this and propose to define "reward" to exclude reward of a nominal value.

As in a number of offences under the existing Copyright Ordinance, we shall provide a defence for the person charged to prove that he does not know and has no reason to believe that the copy of a copyright work in question is an infringing copy.

Amendments to clauses 5 to 12 are consequential amendments following the deletion of the provisions relating to end-user criminal liability. Only clauses 5(1) and 7 are retained to the extent that they relate to the copyshop offence. These provisions are transposed to become the proposed section 119A(6) and (7). Clause 12 provides two Schedules which we propose to delete subject to the retention of those provisions which relate to the copyshop offence. I shall later propose to transpose such provisions to the newly added clauses 7A, 7B, 7C and 14.

Clause 13 of the Bill seeks to repeal the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance). Now that we propose to extend the effective period of the Suspension Ordinance, this clause should be deleted.

All the amendments mentioned have been discussed and endorsed by the Bills Committee. I hope the Committee would support their passage. Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex)

Clause 2 (see Annex)

Clause 3 (see Annex)

Clause 4 (see Annex)

Clause 5 (see Annex)

Clause 6 (see Annex)

Clause 7 (see Annex)

Clause 8 (see Annex)

Clause 9 (see Annex)

Clause 10 (see Annex)

Clause 11 (see Annex)

Clause 12 (see Annex)

Clause 13 (see Annex)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 2, 3 and 5 to 13, which deal with deletion, have been passed, clauses 2, 3 and 5 to 13 are deleted from the Bill.

CLERK (in Cantonese): Clauses 1 and 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New clause 3A	Penalties for offences under section 118
	New clause 7A	Seized articles, etc. liable to forfeiture
	New clause 7B	Disposal of articles, etc. where a person is charged
	New clause 7C	Determination of application for forfeiture
	New heading before new clause 14	Consequential Amendments Prevention of Copyright Piracy Ordinance
	New clause 14	Seized optical discs, etc., liable to forfeiture.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:

Madam Chairman, I move that the new heading and new clauses read out just now be read the Second time. These clauses are all technical in nature. Clause 3A seeks to modify the existing wording of the Chinese text of section 119(1) of the Copyright Ordinance so as to reflect more accurately the intended meaning. As we propose to enact the copyshop offence, we need to retain the associated provisions in the Bill, that is part of proposed sections 5, 6 and 7 of Schedule 1, and proposed section 2 of Schedule 2. To simplify the structure, we propose to transpose the relevant parts of these provisions to clauses 7A, 7B, 7C and 14. All the amendments I have just mentioned have been discussed and endorsed by the Bills Committee. I hope the Committee would support the passage. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 3A, 7A, 7B, 7C, new heading before new clause 14 and new clause 14.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:

Madam Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New clause 3A (see Annex)

New clause 7A (see Annex)

New clause 7B (see Annex)

New clause 7C (see Annex)

New heading before new clause 14 (see Annex)

New clause 14 (see Annex)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:

Madam Chairman, I move the deletion of Schedules 1 and 2. These amendments are technical in nature. Schedules 1 and 2 set out miscellaneous and consequential amendments to the Copyright Ordinance and other relevant ordinances. As a result of the removal of the provision relating to end-user criminal liability, we need to retain only the proposed sections 5, 6 and 7 of Schedule 1 and section 2 of Schedule 2, dealing with the copyshop offence. The provisions have already been transposed to the newly added clauses 7A, 7B, 7C and 14 through a Committee stage amendment which has just been passed. The Schedules can now be deleted. All the amendments which I have mentioned have been discussed and endorsed by the Bills Committee. I hope the Committee would support their passage. Thank you, Madam Chairman.

*Proposed amendments***Schedule 1 (see Annex)****Schedule 2 (see Annex)**

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

(No Member indicated a wish to speak)

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

(Member raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to Schedules 1 and 2, which deal with deletion, have been passed, Schedules 1 and 2 are deleted from the Bill.

CLERK (in Cantonese): Long title.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY: Madam Chairman, I move an amendment to the long title. As I mentioned during the resumption of the Second Reading, I shall propose to extend the effective period of the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) for two years, ending on 31 July 2006. The reference in the long title that the Bill seeks to repeal the Suspension Ordinance should therefore be deleted. The amendment has been discussed and endorsed by the Bills Committee. I hope the Committee would support its passage. Thank you, Madam Chairman.

Proposed amendment

Long title (see Annex)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Commerce, Industry and Technology, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

COPYRIGHT (AMENDMENT) BILL 2003

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:
Madam President, the

Copyright (Amendment) Bill 2003

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 Copyright (Amendment) Bill 2003 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): Copyright (Amendment) Bill 2003.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed to extend the existing concessionary duty rate on ultra low sulphur diesel (ULSD) to 31 December this year. This is to implement the relevant proposal made by the Financial Secretary in his Budget announced on 10 March.

In the past five years or so, the Government has granted a concessionary duty rate on motor diesel or ULSD. In June 1998, we reduced the duty rate on regular diesel from \$2.89 to \$2 per litre as a temporary measure in the light of the economic climate at that time. Later, in July 2000, ULSD was introduced at a concessionary duty rate of \$1.11 per litre on environmental grounds. The duty rate was to be adjusted to \$2 per litre on 1 January 2001 and was to revert to \$2.89 per litre on 1 January 2002. By then, regular motor diesel had been completely replaced by ULSD at filling stations in the territory. The Government has subsequently proposed to postpone the reversion of the duty rate to the original level on four occasions with a view to relieving the operating pressure on the industry during the economic downturn.

According to the resolution passed by the Legislative Council in March last year, the duty rate on ULSD is scheduled to revert to \$2.89 per litre on 1 April this year. Though the economy has started to recover, the Government appreciates that the transport industry and other related sectors still face many difficulties. We therefore propose to extend the concession for ULSD again until 31 December this year. After that date, the duty rate on ULSD will revert to \$2.89 per litre.

The extension of the concessionary period will cost the Government nearly \$0.9 billion in 2004-05. The series of concessions for ULSD have so far cost the Government a total of \$6.8 billion.

I hope Members will support the resolution.

Thank you, Madam President.

The Secretary for Financial Services and the Treasury moved the following motion:

"RESOLVED that Schedule 1 to the Dutiable Commodities Ordinance be amended, in paragraph 1A of Part III -

- (a) in subparagraph (a), by repealing "31 March 2004" and substituting "31 December 2004";
- (b) in subparagraph (b), by repealing "1 April 2004" and substituting "1 January 2005"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed.

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

MS MIRIAM LAU (in Cantonese): Madam President, the Financial Secretary said that, as the economy had just started to recover, the transport industry and other related sectors still faced many difficulties, so he decided to extend the duty concession for ULSD to the end of this year. The period for this duty concession is just nine months. In comparison with the previous periods of duty concession which last for one year, the period of this year is shorter by nearly one quarter. I strongly hope that people in the industry could have all their present difficulties removed by the end of this year, but in case this is not possible, I really hope that the Government can continue to adopt an open

attitude regarding this duty concession for ULSD. Just as the Financial Secretary said in a briefing on the Budget conducted in this Council, "We shall talk about it by then." I shall bear in mind this remark made by the Financial Secretary.

In regard to the further extension of this duty concession for ULSD, I would like to welcome this move by the Government once again on behalf of the transport industry and the logistics industry as a whole. However, I strongly hope that the Financial Secretary will not continue to adopt a compassionate attitude in deciding whether the duty concession should be extended. Instead, he should handle the issue of diesel duty from the perspective of enhancing the competitiveness of the local logistics industry.

In fact, the Chief Executive had already pointed out in his policy address of the year that, as the logistics industry in neighbouring areas was developing very rapidly and competition was ever intensifying and, the operating costs in Hong Kong were too high, we must redouble our efforts, otherwise we risk eroding our established advantages.

In order to enhance the competitiveness of cross-boundary container trucks, the Hong Kong Port Development Board is currently working with the industry in analysing the operating costs of the container truck industry, with a view to identifying items which may have room for cost reduction. One of such items is diesel duty. I have repeatedly pointed out that the Government should review the diesel duty rate in a holistic manner, with a view to assessing the possible scope of reduction for diesel duty, as well as determining a new duty rate, or abolishing the diesel duty altogether. If the diesel duty is abolished for good, then we do not have to deal with this issue of extending the duty concession for ULSD every year. However, the Government has been evading this issue, without making any response at all.

The industry understands that the Government is running on a heavy fiscal deficit. The continued extension of the present duty concession would cost the Government a few hundred million dollars in revenue annually. The Secretary also mentioned this point just now. However, the industry also hopes the Government will understand that, the logistics industry, being one of the core industries of Hong Kong, has been generating a financial income far exceeding

the Government's loss in diesel duty. On the contrary, if the Government does not extend the duty concession, the vitality of the freight forwarding industry will be threatened, and also that of the logistics industry indirectly.

Therefore, if the Government hopes to develop the logistics industry strategically, it must redouble its efforts. Instead of just extending the duty concession, it should go one step further to reduce or even abolish the diesel duty.

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

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, during the past few years, such resolutions have been proposed successively one after the other, and this time around it is proposed that the concession be extended by nine months. I believe no one would voice any objection to it. However, frankly speaking, the Government should really be facing the reality. Is it true that all the problems will really be solved if the Government does not put forward any resolutions by 31 December? By then, will there be 300 to 500 or 100 to 200 container trucks or several thousand container truck drivers presenting petitions outside the Legislative Council Building?

The problem raised by Ms Miriam LAU is very real, one which the Government must strive to tackle. It is also an issue which must be studied in order to identify long-term solutions once and for all. The Government should review the relevant duty rate and consider the competition from neighbouring areas. This is because, insofar as container transportation is concerned, our neighbouring ports are really catching up very fast. So, competition and costs are two issues which we must consider. As the Government intends to develop the logistics industry or the transport industry as a whole, it must also consider its own financial situation. This point is naturally important. In spite of this, if this issue is delayed until November or December, I think it is very likely that troubles will strike by then. I think that the Government should consider in a comprehensive manner ways of conducting public consultation and cost

comparison, studying the current situation of the industry as a whole, and compare costs, so that more in-depth studies can be conducted, which in turn will produce some data for determination on how best the issue should be tackled in the long term. At the moment, I do not have any proposal, nor do I have any concrete suggestions. However, regarding the review mentioned by Ms Miriam LAU just now, I fully support it. I hope that the Government can seriously consider conducting a comprehensive review, which is not just an assessment of how many hundred million dollars have been lost in potential revenue. Instead, it is necessary for the Government to study the development of the industry, the impact on the working population as well as the competition from neighbouring areas. This is not just the work of Secretary Frederick MA, but also that of Secretary Stephen IP. I hope Secretary MA and Secretary IP can discuss together how the issue should be addressed because this is not just a problem for the Treasury.

With these remarks, I support the motion, and hope that the Government can respond to the issue of conducting a review as proposed by Ms Miriam LAU.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, on the issue of diesel duty, I think my viewpoint is very similar to that of Ms Miriam LAU, that is, we hope the Government will not let the validity of the duty concession run out by the end of the year without considering the due course of action in future. In fact, the way forward well deserves our consideration. Apart from the views expressed by Mr SIN Chung-kai, we should actually consider the issue from a realistic perspective.

I would like to quote an example. Let us take the case of a van driver as an example. If the original diesel duty level should be restored, his daily expenditure will rise by more than \$30 or even more daily. On a monthly scale, his extra expenditure will amount to more than \$1,000. However, on the basis of the daily business income of a van driver, we can reckon that their monthly income is only about \$5,000. So, if he has to shoulder an extra expenditure of more than \$1,000, the remainder of his monthly income will only be between \$3,000 and \$4,000. Insofar as his capability is concerned, it is really difficult for him to make ends meet. Therefore, on this point, we must consider the impact of diesel duty on the livelihood of the people.

In fact, van drivers are not the only group of people who are affected. In retrospect, we can recall that the diesel duty was adjusted downwards as early as July 1998. What was the reason for introducing the downward adjustment? It was meant to encourage drivers to switch to cleaner fuels. That was why the initiative of introducing low duty rate was implemented. However, the problem now is not every type of vehicles can use cleaner fuels. For example, in the case just cited by me, the van drivers have been arguing with the Environmental Protection Department why they cannot use the cheaper fuels, such as liquefied petroleum gas. Why can they not use it? They do not even have the chance of trying it out. This is the most critical problem. Therefore, many professional drivers are now saying that they are prepared to co-operate with the Government in alleviating the air pollution problem in Hong Kong, but unfortunately, the Government has not provided assistance to them in this aspect. So, they are left with no alternative but to use this type of fuel. However, if the fuel they have to use is so expensive, it is not good to them. I have said just now that this is a problem that will affect the livelihood of the people.

In the meantime, this is not good for environmental protection as well. A moment ago, I have also touched on the subject of environmental protection. As we all know, the extent of air pollution now is still intolerable. Therefore, from the perspective of either the environment or the livelihood of the people, the Government should think about how to make improvement in this aspect. However, it is unfortunate that at present when the issue is still not yet solved, the authorities concerned force the people to use this type of fuel which is neither clean nor inexpensive. Is this fair? Is this reasonable? Therefore, in the discussion on this issue today, I really hope that the Government will think about how this problem can be solved in the long run, instead of acting in the present way of providing only some small concessions. Or even in harsher terms, the Government seems to be handing out alms to the people in a most condescending manner. From this perspective, we may say that the Government is trying to, so to speak, make life easier for the relevant groups of people, so that they can tide over the hard time. However, in fact, everyone does not wish to use this type of fuel. And as everyone does not like to pay this high tax item, what should the Government do in order to help them? This is indeed the most significant issue.

Therefore, though we are all very happy today and are glad that this concession will be extended, its validity will expire by the end of the year and this is no solution to the problem. As such, in the long term, the Government really has to think about whether there are some better methods to solve the problem.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, you may reply now.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I am grateful to Ms Miriam LAU, Mr SIN Chung-kai and Mr LEUNG Yiu-chung for their views on the concessionary duty rate on ULSD. Concerning Members' request that the Government conduct a review, I will certainly convey Members' views to my colleagues, including Secretary IP, the Financial Secretary and Secretary Dr LIAO. I am also grateful to Members for their appreciation of the pressure that the concession will exert on the Government's finance since, as I said in my speech, extending the concession will cost the Government \$900 million in duty revenue in the year 2004-05. In spite of this, I have heard Members express their support for the motion. Therefore, I wish to thank Members here. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Copyright (Suspension of Amendments) Ordinance 2001.

PROPOSED RESOLUTION UNDER THE COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:
Madam President, I move that the motion, as printed on the Agenda, be passed. The motion seeks Members' approval of the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2004.

In April 2001, the coming into effect of criminal liability for possessing pirated articles in the course of business, the so-called "end-user liability", aroused wide public concerns about possible adverse impact on the dissemination of information in enterprises and teaching in schools. In view of this, the Government proposed the suspension of the implementation of the criminal provisions, while retaining the application of these provisions to four categories of works, namely, computer programs, movies, television dramas and musical sound and visual recordings. The Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) was passed in June 2001 by the Legislative Council.

The relevant provisions under the Suspension Ordinance were supposed to expire on 31 July 2002. Under section 3 of the Suspension Ordinance, the Secretary for Commerce, Industry and Technology may, by notice published in the Gazette before the expiry date, amend that date. Such a notice is subject to the approval of the Legislative Council. In July 2002 and 2003, the Government proposed, and the Legislative Council approved respectively, twice the extension of the effective period of the Suspension Ordinance until 31 July

this year. This extension serves to facilitate the preparation by the Government and the scrutiny by the Legislative Council of the legislative proposals on the longer-term solution for the suspension measures.

Last February, we introduced the Copyright (Amendment) Bill 2003 (the Bill) to the Legislative Council. The Bill proposes, among other things, to continue with the current arrangements under the Suspension Ordinance, that is, to confine the scope of end-user liability to the four categories of works.

During the subsequent scrutiny of the Bill by the Bills Committee, we noted new developments on the discussion between the publication sector and the relevant copyright works users on the scope of end-user liability, in particular, the implementation of the "fair use" principle. Given the shortness of time, the discussion had not come to a conclusion. In the event, having consulted the Bills Committee, we proposed to remove provisions relating to end-user liability under the Bill to provide more time for the relevant parties to continue the discussion. Based on the outcome of the discussion, the Government would review the scope of end-user liability and introduce relevant legislative amendment proposals. The Bills Committee supports this course of action.

We, therefore, propose to extend the effective period of the Suspension Ordinance, which is due to expire on 31 July 2004, for two years, ending on 31 July 2006. During the extended period, the end-user liability under the existing Copyright Ordinance, as read together with the Suspension Ordinance, will remain intact. The proposal has received the support of the Bills Committee.

We expect the discussions between copyright owners and users to be lengthy and complicated. The discussion will cover the issue of defining the scope of fair use of copyright works, including the adoption of the "fair use" provisions employed by the United States. We shall need to consult not only the publishing industry, but also copyright owners and users in other areas on the concept of "fair use". The adoption of the "fair use" provisions may even require an overhaul of the structure of our Copyright Ordinance because the open-ended approach of "fair use" employed to exempt copyright infringement is very different from the current exhaustive approach used under our Copyright Ordinance. In fact, the target of drawing the discussion between owners and users to a conclusion, submitting a fresh bill to the Legislative Council and having the bill enacted within two years is a very ambitious one. However,

provided that there is the best endeavour and compromise on the part of the parties concerned, we feel that the target is still a feasible one.

The Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2004 which I introduce now is made to extend the effective period of the Suspension Ordinance for two years.

Thank you, Madam President.

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

"RESOLVED that the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2004, made by the Secretary for Commerce, Industry and Technology on 3 March 2004, be approved."

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.

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

MR MA FUNG-KWOK (in Cantonese): Madam President, the Government put forward the Copyright (Amendment) Bill in 2001 to introduce criminal liability for the use of infringing copies of copyright works. However, this aroused great public concern as the scope of the amendment was so wide that even educational and non-profit-making organizations were affected. Consequently, in a rare move, the Government announced a suspension of the criminal provisions regarding illegal photocopying as a temporary measure. After two years of consultation and discussion, the Government has decided to continue the suspension of these provisions because there are still substantial differences in the viewpoints of different sectors of the community. Of course, it is very undesirable for us to suspend the implementation of legislation or delay the legislative processes. But it is still better than enacting legislation in a hurry before a consensus is reached, doing injustice to the people, the public or copyright owners.

In fact, during the past two years, in order to allay public concern, the publishing industry has taken the initiative to hold talks with the educational sector, non-profit-making and commercial organizations with a view to setting up a licensing mechanism. On the one hand, they provide the educational sector with definitions and guidelines on a reasonable scope of photocopying, so as to allow teachers to photocopy printed works for teaching purposes, while various other organizations may photocopy books and publications as per the needs arising in the course of their business under licence agreements. On the other hand, the publishing industry may also reach licence agreements with copy-shops to facilitate profit-making photocopying business by granting legal licence, and through this mechanism, the public and students may, for purposes of research and studies, photocopy newspapers in copy-shops for reference. Besides, it is proposed that the criteria on "fair handling and use" should be stipulated under the Copyright Ordinance to specify the proportion of books and publications that the public may photocopy in a month.

During the past two years, the publishing industry has responsibly done a lot of work in balancing the interests between the industry and the public. However, the Government has originally intended to make the temporary suspension measures permanent, and exclude illegal photocopying of printed works from the scope of criminal liability, thinking that the interests of copyright owners can only be effectively protected by curbing the illegal photocopying of books and publications at copy-shops, and that this will also avoid causing undue public worry about excessive extending the scope of the legislation. Of course, this policy is relatively "simple and convenient" for the Government.

However, I would like to point out that there are problems with such concepts. First of all, as I have said earlier, the publishing industry has been doing its best in holding talks with the various sectors in establishing a reprography licensing mechanism in order to exempt the criminal liability through licensing the photocopying of books and publications for purposes of education and private study. Secondly, after the implementation of the Copyright (Amendment) Bill 2001, the copyright of four categories of copyright works, namely, computer programs, movies, television dramas and musical sound and visual recordings has already been protected by the legislation, why

should printed works be excluded? Is this practice in line with the principle of fairness? Thirdly, many advanced countries, such as Britain and the United States, have implemented measures to criminalize the copyright infringement of printed works, why can Hong Kong not follow the international trend of adaptation? Fourthly, if the Government maintains that it will not proceed to draft sanctions against illegal photocopying of books and publications, it is sending an incorrect message to the public to the effect that it is encouraging illegal photocopying of books and publications. It will deal a severe blow to both the protection of intellectual property rights and the development of creative industries.

It must be pointed out that the illegal photocopying of books and publications in the academic sector is very rampant. It is estimated that the annual loss in revenue suffered by the educational publishing industry amounts to \$70 million. Tertiary students have co-ordinated among themselves in proceeding with mass illegal photocopying of textbooks, and such practice has developed into a campus sub-culture. According to statistics done by the Central Policy Unit, the publishing industry is one of the largest creative industries in Hong Kong, with more than 3 000 publishing companies producing more than 800 newspapers, magazines and publications, and providing employment to more than 7 000 persons. If the illegal photocopying trend is allowed to spread, it will inevitably deal a heavy blow to this prosperous industry, thereby defeating the Government's policy of promoting the development of creative industries. More worrying still, if our next generation also adopts this indifference towards intellectual property rights, how can we pin hopes on them to develop the creative industries? Certainly, some people may say that we should enhance the awareness of the young people of protecting intellectual property rights by way of education. However, we believe the employment of legislative measures will also be able to bring about certain effect in deterring people from photocopying books and publications illegally.

I hope that the Government's proposal on an extension of the suspension is not just a delaying tactic. Instead, I hope the Government will really listen to the voices of the industry and consider the work done by the industry before drafting reasonable legislative provisions which accord with the policy of

protecting intellectual property rights in comprehensive, fair and reasonable manner.

With these remarks, I support the motion. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce, Industry and Technology to reply.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY: All the issues raised by the Honourable MA Fung-kwok have been discussed *ad nauseam* in the Panel and during the meetings of the Bills Committee. I have nothing further to add to what I have already said just now. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by 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.

MEMBERS' BILLS**First Reading of Members' Bills**

PRESIDENT (in Cantonese): Members' Bills: First Reading.

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004**STANDARD CHARTERED BANK (HONG KONG) LIMITED (MERGER) BILL**

CLERK (in Cantonese): Professional Accountants (Amendment) Bill 2004
Standard Chartered Bank (Hong Kong) Limited
(Merger) Bill.

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

PRESIDENT (in Cantonese): As both the Professional Accountants (Amendment) Bill 2004 and the Standard Chartered Bank (Hong Kong) Limited (Merger) Bill presented by Dr Eric LI and Dr David LI respectively relate to government policies, in accordance with Rule 54(1) of the Rules of Procedure, the signification by a designated public officer of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bills.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I confirm that the Chief Executive has given his written consent for the Professional Accountants (Amendment) Bill 2004 and the Standard Chartered Bank (Hong Kong) Limited (Merger) Bill to be introduced into this Council.

Second Reading of Members' Bills

PRESIDENT (in Cantonese): Members' Bills: Second Reading.

Dr Eric LI, you may now move the Second Reading of your Bill.

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004

DR ERIC LI: Madam President, I move the Second Reading of the Professional Accountants (Amendment) Bill 2004 (the Bill).

The Bill seeks to amend a number of provisions in the Professional Accountants Ordinance and the Professional Accountants By-laws to effect certain measures to improve the existing regime on the regulation of accountants, and to implement changes to the name of the Hong Kong Society of Accountants (HKSA) and designation of its membership in line with the global trend.

Accountants play an important role in safeguarding the integrity of financial reporting. The regulatory regime of the accountancy profession should be open, effective, transparent and able to inspire confidence of the investing public.

The regulatory regime in respect of the accountancy profession in Hong Kong is set out in the Professional Accountants Ordinance. Section 7 of the Ordinance states that one of the HKSA's objectives is to regulate the practice of the accountancy profession and to discourage dishonourable conduct and practices by professional accountants. In response to the Secretary for Financial Services and the Treasury's request, the HKSA put forward in late January 2003 a series of proposals to open up its governance structure and to improve the present regulatory processes enshrined in the law. The proposals are summarized as follows:

- (i) increase the lay members and government appointed officials in the HKSA's Council (that is, its governing body) from two to six;
- (ii) expand the membership of an Investigation Committee instigated by the HKSA's Council from three to five, and alter the composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;
- (iii) alter the composition of the five-member Disciplinary Committee instigated by the HKSA's Council, with the majority of members (including the chairman) being lay persons; and

- (iv) as a variation of (ii) above, establish an Independent Investigation Broad (IIB) to deal with alleged accounting, auditing and/or ethics irregularities related to the audit of companies listed on the Stock Exchange of Hong Kong.

The HKSA is of the view that the above proposals will provide sufficient mechanisms to meet the demands of establishing adequate oversight over the conduct and work of professional accountants for the proper safeguard of public interest. The Administration welcomes the HKSA's proposals as a move in the right direction, and considers that the proposals are key steps in enhancing the oversight of the HKSA's key functions, and thus the oversight over the accounting profession.

The HKSA intends to implement the proposals relating to the opening up of the Council, its Investigation and Disciplinary Committees as the first step. As implementing such proposals requires legislative amendment, the HKSA took the initiative and sought my agreement to sponsor a Members' Bill to expedite the reform process. The above proposals are supported by the HKSA members at the Extraordinary General Meeting held on 7 July 2003.

Since the proposal to establish an IIB warrants more detailed examination, the legislative changes to effect such a proposal are the subject of a separate consultation and legislation by the Administration, and are therefore not included in this legislative amendment exercise. The Administration issued a consultation paper on the IIB proposal in September 2003, and will report on the outcome of the consultation at the Panel on Financial Affairs meeting on 2 April 2004.

The HKSA envisages that the amendment to give effect to the IIB in its proposed form would not conflict with its present opening-up proposals. In any event, the HKSA expects that it would take some time before any legislative proposal on the IIB could be finalized, and so in the interest of promoting transparency and accountability, the HKSA finds it necessary to proceed with the opening-up proposals in the first instance.

Accounting institutes in all major jurisdictions in the world are either called institutes of chartered accountants or institutes of certified public accountants. The HKSA is one of the very few which still retains the "Society"

name, and its members are designated "Associates (or Fellows) of the Society" whereas most other member bodies in other countries have used the CA or CPA designation. In recognition of this global trend, the HKSA proposes to align its corporate brand with the international designation.

At the Extraordinary General Meeting of the HKSA held on 11 November 2002, a resolution was passed to change the name of the Society, its membership structure and membership designations and the descriptions of the practice units. The HKSA proposes to make the corresponding amendments to the provisions in the Ordinance to reflect such changes. The name of the Hong Kong Society of Accountants shall be changed to the Hong Kong Institute of Certified Public Accountants, with its Chinese name "香港會計師公會" remaining unchanged.

Let me now briefly introduce the major features of the Bill.

The HKSA's regulatory reform proposals are effected through changing the membership structure of its Council, Investigation Committee and Disciplinary Committee as provided for in the Bill. Lay members and government appointed officials in the HKSA's Council are increased from two to six, and the Investigation Committee and Disciplinary Committee instigated by the HKSA's Council respectively will be constituted by a majority of lay members (including the chairman). These changes should provide sufficient mechanisms to meet the demands of establishing adequate oversight over the conduct and work of the HKSA members for the proper safeguard of public interest.

Clauses 3 and 5 of the Bill change the name of the Society to "the Hong Kong Institute of Certified Public Accountants". All references to the "Society" and "professional accountants" in the Professional Accountants Ordinance are amended as "Institute" and "Certified Public Accountants" accordingly. Clause 8 of the Bill empowers the HKSA to introduce a new college of International Affiliates to its membership, and to extend such membership to members of other accountancy bodies.

The Bill also seeks to make certain miscellaneous amendments to the Professional Accountants Ordinance and By-laws with a view to improving the efficiency and effectiveness of the HKSA's operational and regulatory processes. These include:

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- (1) making an immunity provision in the Ordinance to cover generally such acts by members of the HKSA's Council and its appointed committees as well as its officers while exercising their statutory powers in good faith;
 - (2) streamlining the disciplinary proceedings of the HKSA and they are summarized as follows:
 - (i) clause 36 redefines "dishonourable conduct" as a disciplinary offence which would likely bring discredit upon the accountancy profession;
 - (ii) clause 37 empowers the Disciplinary Committee to order the withdrawal of a member's practising certificate either permanently or temporarily, and to determine the effective date of a disciplinary order;
 - (iii) clause 38 enables a Disciplinary Committee, the complainant and a certified public accountant to agree to a consent order for relatively minor offences instead of having a full hearing of the complaint; and
 - (iv) clause 39 makes public the hearings of the Disciplinary Committee except in exceptional circumstances, and so on.
 - (3) making the operation of the HKSA more effective, including the following provisions:
 - (i) clause 29 empowers the HKSA's Council to cancel the practising certificate of a practising accountant who is subject to a bankruptcy order;
 - (ii) clause 47 empowers the Investigation Committee to obtain information and documents from any specified HKSA member other than the HKSA member who is under investigation;

- (iii) clause 14 allows the HKSA to prepare summary financial statements for distribution to members; and
- (iv) clause 55 updates some of the provisions in the By-laws in relation to the election of the HKSA's Council, calling of Annual General Meetings (AGMs) and the minimum number of members to propose resolutions which are unrelated to the ordinary business at the AGMs, and so on.

The above re-branding and self-regulatory reform proposals of the HKSA as well as the various amendments to the Professional Accountants Ordinance and By-laws have been subject to consultation among members of the HKSA, and they are in favour of the Bill. The HKSA has been in continuous dialogue with the Financial Services and the Treasury Bureau, which has indicated its full support for the Bill.

In conclusion, I believe the enactment of the Bill will provide the statutory body of the accountancy profession in Hong Kong with a clear and recognizable brand name which reflects the integrity, ethics, skills and knowledge which are expected of today's accountants. It will also put in place a transparent regulatory framework of the local accountancy profession and equip the HKSA with the independence, objectivity and accountability required for regulating its members.

Accordingly, Madam President, I recommend the Bill to the Legislative Council, and I hope Members will support the Bill. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Professional Accountants (Amendment) Bill 2004 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.

PRESIDENT (in Cantonese): Dr David LI, you may now move the Second Reading of the Bill tabled by you.

STANDARD CHARTERED BANK (HONG KONG) LIMITED (MERGER) BILL

DR DAVID LI: Madam President, I move the Second Reading of the Standard Chartered Bank (Hong Kong) Limited (Merger) Bill (the Bill).

Under the Bill, the assets and liabilities of the Hong Kong branch of Standard Chartered Bank, Manhattan Card Company Limited, Standard Chartered Finance Limited, Standard Chartered International Trade Products Limited and Chartered Capital Corporation Limited will be transferred to a new, wholly owned subsidiary within the Standard Chartered Group.

The new subsidiary has been incorporated in Hong Kong, and is named the Standard Chartered Bank (Hong Kong) Limited "渣打銀行（香港）有限公司".

The provisions of the Bill are similar to the bank merger ordinances passed by the Legislative Council in recent years. The rights of the customers and employees of the Bank are safeguarded under the Bill.

The Standard Chartered Bank is authorized to issue bank notes in Hong Kong. It intends to seek authorization of the Standard Chartered Bank (Hong Kong) Limited as a note-issuing bank in place of the Standard Chartered Bank. If authorization is given, the current plan is for this to take effect on the same day as the appointed day under the Bill.

The Standard Chartered PLC, the Group parent of the merging companies, is listed on the Hong Kong Stock Exchange. The current merger exercise will have no effect on the stock exchange listing, nor will it affect the shareholders' rights.

The incorporation and merger exercise demonstrates the Standard Chartered Bank's long-term commitment to, and confidence in, Hong Kong and China. It gives the bank an opportunity to capitalize on the ample business opportunities created as a result of the closer economic integration between Hong Kong and the Mainland.

This will further enhance Hong Kong's role as an international financial centre, contributing to the growth and prosperity of our city.

Accordingly, I have the pleasure of recommending the Bill to the Legislative Council.

Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Standard Chartered Bank (Hong Kong) Limited (Merger) Bill be read the Second time.

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

MEMBERS' MOTIONS

PRESIDENT (In Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation and the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS MIRIAM LAU (in Cantonese): Madam President, I move that the motion, as printed under my name on the Agenda, be passed.

At the meeting of the House Committee on 5 March 2004, Members agreed that a Subcommittee be formed to study the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation and the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation laid on the table of the Legislative Council on 3 March 2004. I was elected as Chairman of the Subcommittee. Since the two Regulations will affect the operation of the relevant sector, to allow more time for the Subcommittee to deliberate on the items and report the

outcomes to the House Committee, I move a motion in my capacity as Chairman of the Subcommittee to extend the scrutiny period to 21 April 2004.

Madam President, I implore Members to support this motion.

Ms Miriam LAU moved the following motion:

"RESOLVED that in relation to the -

- (a) Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, published in the Gazette as Legal Notice No. 27 of 2004; and
- (b) Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation, published in the Gazette as Legal Notice No. 28 of 2004,

and laid on the table of the Legislative Council on 3 March 2004, 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 21 April 2004."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee on time limits of speeches by Members. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Conservation of monuments and heritage.

CONSERVATION OF MONUMENTS AND HERITAGE

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, I move the motion as printed on the Agenda.

Madam President, every one of us would have some sort of family treasures left behind by our families. Though these are called family treasures, they may well be just articles left by our grandfather or great-grandfather and mostly are watches, vases, music boxes, clothes or the like. They have great commemorative value and may evoke some fond memories in us as we look at these memorabilia.

(THE PRESIDENT'S DEPUTY, Ms Miriam LAU, took the Chair)

There are quite a number of monuments in Hong Kong to which we attach sentiments and which evoke nice memories in us. They are more than buildings, but icons of history. They must not be demolished at will. For the years to come, they are to be preserved, for they are eye-witnesses to our development, in much the same way as three generations of people live together in a family. And that is something in human culture which should be dearly cherished.

Two days before the eve of the Chinese New Year last year, the television was showing a scene in the walled village of Nga Tsin Wai where three generations from the same family were having a dinner. It was a moving image. But no one could have imagined that such a scene may never happen again, for this one and only one walled village in the heart of Kowloon City is going to be pulled down. The Government is unwilling to declare the walled city a monument, for the simple reason that there has yet to be a policy on the conservation of monuments and that the realistic circumstances would not permit its conservation.

This year, we are seeing some positive efforts by the Government in its conduct of a public consultation on the built heritage conservation policy. It shows that the Government is beginning to address the issue seriously. I am therefore proposing this motion to present the views of the Hong Kong Federation of Trade Unions of this issue, in the hope that the Government can provide incentives to encourage owners to retain, repair and maintain the built heritage. At the same time, we also hope that the Government can put these historical buildings into modern uses by enriching them with economic values such as developing tourism and entertainment business, thereby creating job opportunities.

Many places in the world are aware of the fact that monuments should be preserved and in many places, monuments have become scenic spots. Not to speak of faraway places, Macao and Shanghai are experts on the sustained development of monuments. A good example is the buildings along Huangpu River in Shanghai. At night, Nanjing Road dazzles and sparkles against a backdrop of the skyscraping Pearl of the Orient TV Tower in the distance. What makes Shanghai so successful is this blending of the old with the new, the co-existence of which makes Shanghai a spectacular and charming city.

For Macao, it enjoys reputation as a museum of Oriental and Western architectural art. It attracts vast numbers of visitors from all over the world, thanks to the hard work put up by the Macao authorities in preserving buildings of historical value. Moreover, Macao also knows how to package and publicize their heritage spots. For example, they have three heritage tour routes, each with its own character and theme. A total of some 50 spots are involved in these heritage tour routes, including churches, temples, buildings of artistic value and parks of various kinds.

Hong Kong is in this respect lagging way far behind these places. For in other places, the authorities there know how to transform the old into the new and give a golden touch to them. But for Hong Kong, what we got are some outdated concepts and the Antiquities and Monuments Ordinance which is likewise outdated. The Ordinance only defines "antiquities" and "monuments" but it lacks a complete framework to protect our cultural heritage. Many cultural relics have been declared monuments, but they are left deserted to carry on their drab and desolate existence, as lifeless as the dead.

We should have a comprehensive system of built heritage conservation and more professionals should be enlisted to join such conservation work. However, and as we can see, the resources input by the Government is simply not enough. Rarely does the Government offer any compensation to the owners of such monuments and so the owners would rather do nothing to preserve them.

It can thus be seen that conservation of monuments should not just be undertaken by the Antiquities and Monuments Office. It is not so simple as to use some law to determine whether or not certain buildings should be protected. What should be done is to bring in market forces to change the economic values of the monuments or their neighbourhood and hence provide a long-term financial source to preserve those monuments, even to the extent of creating business or job opportunities.

An example is the Nga Tsin Wai village where developers have purchased most of the titles to ownership. In this case, the Government may offer some incentives to encourage the developers to preserve the outlook of the walled village. These incentives may include changing the land use or the plot ratio. Some people have suggested making the Nga Tsin Wai village a heritage trail and build some hostels and shops to attract visitors there to stay or visit, and the profits will be shared with the developers. Some festive activities may also be held in the neighbourhood at certain times of the year, so as to make the activities local events and hence attract both local and overseas visitors there. The place will become more attractive and as many people will engage in the economic activities there, more benefits can be produced.

When the Government implements such a plan, it must adhere to the principle of financial viability and enable enormous input of creativity. It must not allow the plan to fall flat into things like a makeshift market, for in that case,

it will not be attractive at all. Such work must enlist the support of local residents, for only indigenous residents of the walled village will know its unique qualities and some of the special customs observed.

Let me cite another example. Some of the old buildings are topical, so it is a good idea to preserve these buildings and open them for visits by groups, photography shootings or lease. The rentals so collected can be used as funds for their preservation.

In fact, when the Government maintains monuments with conscious efforts, the result could be ludicrous. An example is Wong Nai Chung Gap Road which was a battleground during the Second World War. A few years ago, some Canadian veterans came here to recollect past memories. Then the Government refurbished the whole place, placed sandbags, filled the bullet holes and put up wire meshes. The result was a host of criticisms that these were over board. For the people went there to see the scars of war, but what the Government did was to fill the bullet holes and erect wire meshes. The maintenance work done made the site a lacklustre place.

Maintenance work done by the Government should be given greater flexibility. Existing laws should be amended to incorporate a detailed conservation framework and the statutory status of the related departments should be raised. These include a modification of the existing classification system by drawing reference from the opinions expressed by people from all sectors on the conservation of monuments. This will make the classification system less rigid. The entire process of conservation of antiquities may even be made accessible to the public so that more people can take part in it. For the conservation of monuments and heritage is not an exclusive right of the archaeologists.

Mr KO Tim-keung, a local historian, once said that Hong Kong was the place where the culture of South China was best preserved. Given this, we must find a proper positioning. The policy on antiquities and monuments in Hong Kong should not simply aim at preserving certain buildings, but the entire culture of South China. Apart from buildings of special value in the urban areas and the relics in the countryside, certain intangible heritage like folk customs should also be preserved. This should be incorporated into the purview of this consultation exercise.

Lastly, I would like to stress that economic activities must not make the conservation of cultural relics a commercial activity. On the contrary, commercial activities may serve to add vitality to the cultural relics. I hope the idea can be accepted by the Home Affairs Bureau and that the key goal of blending the old with the new can be achieved. It is because the conservation of cultural relics can be part of our lives and as we make them part of our lives unconsciously, they may be instilled a lasting life. The same argument goes for people, for when people continue to learn and work at an advanced age, they will be endowed with energy and vitality.

Madam Deputy, I so submit. I hope Members will support this motion.

Mr CHAN Kwok-keung moved the following motion: (Translation)

"That this Council urges the Government to expeditiously revise the relevant policies upon completion of the consultation on the Review of Built Heritage Conservation Policy; as it takes time to revise the policies, in order to prevent the monuments and heritage from destruction or demolition in the interim, the Government should provide incentives to encourage owners to retain, repair and maintain the built heritage that has conservation value; furthermore, in addition to retaining their intrinsic characteristics, the Government should consider enriching the built heritage with economic values such as to tourism and entertainment, thereby promoting local community economy that has cultural characteristics and creating job opportunities."

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

MR TIMOTHY FOK (in Cantonese): Madam Deputy, monuments are part of the valuable heritage of human civilization, the very traces of how culture has been handed down from the past. Anyone with even just a minimal appreciation of our cultural heritage will respect and accept the existence of monuments. The conservation of heritage and monuments can serve a three-fold purpose: first, to ascertain authenticity of historical accounts; second, to conserve the cultural style and features of the historical past; and, third, to connect the present to the past and the future.

However, in a commercial metropolis where land is so precious and every bit of land can thus be a potential business opportunity, the conservation of monuments is no longer just an issue of historical and cultural significance. It will also involve land use and economic considerations, in the sense that if a monument cannot offer any business opportunities, it cannot possibly escape the fate of demolition in the end. It is a pity that under the existing policy, the Government will only "conserve" instead of "taking over" a monument. It does not assist in creating business opportunities, and the economic incentive provided is also disproportionately meagre as opposed to the owner's immediate relinquishment of property rights or the huge maintenance costs he has to shoulder. Such a hugely disproportionate burden has greatly hindered the declaration and conservation of monuments and even led to numerous disputes. The problems connected with the Kom Tong Hall and the Morrison Building can aptly show that the Government must adjust its policy direction, working with the stakeholders to create business opportunities as a means of promoting the conservation of monuments and heritage.

Actually, there are as many as 3 000-odd buildings constructed before the 1950s. To conserve all these historical buildings and declare them as statutory monuments will be unthinkable and also a waste of social resources. These monuments were buildings originally designed for practical purposes, not as any sacred objects of appreciation. For this reason, they must be made to serve some practical purposes before their lives can be extended. In Hong Kong, the only effective way to conserve these monuments is commercialization, the re-erection of Murray House in Stanley being a fine illustration. Therefore, when planning the conservation of all those monuments scattered here and there in the busy urban areas, the Government should not focus only on the buildings themselves. Instead, it should look at them from the macro perspective, meaning that it should perfect the support facilities in the districts and also its work on educating the public, so as to encourage residents to develop local cultural features centred on their respective monuments. That way, monuments can be given a new value and turned into a tourism resource bringing prosperity to the districts. This is the only way to ensure the perpetuation of monuments.

In regard to those monuments which cannot bring forth enough business opportunities or which do not have any development potentials, it is even more necessary for the Government to adopt a commercial approach to its negotiations with the title owners and proposed reasonable terms of acquisition or other

compensation, so as to induce owners to co-operate with the Government in the promotion of monument conservation. Failing this, we may just be left with the 78 declared monuments, for all the rest of our built heritage may be dismissed as worthless anachronisms, to be obliterated in the course of urban development.

The conservation of monuments and heritage and commercial operation are certainly two separate and even mutually exclusive concepts, and we should draw a lesson from the experience of the Great Wall. This means that in the course of commercialization, the Government must proceed with its planning very cautiously so as not to blur the historical significance of monument and heritage conservation, lest the preserved monuments may be disfigured beyond recognition.

Madam Deputy, the conservation and protection of monuments are a never-ending task. In order to achieve an integration of monuments and society, to manifest our refined human sentiments and intense artistic atmosphere, the Government must work out a better plan with greater enterprise, so as to bring out the true value of monuments. With these remarks, I support the motion.

MR HOWARD YOUNG (in Cantonese): Madam Deputy, in February last year, we debated in this Council on the heritage conservation policy and at that time the Liberal Party made some recommendations. We urged the Government to take into consideration the major premise of respecting private property and provide incentives to encourage owners to conserve heritage. We are glad that one year later, the Government has issued a consultation paper entitled Review of Built Heritage Conservation Policy in which two of the four fundamental principles to heritage conservation, namely, "to conserve but not take over ownership" and "private property rights should be given due regard", are a response to the aspirations of the Liberal Party at that time.

However, and as a mockery to these, the authorities in the recent incident of Morrison Building in Tuen Mun has invoked the powers vested by law for the first time to declare unilaterally the building a statutory monument and prohibits its demolition for development. The move is not necessarily a bad thing from the perspective of heritage conservation. But no compensation package has been agreed between the Government and the owners and this rash move has been criticized by some as a seizure of property in disguise. This is in

contravention of the two important principles as stated in the abovementioned consultation paper.

Madam Deputy, in view of the principle of paying due regard to private property rights, the Liberal Party opposes this kind of high-handed and arbitrary move. We think the authorities must provide some incentives while taking into account the principle of respecting private property rights. These incentives may include plans to transfer the development rights to encourage owners to surrender the ownership of built heritage with conservation value and to offer flexible compensation packages. Only this can be the most desirable policy to encourage owners to preserve and maintain monuments.

The Liberal Party is of the view that the Morrison Building and another monument, that is, the Kom Tong Hall which attracted much public attention earlier, have all shown that loopholes exist in the heritage conservation policy as enforced by government departments. A clear heritage conservation reporting system is lacking. An example is when after the Town Planning Board approved of the redevelopment application of the Morrison Building at the beginning of 1999, the Antiquities and Monuments Office put the Building on the list of historical buildings in mid-1999. Then the Government hurriedly talked with the owners for a solution. As for the case of the Kom Tong Hall, it had even once been given approval by the relevant department for demolition. It was only when the news was exposed and public outcry ensued that the Government began negotiating with the owners and reached a solution recently, with compensation offered. The stately mansion is planned to be converted into a Dr SUN Yat-sen memorial museum.

Moreover, as we mentioned in last year's motion debate, though there is a classification system for historical buildings and which divides them into three grades, the grading work is slow and there are no clearly stated details on the kind of protection for each grade. In other words, for any historical building which has been graded, provided that it is not a statutory monument, then the owners will have the right to demolish it for redevelopment. So this grading system is practically powerless in conserving built heritage.

Madam Deputy, all along I have been advocating heritage tourism. I think antiquities and monuments should be open to the public for commercial

purposes such as tourism and retail business on the premise that the original character of these buildings must not be affected. This kind of practice has been widely adopted in other countries. In Britain, for example, some buildings of historical value may be partially converted into office buildings, hotels or department stores, and so on. In Italy, there are lots of examples where antiquities and monuments take on a new life as hotels and other tourist facilities. As for Macao which is so close to Hong Kong, it is widely acclaimed for its efforts in preserving buildings of historical or artistic value.

Madam Deputy, doubtless there are some examples of success in Hong Kong. One such is the former marine police headquarters in Tsim Sha Tsui and the Lui Seng Chung tenement. They will be converted into centres of tourist and retail business. The former will be developed under a project which encompasses a monument boutique hotel, a shopping mall and stylish restaurants. The Murray Building in Stanley is a good example of a successful blending of restaurants and an exhibition hall, giving full play to the characteristics of Hong Kong as both a gourmets' paradise and collection of buildings from the colonial past.

It can thus be seen that the advantage of blending culture, history and business together will not only conserve the heritage, but also attract more visitors and hence develop the places into tourist spots. That can in turn promote economic activities and create more jobs in Hong Kong. Furthermore, the financial gains can be used to subsidize the huge expenses on maintaining the heritage on the part of the owners. It can also encourage owners to be more determined in preserving and restoring heritage. For the Government, it can spare the use of public money to protect heritage and monuments of historical value. This is precisely an approach beneficial to both parties.

For a century and a half since the inception of Hong Kong as a port, a significant number of monuments and other objects of collective memory have been accumulated and they deserve conservation by all means. I urge the Government to adopt a more positive attitude to promote the conservation of monuments and heritage in Hong Kong; and for the departments, they should forge closer co-operation among themselves to this end.

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

MISS CHOY SO-YUK (in Cantonese): Madam Deputy, in a drastic departure from its previous inactivity, the Government has recently made many moves in the conservation of monuments. It has used a generous sum of money to purchase the Kom Tong Hall and plans to use close to \$100 million to convert it into a museum in memory of Dr SUN Yat-sen. Then it has taken the case of the Morrison Building in the HO Fuk Tong Centre in Tuen Mun to the Court to declare the building a monument for permanent preservation.

The aggressiveness of government efforts has undoubtedly gained public applause. However, these events also show at a tangent that the Government lacks a comprehensive and effective policy on the conservation of monuments and built heritage. So whenever a problem arises, everybody will tackle it in his own way since no established practice is available. So each success comes as a pleasant surprise. However, this is not a sound approach and there are heaps of examples of failures. Buildings of historical value and which carry our collective memory, like the Repulse Bay Hotel, the old Hong Kong Bank, the old General Post Office, the old Hong Kong Club and the Ritz Night Club in North Point, and so on, have all silently bowed their exit from Hong Kong one after another. And for Hong Kong, it is retrogressing into a hollow city where property developments reign supreme, where there is no icon for past memories.

Madam Deputy, it is a social consensus that a conservation policy on monuments and heritage should be formulated as soon as possible. In the middle of last month, the Home Affairs Bureau finally issued a consultation document. But apart from posing a host of questions such as on what should be conserved, how they are to be conserved and the price prepared to pay, and so on, it does not list any concrete concepts, policy objectives and practicable proposals for public consideration. For technical questions as these, the Government fails to provide any answer and direction. At best, this kind of hollow consultation can be described as devoid of any preconceived stand, but on the other hand, it also bars the public from presenting views of any substance.

The Secretary has on a public occasion pledged that at the present stage, what is being addressed are the fundamental values and after public opinions are collected, concrete measures will be proposed at the next stage. For me, I would wait and see what actions will come up and I hope the Secretary will take concrete actions to dispel public misgivings and that he will listen to sound advice so that the policy to be formulated later will be more comprehensive.

In fact, I mentioned in a debate last year that the key to conservation of monuments and heritage was the offer of suitable financial incentives. Unfortunately, the Government has so far failed to introduce any clear-cut policy and to strike a reasonable balance between the interests of owners and the objective of conserving monuments and heritage. This is important in resolving conflicts when monuments and heritage are threatened by development.

In the absence of a policy with financial incentives embedded, whenever a privately-owned monument and built heritage is subject to any threat, the same kind of salvage attempt will invariably be made and this is often a waste of manpower and money. Though the aim of conserving monuments and heritage has nothing to do with increasing revenue, the experience of many cities both overseas and in the Mainland does point to the fact that monuments and heritage do not only make a place famous, but also bring many benefits in tourism and other aspects. Mr CHAN Kowk-keung has mentioned the case of the walled village at Nga Tsin Wai earlier. This walled village is a rare example of rich cultural heritage situated right at the heart of our city. I implore the Government not to pull down a place like this which is so full of the footprints of our ancestors just for the sake of money.

The Chief Executive has pointed out in his policy address in 1999 that efforts should be stepped up to conserve monuments and heritage. The accountable officials also frequently talk about heritage tours. But after so many years, how many tourists have come to Hong Kong specifically for the purpose of admiring our heritage and in search of our past history? Talks about conserving heritage and developing heritage tours remain castles in the air. As a mockery to all these, there are in fact a lot of cultural relics and historical sites in Hong Kong. What the Government needs to do is to make some planning and that will be quite sufficient.

From a broader policy perspective, the above problems are not exclusive to the conservation of monuments and heritage. The problems in the preservation of old trees and famous trees, as well as environmental protection and ecology conservation are quite similar. Conservation efforts are handicapped by the absence of a clear and effective policy from the Government, including the offer of reasonable compensation to owners of private land. The impact of this is that old trees and valuable trees, including those banyan trees which grow on rocky streams in Hong Kong which are not found elsewhere in

the whole world, and lands with conservation value, are all fast disappearing. Conflicts between the Government and the public seem endless in the absence of a set of standards to tell the right from the wrong.

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

MR ABRAHAM SHEK: Madam Deputy, in last year's motion on heritage preservation, I criticized the Government's half-hearted approach in protecting monuments and heritage. I still maintain my criticism unless the Government comes forward with a defined policy on heritage preservation.

As a former member of the Antiquities Advisory Board (AAB) for three consecutive terms — that was many years ago, I was given an understanding at the start of my appointment that the Government was formulating a comprehensive policy on heritage preservation. With the passage of time — of many many years, such a policy is still non-existent. Now, with the Secretary for Home Affairs who is good at playing violin, we are hopeful that a preservation policy would be forthcoming, not only for the benefit of his lovely daughter, but also for us. It is important that we must have this heritage policy.

It is only last month that the Home Affairs Bureau (HAB) launched a public consultation exercise by releasing a review of Hong Kong's heritage building conservation policy. With the consultation period scheduled to continue until the end of May, I sincerely hope that the HAB will use this opportunity to take a more proactive role in gauging public opinions. It should not only collect the views of related organizations, academics and interested parties, but also be open to the general public. After all, the Government and the heritage experts are not the only people responsible for heritage conservation. Everyone in the community also has a part to play. The fact is, formulating a comprehensive heritage conservation policy which meets the unique cultural characteristics of Hong Kong will enhance the protection of our historical buildings and heritage sites. However, protection will entail public expenditure and forgo the planned development of certain sites.

The consultation document focuses on "built heritage" and broad policy issues. Implementation measures will be dealt with at a later consultation. According to government information, 78 monuments have been declared

heritage sites so far, including 60 historical buildings. Of these 60 structures, only 28 are under government ownership. In other words, over half of the historical buildings are privately owned. I totally agree with Mr K K CHAN's suggestion that — and I quote — "the Government should provide incentives to encourage owners to retain, repair and maintain the built heritage that has conservation value". I acknowledge land in Hong Kong is very valuable. In our capitalist economy, historical buildings are admittedly more likely to be preserved if financial incentives are provided to owners. Over the past few years, owners of historical buildings have been advocating the setting up of a land transfer mechanism. I believe this is a feasible approach to maintain built heritage sites. Once historical treasures are demolished, they can neither be rebuilt nor recovered. As their historical value cannot be measured in monetary terms, the incentive to owners should not simply be in the form of payments, like the compensation paid to those residents affected by urban renewal which is meagre. The compensation must be fairer and more attractive.

The basis of heritage conservation is our respect for history. There is no need to adopt a so-called "politically correct" revisionism in measuring the historical value of certain monuments and heritage. We control our future, but we cannot deny our history. It is of the utmost importance to acknowledge Hong Kong as a unique city of China. Since Kong Kong's reversion to Chinese sovereignty, some misguided people have demanded that a historic colonial statue in a particular park be replaced. Although such cases are unique, it would be a setback to the monuments and heritage conservation movement if we allow political factors to influence the inherent value. Heritage conservation is about allowing future generations to understand history. Any intentional alteration of our heritage's current state will ruin its historical value.

Hong Kong is an international city, and our unique heritage is one of our most attractive characteristics. Right now, historical significance and economic values are the main criteria for determining what should be conserved. It is worrisome that political consideration might be taken as an unwritten factor in heritage conservation. This is something the community should be aware of.

Madam Deputy, there is an enormous economic cost involved in monuments and heritage conservation. It is unlikely that the Government can bear the full burden of this responsibility. Since most of the 60 declared historical buildings are currently under private ownership, it seems very likely that more private buildings will be declared historical buildings in the near future.

To this end, it might be prudent for the Government to adopt more flexible measures and provide incentives to encourage owners to carry out the conservation works themselves with their own financial means. For example, the Government can help by cutting the owners' payable rates during the building maintenance period. Moreover, just as donations to charitable organizations are tax deductible, the Administration can subtract from an owner's tax base the cost of the repair and maintenance work done to his historical building. Plus, some regulatory constraints can be relaxed to allow owners to raise maintenance funds by conducting commercial activities at the historical locations.

Ultimately, the Government should not make economic cost the first priority in formulating a conservation policy on monuments and heritage. Instead, it should keep in mind that the aim is to respect history and preserve the heritage for our future generations. That is what heritage conservation is all about. Thank you.

MISS CHAN YUEN-HAN (in Cantonese): Madam Deputy, the cultural and academic sectors and non-government organizations have been constantly making suggestions and criticisms of Hong Kong's incomprehensive policy on monuments and heritage conservation in the hope that the Government can expeditiously revise its policy to preserve the few remaining monuments and heritage in Hong Kong. Yet government departments are obviously divided on the policy. Coupled with a constant rise in land prices because of artificially restricted supply of land, the Government and the business sector have, in the midst of speculation, carried out demolition and excavation regardless of whether a building carries historical value, not to mention whether relics are situated on a site. Over the past decade or so, a large number of buildings of special value and cultural heritage have vanished like ashes. Many people born and brought up here in Hong Kong are indeed attached to monuments, heritage, and buildings of particular value all over the territory. Those mentioned by Miss CHOY So-yuk are my favourites too. The Lee Theatre, for example, was one of the places where we were brought up. Although many had wanted to preserve the Lee Theatre, it was eventually torn down because of an absence of an appropriate policy. In many similar cases, we could do nothing but sigh helplessly.

Madam Deputy, recently, the planned demolition of Kom Tong Hall by its owner had aroused widespread opposition. In the end, the Government decided

to purchase it for \$53 million and spend another \$91 million repairing and converting it into a Dr Sun Yat-sen Museum. So, does it imply there has been a change in the Government's attitude? I am not optimistic about this. Despite the enormous generosity demonstrated by the Government in acquiring Kom Tong Hall, the acquisition has merely reflected that the Government's monument conservation policy is incomprehensive and inconsistent. Under the existing legislation, protected monuments and heritage not classified as Grade I can be demolished for redevelopment. Even the Government is helpless to do anything. As Kom Tong Hall has been classified as Grade II, the Government has to buy it to prevent it from being demolished.

There are indeed quite a number of private buildings in Hong Kong that are worth preserving. Given the Government's current tight finances, it is simply impossible to acquire all of them. For instance, the Morrison Building, carrying a longer history and greater historical significance than Kom Tong Hall, is presently permanently barred from redevelopment when the Government made an unprecedented move to unilaterally declare it as monument by invoking the Antiquities and Monuments Ordinance. Does this inconsistent handling method reflect confused government policies or a lack of long-term government planning? Such an inconsistent approach has not only thrown owners into confusion, but also given people an impression of extreme unfairness.

Madam Deputy, in the face of the community's rising aspiration for monuments and heritage conservation, the Government has been dragging its feet. It was only until today the consultation paper on the Review of Built Heritage Conservation Policy was launched. Though a bit late, it is after all better than none. However, the entire consultation paper has dwelt more on the abstract, for there are no practical policy proposals in it. For instance, there have been incessant criticisms from public that the existing Ordinance has sought to pursue a policy of preserving single heritage items only. One such example is the Tsui Sing Lau Pagoda in Yuen Long. Despite its long history, it is surrounded by parked cars and no one can possibly notice that it is a monument. Another example is the Nga Tsin Wai Village. Despite the fact that an ancient temple therein has been declared as a Grade I monument for conservation, and its entrance plaque is also a conserved heritage item, the rest of the village is accorded no protection at all. We will find that the village has largely been cleared by property developers in the past decade or so. Despite the fact that monuments had been found in 70% of the properties acquired, the clearance

works was carried out as scheduled. Apart from feeling helpless, there is nothing the Government can do.

Madam Deputy, we often have to heave a deep sigh when talking about matters like this, despite the fact that I started talking about this village more than a decade ago. On this issue, the Government never seems to fully understand what we are talking about. It is now suggested in the consultation paper that protection has to be rendered in terms of "point", "line" and "surface"^{Note}. This obviously shows that the Government has finally realized that its past policy has not worked. Why has the Government failed to make a concrete proposal by summarizing these issues? Why does the Government choose to drag its feet by conducting another round of consultation? That way, certain proposals might not be finalized even next year.

Madam Deputy, a concrete government position is essential, or the Government might end up dragging its feet and leaving the matter unsettled, as it used to be. I would like to advise the Government to consider what it will do if, during the consultation exercise, certain heritage collapse because of prolonged delay or subject to man-made damage because a decision is not forthcoming? Should the Government consider formulating a set of policies on preserving monuments and historical heritage threatened by destruction during the transitional period? The consultation paper must address these issues and refrain from leaving these issues unsettled or shelving them as if they do not exist.

The heritage treasures handed down to the people of Hong Kong by their ancestors have indeed been wasted because the legislation is flawed and impractical. On the contrary, many countries have not only demonstrated an ardent love for monuments and heritage, but also made their best efforts in preserving them. Furthermore, they know how to capitalize on their monuments and heritage and turn them into tourist attractions to promote tourism. The United Kingdom is an excellent example of monuments and heritage preservation. In London, Oxford, for instance, we can find a large number of ancient buildings being kept in perfect condition. The huge number of tourists flocking there has become an important source of income to the country. Tourists visiting these places feel like travelling back in time and being brought back to a medieval European city. We can also see that Shanghai, albeit

^{Note} In the consultation paper, "point" refers to a building, "line" refers to a street and "surface" an area.

determined to develop itself into a commercial and business centre, still retains a series of old buildings representing a mix of Chinese and Western cultures in the '20s and '30s, such as those found in the bund. Although these buildings do not carry a very long history, they are much older than the heritage items we have in Hong Kong. The determination demonstrated by Shanghai during the development process in preserving its heritage has provided the city's tourism and economy with some prominent sightseeing spots.

Madam Deputy, Hong Kong's heritage conservation policy has always lagged behind other places, such as London and Shanghai, just because there is an absence of government action here in Hong Kong. During a visit to Macao two years ago, I was told by the head of Instituto Cultural de Macau that the owner of an old private building confirmed to be an monument would be prohibited from carrying out demolition for development, though the matter could be settled through discussion with the Macao Government on the payment of land premiums. No construction will be allowed if the demolition is undertaken without government consent. This is vital to conservation of monuments and heritage as a whole.

I believe there are many factors contributing to the present situation of Hong Kong lagging behind other countries. It is very important to note that monuments and heritage conservation was simply not a matter of concern to property developers in the past. Today, the situation has remained unchanged because the economy is not faring well. The Government has always held the view that conserving monuments and heritage is, like dumping money into the sea, a money-losing business most of the time. There is simply no comprehensive idea for conservation of monuments and heritage. Neither can the Government see that monuments and heritage can push the economy and employment.

Madam Deputy, the Pousada de Sao Tiago is my favourite hotel in Macao. Although it is very old, it is often fully booked. It is indeed possible for monuments to push the economy and employment. Why can the Government not understand this? The success of built heritage conservation hinges on the Government's determination, creativity and comprehensive plans. Over the years, a number of middle-aged workers have been driven out of the labour market in the wake of the economic transformation. They have been forced to live in a terrible condition every day where wages are low and working hours extremely long. Developing monuments and heritage through proper

conservation can bring forth new opportunities for small-capital businesses. This might become a way out for grass-roots workers who have been eliminated by the knowledge-based economy.

Thank you, Madam Deputy. I support the motion.

MR WONG SING-CHI (in Cantonese): To begin with, Madam Deputy, I have to declare an interest. I am a member of the Executive Committee of The Church of Christ in China. The contentious Morrison Building is owned by The Church of Christ in China.

At present, monuments and heritage preservation work relies entirely on the Antiquities and Monuments Ordinance (AMO), which was enacted nearly three decades ago. The failure of the AMO to keep abreast of the times has resulted in the disappearance of numerous precious monuments from Hong Kong and the loss of our collective memory.

Actually, Hong Kong is a unique city with its own character and various small communities of varied "flavour". Why is a comprehensive set of policies lacking to preserve the testimony to history? What is more, a number of monuments are in danger of obliteration.

I believe the Government is duty-bound to preserve heritage. There is a lack of a uniform government policy in conserving monuments, and compensation is made invariably either in money or land. Recently, the Government has even resorted to snatching monuments through the employment of power. In the case of the Morrison Building, which is owned by The Church of Christ in China, there is simply no room for discussion. Neither is there a co-ordinator in charge of policy implementation. The Home Affairs Bureau, Urban Renewal Authority, Housing Society, Lands Department and Antiquities and Monuments Office are all minding their own business. It will not do monuments anything good if these organs keep dragging their feet and take no concrete steps to deal with the matter. On the surface, this consultation paper seeks to consult the public during the three-month long consultation period. Actually, the Government has simply not come up with any concrete proposals for heritage conservation, and the responsibility is entirely shifted onto the public instead.

Following the successive launching of projects under the Urban Renewal Scheme, a number of streets and districts that can evoke our collective memory

will disappear one after another. Madam Deputy, the collective memory of a neighbourhood can actually help unite the residents living there. Such places as Wing On Street in Sheung Wan and Birds' Street in Mong Kok have already disappeared. Such being the case, we urge the authorities concerned to expeditiously come up with proposals for heritage conservation and stop wasting social resources. In addition to promoting tourism, "built heritage" can bring wealth to the community too.

For these reasons, the Democratic Party considers it necessary for the authorities concerned to conduct a comprehensive review of the existing Ordinance and, through amendments to the laws, strengthen the Government's ability in conserving monuments and reduce the chances of unreasonable demolition of monuments by private owners. Otherwise, we can only watch blocks of "historical testimony" disappear one after another. Nevertheless, in the course of reducing the number of unreasonable demolitions by owners, the Government has to allow more room to prevent the owners from incurring great losses subsequent to the declaration of their properties as monuments. In order to do so, discussion among all relevant parties for a concrete proposal is warranted.

Secondly, the power and resources of the Antiquities and Monuments Office are indeed extremely limited. Conserving a great number of valuable monuments and heritage can indeed be compared to building castles in the air. In addition, monuments conservation and restoration is a highly professional undertaking. It is hoped that the Government can review the functions of the Antiquities and Monuments Office and explore the possibility of upgrading the Office to enable it to take full charge of matters relating to heritage conservation.

Lastly, I think it is very much worthwhile to explore how conservation of certain streets or neighbourhood can be carried out in future. This is because, under the existing Ordinance, conservation applies only to a building, not an entire street or neighbourhood. We consider this inadequate because, in every community, we can surely find a cluster of buildings with unique character that can evoke collective memory. Perhaps it is their distinctive "touch of humanity" that appeal to the people. They can even be described as a three-dimensional album of Hong Kong. Such old places as the Yaumatei Theatre, the Yau Ma Tei Fruit Market, Temple Street, and the vicinity of Tin Hau Temple (commonly known as Yung Shu Tau) are typical examples of communities carrying the collective memory of the people of Hong Kong. Should the

Government fail to take decisive actions and launch rescue operations, we will see blocks of valuable and memorable buildings collapse one after another, and that will surely be a great loss to every one of us in Hong Kong. Thank you, Madam Deputy.

MRS SELINA CHOW (in Cantonese): Madam Deputy, first of all, I must say that I am very much in support of the motion today. It is because Hong Kong does possess very rich heritage resources, including relics with a history ranging from 60 years to more than 6 000 years. The former are buildings with distinctive features showing Chinese and Western cultures and they are vivid depictions of the traditional customs and life of the people. The motion mentions that this kind of built heritage should be made the best use of to promote tourism. The targets are not just tourists but also local people. Promotion of our history and culture is certainly something worth undertaking.

According to a survey conducted by the Tourism Board, nearly 27% of the visitors to Hong Kong actually wish to see these monuments and heritage very much. Such spots are particularly valued by visitors who come over from a long distance to Hong Kong. Now, the increasing number of mainland visitors coming here are also displaying an increasing interest in the heritage of Hong Kong, and they have this demand in addition to shopping and cuisines here.

However, with respect to the conservation of built heritage, we must all know that we would have to pay quite a heavy price for it. The questions are: Who should pay it? Should it come from the Government using public money or should the private owners who hold the titles to the land as it is the case for some of these historical buildings pay for it? Should this be carried out under some kind of conservation process which may lead to the loss of land titles or interests that the owners may possess and enjoy? I think all these are core issues which the Government should address squarely.

With regard to the social demand for the conservation of built heritage, the Government should of course pay attention to a number of items. The most important is, in our opinion, the formulation of some criteria for determination of which buildings would deserve conservation. I think these criteria may of course be related to the architectural or historical significance of such buildings and also to their cultural value. When we recollect our childhood days or the

times of our previous generation, we may think about what objects would best reflect life at that time. These are the objects which leave a deep impression in our mind. They may not be buildings with some great value, but they may also have some value in conservation. That is why different considerations will lead to different needs of conservation.

However, with respect to the payment from public coffers, that has led to countless controversies. This problem is evident in the recent case of the Kom Tong Hall and the more recent one of the Morrison Building. From overseas experience, often times when the government makes a decision that some districts should be preserved, some private owners may have to bear some costs, and likewise the government as well. So the costs are shared. Now in Hong Kong, as we do not have a formal policy on that, there is a need to devise different measures to cope with different circumstances.

Coming back to the case in Britain which some Members, such as Miss CHAN Yuen-han, have mentioned earlier, I recall in Britain, planning for some buildings in an entire district may be suspended. Demolition of the facades of these buildings is prohibited, but the posterior of the buildings may be completely pulled down for redevelopment. Or in some special cases, a single block of such buildings may be demolished. For some buildings in that district, they may have to be pulled down because they have become unsafe, but when they are redeveloped, they must take on an appearance congruous with the other buildings there. Such kind of approach may have to be taken by way of planning for the entire district.

As for some single blocks of buildings, these may not necessarily have to be publicly owned buildings but privately owned ones, and no demolition is permitted originally, but if they are to be demolished, some kind of costs will have to be set. How are such trade-offs to be carried out? When such a trade-off has to be made, the consideration could be the original uses of the buildings and their historical value. This is an important point when we consider the uses of some built heritage. That is to say, when after a building is conserved, what kind of uses it can be put to and what the economic benefits it can bring. Or in other words, how is the building to be used after it is conserved. There are many examples around the world where the local government there will put the old building concerned to new uses after it is preserved. Often these new uses are innovative too. In this regard, I think

that the assistance of private sector organizations can be enlisted, for they may play a great role in the investment, design and maintenance.

In addition to all this, there should be matching work on the software side. That would include transport, the uses of the buildings concerned, services for visitors and publicity channels. All these are very important aspects and it is only when each of these links match well that the buildings under conservation can continue to keep their value. Thank you, Madam Deputy.

MR AMBROSE LAU (in Cantonese): Madam Deputy, the Government issued a consultation paper on 18 February on the Review of Built Heritage Conservation Policy. However, the Government plans to hold the consultation for three months, to be followed by a second round of consultation. The Hong Kong Progressive Alliance (HKPA) is worried that if no relevant measures are adopted and when no action is taken to address urgent matters, some built heritage and communities which carry conservation value may crumble to dust and be gone forever. Therefore, the Government must do everything it can to prevent such things from happening during the consultation period.

Monuments and heritage are not renewable resources and once lost can never be replaced. Even a meticulously produced replica will never have the same value as the original. In addition, the value of monuments and heritage are absolute: it grows and perpetuates with time. In view of this, the HKPA thinks that, as the formulation of a relevant policy may take time, the pressing task at hand is to elevate the conservation of monuments and heritage to a status it rightfully deserves. What the Government should do is to provide the incentives, such as transfer of right to development, tax concession, subsidies or loans, and so on. These will encourage owners to preserve and maintain built heritage with conservation value. However, the consultation paper does not propose any mechanism or incentive to encourage owners to preserve built heritage. The concept of transfer of right to development as proposed by the Government in 2001 is not included in the consultation exercise. The HKPA expresses its regret over this state of affairs.

At present, the Government does not have any uniform compensation mechanism, nor any department tasked with co-ordinating policy enforcement matters. A number of departments are involved in the conservation of

monuments, and these include the Home Affairs Bureau, Urban Renewal Authority, Housing Authority, Lands Department, Antiquities and Monuments Office, and so on. These organs all have their own views on the conservation of monuments and sometimes these views are polarized. In view of this, the HKPA thinks that, with respect to such policy areas as planning, land administration and finance regarding the conservation of built heritage, the Government should assign one department to co-ordinate such matters while consideration should be given to the overall town planning and landscaping. The Government must bear the responsibility of conserving monuments and heritage by effecting centralized co-ordination.

Madam Deputy, there are numerous items of built heritage in Hong Kong which are privately owned and merit conservation. However, given its financial stringence, it would be impossible for the Government to acquire all of these buildings. The money for the purchase of Kom Tong Hall comes from the proceeds of land sale from the Lands Department. But that cannot be a long-term measure. What the Government should do is to set up an independent fund for the conservation of monuments and heritage on top of devising a mechanism for uniform compensation. Financing of the fund may come from appropriations from the Treasury or donations from the community, and part of it may come from the Lottery Fund. Of these sources, donations should be made the major source. The fund management should not only be responsible for soliciting donations from companies or individuals, it should also try to help the owners of monuments and heritage find ways to conserve the built heritage and work out economic solutions such as developing tourist activities. In this regard, Hong Kong should model on the success experience of Britain, New Zealand, and so on, where independent cultural funds are used to conserve and handle monuments and heritage.

Currently, 556 buildings in Hong Kong are classified as buildings of distinctive architectural style or associations with local historical figures. Since the modern times, many famous figures in history left their footprints in Hong Kong, for example, Dr SUN Yat-sen, RONG Hong, WANG Tao, LU Xun, MEI Lan-fang, XU Di-shan, CAI Yuan-pei, XIAO Hong, and so on. The places where they worked and lived, as well as the places they were buried are all of great historical and cultural significance. These sites can be incorporated into heritage tours so that tourists can visit these places in fond memory of these famous people.

Tourism is a major means of conserving monuments and heritage, as well as giving play to their functions. Thus monuments and heritage are closely linked to the development of tourism. They can be said to be mutually complementary as touring a place is not complete without a visit to its monuments, and the cultural and historical substance of monuments can be made widely known by tourist activities. So if the two work well, they can both benefit each other significantly. The World Heritage Committee of UNESCO declares certain places in the world as world heritage sites. It compiles a World Heritage List where these sites of famous monuments and natural scenery are included. The List serves to provide tourists with spots to include in their itineraries. The HKPA is of the view that the Hong Kong Government should set up a department tasked with co-ordinating matters related to the conservation of monuments and heritage. Efforts should also be made to link the development of tourism with the former. For the Hong Kong Tourism Board, it may put in efforts to join these monuments with our natural scenery in the form of tourist spots and tour routes. In this way, monuments and heritage can be conserved through tourism.

Madam Deputy, I so submit.

MR MA FUNG-KWOK (in Cantonese): Madam Deputy, many people consider monuments and heritage conservation to be an unpopular cultural subject. In contrast to economic, political and social issues of our everyday concern, this inconspicuous subject can only be brought up for discussion when we have spare time to do so. But how should conservation be carried out in concrete terms? Very often, conservation works go unnoticed. Furthermore, many feel that Hong Kong's development is confined merely to a little more than a century-old history of colonial rule. In contrast to the history of other regions or countries, there are virtually no "historical sites" in Hong Kong. So a discussion on monuments and heritage here in Hong Kong is somewhat superficial to them.

Undoubtedly, the most interesting aspect of Hong Kong's history was the transformation of the territory from a small fishing port into a modern metropolis over a period of 150 years. In fact, Hong Kong's history dates back much farther than that. We can tell from the discovery of the Li Cheng Uk Han Tomb and archaeological excavations at the Wun Yiu Kiln Site in Tai Poultry, as well as those in Ma Wan and Ha Pak Nai that Hong Kong was inhabited by early men

more than 6 000 years ago, and such heritage like these bear witness to Hong Kong's position in the history of Chinese culture. Rather than bringing us a feeling of alienation and vagueness, these discoveries have a close connection with our cultural tradition, identity recognition and sense of belonging. Heritage conservation is meaningful and important in the sense that it bears witness to the history of Hong Kong to enable people living here to get to know their own position in history and their cultural identity, thus enhancing their sense of belonging to the place. As such, heritage conservation, being one of the Government's important responsibilities, is integral to all policies related to culture.

In fact, the scope of heritage is extremely wide. It embraces archaeology, excavations of archaeological sites, ancient wares, historical buildings and cultural landscape. This consultation exercise launched by the Government and today's discussion focus mainly on built heritage. After 150 years of colonial rule, Hong Kong features buildings of a wide range of architectural styles. Reflecting a unique blend of Chinese and Western cultures, these buildings compare and contrast different types of architecture, Chinese, Western, ancient, and modern, and give Hong Kong a unique cityscape. Furthermore, it is also necessary to preserve buildings of historical value. The Morrison Building is an excellent example. Nevertheless, there is a lack of a comprehensive policy on ways to conserve these buildings and our cityscape.

Heritage conservation in Hong Kong can be traced back to the enactment of the Antiquities and Monuments Ordinance (AMO) in 1976. Under the AMO, buildings can be conserved only by declaring them as monuments. However, after a building is declared as a monument, any alteration to it must be carried out in accordance with strict requirements. As a result, property owners are getting increasingly resistant to the declaration of buildings as monuments. At the same time, there is very little the Antiquities and Monuments Office can do because it is constrained by law, for only monuments considered to be the "most valuable" can be preserved. Subsequent to the efforts made over the past three decades, only 78 buildings have been declared monuments. Recently, the Government has successfully acquired the ownership of Kom Tong Hall for \$53 million. We can see from this case that the effort made by the Administration merits our full recognition. Nevertheless, this is after all an isolated case. Its success has nothing to do with a comprehensive heritage conservation policy. In fact, the Administration has admitted in the consultation paper that heritage conservation work in Hong Kong has been carried out in a rather ad hoc manner.

Madam Deputy, monuments and heritage conservation has to race against time, given the rapid economic and social development in Hong Kong. In the absence of a comprehensive policy on repairs and maintenance, a number of valuable monuments and heritage will vanish. It is a pity that the Administration has failed to seize the opportunity by launching and perfecting its heritage conservation policy in view of the contracted property market in the past few years. Now that the property market is recovering rapidly, we are getting less and less time.

On ways to launch heritage conservation work, the Cultural and Heritage Commission has in its report proposed three principles, namely, heritage conservation should be an important consideration in town planning; priority consideration should be given to using historical buildings for cultural purposes; and Hong Kong's historical and heritage landscape offers potential for promotion of cultural tourism. All this has been accepted by the Home Affairs Bureau in principle.

The Government has now introduced this consultation paper to explore the heritage conservation policy from a macroscopic angle. What has been done is not enough, given the time constraint. The Government should indeed buy some time by expediting the discussion of policy measures and providing data on the results achievable by the different measures. At the same time, it should consider proposing a classification of buildings for conservation and, in the light of different circumstances, priority and degree of difficulty, adopt different measures to make up for the inflexibility of its existing policy.

The slow progress of heritage conservation in the past could be attributed to the policy and statutory constraints on the one hand, and to the attitude of members of the public, particularly owners of built heritage, towards heritage conservation on the other. How can we change the attitude of owners of historical buildings and encourage them to support and even open up those built heritage items? Unfortunately, this point is not included in the scope of the policy under consultation. It is imperative for the Government to offer incentives to the owners of built heritage items to preserve, repair and maintain these items. For instance, consideration can be given to allowing transfer of plot ratio, or even allowing owners to transfer their lost rights and interests in development as a result of monument conservation elsewhere or providing them with additional compensation. Moreover, converting a built heritage item for

tourism or entertainment purposes can be an incentive too. When an owner indicates a willingness to preserve, repair and maintain a built heritage item, the Government should help them in the repairs and maintenance work by providing them with expert consultancy and financial assistance. In order to preserve heritage items of public interest, there is nothing wrong for us to support heritage conservation by resorting to public resources.

Madam Deputy, our cityscape, featuring contrasts between East and West, the ancient and the modern, has enabled us to retain our knowledge and memory of the past. What is more, there is a unique blend of the values of aesthetics, archaeology, history and anthropology. Due to the lack of a comprehensive policy on conservation in the past, only the most valuable built heritage items have been conserved. This means only a minority of built heritage items can be protected. For this reason, I hope the Government can demonstrate a boldness of vision, come up with ambitious plans, co-ordinate relevant departments, provide adequate data and evaluations, propose a wide range of options, consult the public in concrete terms anew, and expedite the formulation of policies and statutory rules. Only in doing so can heritage conservation be pursued in an active manner.

I so submit. Thank you, Madam Deputy.

MR IP KWOK-HIM (in Cantonese): Madam Deputy, under an agreement reached last month with the owner of Kom Tong Hall, the Government has committed \$53 million to acquiring the building and another \$91.3 million to its conversion into a Dr Sun Yat-sen Museum. While we should be very pleased with the acquisition because the entire building is a unique masterpiece of Chinese culture, the Government's ad hoc approach to conserving built heritage and its lack of a comprehensive policy on heritage conservation have been exposed during the entire process. The next conservation item, Morrison Building, is going to pose another challenge to the existing heritage conservation policy.

The request made by the owner of Hoh Fuk Tong Centre in Tuen Mun to demolish the Morrison Building can be traced back to 2003. In order to block the demolition bid, the Government immediately declared the building as a proposed monument, and in order to preserve the building on a permanent basis,

the Government declared the building as a monument in October last year. A petition lodged by the owner last week opposing the declaration of the building as a monument was rejected too. This means the Morrison Building will soon undergo a formal procedure to be gazetted as a permanent monument. This will be the first time that a building is declared unilaterally by the Government as a monument under the legislation without the owner's consent. Upon the completion of the legal procedure, the owner can only, by virtue of the rights conferred by the relevant law, claim compensation from the Government by way of filing a lawsuit with the Court. While the owner probably has the right to do so, we cannot help asking this question: Why should the issue develop to such a state? Although the Government has achieved an initial success in preserving the Morrison Building, the harmony between the Government and the owner has been damaged. Should this approach be adopted every time when the Government wishes to preserve a building, owners of historical buildings will eventually be scared off.

Like the other 9 000-odd buildings completed before 1950, the owners of Kom Tong Hall and the Morrison Building were responsible for all repairs and maintenance, regardless of scale, before the two buildings were declared monuments. There was no commitment on the part of the Government. I believe it is actually the aspiration of the community to preserve certain buildings of historical value. But is it fair for the Government to shift the entire responsibility of preservation onto the owners? Should the public share the social responsibility of heritage conservation as well?

Insofar as heritage conservation is concerned, I believe a number of issues must be resolved or defined. They include: Which types of built heritage should be included? What criteria should be adopted to select buildings for conservation? What are the selection criteria? Will architectural styles be taken into account? How about historical value? The Morrison Building is preserved for its historical value because a lot of notables have engaged in activities there, whereas the Kom Tong Hall is preserved for its architectural style. Apart from these, will the age of a building be taken into consideration? There is also the question of collective memory, a point raised in the Review of Built Heritage Conservation Policy and frequently mentioned by Mr CHAN Kam-lam. It is necessary to define and discuss these issues.

(THE PRESIDENT resumed the Chair)

Furthermore, we have to deliberate on how built heritage can be conserved. Not only should we consider which built heritage items should be conserved, we have to think how conservation can be carried out as well. While the exterior of a built heritage item has to be conserved, is it also necessary to, besides conserving its exterior, examine the interior of the built heritage item? Although the owner can still retain ownership of a building after it has been declared as a monument, he cannot alter the interior of the building at will, is such an "all-embracing" means of conservation appropriate? Is it possible to consider other options that can enable the building to retain the exterior we would like to see and, at the same time, enhance its vitality?

Built heritage conservation involves not only private property rights, social responsibilities and social values, but also enormous amounts of public money. In the opinion of the Democratic Alliance for Betterment of Hong Kong, financial incentives are the key to built heritage conservation. How much is the public willing to pay for heritage conservation? Insofar as this relatively contentious issue is concerned, it is indeed necessary for a consensus to be reached among members of the wider community.

Madam President, a consensus has yet to be reached among members of the public on the heritage conservation policy with respect to achieving a balance in the three major areas, namely, private property rights, social responsibilities and the Government's responsibility. Through this review of built heritage conservation policy, I hope a consensus can be reached in the community through open discussions and extensive consultations. This is very important and essential.

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

DR TANG SIU-TONG (in Cantonese): Madam Deputy — sorry, Madam President — I grew up in the rural areas of the New Territories. I remember that there used to be many old historical buildings in the neighbouring areas. Seeing that most of these old buildings have become dilapidated and even vanished without trace due to the lack of maintenance and care, I feel utterly sad in my heart, sad like losing some very valuable memories. The Legislative Council debated a similar topic some years ago, and most Members stated at the time that the Government should step up the conservation of monuments and heritage. But in the following year, the Government seemed to have taken no

follow-up action. It was until the 18th of last month when the Consultation Document on Review of Built Heritage Conservation Policy was released that the Government said that it would consult the views of all sectors on the conservation of built heritage. I am dissatisfied with the slow progress made by the Government in stepping up work on monument conservation. I also think that some of the contents of the consultation document need to be enhanced.

Madam President, being a member of the Antiquities Advisory Board (AAB), I have a profound understanding that insofar as monument conservation is concerned, the Government lacks not only a comprehensive policy, but also an efficient system, structure and resources. This consultation by the Government only lays stress on the monuments and heritage conservation policy. It has not looked into the question of how a professional structure can be established with the Government to co-ordinate work in this regard, let alone financial support. As I pointed out in the debate several years ago, in the AAB there are many archaeologists and historians who have given many suggestions on how the Government should implement the work of monument conservation. Regrettably, the Government has not attached importance to the views of these "insiders". Added to this a lack of solid power and resources, the AAB has therefore degenerated into a group engaging in empty talk.

In fact, many valuable old buildings in Hong Kong have gradually disappeared due to the lack of care. This has a lot to do with the heritage conservation policy of the Government. The Antiquities and Monuments Ordinance enacted as early as in 1976 set the cut-off date at the year 1800, stipulating that monuments and heritage built before 1800 can automatically be given the status of declared monuments, whereas those built after 1800 have to be examined on a case by case basis. From 1976 to the present, excluding the latest case of Morrison Building in Tuen Mun, only 77 old buildings have been declared as statutory monuments in Hong Kong. This shows the tardiness of the vetting process. Moreover, according to the internal guidelines of the Antiquities and Monuments Office, only Grade I historical buildings will be given special and full protection by the authorities. Historical buildings of Grades II and III will only be preserved selectively. As a result, many valuable old buildings have failed to escape demolition for redevelopment. If the Government is genuinely determined to preserve monuments and heritage, I believe it is imperative to amend and refine the Antiquities and Monuments Ordinance. Two years ago, members of the Panel on Planning, Lands and Works of this Council visited Singapore, Britain and Germany, and found that

for areas with conservation value in these countries, alteration or restoration is often adopted in place of redevelopment as the direction of development. This can preserve the people's way of living in the past to which their predecessors can pay homage. So, this is indeed a way out for the preservation of monuments.

Recently, the authorities have invoked the law for the first time to unilaterally declare the Morrison Building situated in Tuen Mun a monument, sparing it from the fate of demolition. This is indeed an expedient measure, but it cannot avoid disputes. A better way of handling is for the Government to reach a consensus with the owner beforehand. I know that the Government has actually tried to get in touch with the owner many times, in order to identify solutions together but to no avail. From this incident, we can see that it is indeed necessary for the Government to provide some incentives to encourage owners of monuments to preserve and maintain valuable historical buildings in their possession. For instance, the Government can directly provide tax concessions or funds to assist in the repairs of built heritage. Moreover, as a serious budget deficit prevails, the Government should actively persuade the owners to transfer the title of the monuments to the Government by way of land exchange or transfer of plot ratio. For families or persons willing to donate the title of private monuments, such as in the earlier case of Lui Seng Chung, the Government can consider arranging for the production of a feature by radio stations or other media, or a television programme on the historical building and the family that owns it for open broadcast. This will enable the public to learn more about the monument, and the persons and their families who donated the monument on their own initiative will be honoured with pride. It is hoped that this can encourage others to follow suit and fulfil their social responsibility and hence alleviate the burden on public coffers.

As regards ways to achieve "adaptive re-use" to enable built heritage to give play to its economic benefits, the work carried out by the Government and the studies conducted are far from satisfactory. I hope that through the release of the Consultation Document on Review of Built Heritage Conservation Policy, we can draw on collective wisdom. In the Macao Special Administrative Region, which is only a strip of sea away from us, their efforts have proven to be very effective. Many monuments and buildings such as churches, batteries, lighthouses, and so on, there have successfully been turned into tourist attractions that bring economic benefits. While the achievements made by Macao in this respect are certainly worthy reference, Hong Kong actually has

many places of historical significance which are also attractive to tourists. For example, in the Central and Western District there are many monuments and places of historical significance that bear relationship to the 1911 Revolution, pending conservation and utilization. The Government must further step up efforts in this respect and expedite its work.

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

MS CYD HO (in Cantonese): Madam President, the concept of cultural identity is adopted in the "Review of Built Heritage Conservation Policy" proposed by the Home Affairs Bureau. Formerly Chairman of the Hong Kong Arts Development Council, the Secretary can easily deliver a very fluent speech filled with cultural jargons causally picked, and give an official document a touch of novelty. This is worthy of our recognition. However, if he only seeks to achieve superficial resemblance without paying regard to the absence of a consistent cultural policy behind the spirit of the document, he will only disappoint the people more after kindling their hopes. It is also possible that people unfamiliar with such jargons will lose interest because they do not see any connection between the consultation and their life.

At the previous meeting held by the Panel on Home Affairs, I raised the point that the consultation document had dwelt excessively on the abstract. Members of public were asked these questions: Is built heritage conservation desirable? Is conserving the landscape, lifestyle and history of a neighbourhood desirable? I believe the people will raise no particular objection. However, had the Government given more details by disclosing the means of conserving the landscape of the neighbourhood, such as giving the size of the area to be preserved, so that the public could know that surrounding buildings could not be redeveloped, the plot ratio could not be altered or compensation in the form of land or money had to be offered to property owners because of the need to preserve the whole neighbourhood, I believe the public would consider the matter in a more in-depth manner.

The question on who should pay has been raised in the document. However, the question has been asked in a very vague manner, and no concrete, practical options have been offered. The matter was left unattended once money, the crux of the matter, was mentioned. Madam President, we agree

that we have to pay for everything. I believe we will be going too far if we ask owners of private properties to give up their properties without seeking compensation, or pay for the maintenance of their properties before opening them to the public. We will only waste more time should we keep evading issues concerning money. And yet, there is no guarantee that our goal can be achieved.

For these reasons, Madam President, I would like to call on the Secretary to set out in detail the economic and cultural merits of different proposals so as to help the public understand the matter and better enable them to grasp this question for the purpose of making a wise collective decision. The questions set out in the first round of consultation are indeed too abstract and irrelevant. As such, I call on the Secretary to issue a supplementary paper expeditiously to set out the concrete issues, such as sources of financing, criteria for declaring built heritage for conservation and the use of conserved built heritage, to let the public know the merits and demerits of different approaches. Otherwise, it will be a waste of time if the public opinions collected in the next three months are generally supportive whereas everyone calls for a halt when it comes to formulating concrete policies.

The effort made by the Secretary in promoting this policy merits our recognition. However, if we look at what has been done by various bureaux within the Government, we will naturally doubt whether there is consensus within the Government itself. The most prominent example is the proposed clearance of the "wedding-card street" in the redevelopment to be carried out at Lee Tung Street, Wan Chai. Such an organic mode of living developed within the community is precisely what the Secretary meant by cultural identity. Has a consensus been reached between the two bureaux? Have any discussions been held? Or are there 11 governments because of the existence of 11 bureaux, with each bureau minding its own business, as some colleagues remarked earlier? I believe the Secretary should come out more to explain to us and the public the policies, stance and positioning of the entire Government.

There was a meaningful article, captioned "What kinds of redevelopment and improvement for whom", written by Ms KING Pui Wai of the Civic Act-Up in *Hong Kong Economic Journal* yesterday. I would like to read out two paragraphs from the article for the Secretary's reference. "Redevelopment carried out without careful planning and support facilities will cause irremediable

damage to a community and result in total extinction of the organic nature of the network and people of the community. Cultural identity and the organic nature of the people have never been based on the subjective wishes of the people in power or planners. For instance, the Government has never managed to force people to visit those multi-storey market complexes that have cost huge public money to build because they do not accord with shoppers' habits. In the end, a number of these market complexes are left vacant. On the contrary, organisms formed naturally in the community have been constantly tarnished and strangled. In planning for the future, should a down-top approach be adopted to take the people's organic nature as a starting point to be assisted with complementary measures?" Madam President, I hope the Secretary can refer to this piece of advice so that not only the exterior is conserved in the course of promoting culture and carrying out built heritage conservation. Attention should also be paid to the fact that culture should always be people-oriented.

We have noticed in some cases of conserved buildings that the Government has merely paid attention to the exterior without following up the contents in detail. One such example is the Cattle Depot. It has already been known a long time ago that power supply in the Depot is inadequate. Many artists have failed to make the most of the venue because they cannot secure adequate power supply. Very often, only a few people can take part in the activities conducted in summer. It is definitely not our wish to see the Depot being turned into a shell of limited use. It is hoped that the Government can make the most of buildings with a cultural setting to enable as many people as possible to admire our heritage and take part in meaningful activities conducted inside the buildings.

Another example is the Court of Final Appeal (CFA). There is a shortage of manpower and resources for antique building maintenance. We can see that the painting of the building and the newly installed metal and wooden facilities there are incompatible with the building itself. Yet the Judiciary is always short of resources for maintenance. As a result, antique buildings become a burden to their users, who may prefer doing without them.

Madam President, while I very much support the broad direction, I still believe it is necessary for the Secretary to redouble efforts in sorting out numerous minor details, examine the contents of the details as early as possible, and conduct meaningful discussions with the community. Thank you, Madam President.

MR MICHAEL MAK (in Cantonese): Madam President, despite robust economic development and its position as a cosmopolitan, Hong Kong is nevertheless satirized as a "cultural desert". This is indeed saddening to all of us. Irrespective of how prosperous the economy is and how high the standard of living is, if the people only bustle around and work all the time for feed, without being nourished by culture and arts, they are no different from a beautiful doll without a soul.

Monuments and heritage are a cultural treasure left by our ancestors. Not only are they a showcase of the way of life and social ethos at different times, they are also a reservoir of wisdom and experience. Monuments and heritage are important to modern society in the sense that they bear witness to history in this fast changing society. Through monuments and heritage, we can draw lessons from the past and learn from the old traditions and rites of our ancestors; we can explore and trace the origin of the cultural treasures with a long history, thereby enriching our cultural cultivation. Hong Kong is a place with a scarcity of land but a large population, and land here is extremely expensive. To cater for the robust economic and business development, many monuments and heritage have been demolished and destroyed. We have lost so much of our valuable heritage, which is an irremediable loss. I hope the Government can rectify its mistakes before it is too late by expeditiously revising the relevant policies for the conservation of monuments and heritage, in order not to earn an additional name of a "monument desert" for Hong Kong.

In fact, preserving monuments and heritage will affect neither the cityscape nor public hygiene. Nor will it endanger the ecology and the natural environment. On the contrary, it can enrich the cultural characteristics and literacy of a place, which will help foster the sense of belonging in the people and promote the development of tourism.

If we look around the world, we will see that in many countries such as Britain, Italy and France, great importance has been attached to monuments and heritage. They have made great efforts of conservation by a diversity of means, such as legislation, regular repairs and maintenance, and so on. These countries are all developed countries where businesses and industries are developing robustly. This shows that the conservation of monuments and heritage definitely will not impede industrial and business development. On the contrary, it will bring about opportunities for tourism. For instance, when we visit Beijing, we must go to the Great Wall; when we are in Italy, we must go to

the Leaning Tower of Pisa; and in Egypt, a place that I long to visit as I have never been there before, one must go to see the Pyramids. These places of historic interest and monuments are not only the valuable legacy of the world. They also attract many tourists who will in turn bring sizable revenues to these places.

In citing these examples, Madam President, I do not intend to explain from a utilitarian angle that conservation of monuments and heritage is warranted given the huge economic benefits that they can readily generate. I only wish to prove that monuments and cultural heritage can go hand in hand with the development of a modern society as well as economic development; they can actually complement each other and breed dynamics and vitality in society.

Even if monuments and heritage cannot generate economic benefits, their conservation is still necessary for they bear testimony to the history of Hong Kong and the root of Hong Kong people. According to the information of the Antiquities and Monuments Office, from relics unearthed in archeological excavations in Hong Kong, it is proven that there was already human settlement in Hong Kong as early as some 6 000 years ago. But as at 19 December 2003, only 78 historical monuments have been made declared monuments under the Antiquities and Monuments Ordinance. What does this show? Does it show that we have not done enough in excavation or we have not done anything to conserve the monuments?

I hope that the Government, in planning urban development, will at the same time make an effort to conserve monuments and cultural heritage. Moreover, the Government must educate the public and inculcate in them the value of protecting monuments and heritage. Only by adopting this two-pronged approach can we effectively preserve such valuable legacy.

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

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

MR ALBERT CHAN (in Cantonese): Madam President, from a historical viewpoint, antiquities and monuments can be described as the root of the people; and to society, antiquities and heritage of historic significance are the soul of a

place and nation. Looking around, we can see that many ancient cities or metropolis such as Paris, London, Rome, Florence, and so on, are full of monuments. The people, the governments and the business sectors of these places have done their utmost to conserve and preserve these antiquities and monuments, contributing either money or efforts to help. They have also managed to preserve the ambience of ancient cities, enabling their people and tourists to gain an understanding of their history and the past. It is because their monuments are preserved that their people have a stronger sense of identification with their society and better understanding of their history.

However, the situation in Hong Kong is sheer misadventure. Over the years, both the former colonial Hong Kong-British Government or the Government of the Hong Kong Special Administrative Region at present have done little for the preservation of antiquities and monuments. Worse still, to make things convenient for certain consortiums, the Government has even given them opportunities to destroy and remove antiquities and monuments. To a nation with a soul, this attitude is like strangling their soul; and to a society with a root and history, it is like severing its root. Such a utilitarian approach will only strive for the greatest or the most benefits for investors and developers in the short term. But in the long term, this will bring irremediable losses, irremediable damages and irremediable destruction to society. While Hong Kong has been described by many people as a goose that lays golden eggs, the destruction of monuments — representative objects with souls and representative structures which belong to the people — will be tantamount to the destruction of history. This is like killing the goose to get the eggs, taking away the life of the goose once and for all.

Therefore, I hope that the Government can draw a lesson from the bitter experience. The many buildings that I used to see when I was a child no longer exist now. Those very representative buildings and their history also exist no more. At this point in time, since the Government has made a 180 degree change in its attitude towards the protection of the Victoria Harbour, we appeal for a similar change in its attitude towards the preservation of antiquities and cultural heritage. I very much hope that the Government can change its attitude, and refrain from considering the preservation of antiquities, monuments and heritage a negative equity. I hope it will not take the view that the preservation of monuments and heritage will put a burden on the Government, affect government revenue and increase government spending. In fact, the preservation of antiquities and monuments is, to a certain extent, a profitable

investment strategy in the long run. It is conducive to the long-term development of Hong Kong and will cultivate a sense of belonging among Hong Kong people towards Hong Kong, since the Government always says that Hong Kong people seem to have no sense of belonging towards the territory. It is precisely because the Government has destroyed much of the cultural heritage in their memory that they have developed a negative impression of this place.

Therefore, whether from a political, economic, humanitarian and social development angle, the Government should commit greater to the preservation of cultural heritage. It should plough in more manpower and resources, and put the preservation of monuments and heritage in a more significant and important position in respect of legislative amendments or control over town planning. Thank you, Madam President.

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

(No Member indicated a wish to speak)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I am very grateful to Mr CHAN Kwok-keung for moving this motion for debate, and I also very much appreciate his doing so, for he has given us an opportunity to discuss the Review of Built Heritage Conservation Policy. I also thank Members for their views on this motion. The Government launched the first stage of public consultation on the Review of Built Heritage Conservation Policy on 18 February this year. Mr CHAN's motion and the input of Members have come most timely, enabling us to discuss in this Chamber issues relating to built heritage, public sphere, community development and creative economy. These issues have to do with society and the people's livelihood in Hong Kong, and they also have to do with the spiritual pursuit of the people.

First of all, please let me go into the contents of Mr CHAN's motion. Mr CHAN feels that the existing built heritage conservation policy is inadequate and must be expeditiously revised upon completion of consultation. Secondly, he holds that before the policy is revised, the Government must take conservation measures to prevent built heritage from destruction or demolition in the interim. Finally, Mr CHAN expresses concern for the economic values of built heritage in respect of cultural tourism, and so on, and urges the Government to

appropriately make use of built heritage to promote local community economy and create job opportunities. The first point of Mr CHAN's motion concerns the background and the key objective of policy revisions; the second point is about the effectiveness of the implementation of the existing policy, raising concern over whether the Government has sufficient powers and ability to conserve built heritage and whether, before the policy is revised, it is necessary to introduce other contingency measures; and the third point concerns the adaptive re-use of built heritage.

First, I would like to explain the background and the key objective of the policy review. In his policy address last year, the Chief Executive mentioned two major objectives of "Enlightened People with a Rich Culture" and "Environmentally Responsible Development". The Home Affairs Bureau responded in its policy agenda that we intended to "adopt a holistic approach in assessing the historical value and cultural background of the buildings for heritage conservation". On 12 February last year, Mr LAU Ping-cheung also moved a motion calling for a comprehensive review of heritage conservation, and I also attempted a reply in the Legislative Council. In fact, in March 2001, in the consultation paper published by the Culture and Heritage Commission appointed by the Chief Executive, the need to conserve cultural heritage in Hong Kong was also mentioned and the Government was urged to study ways to strengthen co-ordination among government departments and public bodies, incorporate a cultural perspective in considering the city environment and urban redevelopment, enhance public awareness of heritage and convert some government historical buildings for culture-related uses. In the meantime, the Bureau received proposals from many advisory bodies, professional organizations and members of the community. Some historical buildings under threats of demolition began to attract media coverage and public attention. All these showed that a certain consensus on heritage conservation had been formed between the Government and the public. Coupled with the enforcement of the Antiquities and Monuments Ordinance (Cap. 53, Laws of Hong Kong) for nearly 30 years, the considerable experience accumulated had made it possible for a conclusion to be drawn on the direction of the policy review. It is against this backdrop that the Bureau released the Review of Built Heritage Conservation Policy Consultation Document in February this year.

The contents of the policy review have been set out in the consultation document. Here, I wish to highlight the historical background and community spirit of heritage conservation. I will spend some time explaining the universal

spirit and academic basis behind certain policy changes, although these philosophical issues bear no direct relation to the policy review.

Heritage conservation is a relatively modern phenomenon. By taking care of historical monuments, royal houses, classical buildings and old urban quarters, and bestowing on them a symbolic meaning for the general public, a country marked its entry into the modern era. In other words, heritage conservation is an element of modernization. If modernization is not on the agenda, heritage conservation simply would not come up in anyone's mind.

In the course of building a modern nation under constitutional rule, historical monuments, classical buildings and national treasures that once belonged to the royal family are open to public access and appreciation. The parliament votes funds to maintain palaces, castles, public squares, cathedrals, city halls, market places and guild offices. Laws are made to protect these heritage buildings. Management agencies are established to maintain structural authenticity, while modernizing interiors and adapting their uses to modern needs. Buildings bearing historical significance but owned by private parties are preserved through legislation, often with public financial support. A citizen, regardless of social status and wealth, and by observing certain common rules and etiquette, can visit and venture inside such buildings. Through public access and discussion, the citizens can identify with these buildings which also act as a sphere for shared communication among the citizenry. The preserved built heritage stands not only for the honour and achievement of a common past, but also for the freedom, equality and social cohesion of the present and future. They help embody modern civilization.

Side by side with historical monuments and old urban quarters, modern architecture portrays efficient glamour in such structures as banking towers, factory complexes, airports, municipal buildings, urban apartments, shopping malls and underground railways. The old and the new coexist. Leeway and niches allow citizens to choose and develop their lifestyles and means of living. The new does not exclude the old but includes it and modernizes it. The spirit of the old persists. The old carries a new meaning of modern life. The past is not eradicated but remains in constant dialogue with the new. Heritage conservation does not fossilize the old, but to preserve it and duly modernize it in accordance with the wish of the community. This evinces the continuity and accommodating nature of modern society. This liberal politics of the West echoes the Confucian way of government during the Han dynasty, where the old

practices and way of life of the local community were given due respect in the exercise of state-imposed measures. As explained in the *Chapter on Kingship of the Book of Rites*, "Formal education will be provided, while ways of life should not be changed. Public facilities will be standardized, while niches of livelihood should not be affected."

In recent decades, heritage conservation has extended its coverage from the royal and sacred to the industrial and the communal. Old mansions, steam engine factory halls, railway stations, warehouses and old shopping lanes — more and more of these are being conserved. As "younger" heritage items, they are more suitable and susceptible to adaptation and modernization. They are converted into trendy restaurants, stylish hotels, artists' villages, art galleries and homes. These conserved buildings enrich a city's culture and lifestyles and also attract tourists and talents. They form a part of the new creative economy and enhance a city's cultural image and competitive edge.

Heritage conservation is an essential part of modernization and the shaping of modern social awareness. The community identifies with the preserved heritage and supports the use of legislation and public resources to maintain and protect it. Private owners have also realized the intrinsic value of built heritage and negotiated and co-operated with governments for their conservation. These conserved heritage buildings and places have, in most cases, merged with modern architecture, lifestyles and technology and can sustain themselves to provide aesthetic enjoyment, social benefits and economic gains. For this reason, the current Review of Built Heritage Conservation Policy is much more than a technical consultation on how to conserve our built heritage in Hong Kong. It is a reflection on, among other things, the community values, lifestyles and even survival tactics of our city.

Looking back on history, we can conclude that a heritage conservation policy means an authorization, by social consensus of the people, given to the government to employ public funds and authority to build up the public sphere commonly owned by the people for nurturing cultural identification and a sense of cultural honour. This is the first-tier meaning of heritage conservation policy, and this is where the core values lie. With such core values, the reunification of Hong Kong with the Motherland has developed a stronger sense of belonging in the people towards society. It has become natural for the people to start treasuring old things with nostalgia, and at the same time heightening their

interest in conserving the heritage. All these have provided the first favourable condition for the heritage conservation policy.

The second-tier meaning of heritage conservation is boosting the ancillary benefits of the relics by developing a nostalgic cultural district to augment the leisure space of the city, thereby enhancing the historical depth and cultural grace of our city and strengthening its appeal and competitiveness as a metropolis. All this will help promote cultural travels and bring economic benefits. Now, the people of Hong Kong have regained a balance in their concepts of land and properties. Apart from treating properties as investment tools, they consider their properties their permanent residence. Both the people and the developers are more concerned about the living environment and cultural ambience of the districts in which their properties are situated. This is the second favourable condition for the Review of Built Heritage Conservation Policy. We must treasure it and do the work well.

As we look at the trends in the world, and learn from local experience, we can come to the conclusion that there are two prerequisites for the successful implementation of heritage conservation: first, there must be a general agreement in society that historical relics are common cultural heritage, worthy of preservation through the use of public and social resources, and that property owners should also agree that their properties are of cultural value and be prepared to co-operate with the Government by exchanging them on certain conditions, in order to achieve a win-win situation; second, the preserved historical buildings must be integrated with the modern way of living, so that they can give full play to their functions in society and to a certain extent bring financial benefits, thus achieving sustainable development. If these two prerequisites are lacking, it would be very difficult for the Government to bear the full costs alone with public funds or resources, and the whole purpose of heritage conservation will be defeated.

Despite the enactment of the Antiquities and Monuments Ordinance (Cap. 53, Laws of Hong Kong) as early as in 1976 and the establishment of the Antiquities Advisory Board and the Antiquities and Monuments Office as the enforcement agents, we must admit that the existing legal framework and the work of built heritage conservation in Hong Kong lag behind the times. The public do not have sufficient understanding and support for heritage conservation, so it is difficult to ask them to shoulder part of the resources and responsibilities.

The Government would not lightly exercise all the authority vested in it by the Antiquities and Monuments Ordinance to conserve local historical buildings. On the three points made by Mr CHAN Kwok-keung in his motion, I will now provide the following response in the light of the present situation.

Firstly, the Government will comprehensively consider the issues involved in built heritage conservation and duly establish a conservation mechanism by, for instance, introducing legislative amendments, to make up for the inadequacy of the existing conservation mechanism in keeping with the global and local trends. For example, the existing legislation attaches importance to the historical value of single-block buildings, stressing historical authenticity in respect of the materials, structure and craftsmanship employed. So, it is difficult for buildings or groups of buildings where alterations have been made but bearing social and cultural significance to be covered by statutory protection. It is, therefore, necessary for the Government to adopt such other means as negotiation or to draw support from other bodies, such as the Urban Renewal Authority. For example, owing to large-scale alteration works carried out in recent years, the Nga Tsin Wai Village does not meet the requirement for statutory protection. However, we do know that these groups of buildings bear great historical and tourism significance and carry collective memory. Other examples are the Haw Par Mansion and the Tiger Balm Garden. If only one of them can be conserved, then according to the guiding principle of the law, the Haw Par Mansion where architectural consistency and structural authenticity are maintained should be conserved, rather than the Tiger Balm Garden which has deeply impressed both local and foreign visitors and forms part of our collective memory. The reason is that the Tiger Balm Garden has undergone large-scale redevelopment and hence falls outside the definition of historical buildings. Another example is Hong Lok Street, or the "Bird Street", in Mong Kok. While it cannot be conserved as built heritage, it does carry cultural value. In recent years, although members of the community cherish these old things or old communities, they could only give up such treasure reluctantly due to limitations in law. From these examples, we can see that the existing laws need improvement to reflect social values which have already changed. To put it simply, we must extend the concept of built heritage conservation from buildings to cover social values and common recollections, and from history and the professional judgement of architects to cover the collective memory of the general public, while at the same time allowing public participation and planning.

Secondly, as the law lays stress on single-block buildings and has yet extended to the preservation of the culture of the whole area, heritage conservation cannot be incorporated into urban redevelopment and community regeneration to enable the preserved buildings, after appropriate modernization, to resettle in the original social and culture ambience. In other words, the existing legislation emphasizes protection by "point", not by "line" and "surface". Thus, the conservation of single-block buildings cannot be extended to a street, a lane or an area. Certainly, to extend built heritage conservation from "point" to "line" and "surface", the requirements in respect of structure, materials and uses in the existing legislation should be relaxed accordingly to facilitate "adaptive re-use" of built heritage, so that the "old things" of yesterday can be turned into "living things" today, because the "living things" today will become tomorrow's "old things". This is precisely the third point over which Mr CHAN has expressed concern. I will now give a response to the third point before coming back to the second point.

There are roughly three ways of preserving built heritage: restoration, preservation and conservation. For certain historical buildings, such as old temples or ancestral halls, as their original functions still apply, it is a more appropriate approach to restore them, keep its original functions and install some suitable modern safety and electrical installations. However, under some special circumstances, preserving the historical buildings is a more suitable approach. For example, we may prefer to maintain the original conditions of some historical buildings or batteries to show how they were ruined by gunfire in war. In Hong Kong, as the city has been developing very rapidly with its population moving around frequently, the original functions of many historical buildings no longer apply, such as the study halls, "yamens" (government offices) and some old police stations which do not serve the needs of modern times. For such historical buildings, the best possible approach is conservation. In the process of repairing and conserving them, efforts should be made to retain their architectural styles and cultural connotations in history, and preserve their function of recalling the collective memory of the people, and then apply them to adaptive re-use, thereby integrating them into our modern life, and even enable it to give full play to its role of revitalizing and regenerating the community. Recently, the Government has adopted this approach in re-planning the use of built heritage, including the Former Marine Police Headquarters in Tsim Sha Tsui, the Central Police Station, the Victoria Prison and the Former Central Magistracy. In designing their new functions, special attention has been given to protecting their cultural characteristics in the hope that these characteristics

can blend well with the surrounding environment and hence achieve the objectives of promoting tourism and local community economy and creating job opportunities.

The second point mentioned by Mr CHAN in his motion is the provision of incentives to encourage owners to carry out repairs and maintenance works required for monuments and heritage to prevent them from destruction or demolition when the policy review is ongoing. This has fully manifested Mr CHAN's spirit of heritage conservation in Hong Kong and his enthusiasm by sensing the urgency of the people. Let me assure Members that the existing Antiquities and Monuments Ordinance has given the Government sufficient powers to protect local built heritage. But pursuant to the spirit of respecting property rights, the Government does not invoke its powers lightly. Rather, we tend to conserve built heritage by way of negotiations and building up consensus. As regards the provision of incentives, section 7 of the Antiquities and Monuments Ordinance provides that the Government can grant to a person who proposes to carry out works for the maintenance, preservation or restoration of a monument an appropriate sum for the purpose of assisting the person to carry out such works. In fact, the Government has all along assisted private owners in need to repair and maintain monuments in their ownership. In spite of this, I agree that where the conditions permit, more incentives should be offered, such as providing technological and financial support, and restrictions should be relaxed in respect of the use of land or premises, in order to encourage owners to give consent to the declaration of historical buildings with conservation value as statutory monuments. We will particularly pay attention to this point in reviewing the built heritage conservation policy. The Government will also negotiate with owners under the existing legal framework and conservation mechanism, in the hope to achieve a win-win situation.

Hong Kong is a small place with a dense population. Given the rapid growth in population and pace of urbanization, it is a tall task to take forward the work of heritage conservation. Nevertheless, the Government has still injected a lot of resources into conserving monuments and heritage. Sometimes we have to pay the high cost in giving up the redevelopment of some premier sites, forgoing the redevelopment opportunity over our precious resources of land. For example, many government historical buildings are declared monuments situated at expensive prime sites in Central, such as the Legislative Council Building in which we are holding this meeting, the Former Government House, the Flagstaff House, the Court of Final Appeal, the Central Police Station, the

Former Central Magistracy and the Victoria Prison. All of them have become the public sphere of the people of Hong Kong and are the eyewitnesses to the history of Hong Kong. They are our common cultural pride.

We have made certain achievements in our level of techniques in conserving historical buildings. Apart from making 60 historical buildings declared monuments, the achievement of Hong Kong in repairing monuments has also been recognized in the international community. For example, during the past four years, the repair works of the Jewish Synagogue in the Mid-Levels, Central, the Hung Sing Ancient Temple on Kau Sai Chau, the Law Family Study Hall in Tai Po Tau and the Hong Kong Catholic Cathedral of the Immaculate Conception in Central have won the Asia-Pacific heritage awards of the United Nations Educational, Scientific and Cultural Organization. In addition, we have developed many heritage trails, such as the Ping Shan Heritage Trail, the Lung Yeuk Tau Heritage Trail and the Central and Western Heritage Trail. Such heritage trails have linked together major historical buildings in the vicinity to facilitate visits by tourists. In recent years, we have felt some positive responses from the community. The oldest pumping station/building still in existence, which has a history of over one hundred years and is situated in Shanghai Street, is successfully preserved with the co-operation of the developer. Besides, with the support of another developer, part of the built heritage at the St. Joseph's Home for the Aged is also successfully preserved. There is also Lui Seng Chung, an old building of historical value in Lai Chi Kok Road, Mong Kok. The family of the owner has taken the initiative to offer the building to the Government for preservation as a monument. Recently, with the support of the owner of Kom Tong Hall, the Government has successfully acquired Kom Tong Hall at reasonable costs for use as the Dr SUN Yat-sen Museum. All these happened after the reunification, showing that society needs a sense of historical and cultural identification and the people have gradually accepted the concept of heritage preservation and felt a sense of honour in preserving the heritage. We in the Home Affairs Bureau, together with enthusiasts devoted to heritage conservation in Hong Kong, are very pleased and delighted at such achievements.

I wish to tell Members that as the Secretary for Home Affairs, the statutory authority that I have in conserving antiquities and monuments mainly comes from my capacity as the Authority under the Antiquities and Monuments Ordinance. In taking forward the conservation work, it is often necessary to

co-ordinate with other Policy Bureaux or departments, particularly in respect of town planning and land development. In the course of the policy review, more emphasis will be given to inter-departmental, inter-organizational and inter-sector co-ordination and co-operation, with a view to making built heritage conservation a common value of the community at large. At present, I am in the course of consulting public views in accordance with the timetable and I have actively met with professional bodies, academic groups, conservation groups, organizations of the relevant sectors, District Councils and other relevant organizations to explain to them the direction of the policy review and listen to their views. Apart from collecting views, the consultation exercise also aims to achieve social consensus. Only when built heritage conservation has become a common value of the community that there will be a sufficient basis of social consensus for the Government to explore such technical details as the means of conservation, financial incentives and compensation mechanism. As we all know, heritage conservation will ultimately face the question of cost, for instance, whether the work should be directly funded by public coffers or by other public resources indirectly (such as by transferring the plot ratio). According to simple principles of economics, whether or not the cost paid is worth depends on the value of the things obtained in return. Therefore, the discussion on the perception of value is very important. Old objects may not worth a penny, but antiques can be priceless. We also know that new cars are more valuable than old ones, but the value of classics may be comparable to new cars. Old buildings may not worth a lot of money, but "antique buildings", that is, buildings which are considered monuments, may carry as many economic benefits as those of newly-developed buildings. So, it is necessary to re-examine the issues of incentives, compensation and subsidies. The built heritage conservation policy will come a long way only when the people, developers and property owners in Hong Kong share the view of owners of monuments in foreign countries, that the honour of owning built heritage outweighs the economic value of new buildings or property development. Therefore, at this stage, that is, the first stage of the Review of the Built Heritage Conservation Policy, we should focus on the exploration of the common values of Hong Kong society. The objective of this stage of consultation is to enable the public to understand, to draw close to, to develop a liking for and to respect monuments, so that they will care for and cherish monuments on their own initiative, and understand the importance and the sense of honour in preserving them. Only in this way can conservation efforts effectively gather perpetual momentum, thereby revitalizing and enlivening historical monuments. Only

through public participation and recognition can we avail ourselves to the enjoyment of a society enriched by history, culture and monuments.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr CHAN Kwok-keung, you may now reply. You have six minutes 26 seconds.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, I am very grateful to the 14 Members who have spoken. They have made many suggestions which I hope the Bureau will consider carefully. The fact that no amendment has been proposed to my motion confirms the viability of the concept of promoting the economic benefits of heritage and monuments with a view to creating jobs.

I was once on a duty visit to Singapore and saw that under legislative control, buildings with historic significance in the Chinatown Historic District cannot be pulled down at will. Besides, the old buildings there have been renovated, and the Singaporean Government has injected over \$100 million into repackaging of district into a tourist attraction. In fact, that place is very much like Wan Chai and the Shanghai Street in Hong Kong where old buildings abound. But after the acquisition of this area by the developer, other than some internal renovation works and the removal of some unstable structures, the façade and original features of the buildings have been preserved. After the completion of such works, the shops there have been turned into shops with distinctive characteristics and the premises have continued to be used for residential purposes. Besides, in Clarke Quay and Boat Quay in Singapore, warehouses along the river have been converted into restaurants, tourist spots, and so on. Apart from conserving cultural heritage, this has given the city a new look and created many business and employment opportunities.

In fact, it is unnecessary for the Government to bear the full costs of renovation and repairs, for it can invite developers to lease such places and then ask the developers to shoulder the renovation costs of the heritage. The Government can lease such places to private developers at a concessionary rate for a number of years, so that they can carry out repairs on the old buildings there. This can, therefore, serve two purposes at the same time.

The Secretary mentioned just now ways to protect built heritage with reference to "point", "line", and "surface". In fact, there could be many methods or ways to do so. I hope the Government, after consulting the views of the public, can effectively draw up a timetable on how cultural heritage in Hong Kong can be conserved and identify the way forward for development. The Government should also enable concerned organizations or developers to participate in the process and make suggestions to the Government.

Last time when I was in Japan, I went with Mr WONG Sing-chi to inspect the development at the Asakusa Kannon Temple. The development there has been remarkable, and it is growing stronger all the time. At first, there was only one street surrounding the temple and now, several streets have already been developed. This is exactly an example of conservation and development of cultural heritage by the government as a means to create abundant employment opportunities.

An academic said to me this afternoon that the Government sometimes failed to "get the horns when it catches a deer". Why did he say so? He cited an example. He said that the excavations at the Li Cheng Uk Han Tomb were of great value. But the Government placed it in a small park and this has completely deprived it of the opportunities of development. Had the Government not placed the tomb in a small park, the surrounding area could have been developed and souvenirs, food, and so on, could be sold there, in which case the area would prosper, unlike the way it is now as people simply do not go there. The Government should draw a lesson from this.

Here, I wish to thank Members again and I hope Members will support my motion. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHAN Kwok-keung 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: Combating crimes relating to automatic teller machine cards and credit cards.

COMBATING CRIMES RELATING TO AUTOMATIC TELLER MACHINE CARDS AND CREDIT CARDS

MR LAU KONG-WAH (in Cantonese): Madam President, in an international financial centre like Hong Kong, such daily activities of the people as shopping and dinning, entertainment and payment of various charges and tax are often conducted electronically. Cash is less frequently used nowadays, and people carry mostly credit cards and automatic teller machine (ATM) cards in their wallets. That is why new types of crimes have emerged specifically in connection with the use of credit cards and ATM cards.

Last year, there were as many as 50 ATM frauds, involving a total of \$1.04 million. The police detected 493 cases of counterfeit credit cards and seized as many as 1 599 counterfeit cards. In the past nine months, law-breakers set up bogus websites of 17 financial institutions to cheat credit card holders of their card information, using just very simple techniques and technologies. The situation depicted by these figures alone of course cannot be described as serious. But the police have so far failed to crack any ATM frauds. If new tricks of stealing credit card and ATM card information keep emerging, rendering members of the public unable to protect themselves, the Government should tackle these new crimes squarely.

The information available lately shows that law-breakers have been employing a wide variety of means to steal credit card information, such as pilfering credit cards from postmen's mail bags or from mail boxes of buildings, or approaching cardholders direct to obtain their signatures and identity card particulars. Besides, since more and more Hong Kong people are using Internet financial services, law-breakers who are quick to capitalize on the

opportunity have designed websites similar to those of financial institutions in a bid to trick bank customers into keying in their names, addresses and personal identification numbers. The servers and Internet service providers of these bogus websites are often located overseas, making it very difficult for the Hong Kong police to conduct trace investigation.

Meanwhile, counterfeit credit card frauds have become increasingly organized and international in nature. Many local counterfeit credit card syndicates have co-operated with their overseas counterparts in an attempt to purchase stolen credit card information from Southeast Asian countries. The stolen information is then used to make counterfeit credit cards in local workshops for making purchases. Besides, counterfeit credit card syndicates will also commit crimes by making use of the time zone differences between Hong Kong and other places in Asia. In European and American countries where time zone differences also exist, such crimes are also found.

The types of crimes mentioned above are just the tip of the iceberg. There are in fact numerous other kinds of ATM frauds and ways of stealing credit card information which all deal a blow to people's confidence in electronic banking. Therefore, the Democratic Alliance for Betterment of Hong Kong (DAB) would like to advise the various enforcement agencies to deploy sufficient resources to tackle these cases and step up their co-operation with overseas enforcement agencies, with a view to strengthening their ability to investigate and combat these crimes. Closer and mutual co-operation with both mainland and overseas enforcement agencies should be maintained to combat cross-boundary and cross-border counterfeit card syndicates. Besides, steps should also be taken to strengthen the intelligence networks of enforcement agencies, upgrade the ability of police officers to gather intelligence and investigate cases and enrich their relevant experience.

Madam President, since the beginning of this year, when mainland visitors could use credit cards for consumption and withdraw Renminbi (RMB) in Hong Kong, they have become the targets of many criminal elements and unscrupulous shop owners. For this reason, the Hong Kong Tourism Board and the police should station more manpower at popular tourist spots to distribute leaflets on reminding visitors of the ways to prevent their credit card information from being skimmed. As for the banks, they should inspect their ATMs more frequently to examine whether any devices for stealing deposits have been installed.

Currently, local banks and credit card-issuing institutions are not obliged by law to report to the police after discovering that the credit cards issued by them have been stolen and used. This has rendered the police unable to form a clear picture of the use of counterfeit Hong Kong credit cards overseas, thus severely reducing their ability to crack down on counterfeit card syndicates. The DAB proposes that the Government and the Hong Kong Monetary Authority (HKMA) should actively study the idea of requiring banks and credit card-issuing institutions to submit useful reports on cases involving the use of stolen Hong Kong credit card information overseas, so as to enable the police to know how the relevant crimes are committed and caution members of the public accordingly.

These proposals of the DAB are targeted on the tactics employed by criminals, but they can only address the symptoms, not the root causes. "As virtue rises one foot, vice rises ten", as the saying goes. The DAB therefore proposes that the Government of the Hong Kong Special Administrative Region (SAR) should actively explore, in conjunction with the HKMA, banks and other card-issuing institutions, the introduction of products of new technology with more sophisticated security features.

By "the introduction of products of new technology with more sophisticated security features", I actually mean that there are many such products in the market, and many countries have introduced various security systems for credit cards and ATM cards that suit their respective economic and social conditions. The DAB proposes card-issuing institutions to consider the possibility of introducing a new type of magnetic card systems, whereby some of the signals are made unstable by the magnetic properties of the materials used. The concept here is that every time after a bank customer has completed an ATM transaction with his card, a group of digits in the code will change, so even if a criminal element can steal the information of the card and make a fake ATM card, ATMs will still be able to tell that it is a fake card immediately after reading the information for the second time, because what is duplicated on the fake card is just the code of the real card at a certain point of time, which has not changed subsequently. This will make it more difficult to use any fake cards. Can consideration be given to this?

And, in regard to the installation of pinhole video cameras on ATMs to steal the personal identification number of the cardholder, can banks consider the idea of installing some devices such as "jitter" to pre-empt illegal card reading?

"Jitter" is a new type of card drive that can prevent the illegal reading of personal information on bank cards even if an illegal card-reader is installed on an ATM.

The DAB is of the view that, in the long run, the financial institutions and card-issuing institutions in Hong Kong should seek to keep abreast of the new technologies adopted by international financial institutions. As reported, VISA and MasterCard have recently requested various banks in Asia to replace their card systems by smart card terminal systems, saying that if any banks fail to do so, they will not assume responsibility for the losses resulting from the use of any counterfeit credit cards in the future. Taiwan, South Korea and Japan are already planning to introduce SIM cards. The HKMA has earlier made it clear that it will not require local banks to convert their magnetic ATM cards to SIM cards owing to cost implications, because apart from card and ATM replacements by the banks, it will also be necessary to replace all EPS and sales terminals and to introduce new encryption software. But we do have misgivings about this. If the Government and the HKMA do not require local banks to comply with the relevant technology requirement in good time, leading the companies concerned to stop shouldering the losses caused by counterfeit credit card usage in the future, the banks will shift the losses onto consumers. This will in turn hinder the widespread use of credit cards by consumers. In the long run, the development of electronic banking in Hong Kong will also be affected.

In conclusion, the Government, the HKMA and various card-issuing banks must step up their efforts to squarely address the problems concerned. The Government and the HKMA should urge the banks not to procrastinate and ensure that they can keep abreast of the latest developments in technology, market demands and various fraudulent practices. The banks should also be urged to continuously update their security installations and facilities for electronic and Internet banking, so as to deter criminal activities and restore people's confidence in using credit cards and ATM cards.

Madam President, I beg to move.

Mr LAU Kong-wah moved the following motion: (Translation)

"That, as the numbers of automatic teller machine frauds and credit card thefts are rising continuously and such crimes are committed in many

varied ways, dealing a heavy blow to the public's confidence in electronic banking services and to Hong Kong's tourist and retail industries, this Council urges the Government to adopt the following measures to secure the confidence of the public and tourists in using electronic banking services:

- (a) deploy sufficient resources and strengthen co-operation with overseas law enforcement agencies to enhance its capability to investigate and combat such crimes;
- (b) extensively publicize the ways in which such crimes are committed to enhance the alertness and vigilance of the public and tourists; and
- (c) actively explore, in conjunction with the Hong Kong Monetary Authority, banks and other card-issuing institutions, the introduction of products of new technology with more sophisticated security features to safeguard the interests of users."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAU Kong-wah be passed.

DR DAVID LI: Madam President, may I first thank my Honourable friend Mr LAU Kong-wah for raising the issue of automatic teller machine (ATM) and credit card fraud. Such fraud is a worldwide problem, one which the banking and card services industry takes very seriously. The international card industry is fighting the problem on two major fronts: through technology and through education.

ATMs and credit cards offer great convenience to the consumers and the travelling public. No matter whether you are here in Hong Kong, or travelling to Beijing, Boston or Bali, your credit card is accepted for purchases small and large.

Meanwhile, with your ATM card, you may withdraw local currency at designated machines all over the world. This convenience has greatly increased

the safety of international travel, by limiting the need to carry cash on long journeys. It also ensures that funds are properly tracked within the banking system, reducing the scope for money-laundering.

In short, the ATM and credit card payment networks are vital to our modern way of life, our security, and our economic prosperity. These networks are effective precisely because they span the globe. As such, the cards and the merchant terminals we use here in Hong Kong must comply with international standards. Otherwise, our cards would not be valid overseas — neither would overseas cards be valid here.

Furthermore, there is a large installed base using current technology. This includes not only the cards in individual wallets, but also the merchant terminals in each and every store, the ATMs throughout the city, and the supporting computer systems as well.

If we are to make any major change in the technology we use in our cards, we must do so in a planned way in association with the worldwide card industry. This is exactly what is happening at the moment. An international group led by the leading card service companies has recently issued a standard for a new generation of cards which should be in place by January 2006. The local banking industry is reviewing this standard, and planning how it may be implemented in Hong Kong by the world-wide deadline.

In the meantime, may I point out that Hong Kong already offers a very high level of card security. Most merchants use on-line terminals, which verify all credit card transactions before they are approved. Many banks have installed devices to prevent card-skimming on their ATMs; many monitor their machines using closed circuit television.

However, while banks and card companies have introduced sophisticated security features to safeguard the interests of users, no security system is foolproof. No measure, no matter how robust, can take the place of an alert and responsible card user.

May I take this opportunity to remind the public that their personal card PIN is their own secret identification number. This number should not be revealed to anyone, not even to bank staff.

Cardholders will have noticed that most banks have already put notices on their ATMs asking users to exercise caution whenever they use their cards, to prevent their personal card data or PIN numbers from falling into the wrong hands.

The public should be alert to suspicious activity, and should enhance security by using only machines with which they are familiar. By remaining alert and properly safeguarding the PIN, most card frauds can be avoided.

Thank you, Madam President.

MR KENNETH TING (in Cantonese): Madam President, in recent years, for reasons of costs reduction, manpower rationalization and efficiency enhancement, the major banks in Hong Kong have been providing more and more of their services by electronic and automated means; automatic teller machine (ATM) and credit card services have thus become immensely popular. Members of the public do find such services extremely convenient, because they thus do not have to queue up for services and can also choose to operate their accounts at their own convenience. However, there are always pros and cons. High-tech criminals are quick to capitalize on the loopholes, and since their tricks are just too numerous to be easily noticeable, bank customers have been made to suffer immense trouble.

In the case of credit card spending, for example, the original purpose is to save people the trouble of having to carry large amounts of cash for shopping. But, very often, if they are not vigilant enough, their credit card information will be stolen for making counterfeit cards. Merchants, credit cardholders and banks will all suffer losses as a result. In addition, since these cases have become increasingly organized and international in nature, the scope of impact has also turned much wider than before.

For these reasons, we agree that the police should enhance their communication with enforcement agencies outside Hong Kong and co-operate with them to clamp down on such cross-boundary crimes. For example, last month, with the co-operation of the Hong Kong Police Force, the enforcement agencies of a number of European countries managed to arrest more than 10 Hong Kong swindlers using counterfeit cards there. This example shows that,

with the globalization of information flows, national boundaries no longer mean anything to criminals, and that it is only by co-operating fully with enforcement agencies outside Hong Kong that we can bring these law-breakers to justice.

As for ATM services, which have by now become an indispensable part of our daily life, criminals have also come up with certain high-tech ways to steal the deposits of ATM cardholders, causing widespread anxieties in town and scaring customers into extreme vigilance every time they make an ATM withdrawal.

So far, what kinds of specific contrivances have been involved in the mysterious theft of people's bank account deposits? Have any pinhole video cameras been installed to get the personal identification numbers of account holders withdrawing cash from ATMs? Have any high-tech contrivances been subsequently used to retrieve the card information for stealing account holders' deposits? Is there any involvement of bank staff? The police have so far failed to give any clear answers, and there has not been any major breakthrough in their investigation.

We therefore urge the police to step up its efforts of combating this new type of crimes. In the short run, for example, sufficient support should be given to the Commercial Crime Bureau to enable it to find out what criminal contrivances have been adopted. That way, they will be able to track down the criminals and bring them all to justice. In the long run, owing to the ever-changing ways in which such high-tech crimes are committed, the police should commit even more resources to enhancing their internal training on the combat of high-tech crimes. It is only in this way that they can outwit this type of criminals and win this uphill battle.

Besides, we are of the view that although the police may not immediately succeed in ascertaining the usual ways in which these crimes are committed, they should still release all the case particulars, including the locations, once any new forms of such crimes are discovered, so as to raise the vigilance of the public. If the police have already ascertained the criminals' usual tactics, announcements should be made as early as possible to advise people on how best to protect themselves. This can greatly increase the "depreciation rate" of crime tactics; soon enough, they will exhaust all their tricks, and members of the public can be spared losses.

The Liberal Party maintains that the HKMA, the banks and card-issuing institutions should also play a part. They should expeditiously explore the application of state of the art security technologies, so as to provide ultimate protection to members of the public. The magnetic stripes on our ATM cards now, for example, are the technological products of the 1970s, of more than 30 years ago. They simply cannot provide any effective protection against high-tech crimes. That is why we think that for the effective and better protection of bank customers' interests, new SIM card-operated ATM systems should be introduced, though this may mean a cost of more than a billion dollars, or else the theft of bank account deposits will only persist. The banks will of course have to make compensations, and in the long run, people's confidence in the banking system will be eroded. When this happens, when people no longer have any confidence in the security of bank deposits, the losses suffered by the banks will certainly far outweigh the cost of replacing their ATM systems.

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

MS AUDREY EU (in Cantonese): Madam President, in the second half of last year, a series of automatic teller machine (ATM) fraud cases occurred. At that time, anxieties spread widely in society, and many bank customers tried all means to protect their own deposits. Some of them, for instance, transferred most of the deposits under their names to accounts that did not allow ATM withdrawals; others even "trimmed the toes to fit the shoes" by cancelling their ATM cards altogether. But all this will after all cause inconvenience to consumers and run counter to the banking sector's intention of saving costs by encouraging more customers to use automated banking services.

After the implementation of various measures by banks to enhance the security of their ATMs, and also due to the increased vigilance of consumers, there have not been any more such cases so far. However, as long as the police cannot crack these cases, it will still be difficult to fully restore people's confidence. Besides, as the saying goes, "as virtue rises one foot, vice rises ten". How can we be sure that law-breakers will not think up other tricks that are even harder to detect and guard against, and which will also cause losses to people?

Actually, many security experts have pointed out that the security measures currently employed by banks, such as the installation of closed-circuit

television and devices against secret cameras, more frequent inspection of ATMs, the fitting of ATM hoods and the posting of notices to advise customers to conceal their personal identification numbers, cannot possibly provide any ultimate solutions. The root cause of the problem is that ATM card information is currently stored in the magnetic stripes and can thus be stolen relatively easily. Banks should consider replacing magnetic stripes by smart cards or other more advanced technologies. It may even be necessary to replace the existing security systems entirely for the provision of enhanced protection to customers.

All this will no doubt increase the operating costs of banks, but I wish to emphasize that at the very beginning, when banks wanted to save costs, they vigorously encouraged their customers to use automated banking services and even levied counter handling charges on customers with low deposits. Now that problems with the security of ATMs have emerged, banks are naturally obligated to shoulder responsibility. Most importantly, banks are obligated to provide secure and reliable services to their customers. This is their duty.

According to the statistics of the Hong Kong Monetary Authority, last year, 49 victims whose money was stolen through ATMs were offered compensation, and the combined amount stood at \$2.1 million. But we must not overlook the fact that many other victims have so far failed to receive any compensation at all. According to the provisions of the Code of Banking Practice on unauthorized withdrawals, if a transaction is made through the use of a counterfeit card and there is no fraudulence or serious negligence on the part of the genuine cardholder, the bank must bear the full loss.

Unfortunately, it is not at all easy for the victim to prove that there is no fraudulence or negligence on his part. I know of a victim whose ATM card was not stolen, but a total of \$100,000 was mysteriously withdrawn from his account. When he negotiated with the bank, its staff instead questioned him whether any of his acquaintances or anyone who knew the personal identification number might have withdrawn the money, hinting that they were highly suspicious of him and refusing downright to pay any compensation. Having suffered monetary losses, the victim also felt that he was treated like a "crime suspect" by the bank staff. His experience was indeed extremely unpleasant.

The original motion urges banks to step up security measures and their public education and publicity efforts. In addition to these points, I would say

that banks should also consider the idea of providing services on a more flexible basis. For instance, customers should be allowed to pre-set their daily limits of withdrawal and cash advance. Those customers who do not usually spend so much should be allowed to choose a lower withdrawal limit, so that even when things go wrong, their losses can be kept to the minimal.

When compared with ATM fraud, credit card thefts are even more rampant. From news bulletins and the "Police Report", we can notice that criminals can easily steal the new cards issued by banks from mail boxes or through other channels and then use them for spending. Many banks will post new cards or personal identification numbers to cardholders without any prior notice. Banks can actually consider adopting other safer means of delivering new cards, such as by registered post or requesting cardholders to collect their new cards in person at branches. My personal assistant, for example, has told his bank explicitly that he wants to and is always prepared to collect his new card in person at the bank. But then, the bank has simply replied that he cannot do so because the issuing of cards is centrally processed, and hence delivery must be by mail.

Madam President, when it comes to ATM fraud and credit card thefts, I am of the view that in addition to urging the police to step up their investigation and enforcement and reminding members of the public to raise their vigilance, we must also urge banks to review their operational practices and refrain from putting cost reduction before everything else. The interests of customers must be accorded top priority whether in terms of ATM security, card design and make-up and even the entire card-issuing process. If not, the situation may worsen, in turn damaging Hong Kong's status as a financial centre.

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

MR ALBERT HO (in Cantonese): Madam President, electronic banking has had a history of over 20 years in Hong Kong. In order to reduce operating costs, many banks have in recent years vigorously developed their electronic banking services. As estimated by the banking industry, the widespread provision of automated and electronic banking services, such as ATM transactions and online banking, will greatly reduce service costs. For the sake of profits, banks are induced to actively encourage people to use electronic banking services as much as possible. We can see that on the one hand, banks have closed down many of

their branches and curtailed their manpower, asking customers to handle withdrawals, deposits and fund transfers through ATMs, but on the other, they have failed to discharge their responsibility of assuring the security and reliability of ATMs to protect the interests of customers.

The continuous development of electronic banking services in recent years has in fact given criminals a very good opportunity. The existing ATM systems of local banks were actually put into full operation as early as the 1980s. Over the past 20 years or so, we have no doubt seen many improvements, but we also notice that these systems are lagging behind their overseas counterparts in terms of security, thus giving rise to deposit thefts. We see that such thefts have not occurred in other parts of Asia only; recently in Hong Kong, there have also been such fraud cases or other crimes involving high-tech tricks, thus causing losses to bank customers. In late 2003, there was a rumour doing the rounds that the deposits of some customers of the Tainan branch of a Taiwan bank have been stolen, and that the losses ranged from several thousand Taiwan dollars to 200,000 Taiwan dollars, causing widespread panic at the time. The bank concerned in Taiwan even suspended its ATM services throughout the island at one time. Even in the United Kingdom, it has recently been announced that its banking industry has noticed a rising trend of deposit thefts, with losses involving billions of US dollars. The situation there is rather acute.

We are of the view that, despite all these signs of a deteriorating situation, the local banking industry and the Hong Kong Monetary Authority (HKMA), when handling the issue of responsibility, have behaved not only very conservatively but also very bureaucratically, refusing to make any improvement and find out the whole truth. This was at least the kind of attitude we noticed when we raised the problem initially. The Democratic Party finds this attitude most regrettable.

Very often, in order to maintain the reputation of the banking industry and depositors' confidence in the banking system as a whole, the HKMA would adopt a rather evasive approach. Initially, banks likewise told depositors that such frauds might just have been caused by the theft of their personal identification numbers by their friends or relatives or by their own carelessness, which gave rise to opportunities for others. In other words, banks tried to ascribe such frauds to customers' oversight, so as to shirk responsibility and divert attention. We approached the HKMA repeatedly on this problem, and it was not until October 2003 that the HKMA admitted the seriousness of the

situation and issued a set of guidelines, requesting banks to take corresponding remedial measures. We think that its response has been much too slow.

Banks and the police frequently lay the blame on the victims even before finding out the reasons for missing deposits, asking them to prove as much as possible that they are not involved in the thefts, that they are innocent. I think such an approach is not appropriate. Let me describe a case here as an example. I received in May 2003 a complaint from a Mr TSANG who had lost \$280,000. He had applied for a credit card, and the bank mailed one to him in June 2002, but he did not receive it until 5 July. But then, before that, his money had already been transferred to the current account of another person, and money was further transferred for the purchase of cash vouchers from the Hong Kong Jockey Club. In the end, a total of \$310,000 was withdrawn from his account for the purchase of cash vouchers and as cash advance. It was not until early 2004 that the bank admitted the element of theft in the case and paid him compensation.

Besides, in some other cases, we can see clearly that despite the obvious element of fraudulence, banks will insist on conducting lengthy investigation. And, in the end, they will only pay compensation to the victims on compassionate grounds instead of admitting any responsibility. Therefore, we think that the Government should take effective steps as quickly as possible to safeguard depositors' interests. We are of the view that video recordings of ATM transactions should be kept for 45 days as far as possible, like the legal requirement in the United States. Moreover, outdated magnetic cards should be replaced by smart cards as much as possible to expand card memory, so as to keep records of whether a card has been used for cash withdrawal. I hope that the Government can respond to the problem and take appropriate remedial measures as soon as possible. Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, several dozen ATM frauds have recently been committed in many varied ways in Hong Kong. The police have not come up with any clues, and not even one single case has been cracked. This will deal a heavy blow to the confidence of the local people and tourists in using credit cards and ATM cards in Hong Kong. In the end, people's desire to spend money with their credit cards will necessarily dwindle, thus indirectly affecting local tourism and retail businesses. While new types of ATM frauds keep emerging, the websites of various financial institutions have also been forged to cheat account holders of their credit card information.

Recently, some law-breakers have even attached their e-mails to the e-banking website of Hang Seng Bank. When a customer logs on the website after keying in his e-banking account name and personal identification number, all his personal particulars will be linked to a forged website. In this way, all his personal particulars will be obtained by the law-breakers.

The DAB conducted an opinion survey on these new types of ATM frauds at the end of 2003. The findings show that ATM frauds have affected people's confidence in using ATMs. However, since ATM cards have by now become an indispensable "daily necessity" of most people, providing so much convenience, people will continue to use them despite their fear of frauds and lack of confidence. This means that there will still be many opportunities for law-breakers. Given this, we are of the view that before a more serious ATM fraud emerges, the Government must put forward measures on preventing and clamping down on such frauds as early as possible, so as to avoid a greater confidence crisis relating to ATM cards.

At the same time, the DAB maintains that the Government should educate people on the need to raise their vigilance. There is such a need because the opinion survey indicates that despite the spates of frauds, many people have still not formed the habit of keying in their personal identification numbers under the cover of their hands or other objects, nor have they adopted the practice of changing their personal identification numbers from time to time. The DAB advises members of the public that they should withdraw money from ATMs equipped with video cameras as much as possible, and that besides keying in their personal identification numbers under the cover of their hands or other objects, they should check their account balances as far as possible beforehand, lest they may fail to detect losses of their deposits if they keep on neglecting to check their balance changes. We see that "hoods" have recently been retrofitted to some ATMs to prevent others from noting the personal identification numbers keyed in by customers. On their part, members of the public, when using ATMs, should pay attention to the surroundings, including the card slot, just to see whether any suspicious device has been attached to it. Members of the public should also check the mail boxes of their homes frequently to see whether letters containing their personal information or letters issued by banks have been opened or stolen. They should also be very careful with their personal information; they should be very cautious when showing their identity cards to people claiming to be postmen, couriers, police officers and bank staff. When using online banking services, they must be especially careful with the authenticity of the websites concerned lest they may be cheated into giving their

account names and personal identification numbers and hence suffer unnecessary losses.

All of these recommendations can only minimize the theft of credit card and ATM card information. They cannot eliminate the intrinsic loopholes of magnetic credit cards and ATM cards, and they are thus unable to catch up with the constant advances in technology. In regard to whether magnetic cards should continue to be used, although the Government has already said that it will not require the replacement of magnetic cards by SIM cards at this stage, local banks cannot possibly continue to resist this trend, as VISA and MasterCard have already required the banks in Asia to install SIM card terminals before 2006. The use of SIM cards by banks has thus become an irresistible trend. The DAB is of the view that even if huge additional investments are required, it is still worth the while to effect the change as long as it can promote the development of Hong Kong's economy, financial industry and online banking services.

Faced with rampant ATM card and credit card frauds, the DAB maintains that if the Government and local banks do not step up their efforts to clamp down on such crimes as early as possible, people will only lose their confidence in electronic banking services. If people know that the use of ATMs for withdrawals will become increasingly risky, they may be forced to use credit cards and ATM cards less frequently for the sake of safety, or they may simply stop using them altogether. Then, when they need money, they will go to banks. The result will be a severe impact on the credit card business. And, the local consumption market will also be dealt a heavy blow, thus indirectly affecting retail and service businesses.

With these remarks, Madam President, I support Mr LAU Kong-wah's motion.

MR JAMES TO (in Cantonese): Madam President, I have listened to many colleagues, especially Dr David LI, who have talked so much about how members of the public can assist in combating frauds, as if they were the hosts of "Police Report".

I can recall that since the policy debate and Budget debate 10 years ago, I have been reminding the Government that it should start to tackle this problem. I must say it is indeed very fortunate that over the past few years, though

electronic banking services and the use of credit cards and ATM cards have been punctuated by thefts and frauds, the crime rate of Hong Kong in this particular regard is still very luckily on the low side. That is why when we see the motion put forward by our colleague, I mean, Mr LAU Kong-wah, we observe that the Government has basically met the requirements in (a), (b) and (c) of the motion already. What I want Members to consider in detail is instead the problem of risks and costs. When we request the Government, card-issuing companies or banks to upgrade their security measures continuously, we must realize that generally speaking, whatever is given is to be paid for, meaning that customers will also have to bear part of the costs.

Recently, people have been talking about the application of smart cards. I actually believe that credit card companies must have made all sorts of calculations. They know that even if they do not use smart cards, the losses they have to bear as a result of thefts will still be disproportionately low. Many credit card companies have in fact been absorbing the losses secretly. They will not announce the number of such cases, and not only this, the police authorities of various regions also have reasons to believe that they simply will not report any theft cases. Therefore, generally speaking, we do not have too much information anyway.

When it comes to Internet banking, we have recently observed many different tricks. What appears to be plain text is actually a hyperlink to other websites. Even an e-mail may contain parts that are hyperlinks. There are numerous tricks that are relatively high-tech and "intelligent". But if customers can be more alert, they may collectively reduce their risks. It is only in this way that people can keep their money in their own pockets.

When credit card and ATM card frauds first started to emerge, the Government, as far as I could observe, refused to announce the venues of the frauds even five or six days afterwards. It only did so when there was mounting public pressure. The handling of forged websites of banks seems to have improved now, as the Government will make an announcement as soon as a case is brought to its attention. Such a practice is absolutely important, not only to the handling of bank-related cases, but also to dealing with confidence tricks in the streets — those involving herbal medicine, electronic spare parts, blessing, and so on. Time is the essence in all such cases. They should be reported right away, in the evening news. That way, the tricks concerned can be revealed, and people can thus take appropriate precautions. Besides, family

members can also caution one another. To sum up, immediate announcements are very effective.

Similarly, other reminders can also serve to reduce our risks. For example, many of us use mobile phones these days, and these phones are switched on all the time (Mr SIN Chung-kai's mobile phone is an example; of course, he should not switch on his phone while he is in the Chamber). We often use online banking services and our credit cards and ATM cards overseas. What some banks or organizations are doing now is that whenever we use any cards issued by them, an e-mail will be sent to our mobile telephones, or a message, an SMS and whatever may be sent. In this way, a customer who has not applied for a new card or used his credit card will wonder why his card has been used. This is the activation of a kind of feedback system which can minimize losses, though not avoiding them altogether. I think these systems can reduce our risks to a certain extent. If the costs are low, they should be promoted vigorously.

Why did I say that the adoption of new technologies will involve the problem of balancing losses against costs? The reason is that all will boil down to the question of risk management. In all communities and groups, among the millions and billions of people in the world, there are bound to some who will still make mistakes, who will still transmit their personal identification numbers to others by error, who will still be cheated, and who will still be very careless, no matter what kinds of publicity efforts and excellent services there are. These things will always happen. That being the case, orderly upgrading should instead be more important.

If, on the other hand, a company really thinks that an upgrading of the relevant technologies will involve costs which are disproportionate to losses, and if it thus refrains from doing so, it should not be too harsh to its customers. It should not always talk only about suspicious elements in a case. As long as it cannot find any evidence of the customer's fault, it should pay compensation. In case banks do not have to upgrade the relevant technologies, all sides may well be able to save money. I think compelling banks to upgrade all their technologies will only lead to the soaring of IT shares, which may be good to their shareholders. But this may not necessarily be good to others.

The problem does not look really very serious now. What is most important is that all of us should join hands to manage the risks and costs.

Besides, the Government should conduct all the publicity within its abilities and all members of the public should raise their own vigilance. In this way, the costs borne by society as a whole may be reduced. I think this is the only ultimate solution.

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, in recent years, there has been a growing number of frauds in Hong Kong. Some years ago, there were the street frauds, but recently, the villains employ new tricks that involve the tampering of automatic teller machines (ATMs), fake websites of banks, and so on. They cheat money out of the pockets of the people in a sweeping tide. Just in the period between 2002 and 2003, more than 50 frauds have occurred, involving a total of more than \$2.1 million.

In fact, Hong Kong is not the only place where ATM frauds have taken place. Similar fraudulent practices have also occurred in Britain as well as other places in Asia. Villains would make use of pre-installed card-readers and pinhole camera to capture information stored on ATM cards as well as passwords, and then proceed to duplicate new cards and withdraw all the money from the accounts of the victims. It is therefore evident that such crimes are committed with syndicates operating in the background, and such crimes could even be cross-boundary by nature. The local Police Force should co-operate with overseas law enforcement agencies for exchange of intelligence and information.

ATM card frauds and fake websites of banks fall into the category of high-tech crimes, in which criminals withdraw money of cardholders by making use of the information system of banks. It has become necessary for the police to exercise their wits, instead of their physical strength in fighting the battle against the swindlers.

As suggested by the Consumer Council, the parties concerned may install closed circuit television (CCTV) systems and jitters. This is indeed a pragmatic approach. However, as a Chinese saying goes, "As virtue rises one foot, vice rises ten." What we fear is that the swindlers may have already invented some

new ways of cracking the jitters, and then they would render all such efforts useless. Furthermore, CCTV systems can only capture the physical appearances of suspects for further actions in future. However, they could still get away with it if they have masked their faces when committing the crimes. Therefore, banks should strengthen their patrolling manpower and should employ more staff to step up their preventive measures.

Besides, there is another method which may incur higher costs. According to someone from the banking sector, the adoption of chips with a higher level of security would be the best and the quickest solution. However, the cost of this type of chips is five times more expensive than an ordinary ATM card. What is more, all the ATM machines will have to be replaced, pushing the total cost higher. However, the Hong Kong Monetary Authority should work with the banking industry in developing more effective technologies, and maybe it would take some time before such ATM cards with new security features could be brought into application.

It is believed that the increase in the number of credit card frauds has been attributable to the expansion of the scope of fraudulent activities of criminal syndicates. I hope the Government can call on the tourists and local residents to exercise greater caution, and I hope the banks can urge their clients to be more prudent in handling their credit cards.

This type of crimes is spreading to different parts of the world, and it is believed that these crimes are planned and organized. The police should step up their measures in tackling such crimes.

With these remarks, I support the motion.

MR SIN CHUNG-KAI (in Cantonese): Madam President, insofar as security is concerned, I think problems exist in two aspects: one involves ATMs, and the other involves e-banking (that is, Internet banking). Just now many Honourable colleagues suggested the use of chips. However, even if banks agree to switching to chips and replacing all the machines now, it will take two to three years to complete the process. This is already the fastest rate. Therefore, I think, in the short term, we should encourage the banks to adopt some feasible measures to strengthen security.

Mr James TO mentioned the use of SMS. In fact, if the banks are willing to implement this — of course this is one of the criteria — it would essentially incur some costs. Sending a SMS, that is, once the card is inserted into the ATM, a SMS will be sent to your mobile phone. If you find that you are practically not using this card with the ATM when this message is received at your mobile phone, then even if loss may still be suffered as a result of this transaction, it would enable us to minimize our loss in the future. Besides, banks may make changes to their programs, such as requiring the provision of an additional password when money is withdrawn. So it involves some efforts in amending the programs. I think the Hong Kong Monetary Authority (HKMA) may discuss such initiatives with the banks, so as to step up security.

Madam President, I think the present problems with ATMs would be solved sooner or later, because the international trend is to use chips. However, I think the greatest problems faced by us now lie in e-banking. I think that the Government should step up their work in this aspect. All the e-banking services now require the input of a so-called "ID", that is, the PIN, when users log in to their accounts. The Hong Kong Government is now promoting the use of e-Cert, and it should actually initiate talks with banks on this. After the Immigration Department has added the feature of e-Cert into our identity cards, it in fact does not have too many applications. Its usage is quite low. We hope that, with the enhancement of its security system, more people could be encouraged to use e-Cert. As the banks are reluctant to use it now, it has created a problem of the chicken and eggs kind, and no one is willing to use e-Cert. In fact, the use of e-Cert is really quite inconvenient. However, its security features are more sophisticated. Yet, on the question of whether or not the Government should require banks to use e-Cert, there may be some difficulties. However, on the issue of how it should be promoted, we shall have to rely on the efforts of the HKMA. If e-Cert could be used, I believe the security level will be enhanced considerably, and problems generated in this aspect will be reduced substantially.

Besides, if we compare the present administrative procedures in using credit cards in Hong Kong with those in the United States, we can see that most retail shops in the United States would ask cardholders to produce a picture ID. This is one of the ways of reducing the fraudulent use of credit cards. Although this may cause us some trouble, it has been implemented in the United States.

For example, if you buy some clothing, the shop attendant would ask you to produce an identification document bearing your photo on it. It would be much easier for this practice to be implemented in Hong Kong as everyone carries his/her identity card with him/her all the time. This would reduce the number of cases of fraudulent use of credit cards.

Finally, in terms of legislation, the Secretary knows it too well that a resolution on overseas jurisdiction was recently withdrawn by the Government. In fact, the Bills Committee has discussed the issue many times, and we fully support the inclusion of computer crimes into the scope of overseas jurisdiction. However, there are certain technical problems. As it has been discussed on several occasions, I believe officers in the Security Bureau know the reasons very well. In fact, we strongly hope that the Government can expedite the introduction of a relevant bill to improve the principal legislation as soon as possible, instead of inserting the provision by way of resolution into the relevant schedule. I believe officers of your Bureau should understand this. I think, even if the relevant resolution on overseas jurisdiction is passed, immediate assistance is still not available. But I still believe that we should stipulate such an authority in the legislation. As many Honourable colleagues have said, most of the brokers' websites are not in Hong Kong. Frankly speaking, they would not be so stupid; they would definitely maintain their operation elsewhere. That is why we think the Government should be given such an authority. Although it would not be possible for us to finish processing it within this Legislative Session, we hope the Government can table the relevant bill to this Council as soon as possible in order to amend the principal legislation.

I think many procedures will hinge on enhancement of the present security standards of banks through initiatives taken by the HKMA. The reasons mentioned by Dr David LI should also be considered. If we want to switch to using the smart card, we cannot use it just in Hong Kong. This is because, honestly, if the switch to chips is effected only in Hong Kong but not in other parts of the world, then we would not be able to withdraw cash, and this would cause some inconvenience. As such, we must act in line with the international trend. However, before changing to chips, I hope the HKMA can do something about the security standards. I have mentioned several examples earlier, and if they could commission some security specialists to study the issues, they would certainly discover that enormous improvement can still be made. Although there would not be any more problems several years later upon the switch to

chips, we still have to implement some initiatives for a certain period of time before the switch is actually effected. We hope Secretary Frederick MA can hold discussions with banks via the HKMA on the formulation of a set of enhanced security standards.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam President, with the advances and penetration of technologies, banks and other institutions have been able to introduce a wide variety of electronic services, much to the convenience of people in their daily life. According to statistics, the total number of credit cards in circulation in Hong Kong now stands at some 12 million, and that of ATM cards is estimated to be 19 million, showing that such tools of electronic transaction have already become an indispensable part of people's financial management and consumption.

Advances in technology have, however, given rise to opportunities for law-breakers. In 2003, the police seized a total of 1 599 counterfeit credit cards in Hong Kong. In the same year, the police also received 49 reports on ATM frauds which involved an alleged loss of HK\$1.04 million in total.

Despite all this, I wish to stress that the situation is not so serious, as the cases concerned are just very small in number relative to the total circulation of credit cards and ATM cards. However, as pointed out by Members earlier in the debate, lest any erosion of public confidence in the electronic services offered by banks and other institutions may in turn affect the popularization of information technology and the development of financial, tourism and retail businesses in Hong Kong, the authorities have always accorded very serious attention to such crimes, especially those involving brand-new practices, and huge resources have been committed to fighting these crimes.

The Secretary for Financial Services and the Treasury will give a reply on the measures taken by the Hong Kong Monetary Authority (HKMA), and I shall offer an account of how the police investigate and combat these crimes and also the work on raising public vigilance.

The police will conduct in-depth investigation into every case of counterfeit credit cards and take various active measures, including crime intelligence collection and the conduct of intelligence-based operations. As a result of such investigation, the police have succeeded in smashing a number of counterfeit credit card syndicates and arrested the criminals concerned. In 2003 alone, nearly 200 persons were arrested for the possession, use and suspected production of counterfeit credit cards. In recent years, roughly 80% of the counterfeit credit cards seized in Hong Kong have been the result of proactive police investigation. This means that most of the counterfeit credit cards were seized by the police before they could be used. The results show that the intelligence-based strategy adopted by the police has been able to effectively track down and combat counterfeit credit cards.

Moreover, the police also maintain close contact and intelligence exchanges with banks and the credit card industry, with a view to detecting cases expeditiously and working out ways to prevent such crimes.

In some cases, the use of counterfeit Hong Kong credit cards outside the territory may involve the participation of international crime syndicates. For this reason, the Hong Kong police have also been maintaining close contact and intelligence exchanges with overseas enforcement agencies, so that joint efforts can be made to combat these crimes. These agencies include the Payment Card Working Party under the Specialized Crime Directorate of the Interpol General Secretariat and also the police authorities of such countries as the United States, Canada, Holland, Belgium, Thailand, Malaysia and Japan. The liaison work is undertaken mainly by the Interpol Office of the Hong Kong Police Force, its officers stationed in the Interpol headquarters in France and the representatives stationed in Hong Kong by some overseas enforcement agencies.

The Hong Kong Police Force is also an advisor of the universal classification system for counterfeit payment cards, which has been set up for the use by member states in the course of investigating counterfeit card cases. It can thus be seen that the police have established very close co-operation with overseas enforcement agencies. The series of cross-boundary co-operation measures have provided immense help in preventing cross-boundary crimes, including counterfeit credit card cases.

In regard to ATM frauds, the police have tried to tackled these cases in various ways, including contact with the industry, studies on upgrading ATM

security and instructing front-line police officers to pay more attention to ATM points. The police will also conduct active analyses of and investigation into this type of frauds. The HKMA has likewise been holding negotiations with the banking industry on ways to upgrade ATM security. The Secretary for Financial Services and the Treasury will give a more detailed account on this.

Besides the preventive and enforcement measures mentioned, people's vigilance, as also pointed out by many Members, is also of vital importance to the prevention of such crimes. Through various channels, such as the distribution of leaflets and posters, the police have been trying to raise the vigilance of the public and merchants against credit card frauds. Members of the public are reminded to use and keep their credit cards with care to prevent the theft of card information. They are also reminded that in using their credit cards to make payments, they should pay attention to any unusual moves of service staff while the latter are doing card-swiping.

As for ATM frauds, the police have sought to raise public vigilance by revealing the tricks adopted by criminals in "Police Report" on television. Through various channels, the police have also urged members of the public to guard their ATM cards and personal identification numbers against any theft and to check their account balance regularly. It is believed that with the appeals of the police and the recent media reports, people's vigilance should have increased greatly. I believe that this, together with the active preventive measures taken by the banking industry, should help enormously to prevent such crimes.

Madam President, in the face of rapid technological development, we must keep abreast of the times in crime investigation and prevention. As I have already explained, the police have been exerting their utmost to prevent the crimes in question. The support of the public and the industry will also play a key role in combating these crimes. We will continue to intensify our efforts for the protection of people's interests. Thank you, Madam President.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Secretary for Security has already given his response with respect to law enforcement and the combat of crime. I will now respond to Mr LAU Kong-wah's motion from the angle of financial services, a policy area for which I am responsible.

Developing electronic banking (e-banking) services has become an international trend. In order to maintain Hong Kong as an international financial hub, the development of our banking services must keep pace with other advanced regions. In fact, the traditional banking *modus operandi* can no longer cope with the increasingly complex, time-conscious and constantly changing financial and commercial activities.

The Government attaches great importance to the development of e-banking services. In recent years, the rapid expansion of such services has greatly enhanced transaction efficiency and brought more convenience to enterprises and the public, though it bears some degree of risk. As the banking regulator, the Hong Kong Monetary Authority (HKMA) has endeavoured to create an environment conducive to the healthy development of e-banking services in Hong Kong. In this connection, the HKMA has implemented a comprehensive e-banking and technology risk management supervisory framework in compliance with relevant international regulatory standards, particularly the guidance on e-banking risk management issued by the Basel Committee on Banking Supervision. The supervisory framework comprises the following major components:

- (1) Development of policies and guidance for the banking industry — Since 1997, the HKMA has been issuing a series of guidance and circulars to set out its regulatory approach on e-banking services and to provide authorized institutions (AIs) with recommendations on the risk management for these activities and information security measures. In February 2004, a circular on supervision of e-banking institutions was issued by the HKMA to further provide AIs with guidance on e-banking risk management. AIs should discuss their plans and risk management measures with the HKMA before offering e-banking services. On the other hand, the HKMA requires senior management of AIs to commission periodic independent assessments of the information security aspects of their e-banking services. Furthermore, the HKMA has issued guidance on technology risk management for e-banking services, business continuity planning and Internet advertising material for deposits.
- (2) Promoting customer protection, education and security awareness — As for other banking services, the HKMA requires AIs to observe the Code of Banking Practice in providing e-banking services to

their personal customers. There should be adequate transparency in the provision of e-banking services so as to enhance the customers' understanding of what they can reasonably expect of the services, as well as their precautionary actions in enabling adequate information security of the services. Besides, the HKMA has established contact with the industry associations, Information Technology Services Department, the Technology Crime Division of the Police, and other relevant bodies with a view to promoting the general awareness of e-banking security, establishing a common incident reporting and response mechanism for the banking industry and enhancing public confidence in e-banking.

- (3) Continuous Monitoring and Examinations — In addition to the issuance of supervisory policies on e-banking, the HKMA launched in 2002 an on-site examination programme focusing on AIs' e-banking activities, technology risk management and business continuity planning. The HKMA has been conducting such on-site examinations on strategically important banks in Hong Kong since January 2002. To facilitate prioritization of its supervisory focus, the HKMA has established a technology risk profile system. A self-assessment process for e-banking, technology risk management and business continuity planning was also implemented for AIs in 2003.
- (4) International Co-operation — As regards international co-operation, the HKMA is a participant of the Electronic Banking Group of the Basel Committee on Banking Supervision. The Group has studied different supervisory issues of e-banking, such as cross-boundary issues and risk management principles for e-banking services. The HKMA is also active in sharing its experience in supervision of e-banking with other bank supervisors in the Asia Pacific Region and mainland China.

In the light of the occurrence of a spate of automatic teller machine (ATM) frauds and Internet banking frauds, the Government, HKMA and banking sector have undertaken a series of tasks focusing on the prevention of frauds and the enhancement of public alertness and vigilance against ATM frauds and Internet banking frauds.

I would like to say a few words on ATM frauds. The HKMA received, in the second half of 2003, a number of suspected ATM fraud cases. Although the number of such cases in Hong Kong is still less in comparison to those happened in other regions, the HKMA takes this issue very seriously. On 14 October 2003, the HKMA issued a guideline to all AIs setting out necessary precautionary measures. These measures include:

- (i) enhancing the security features of ATMs (such as installing jitters and hoods over the keypads). I believe Members withdrawing money from ATMs lately will notice a hood installed over the keypad as a means to prevent PIN numbers entered from being peeked by others;
- (ii) continuous monitoring the operation and use of ATMs by installing closed-circuit televisions;
- (iii) implementing a mechanism that records relevant information on ATM card or credit card transactions so that AIs can determine whether an unauthorized ATM transaction has been carried out through a counterfeit card;
- (iv) more frequent patrols of ATMs during and after office hours;
- (v) encouraging customers to report any suspicious devices detected on ATMs. Institutions should provide the relevant telephone number for customers to make enquiries and reports at conspicuous positions the ATMs; and
- (vi) alerting customers to any unusual transactions.

Most ATMs in Hong Kong have now been installed with precautionary measures or moved to a safe place (such as inside the hall of bank branches). The HKMA has received no new cases since mid-November last year. This shows that the existing precautionary measures are quite effective and the problem has appeared to be brought under control.

To prevent the occurrence of similar frauds or ATM frauds involving the use of more sophisticated technology, continuous efforts will be made by the banks in exploring other measures to enhance vigilance. For instance, some

banks have launched SMS signalling services to immediately inform their customers of transactions conducted under their accounts at ATMs or by credit cards. I noted that a similar proposal was raised by Mr James TO earlier. Furthermore, the Task Force on ATM Fraud Prevention, set up under the Hong Kong Association of Banks, is now looking into other feasible options and technology to enhance the security of ATMs and ATM cards, including the use of chips to conduct ATM transactions, as mentioned by a number of Members earlier. The members of the Task Force comprise representatives from the banking industry, the Hong Kong Police Force, ATM network service providers and the HKMA.

To enhance public alertness and vigilance, the Government and the industry have made a lot of efforts. The police have in its television special "Police Magazine" reminded the public of ways to protect their ATM cards and PINs. Furthermore, banks have placed stickers on their ATMs advising their customers to cover the keypad while entering their PINs. The customers may also make use of the telephone hotlines provided on the stickers or ATMs to report any suspicious devices found near the ATMs. The Task Force mentioned above will make continuous efforts to launch publicity this year to enhance public awareness of ATM security.

Now I would like to turn to e-banking. Since June last year, approximately 12 fraudulent bank websites targeted on the public in Hong Kong have been received by the HKMA. Fortunately, the police have so far received no report concerning the loss of money by members of the public. In fact, circulars were issued by the HKMA to AIs as early as May and August last year, and the recommendations include, *inter alia*, (i) to make sure that e-banking customers are aware of the fact that banks will not request their customers to disclose their sensitive account information through e-mail; (ii) to remind e-banking customers of ways to ensure that they are connected to genuine websites; and (iii) to conduct regular search for any suspected fraudulent websites bearing domain names similar to their own. The HKMA has issued a series of press releases to remind the public of these fraudulent websites. It also maintains close liaison with local and overseas authorities for the purpose of expediting the closure of fraudulent websites.

The HKMA has also requested AIs to adopt more effective verification methods (such as double checking the identity of customers by way of PIN and digital certificates) to verify more risky customer transactions. In fact, the

double-confirmation method has become a trend. For instance, digital certificates have been adopted by banks to verify the identity of on-line corporate customers. Some banks have recently started to make use of Smart ID cards to verify the identify of their customers to further enhance the security of their e-banking services.

The Hong Kong Association of Banks also set up an e-Banking Working Group in December 2002. Since February last year, the Working Group has launched a multi-channel consumer education programme to enhance public awareness of e-banking security measures. The programme includes publishing and distributing publicity leaflets, and producing and broadcasting television announcements of public interest and radio broadcast excerpts.

The Information Centre of the HKMA has also installed interactive computer programs to provide the public with knowledge on e-banking security. This year, the HKMA will continue to work with the Hong Kong Association of Banks in strengthening the programme for consumer education on e-banking services by such means as producing broadcast excerpts through radio stations and publishing more updated publicity leaflets.

In conclusion, e-banking supervisory measures in Hong Kong are effective and consistent with international standards. The use of e-banking services in Hong Kong is safe, as long as banks and customers are willing to adopt appropriate security measures. We agree that consumer education is very important. The HKMA will continue to, in collaboration with the industry, promote consumer education and constantly review the existing risk management and security measures to make e-banking facilities safer and enable them to continue to develop in a healthy manner.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, you may now reply and you still have four minutes two seconds.

MR LAU KONG-WAH (in Cantonese): Madam President, I would like to thank several Members who have spoken. From the responses provided by Members

and officials, I can generalize several common points. The first point, such frauds have basically shown a sudden rising trend. Of course, recently the number of such cases may have dropped slightly. The second point, for such frauds, we agree that all of us, including the public, have the responsibility to safeguard our own properties. And the third point, for such frauds, it is always a case of "as virtue rises one foot, vice rises ten". The swindlers will always come up with some cleverer tricks, and our preventive measures may never be good enough for such new tricks.

On a personal level, or on the responsibility of the people, I have had a feeling during the past few months, I am not sure if the President would share it, that I would always make some covering moves whenever I withdraw money from ATMs, and really I have been more prudent. However, such prudence reflects our worries, that is, our worries continue to exist. The same situation occurs when I pay my bills by credit card. Sometimes I would start to worry if the shop keeper takes a bit longer in processing payments with my credit card, and wonder why it takes so long. Of course, as advised by the Secretary, we should be more prudent if we so encounter some unusual behaviour. However, sometimes it is just not possible for us to detect whether there is any unusual behaviour because the card has been taken away from us and is a distance away from us, and it has become absolutely impossible for us to see whether there is any unusual behaviour. Therefore, sometimes even the vigilance of the people may not be good enough for preventing such frauds.

In regard to the police, the Secretary mentioned just now that they would intensify the effort against such crimes. As a matter of fact, the police have not been able to crack down even one single case among the several dozens of ATM frauds that took place last year. This is a problem. More than 10 fake websites have emerged in the past. Though such websites have been closed down with no losses suffered because the people have already been notified, there seems to be no way for the Government to track down such frauds and find out what kinds of tactics they are trying to employ. Therefore, such incidents may recur in future.

As for the banks, I am glad to note that they will launch a series of new services. However, for the two credit card companies mentioned by Dr David LI earlier, namely VISA and MasterCard, no undertaking has been made to meet the proposed deadline of 2006 for introducing the use of chips. This is a

problem in reality, not one of cost and risk. Instead, it is an index that has to be achieved in reality. Under such circumstances, I still do not know whether the banks can really achieve this. If they can expeditiously inform the public that they will really be doing that, I believe they will assure the public in some measure in terms of confidence.

Lastly, I have not heard of any response from either the Hong Kong Monetary Affairs (HKMA) or the Security Bureau to a particular issue during the question time today or in past sittings. The police may have collected a lot of statistics, so they understand the situation regarding the use of counterfeit credit cards in Hong Kong. However, if the credit card information of the Hong Kong people is not stolen in such venues as restaurants and karaokes in Hong Kong, but in other regions, such as Europe or other parts of Asia, then we have no access to such information. In fact, credit card centres of banks should have such information, but they probably will not divulge such information to the police. In my opinion, this will create a loophole. As such, I hope the two Secretaries can discuss the issue with the HKMA or banking institutions, so as to collect more such statistics, the *modus operandi* and pattern of such crimes, and release such information to the public. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 21 April 2004.

Adjourned accordingly at twenty minutes past Nine o'clock.

Annex

COPYRIGHT (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "and to repeal the Copyright (Suspension of Amendments) Ordinance 2001".
1	By deleting subclause (2) and substituting - "(2) This Ordinance shall come into operation on 1 September 2004."
2	By deleting the clause.
3	By deleting the clause.
New	By adding -

"3A. Penalties for offences under section 118

Section 119(1) is amended by repealing everything after "定罪，" and substituting "可處監禁 4 年，並可就每份侵犯版權複製品處第 5 級罰款。".

4	By deleting the clause and substituting -
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ClauseAmendment Proposed**"4. Section added**

The following is added -

"119A. Offence in relation to possession of infringing copies in a copying service business

(1) In this section -

"copying service business" (複製服務業務) means a business, conducted for profit, that includes the offering of reprographic copying services to the public and, in the case of a business that includes the offering of reprographic copying services to the public at more than one place, means any part of the business carried on at such a place;

"reward" (報酬) means reward other than reward of a nominal value.

(2) A person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work.

(3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for the purpose of and was not made in the course of the copying service business.

ClauseAmendment Proposed

(4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for profit and was not made for reward.

(5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copy of a copyright work in question was an infringing copy of the copyright work.

(6) A person who commits an offence under subsection (2) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

(7) Sections 115, 116 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (2).".".

5 By deleting the clause.

6 By deleting the clause.

7 By deleting the clause.

New By adding -

"7A. Seized articles, etc. liable to forfeiture

ClauseAmendment Proposed

Section 131 is amended -

- (a) in subsection (1), by adding ", 119A" after "118";
- (b) in subsection (7), by adding ", 119A" after "118".

**7B. Disposal of articles, etc. where
a person is charged**

Section 132 is amended by adding ", 119A" after "118".

**7C. Determination of application
for forfeiture**

Section 133 is amended -

- (a) in subsection (5), by adding ", 119A" after "118";
- (b) in subsection (6), by adding ", 119A" after "118".

8 By deleting the clause.

9 By deleting the clause.

10 By deleting the clause.

11 By deleting the clause.

<u>Clause</u>	<u>Amendment Proposed</u>
12	By deleting the clause.
13	By deleting the clause.
New	By adding -

"Consequential Amendments

Prevention of Copyright Piracy Ordinance

**14. Seized optical discs, etc., liable
to forfeiture**

Section 34(3)(a) of the Prevention of Copyright
Piracy Ordinance (Cap. 544) is amended by adding "
119A" after "118".

Schedules 1 and 2	By deleting the Schedules.
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Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for Commerce, Industry and Technology requested the following post-meeting amendment to Question 1

Line 6, last paragraph, page 11 of the Confirmed version

To amend ".....hope that by the end of this year, that is, some time before 1 October, the results of the consultations can be announced" as ".....hope that the consultation can be completed by 1 October and the results can be announced by the end of this year....." (Translation)

(Please refer to line 11, first paragraph, page 4693 of this translated version)

Appendix 2**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for Health, Welfare and Food requested the following post-meeting amendment in respect of a supplementary question to Question 5

To amend "the Integrated Home Care Services currently provide 15 800 working places to care for 26 800 elders, and 1 120 additional places for frail elders, thus there are 11 630 places in total" as "the Integrated Home Care Services currently provide not less than 10 510 places, and 1 120 additional places are provided for frail elders, thus there are no less than 11 630 places in total. At present, the Integrated Home Care Services are provided up to 26 800 people" (Translation)

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Health, Welfare and Food to Mr LEUNG Fu-wah's supplementary question to Question 2**

Regarding whether an individual might serve as the appointee of more than one elderly recipient of the Comprehensive Social Security Assistance (CSSA) living in residential care homes, according to the records of the Social Welfare Department (SWD), there are currently 907 cases where a single individual serves as the appointee of more than one elderly CSSA recipient living in residential care homes. About 75% of them are the SWD's social workers, 19% are immediate family members and relatives of the elders, 5% are staff of residential care homes, and 1% are friends of the elders.

Appendix II

WRITTEN ANSWER

Written answer by the Secretary for Security to Mr LAU Chin-shek's supplementary question to Question 3

Regarding the average response time of ambulances that could not arrive at the scene within the target response time of 12 minutes, relevant figures of 2002, 2003 and the first two months of 2004 are as follows:

<i>Year</i>	<i>2002</i>	<i>2003</i>	<i>2004 (January and February)</i>
Number of emergency ambulance calls that were not attended to within the 12-minute target response time	40 875	32 129	6 941
Average response time (minutes)	15.3	15.5	15.4

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr TAM Yiu-chung's supplementary question to Question 3**

Regarding the number of complaints of late arrival of ambulances that led to death of the patients, out of a total of 1 628 207 ambulance calls handled by the Fire Services Department from 2001 to 2003, 24 complaints were received on the late arrival of ambulances. Investigation conducted by the Department revealed that in 10 of the 24 complaint cases, the ambulances were unable to arrive at scene within the target response time of 12 minutes. Amongst the 10 cases, one involved the death of a patient. The Coroner's Court ruled that the patient had died as a result of an accident.

Appendix IV**WRITTEN ANSWER**

Written answer by the Secretary for Security to Mr James TO's supplementary question to Question 3

The Fire Services Department has not received any quantified workload indicator from the Ambulancemen's Union either to show that they are over-worked, or as a reference to the amount of work that they would consider as reasonable.

Appendix V**WRITTEN ANSWER****Written answer by the Secretary for Security to Dr TANG Siu-tong's supplementary question to Question 3**

As regards the manpower provision for the Braemar Hill Ambulance Depot, two Ambulance Officer posts have been created and a total of 36 ambulance staff, comprising five Principal Ambulancemen, seven Senior Ambulancemen and 24 Ambulancemen will be internally deployed to the new depot. Four ambulances will be deployed to the depot upon its commissioning.

Approval has been given for the creation of two Ambulance Officer posts and for the purchase of four ambulances for the Penny's Bay Ambulance Depot. The Fire Services Department will review the overall demand for ambulance service in the Southwest New Territories and Lantau Island, and redeploy existing ambulance resources to the depot to tie in with the opening of the Disneyland Theme Park. The Department will keep the demand for ambulance service in the Penny's Bay area under review to assess the long-term manpower requirement of the depot.