

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 16 June 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 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 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 LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBERS ABSENT:

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE HUI CHEUNG-CHING, J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

- No. 90 — Report of changes to the approved Estimates of Expenditure approved during the fourth quarter of 2003-04 (Public Finance Ordinance : Section 8)

Report of the Bills Committee on Inland Revenue (Amendment) Bill 2000

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Opening up of Sha Tau Kok Frontier Closed Area

1. **MR JAMES TIEN** (in Cantonese): *Madam President, residents in Sha Tau Kok (including Ta Kwu Ling, Fan Ling and Sheung Shui area,) have reflected to me that they have been asking for opening up the Frontier Closed Area (FCA) over the years to alleviate their inconvenience and facilitate public access to the area, with the aim of improving the economy and employment of the local people. In this connection, will the Government inform this Council whether:*

- (a) *it has considered a total or partial opening up of the Sha Tau Kok FCA; if it has, of the details and timetable, if not, the reasons for that;*
- (b) *it has assessed the impact of opening up Sha Tau Kok FCA on its economy, employment and tourism, and so on; if it has, of the assessment results; if not, the reasons for that; and*
- (c) *it has considered developing Sha Tau Kok into a recreational and diversified transit town, so as to relieve the pressure of passenger flow in other immigration control points?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Security Bureau has reported to the Legislative Council that in view of the concerns in the community about the FCA (including Sha Tau Kok) and boundary security considerations, the authorities are reviewing the coverage of the entire FCA and would inform the Legislative Council and interested parties of the outcome as soon as the review and the related work are completed. In the process of the review, some Members and residents in Sha Tau Kok have suggested that the authorities should give priority consideration to opening up the Sha Tau Kok pier for use by tour groups under the existing FCA policy to enable tourists to access Kat O and neighbouring islands via a more direct route so as to facilitate development of eco-tourism in the area. The Security Bureau and the departments concerned have been exchanging views with local residents on the arrangements.

The reply to the three parts of Mr TIEN's question is as follows:

- (a) The Security Bureau and the police have actively considered local residents' proposals to open up the Sha Tau Kok pier for tourism development. We are of the view that a limited number of tourists in organized tour groups may be allowed to use the Sha Tau Kok pier to gain access to Kat O and neighbouring islands for sightseeing during weekends and public holidays, on condition that boundary security will not be compromised. To implement these arrangements, ancillary facilities must be in place and security measures have to be enhanced at appropriate locations to ensure that the police can effectively maintain public order and safeguard the integrity of the boundary of administration.

The police have drawn up proposed arrangements for opening up the Sha Tau Kok pier and the required security measures. Local residents were consulted on the proposed arrangements through the North District Office in August last year.

Up to now, we have yet to reach consensus with local residents on the details of the whole set of arrangements. We will continue our liaison with the local representatives on the proposals with a view to identifying options which are acceptable to all parties and agreeing on a timetable for the implementation of the arrangements for opening up the Sha Tau Kok pier.

- (b) In considering the arrangements for opening up the Sha Tau Kok pier for use by tour groups, our main concern is how to strike a proper balance between provision of more convenient access for tourists and effective maintenance of boundary security. We believe that the impact of the arrangements on the economy, employment and tourism, and so on, of Sha Tau Kok should be positive but have not specifically conducted any detailed assessment in this regard.
- (c) A preliminary study on the future development of the FCA (including Sha Tau Kok) has been conducted under the "Hong Kong 2030: Planning Vision and Strategy" study ("HK 2030" study). That study indicates that only three sites, namely the Lok Ma Chau River Loop Area, Heung Yuen Wai and Kong Nga Po, in the FCA have potential for development.

Given Sha Tau Kok's proximity to mountains, highlands and sites of ecological and conservation value, the study proposes to maintain the existing planning intent, that is, rural development with the land mainly reserved for villages, rural houses and related community facilities. It is worthwhile to note that the capacity of Sha Tau Kok Road is limited. The development of Sha Tau Kok into a recreational and diversified transit town may mean a sharp increase in passenger and vehicular flow, which will exert pressure on the transport facilities and environment. The widening of Sha Tau Kok Road would imperil the existing rural environment along the two sides of the road. Drawing reference from the Tourism Commission's study report entitled "Development of Tourism in the Northern New Territories", the "HK 2030" study indicates that so long as boundary security is maintained and cross-boundary traffic is not impeded, Sha Tau Kok and its vicinity is suitable for development of low volume eco-tourism activities.

The development of the FCA (including Sha Tau Kok) involves a wide range of considerations and requires co-ordination amongst the policy areas of security, environmental protection, transport and infrastructure. In view of the far-reaching implications of the development of the FCA, the relevant departments have to conduct

detailed studies. Under the existing conditions, the Government has no plan for large-scale development in Sha Tau Kok.

MR JAMES TIEN (in Cantonese): *Madam President, I thank the Secretary for his positive reply in this respect. My supplementary question is on part (a) of the main reply which stated that consultation of local residents has been conducted since last August, and now that 10 months have lapsed. If consensus has to be reached on the entire set of arrangements, it is surely impossible. May I ask the Government whether it can consider the issue from the perspective of tourism? Since Hong Kong people also have to apply for resident permits to visit Sha Tau Kok now, will the Government allow Hong Kong residents holding Hong Kong Identity Cards or passes to visit Sha Tau Kok from now on or as soon as possible? As for mainland visitors, should arrangements be made only after public consultation, as the Government desired?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I said earlier, owing to security reasons and other considerations, Sha Tau Kok cannot be fully opened up at this stage. Last year, we proposed to local residents the opening up of Sha Tau Kok pier to allow tourists to access neighbouring islands for eco-tours. However, since some details still require negotiation with local residents, the relevant proposal has yet to be finalized. We hope that consensus with local residents can be reached as soon as possible to allow the early introduction of eco-tourism. A review will be conducted after a period of time.

MR JAMES TIEN (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I meant to ask whether Hong Kong people, holders of Hong Kong Identity Cards and passes, would be allowed to visit this place which belongs to them.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I have already said, owing to security reasons and other considerations, we do not wish to open up Sha Tau Kok fully to visitors, be they Hong Kong people or overseas visitors, at the present stage. Our first step is to propose the opening up of Sha

Tau Kok pier. However, certain security facilities have to be constructed to complement the proposal. Yet, the local residents have some opinions against such facilities, so we have to negotiate with them. The proposal can thus be taken further only after an agreement is reached.

MR LAU WONG-FAT (in Cantonese): *Madam President, does the Government of the Hong Kong Special Administrative Region (SAR) has absolute decision-making power over the abolition of the FCA, or should it engage in discussions with the Central Government? In the latter case, what is the attitude of the Central Government towards this issue? In the former case where the SAR Government has absolute power over the issue, why has the Administration still failed to finalize its review of the retention or abolition of the FCA until now, seven years after the reunification, when the Individual Visit Scheme has been successfully implemented for quite some time? Is there anything that it is not in a position to tell us?*

SECRETARY FOR SECURITY (in Cantonese): The review of the existing FCA is purely an internal affair of Hong Kong. We in the Government have been working on this and no discussion has ever been held with the Central Government. Perhaps I may recap some history to Members. The existing coverage of the FCA was laid down in 1962. All along, the Government has conducted periodical reviews of the need and coverage of the FCA according to the prevailing security situation. The last review was conducted in 1999. The reviews reaffirmed the need for the FCA to serve as a buffer zone at the boundary, which may effectively combat illegal entry, smuggling and other cross-boundary crimes. Apart from making minor adjustments to the boundary demarcation, the Administration included the Lok Ma Chau Terminal into the FCA in 1989, the same year when the Lok Ma Chau Terminal was established. In 1991, the coverage of the FCA was curtailed to exclude the landfill in the northeastern part of the New Territories. This indicates that our policy on the closed area is subject to constant review, and the Administration considers the coverage of the FCA largely appropriate after such reviews. In recent years, we have noticed that the FCA has been a matter of concern to different sectors of the communities. Therefore, in the past two years, the Administration has been conducting further reviews of the coverage of the FCA.

MR TOMMY CHEUNG (in Cantonese): *I would like to ask the Secretary about part (c) of the main reply which stated that the "HK 2030" study indicated that only three sites had potential for development. In fact, many people do know the existence of Chung Ying Street which has strong potential for development indeed. Will the Secretary for Security discuss with other bureaux to find out whether, apart from the three identified sites and Sha Tau Kok pier, there are some other places that also have potential for tourism development?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, Chung Ying Street is famous because of its unique historic background and geographical location. Chung Ying Street, an open boundary administration, forms part of the boundary of administration between the SAR and the Mainland. I believe many Members have been to there. There are neither fences nor facilities to separate both places, nor immigration and customs checkpoints. Hong Kong and the Mainland divide the original Sha Tau Kok town into two parts with Chung Ying Street being the boundary between Shenzhen and Hong Kong. Because of this historic background, the indigenous residents of Sha Tau Kok town and their descendants are allowed to use Chung Ying Street as passage between Sha Tau Kok town on the Mainland and Sha Tau Kok area in the SAR. Owing to the unique situation in Chung Ying Street, it should be understood that the security risk in the area is obviously higher than in other boundary areas. In the past, smuggling or illegal entry cases were discovered. In view of the circumstances in Chung Ying Street, the Administration needs to impose stringent control on Chung Ying Street to minimize its visitor flow. Therefore, in the context of security control, we consider that Chung Ying Street should not be opened up at this stage.

MR IP KWOK-HIM (in Cantonese): *Madam President, in February 2002, the Democratic Alliance for Betterment of Hong Kong (DAB) requested the Government to open up Sha Tau Kok closed area and to develop eco-tourism in Kat O. We know that the Government has earlier commissioned The Hong Kong Polytechnic University to conduct a consultant study on the development of tourism in the northern part of the New Territories and a report has been released. As indicated in the report, Sha Tau Kok has strong potentials for development. It can be opened up and developed into a shopping and catering attraction for tourist at the boundary to promote the local community economy.*

Will the Government give consideration to the comments of the report to implement and follow up its content?

SECRETARY FOR SECURITY (in Cantonese): Madam President, the report of the study commissioned by the Tourism Commission includes in a certain part an assessment of the potential for tourism development of Sha Tau Kok and relevant recommendations. As to how these measures should be implemented in particular, it has to depend on the interface in other policy areas, such as ancillary facilities. Under the existing policy, the Government will do its best to introduce corresponding measures to promote the development of Sha Tau Kok. The opening up of Sha Tau Kok pier, as I mentioned earlier, is one example. Moreover, the Government has allocated \$64 million to the redevelopment and improvement of facilities at Sha Tau Kok pier to cater for the visitor flow brought about by the limited opening of the pier.

In respect of the ancillary facilities mentioned above, including sewage treatment, since Sha Tau Kok is a rural town originally designed for a population of some 5 000 residents, which at present stands at some 4 000, close to 5 000, so Sha Tau Kok, with its existing ancillary facilities, cannot be developed into a tourist spot that attracts too many visitors. Therefore, our initial proposal is to open up Sha Tau Kok pier to visitors, including holders of Hong Kong Identity Card, on weekends and holidays. We hope to conduct a review after the relevant ancillary facilities are introduced, and to consider whether more places should be opened up to visitors in the long term.

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

MR WONG SING-CHI (in Cantonese): *Madam President, all along, we consider Sha Tau Kok part of Hong Kong. However, it is ridiculous that not every Hong Kong resident, while enjoying convenient access to the Mainland, may visit Sha Tau Kok, a place of Hong Kong. How ridiculous a phenomenon it is. In fact, in the past few years, a member of the North District Council from the Democratic Party and I have been demanding the police to review the situation in Sha Tau Kok boundary area. In the past, before 1997, I know that*

certain section of Chung Ying Street at Sha Tau Kok was prosperous, with a high people flow. However, the Secretary said earlier that owing to many.....

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

MR WONG SING-CHI (in Cantonese): *I am putting my question now. Madam President, the Secretary said earlier that control on Chung Ying Street had to be tightened for better management. In fact, before 1997, the police was capable of dealing with many major issues. I would like to understand whether the Secretary himself would visit Sha Tau Kok or rural committees of other places in the North District to discuss with the persons concerned, including chairmen of the District Council and rural committees and their representatives, how prosperity prevailed in Chung Ying Street before 1997 could be restored under restricted or more appropriate conditions.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we have to straighten out some facts first. Just as Mr WONG said earlier, before 1997, the mainland section of Chung Ying Street had actually been very prosperous during a certain period. This was mainly due to the fact that mainland visitors could not easily visit Hong Kong at that time, so they still had to join group tours in order to come to Hong Kong. However, after the reunification, and owing to the greater convenience enjoyed by mainland visitors in visiting Hong Kong, the number of mainland travellers visiting Chung Ying Street has dropped drastically, causing shops at Chung Ying Street to suffer a substantial decrease in their business turnover. But the drop was not caused by the policy of the Hong Kong Government in tightening control on Chung Ying Street, for our policy in this respect has remain unchanged all along. The drop is only the result of market adjustment. As to whether the Security Bureau and the police would discuss the development of Sha Tau Kok with representatives from rural committees and villages, as asked by Mr WONG earlier, we are prepared to do so.

MR WONG SING-CHI (in Cantonese): *Madam President, I was not referring to the Security Bureau and the police just now. I asked whether the Secretary*

himself would discuss with representatives from Sha Tau Kok or rural committees.

SECRETARY FOR SECURITY (in Cantonese): Madam President, I will consider the suggestion.

PRESIDENT (in Cantonese): Second question.

Complaints Regarding Claims on Medical Insurance and Personal Accident Insurance

2. **MR MICHAEL MAK** (in Cantonese): *Madam President, it has been reported that while the total number of complaints about insurance claims received by the Insurance Claims Complaints Bureau (ICCB) decreased by 12% over the previous year, the number of complaints in respect of claims on medical insurance and personal accident insurance increased by about 30% respectively. In this connection, will the Government inform this Council whether:*

- (a) it has assessed the cause of the rise in the number of complaints about the above two types of insurance claims;*
- (b) it knows the number of complaints, broken down by the cause of complaints, about medical insurance claims received by the ICCB in each of the past three years and, among them, the number of cases in which the insurance companies were ordered to pay compensation to the complainants; and*
- (c) the Office of the Commissioner of Insurance has discussed with organizations of insurance industry the ways to reduce complaints about these two types of insurance claims?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, before replying the Honourable Michael MAK's questions, I would like to introduce the operation of the ICCB. Established by the insurance industry in 1990, the ICCB's objective is to handle/arbitrate claims

complaints lodged by policyholders against insurance companies, offering an alternative avenue other than Courts to resolve the relevant disputes and thereby protecting the interests of the policyholders. An independent Complaints Panel with five members was established by the ICCB to handle complaints. The incumbent Chairman is a barrister. Two of the other four members come from the insurance industry, and the remaining two are non-insurance professionals representing the Consumer Council and the Hong Kong Society of Accountants respectively.

I will now reply to Mr Michael Mak's question one by one:

- (a) The ICCB received a total of 256 complaints in 2003, which was 12% less than that in 2002. On the other hand, it handled a total of 222 cases in 2003, which was 9% more than that in 2002. The number of cases relating to medical and personal accident insurance claims increased by about 30% when compared with 2002.

It is believed that the reasons for the increase in complaints handled by the ICCB relating to medical and personal accident insurance claims are that the public is now more receptive to insurance products and more assertive in protecting their interests in recent years. Moreover, through the education and publicity campaigns by the Office of the Commissioner of Insurance (OCI) and industry bodies, there has been greater awareness among members of the public of their right in lodging complaints.

- (b) According to the information provided by the ICCB, there were 220 handled complaints on medical insurance claims in the past three years (2001: 74, 2002: 63, 2003: 83). After arbitration and adjudication of the cases, the number of cases with claims successfully settled was 21 in 2001, 19 in 2002 and 23 in 2003.

The main causes of complaints were the different interpretation of policy terms by the policyholders and the insurance companies, dispute over "excluded items" and the rejection of claims due to non-disclosure of material facts by the policyholders.

The complaints on medical insurance claims handled by the ICCB in 2003 are classified as follows:

Interpretation of policy terms	25
Excluded items	19
Non-disclosure	19
Amount of indemnity	11
Others (for example, delay in claims settlement)	9

The ICCB does not have the relevant information for 2001 and 2002, but it is believed that the situations were similar to that in 2003.

- (c) Over the years, the OCI has maintained close liaison with the insurance industry (including the Hong Kong Federation of Insurers (HKFI)), held regular meetings, and explored ways to promote good insurance practice, code of business and self-regulation of the insurance industry. To help minimize complaints involving medical and personal accident insurance, the HKFI has launched a section of "Insurance Tips" on its website, which aims to facilitate policyholders in choosing insurance products and highlights issues they need to know when taking out insurance. The HKFI is now deliberating on whether guidelines should be issued to medical insurers on the exclusion clauses in medical insurance policies with a view to further enhancing the protection for policyholders.

To protect their own interests and reduce arguments with insurance companies over the claims, may I also draw consumers' attention to the following three points when taking out insurance: (i) Disclose fully and accurately all information in the insurance proposal forms. If in doubt, ask an agent to explain fully the implications of the clauses; (ii) Understand the scope of coverage of the insurance policy; and (iii) Read the policy terms thoroughly, particularly the exclusion clauses.

MR MICHAEL MAK (in Cantonese): *Madam President, the Secretary has told us that the insured should take note of three points. He sounded like reminding the insured to take good care of themselves and failed to realize that there could possibly be a problem in the explanation of policy content to the insured by the insurance company or the agent. We can note from part (b) of the main reply*

that most often the problems come from interpretation — 25 complaint cases are related to the interpretation of policy terms. Complaints regarding exclusion items also belong to interpretation problem. Therefore, may I ask the Secretary how he would ensure the OCI and HKFI will enhance their education work so that the insurance agents or relevant insurance companies can make their clients completely understand the content of the policy before taking out any policy?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, Mr Michael MAK was right. This is something which both parties have to note. The insured should read the exclusion clauses in their insurance policies carefully and seek clarifications from their insurance agents. They should spend more time asking instead of just signing. The insurance companies should also do their work properly. As a matter of fact, the HKFI, in view of the continuous increase of such cases, has issued internal guidelines to the medical insurance companies to request the latter to respect and comply with the terms and conditions in dealing with such claims, and to maintain the principle of best industry practice. They should urge their colleagues to be conscientious and clearly explain the clauses therein when selling an insurance policy.

MR MA FUNG-KWOK (in Cantonese): *Madam President, I would like to follow up a question. Regarding the interpretation of policy terms, I have also received certain complaints, and I have had even a personal experience. The definitions of some illnesses on some medical insurance policies (for example, new products such as critical illness insurance and others) do vary. Although there may be different medical names for an illness, the insurance policy often only gives one interpretation or one definition to it. The whole insurance industry does not have any standard interpretation or definition. As a consumer, even though you have read the insurance policy thoroughly and sought clarifications from your insurance agent, the agent, however, may not be knowledgeable enough to judge what illnesses are covered. In face of critical illness insurance, most people most often simply do not know what those diseases are or how those terms are defined. How can a consumer protect himself? Has the Government urged the HKFI to prepare a standard interpretation with special regard to the medical terms and definitions for the public's reference?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I can discuss with Mr MA Fung-kwok on the details he has just raised after the meeting. We will refer his suggestions to the HKFI. The OCI will also work more in this respect. Of course, we will not comment on each individual case. Since it is a good suggestion, we are certainly happy to relay Mr MA Fung-kwok's views to the HKFI.

MR MICHAEL MAK (in Cantonese): *Madam President, part (b) of the main reply mentions the complaint cases during the past few years. But as we can see, only less than one third of the cases were successful in getting compensations. May I ask the Secretary why the remaining two thirds were unable to obtain the relevant compensations?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, why in fact does this situation happen? The common reason is that the complainant did not reveal the relevant facts. For instance, the insured, prior to purchasing the medical insurance, had suffered from certain illnesses which he did not inform the insurance company. When he lodged a claim after a mishap, such situation would occur. It is also possible that the complainant has misinterpreted the policy terms. In view of the above situation, the insurance bodies have adopted a series of measures, including strengthening public education and issuing guidelines on exclusion terms of medical insurance policies. Therefore, as I have just said, the most important thing is to know clearly what you are purchasing when taking out an insurance policy.

MR HENRY WU (in Cantonese): *Madam President, part (b) of the main reply mentions the number of cases with claims successfully settled in 2001, 2002 and 2003. May I ask the Secretary whether he knows the amount of money received by the complainants in those cases? What is the percentage of successful cases?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I do not have such information on hand. But I can obtain such information from the ICCB and pass it to Mr Henry WU.

(Appendix I) I would like to add one more point. After the ICCB has made its decision, the insurance company can no longer appeal. In other words, the ICCB's decision is final. But the policyholders can continue to make claims through legal procedures.

PRESIDENT (in Cantonese): Third question.

Smoking Among Young People

3. **DR TANG SIU-TONG** (in Cantonese): *Madam President, regarding smoking among young people, will the Government inform this Council:*

- (a) *of the current number of young people who smoke regularly;*
- (b) *given that during the period from February 2001 to April this year, the relevant authorities received a total of six complaints about the sale of tobacco products to minors, of the actions the authorities have taken to follow up these complaints, and whether they have assessed if the figure reflects the actual situation; and*
- (c) *of the channels through which the authorities monitor the sale of tobacco products to young people by shops and newspaper vendors?*

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

- (a) According to a survey conducted by the Census and Statistics Department from November 2002 to February 2003, 3.8% (representing about 16 700 persons) of persons aged 15 to 19 in Hong Kong were daily cigarette smokers.
- (b) Since its establishment in February 2001, the Tobacco Control Office (TCO) has received and handled six complaints about sale of tobacco products to minors. This figure is on the low side compared to other categories of complaints in respect of tobacco

control. We are not aware of evidence that this low figure does not reflect the prevalence of the problem concerned.

The sale of cigarettes and other tobacco products to any person aged 18 or below is prohibited under section 15A(1) of the Smoking (Public Health) Ordinance (the Ordinance). Complaints about alleged breaches of this prohibition are followed up and investigated by the TCO expeditiously. On receipt of the six aforesaid complaints, staff from the TCO have paid unannounced visits to the tobacco retail shops concerned to observe whether tobacco products are sold to minors. During these visits, TCO staff also monitored the shops' compliance with other statutory requirements such as the display of tobacco control signs prescribed by regulations under the Ordinance. Notwithstanding that no offence relating to the Ordinance was detected on the spot, verbal warnings were given to the shop owners/keepers concerned. Following the visits, the TCO has not received any further complaint about sale of tobacco products to minors in the six shops concerned.

- (c) According to the TCO's estimate, the number of retail outlets offering tobacco products for sale in Hong Kong is in the order of several thousands. To optimize the use of its manpower resources, the TCO relies on a mix of proactive and responsive steps to monitor compliance with the statutory ban on sale of cigarettes to minors. TCO staff visit tobacco retail shops around the territory to check compliance and to remind the shopkeepers concerned of their obligations under the Ordinance as well as the consequences for non-compliance. Since February 2001, over 1 600 such visits have been made. Separately, each complaint regarding sale of cigarettes to minors has been actively followed up and investigated by the TCO. We will keep our enforcement approach under review to ensure that adequate resources are deployed to target at venues with known compliance problems in this regard.

DR TANG SIU-TONG (in Cantonese): *Madam President, it was mentioned in part (b) of the main reply that a total of six complaints had been received since February 2001, and that the figure was on the low side. However, it was also*

said that there was no evidence that the low figure did not reflect the prevalence of the problem. May I ask how this conclusion or assessment was made?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have no other evidence that reflects the prevalence of the problem.

MR AMBROSE LAU (in Cantonese): *Madam President, the Secretary said in part (a) of the main reply that the Census and Statistics Department had conducted a new survey recently and the outcome had indicated that 3.8% of respondents among the age group of 15 to 19 were daily cigarette smokers. Can the Government inform this Council actually how many persons among this 3.8% are under the age of 18?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have no data about people aged under 18, because the age group delineated by the Census and Statistics Department is 15 to 19 years. If the Census and Statistics Department is required to provide data on people aged under 18, all information will have to be processed anew before an estimate can be made.

MR WONG SING-CHI (in Cantonese): *Madam President, it can be seen from the main reply of the Secretary that the number of prosecutions against the sale of cigarettes to minors is on the low side. Furthermore, it was mentioned in part (a) of the main reply that only 16 700 young people were daily cigarette smokers. Therefore, many people will feel that this figure seemingly cannot reflect the real situation. Presently, we can see many young people smoking on the streets, and so the said figure is really unable to reflect anything. May I ask the Secretary, besides arresting those who sell tobacco products to young people aged under 18, is there any measure in place to minimize smoking among young people? What specific measures have now been implemented?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I wish to clarify that the 3.8% mentioned earlier in the main

reply is the outcome of the survey conducted by the Census and Statistics Department, which represents the number of persons aged 15 to 19 in Hong Kong who are daily smokers. Of course, there are young people who smoke but not daily. For example, other surveys indicate that some young people only smoke regularly but not daily, and the percentage is higher, being around 5% to 6%. If they were asked whether they had ever tried smoking, the percentage would be even higher. And this 3.8% refers to young people who smoke daily. Among the work that we are doing, of course we have done a great deal in health education. The Department of Health and our TCO have also done a great deal of work. Schools and other organizations also engage in health education. Our law prohibits the advertising of tobacco products, which is one of the ways to curb such habit. Of course, the public is also working with us in conducting tobacco control and anti-smoking activities.

MR WONG SING-CHI (in Cantonese): *Madam President, I asked what kind of work had been done and not whether work had been done. If the Secretary is unable to reply now, can he give me a written reply on the kind of work that has been done specifically among young people?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I think I have made a reply on the work that has been done. But if Mr WONG wants a more detailed reply, I can give Members a written reply. (Appendix II)

MR HENRY WU (in Cantonese): *Madam President, it was mentioned in part (c) of the main reply that the number of retail outlets was in the order of several thousands. It was also mentioned in the main reply that in the past three years, about 1 600 visits had been made, which means an average of some 5 300 visits each year, or about 10 visits a week, or an average of about two visits per day. May I ask the Secretary how the Government considers the effectiveness of the visits? How many people are engaged to conduct the visits? How much time does it take to complete a round of visits to the several thousand retail outlets? Will the Secretary consider increasing the manpower in order to achieve greater effectiveness?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, regarding the issues of manpower and number of visits, I also agree that further discussions with the Director of Health are necessary to look into the possibility of stepping up our efforts and to evaluate the effectiveness. I also agree that it is worth conducting more visits if they produce good results. I will discuss the matter with the Director of Health.

MR MICHAEL MAK (in Cantonese): *Madam President, actually I wish to follow up the supplementary question of Mr WONG Sing-chi. May I ask the Government, given that the relevant authorities educate the general public of Hong Kong, in the hope that they will not smoke, but the target is 3.8% of the young people aged 15 to 19, totalling about 17 000 persons, who have the habit of smoking, if the objective is to exert more serious efforts for the benefit of these 17 000 persons so that they will discontinue smoking, give up smoking, or smoke less?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the main purpose of our anti-smoking activities is certainly to educate the public as health education is very important. In addition, we are currently almost at the final stage of drawing up a number of bills, and the new proposals will be tabled before the Legislative Council in the next Legislative Session. For example, there are currently no provisions on the prohibition of smoking in the outdoor locations of schools, and so our first step is to propose the prohibition of smoking in all schools, that is, no smoking both inside and outside the classrooms. As regards health education, more can be done. Of course, regarding visits to the outlets, we have to see whether they produce good results, and we will exert more efforts in many aspects to minimize smoking among young people. It is quite difficult to give up the habit of smoking once it has been acquired, but we are providing facilities or services to the public, or young people, that is, if they wish to quit smoking, they can make use of these clinics. We will also examine if there is adequate publicity to apprise young people of the clinics which provide such services.

MR WONG SING-CHI (in Cantonese): *Madam President, I wish to further follow up part (a) of the main reply. The Secretary has only provided the*

outcome of the survey conducted from November 2002 to February 2003. During the roughly two years' time prior to the said period, was the problem of daily smoking among young people more or less serious? I wish to know the situation because it should have improved as the Secretary said earlier that much had been done, and I wish to see if there was actual improvement.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to the data of surveys conducted by the Census and Statistics Department, there has not been much movement in the relevant figures since 1982. In 1982, 7.9% of the males were daily smokers. In 1990, it was 7.8% only. For the recent years, the figure dropped a little, being 6.4%, 4.2% and 5.3% respectively. However, it is not so optimistic for the females. The figure was 0.4% in 1982, and 1.1% in 1990. For the recent years, it was 2.6% in 2000, and 2.3% in 2003. I can provide these figures to Mr WONG in writing as well. (Appendix III) Therefore, as indicated by other surveys, the present trend is that an increasing number of young females are picking up the habit of smoking, while the relevant figure for males has remained at a low level, and while it is of course on a slight downward trend it has not reached the target that we have in mind. Therefore, we still need to strengthen our legislation so as to prevent a greater number of young people from acquiring this habit.

PRESIDENT (in Cantonese): Fourth question.

Improving Tourism Facilities in Outlying Islands

4. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, with regard to improving the tourism facilities in outlying islands, will the Government inform this Council:*

- (a) *whether it has plans to set up a water recreation centre at Silver Mine Bay, conduct environmental improvement works at Silver Mine Bay Beach, including removing rubbles, planting more trees and dredging the brooks flowing to the beach and to restore the deserted*

Silver Mine Cave and provide tourist facilities near the cave; if it has such plans, of their details; if not, the reasons for that; and

(b) of the plans to develop tourism in other places of outlying islands?

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

- (a) (i) The Government does not have any plan to establish a water recreation centre at Silver Mine Bay Beach at present for the following reasons. First, Silver Mine Bay Beach is located near ferry and fireboat piers and a loading and unloading area. About 80 regular ferry and inter-island ferry trips are made within the waters off the beach every day, and there are often large and small vessels and fireboats entering and leaving nearby waters. Secondly, the sea-bed of Silver Mine Bay is relatively shallow, and most of the beach area has already been designated as a public bathing beach for swimming. Hence, the sea area available for water sports activities is limited. Moreover, the winds that prevail over the beach area are generally not strong enough, thus limiting the development of many water sports activities there.
- (ii) The Leisure and Cultural Services Department (LCSD) has been taking measures to maintain Silver Mine Bay Beach in good conditions for the enjoyment of the public, such as arranging for workers to clear the stones on the ebb tide. Also, in order to provide more greenery and shade on the beach, the LCSD plans to add about 50 trees there. As regards clearance of the stream, the LCSD regularly carries out clearance works at the estuary on the beach. The latest exercise was completed in April this year.
- (iii) As regards the proposal to restore the deserted Silver Mine Cave, the Civil Engineering Department (CED) points out that as all the records of the cave before 1945 have been destroyed, it is not practicable to conduct a risk assessment to ascertain the safety level of the cave. To restore and open the cave to the public, large-scale stabilization works are

required to ensure safety. The expenditure will be very substantial. Therefore, the Government will not consider the proposal at present.

- (b) (i) The plan to develop a major tourism node on Lantau Island is making good progress. The key projects, including Hong Kong Disneyland and the Tung Chung Cable Car system, will be completed over the next two years. According to the latest progress, Hong Kong Disneyland is expected to be opened at the end of next year. The Tung Chung Cable Car System is scheduled to come into operation in early 2006, carrying visitors to the Po Lin Monastery in Ngong Ping.
- (ii) The above large-scale facilities aside, we are also developing the Ngong Ping Village and the "Heart Sutra" Inscription Project. Ngong Ping Village is located adjacent to the Ngong Ping Cable Car Terminal. With a Buddhist Interpretive Centre, and an iconic tea house and country market, it will combine a unique mix of cultural attractions in a Chinese village setting. The Village's construction has commenced, with scheduled operation in early 2006 together with the cable car. The "Heart Sutra" Inscription Project is located on the slope of Lantau Peak. The project involves the inscription of JAO Tsung I's entire work of "Heart Sutra" calligraphy on more than 30 timber logs. The logs will then be erected on Lantau Peak matching the natural landscape of the selected site. The project is expected to be completed in the first quarter of 2005.
- (iii) In addition, the Government is constructing a promenade in Tai O which will have landing steps, as well as a sheltered boat anchorage area of about 4 hectares and a breakwater. Also, there will be the formation of about 7 hectares of inter-tidal area for mangrove replanting, and restoration of the historic seawall and so forth. The project will be completed by the end of next year. The Tourism Commission will install directional signs and mapboard in Tai O at the end of this year.

- (iv) The Lantau Development Task Force (the Task Force) under the chairmanship of the Financial Secretary is steering and co-ordinating the planning and development of the major infrastructural projects on Lantau. The Task Force is exploring the best ways to tap tourism resources and develop tourism infrastructure projects on Lantau, such as spa and resort developments. The Government will consult the public on the development projects for Lantau. The current target is to publish the consultation document in October this year.
- (v) In addition to the major infrastructural developments on Lantau Island, the Government is taking forward two pilot projects to develop green tourism on Tung Ping Chau and in the Tolo Harbour area. The pilot projects will make optimum use of the natural resources, cultural assets and heritage of these areas to promote tourism in the outlying islands in the north-eastern waters of Hong Kong. We have established an interdepartmental committee (the Committee) to draw up an action plan to take forward the pilot projects. The Committee will also consider implementing improvement works on supporting facilities such as piers, sewerage systems, electricity and water supplies and so forth to complement these projects.
- (vi) New development projects aside, the Government will continue to enhance and improve facilities at the outlying islands for the convenience of visitors, such as implementing the visitor information signage system which is scheduled for completion at the end of this year. Relevant government departments will continue to step up greening efforts and improve leisure and recreational facilities, such as hiking trails, cycling paths, camp sites and so forth. They will also organize activities, publish publicity materials, and use their websites and district offices to promote and publicize the tourist attractions and special interests of the outlying islands.
- (vii) In terms of overseas promotion, the Hong Kong Tourism Board (HKTb) will continue to use different channels,

including its website, publications and its overseas offices, to promote and publicize the attractions and special interests of the outlying islands such as traditional activities and festivals. The HKTB also promotes three walking tours to help visitors explore the cultural attractions of selected outlying islands at their own pace. It also recommends quality island tours to visitors, as well as services relating to the outlying islands such as the ferry service day pass and so forth.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, I wish to thank the Secretary for his detailed reply. The Secretary mentioned the Silver Mine Bay Beach in part (a)(i) of the main reply. There is a small beach on the left-hand side of the Silver Mine Bay Beach, that is, obliquely opposite to it. The small beach is actually at a distance away from the ferry pier, which can actually be developed into a water sports centre. Certainly, a water sports centre should not be confined to windsurfing activities, there should be other types of activity. Will the Government study seriously the development of the location?*

Moreover, as to the work in removing rubbles, will the Government only take general and perfunctory actions, and when has it carried out the removal tasks?

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, it seems that you have raised two supplementaries. Which one do you actually wish the Secretary to answer?

MR TAM YIU-CHUNG (in Cantonese): *Madam President, I have indeed played "foul" somehow. (Laughter)*

PRESIDENT (in Cantonese): Then which one should the Secretary answer? Should it be the one related to rubbles removal?

MR TAM YIU-CHUNG (in Cantonese): *Madam President, that will be fine, I wish he could study the first supplementary seriously. As to rubbles removal,*

may I ask him when the clearance work took place? And whether it was carried out in a perfunctory manner?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I wish to thank Mr TAM for his supplementary. Perhaps I can show Mr TAM a photo later of the actual situation of the rubbles removal work. The removal work is in fact an ongoing process, because the water current will carry the rubbles to the beach, thus staff of the LCSD will carry out the task from time to time.

Moreover, with regard to the first supplementary, we have to take into consideration issues such as the safety of the site and the seabed. In fact, the LCSD has already set up several water recreation centres, while a water sports centre will be established adjacent to the Disney theme park on Lantau.

MRS SELINA CHOW (in Cantonese): *Madam President, I am glad to learn of the development in various aspects in outlying islands, at the same time, I am not sure whether I should declare my interest, for the HKTB has indeed a lot of publicity programmes. The Secretary explained in part (b)(v) of the main reply that a Committee had been established to draw up an action plan of the relevant projects. I wish to focus my supplementary on the water traffic and pier aspects. It is widely known that feeder service for water transport is vital to the development of the tourism industry in outlying islands. Furthermore, as to piers, how can the problem of private yachts being unable to berth at the pier be resolved? I met the problem when I visited Cheung Chau last time since the height of the pier was not tall enough, thus boats could not berth alongside. May I ask the Secretary if there is any relevant plan which is comprehensive enough to improve the water transport and meet the needs of local or foreign tourists?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, with regard to Mrs Selina CHOW's supplementary, in fact, the action plan drawn up by the Committee includes her concerns, such as pier facilities and outlying islands' feeder service. We also attach importance to this respect. I have also explained in my main reply that supporting facilities such as piers, sewerage systems and other infrastructure

facilities have been incorporated into the action plan. We would consider implementing improvement works on them, such as constructing additional piers and providing more ferry services.

MRS SELINA CHOW (in Cantonese): *Madam President, the Secretary has not given a concrete reply to my supplementary. What he has just answered is already included in his main reply. In fact, what I wish to ask is whether there is a comprehensive water transport plan and whether it can be implemented; while in respect of piers, whether there is a reinforcement plan, because it seems that there is a need for such a plan. If the Secretary has no such information at hand, can he answer in writing after the meeting?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, besides our bureau, the Transport Department is also studying this issue. Certainly, the first and foremost task is to improve transport facilities if we are to promote tourism in the outlying islands. We have actually taken piers and ferry services into consideration, and as to the details of that, I will give a written reply to Mrs Selina CHOW. (Appendix IV)

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in part (b)(iv) of the main reply, the Secretary explained to Mr TAM Yiu-chung that the Task Force under the chairmanship of the Financial Secretary is steering and co-ordinating the major infrastructural projects on Lantau. The Secretary also indicated that a consultation document would be published in end of this year. However, as far as I can see, besides Lantau, there are some other outlying islands such as Sharp Island. With regard to spa and resort developments, some people have proposed the development of Sharp Island as they consider that would be a quicker way. May I ask whether the Government is only focusing on the Lantau and neglecting other beautiful outlying islands in Sai Kung and elsewhere? Moreover, besides the timetable which has set the target of publishing the consultation document in end of this year, what exactly is the progress? I hope the Secretary can answer my supplementary.*

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, is this supplementary..... not answered? All right, Secretary, please reply.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe everybody knows that the size of Lantau Island is vast, and it has advantages in tourism: construction of the Disneyland will soon be completed, plus the Tung Chung Cable Car System and the water sports centres which I have mentioned just now. We will conduct a full-scale planning and study what facilities should be established on Lantau Island. A task force is about to start the study and we welcome suggestions from Members. In fact, we have received a lot of proposals and we are now sorting them out for consideration. We will publish a consultation paper later to gauge public views on what facilities should be established in which places. Of course, that the authorities have set up a task force to concentrate on the development of Lantau Island is not tantamount to, as Miss CHAN has said just now, that we have neglected such places as Sai Kung, Tung Ping Chau or Cheung Chau. In fact, we would figure out areas for improvement according to the environment and characteristics of each and every place, and then the relevant department will carry out studies. Let us take Cheung Chau as an example. At present, tourists may ride their bicycles there, and a central park has also been constructed. Actually, we will study each and every place.

MR HOWARD YOUNG (in Cantonese): *Madam President, although it seems that the reply given by the Secretary on Silver Mine Bay on Lantau Island has not made Mr TAM Yiu-chung feel satisfied, I have noticed that the Secretary mentioned that the authorities had already carried out a number of tasks with regard to the development of water sports activities. May I ask whether the relevant department has contacted the department in charge of tourism or even other bureaux to discuss ways to eliminate obstacles in the course of developing water sports activities in the outlying islands? For example, just now the Secretary for Security explained that if we were to develop Kat O, we would be subject to security restraints as tourists were prohibited to go there; or in the case of water sports centres, jet skiing is quite popular in Southeast Asia, but in Hong Kong, if a person holds no local certificates of competency both as a master and as an engineer issued by the Marine Department, then he cannot operate a jet ski. Has the interdepartmental co-ordination in this respect been started so as to promote the relevant businesses?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I wish to thank Mr YOUNG for his supplementary. The answer is

"yes", we have conducted interdepartmental co-ordination. As I have said just now, with regard to water sports centre, I believe Mr YOUNG is also aware of the fact that besides the water sports centre established by the LCSD, there are about 70-odd water sports centres all over Hong Kong and they are managed and operated by government departments, non-profit-making organizations and private bodies respectively. Certainly, they include a wide range of water sports activities, such as windsurfing, canoeing, sampaning, skiing, jet skiing, surfing, rowing and so forth, and most of them are open to public use. The preparation of establishing a new water sports centre in Stanley is in progress, and the one which has just been mentioned will also be set up on Lantau Island. Should there be any problem, we will conduct interdepartmental co-ordination.

MR LAU KONG-WAH (in Cantonese): *Madam President, regarding the sewerage systems mentioned in part (b)(v) of the main reply, may I ask the Secretary, given that after the Stonecutters Island Sewage Treatment Works have come into operation, all beaches in Tsuen Wan will have to close down, how he can ensure that this project will not cause impact on the oceanic resources of Lantau Island, and how the conservation work will be carried out?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, this is a rather technical question, I will give Mr LAU a reply in writing. (Appendix V)

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

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary mentioned in part (b)(iv) of the main reply that the Task Force under the chairmanship of the Financial Secretary is steering and co-ordinating the planning and development of the major infrastructural projects on Lantau. However, whenever the relevant projects on Lantau require funding from the Government, many colleagues would receive dozens of emails from residents on Lantau to voice their disapproval, and they have even requested to meet with a lot of our colleagues. Is it true that some of them are still in opposition to the*

Government's plan since this Task Force has not actually contacted and consulted all relevant parties in its consultation exercise?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Thank you Dr HO. I believe Dr HO also knows that this Task Force was set up only recently. I have explained just now that we are now studying the major infrastructural projects on Lantau before drawing up the papers to let the public understand the condition of Lantau in a systematic way, for example, as to tourism, what facilities should be located at which location. I believe this will be more systematic and we can gauge the more constructive views of the public.

PRESIDENT (in Cantonese): Fifth question.

Reprovisioning of Sha Tin Water Treatment Works Through Public Private Partnership

5. **DR RAYMOND HO** (in Cantonese): *Madam President, the Financial Secretary pointed out in this year's Budget speech that the Government had just completed the preliminary feasibility study on the reprovisioning of the Sha Tin Water Treatment Works (STWTW) through Public Private Partnership (PPP), and the results were encouraging. However, in Australia and the United States, there have been unsuccessful cases of private sector participation in the provision of utility services, or cases in which the services provided have seriously affected the local people's livelihood. In this connection, will the Government inform this Council:*

- (a) whether staff of the Water Supplies Department (WSD) were involved in the study; if so, of the details of their involvement; if not, the reasons for that;*
- (b) of the basis for drawing the conclusion that the study results are encouraging; and*
- (c) whether it has assessed the implications of the plan for the reprovisioning of the STWTW through PPP on public health, as well*

as the economy and employment situation of Hong Kong; if it has, of the assessment results?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in the absence of Secretary for the Environment, Transport and Works) (in Cantonese): Madam President, I am replying to this oral question on behalf of the Secretary for the Environment, Transport and Works. The Government commissioned in November 2003 a consultancy study on the feasibility of adopting the PPP approach in the reprovisioning and operation of the STWTW and the delivery of related water supply, distribution and customer services. The study was completed in May this year and the two study reports have been uploaded onto the homepage of the Environment, Transport and Works Bureau for public information.

- (a) When conducting the study, the consultants maintained close liaison with the Environment, Transport and Works Bureau and the WSD and communicated with the staff of the WSD. As arranged by the WSD, the consultants met the WSD staff representatives on 6 January 2004 to discuss directly with them their views and concerns.
- (b) The adoption of the PPP approach in the delivery of water treatment, supply and other related services is quite common. There are many successful cases in different places, for example, the Indianapolis Water Services Partnership in the United States, the AQUA project in Australia, the Agglomeration Communaute Urbaine de Lyon in France, the Lingzhuang Water Treatment Plant in Tianjin and the Macao Water Supply in Macao. The consultants have conducted a research on a number of PPP projects similar to the reprovisioning of the STWTW in the Mainland and overseas. Their conclusion is that it is feasible to adopt the PPP approach in the reprovisioning and operation of the STWTW and the Government is likely to attain better value for money and cost savings through this approach as compared with the conventional mode of project delivery. Furthermore, it is likely to be beneficial to adopt a PPP approach for the water supply, distribution, and customer services as well. According to the market enquiry exercise conducted by the consultants from December 2003 to

January 2004, there are many service providers in the market who have the capability and experience in the construction and operation of reprovisioning water treatment plants and are interested in the reprovisioning of the STWTW and the delivery of related services. Therefore, we consider the results of the study encouraging and will further examine the feasibility of adopting the PPP approach in the reprovisioning and operation of the STWTW.

- (c) The Government always attaches great importance in maintaining a high quality of potable water and a reliable water supply. Our commitment and achievements are for all to see. If the Government decides to adopt the PPP approach in the provision of water supply facilities and services, a rigorous water quality monitoring mechanism will be set up to ensure that the water supply services provided by the private operator will comply with the guidelines for drinking water issued by the World Health Organization and the standards and specifications laid down by the Director of Water Supplies. Such a mechanism will safeguard public health and ensure that the reliability of water supply and water quality will be maintained at a high level. In addition, adopting the PPP approach can facilitate the introduction of modern water treatment technologies and enhance the overall efficiency of our water supply system, which will help us achieve the objective of improving the quality and cost-effectiveness of our water supply services. As the project may be expedited if the PPP approach is adopted, it will help tackle the problem of underemployment in the local construction industry.

The Government is committed to improving efficiency of services to the public which rightfully expects value for money of services provided. PPP is a well tried out formula around the world and there is no reason why Hong Kong should not explore PPP.

DR RAYMOND HO (in Cantonese): *Madam President, in Australia, the Philippines, the United States, and even Europe, incidents have happened on numerous occasions in the private water treatment plants there to the extent of causing disruption in water supply and the termination of the related contracts in*

an emergency. Now the Government is contemplating the reprovisioning of the STWTW into the largest water treatment plant in Hong Kong capable of delivering water supply to 3 million people. If there is an extensive disruption in water supply, how will the Government cope with such a great risk? In over 40 years of its operation, the STWTW has never experienced any incidents and its water quality is 100% safe, why can the Government not consider spreading the risk over by building another water treatment plant to provide water supply to 3 million people so that the risk borne can be minimized?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I thank Dr Raymond HO for raising this question. Of course, there are many places in the world where such projects are run. Some of these are successful and some of these are not. I believe that it is good to have some unsuccessful cases. For when we are to go ahead with this project in future, it would be good to learn from other people's failures so that they would not repeat. In addition, Dr Raymond HO also mentioned risk management. When the Government decides to go ahead with the project, it will definitely consider what kinds of risk the project may run into and how should the risk be managed. As I have said, on these issues, I think more detailed studies are needed. At the present stage, we have completed the study and after consultation, we will decide on the way forward. Moreover, once a decision is made to proceed with the project, we must consider the issue of risk management mentioned by Dr HO. Apart from the STWTW, there are also other water treatment works and we do have a contingency plan in place, that is, if problems arise, we will know what should be done to ensure that water supply in Hong Kong is maintained and will not be disrupted. So with respect to this, there is actually a contingency plan in place.

DR RAYMOND HO (in Cantonese): *Madam President, despite the length of the Secretary's answer, it has not actually answered my supplementary question. My supplementary question is: If 40% of the population of Hong Kong, that is, about 3 million people, find themselves caught in a major disruption of water supply such as those experienced by many advanced countries many times, how will the Government cope with such risks? Is the Secretary not telling us that no such detailed plans are presently in place and he only hopes that such incidents will never happen?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I think you would agree that I have answered that supplementary. This is only an assumption and we are not saying that this will be done certainly. And of course, the risk has not appeared yet. Just as it has been stated, in the event of a problem with the supply of water, we have a contingency plan for it. I believe Dr HO was saying that in future if, after we have adopted the PPP and if problems arise, how we would handle them. Like I said, we have not yet decided to go ahead with it or not. And if we do, we will of course consider the issue of risk management.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, may I ask the Secretary how many staff will be affected by this project and how the Government will treat them?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): On the question of how many staff will be affected, I know that in May, in fact the authorities came before the Legislative Council to report to Members. It was mentioned that there were three plans of various scales, some large and some small. The large-scale plan would involve about 800 staff. I understand perfectly well Mr CHAN Kwok-keung's concern and as I have said in the main reply, the WSD attaches great importance to the views of its staff and it has arranged the consultants to have a dialogue with the staff of the WSD. A committee has been set up specifically to handle the issue and to listen to views from the staff. I know that they will have a meeting at the end of this month to hear more views from the staff. I believe, of course, that when a decision is to be reached on whether to implement the project or not, that is, whether the PPP approach will be adopted, the views of the staff will be considered before a decision is made.

DR LUI MING-WAH (in Cantonese): *Madam President, as a matter of fact, for the people of Hong Kong, their greatest concern is water quality, reliable supply and price, and it does not matter so much if water is supplied by the Government or in a joint-venture with a foreign country. Could the Government tell us in practical terms the greatest benefit the people can expect to get: price, water quality or reliable service?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I believe the people will certainly hope that they can benefit in all these three aspects. From the point of view of the Government, the prime concern I believe is water quality. So, as I have mentioned in the main reply, the Government will ensure that a high quality of water is maintained. Another benefit is that we hope to raise efficiency and lower operational costs. We hope that by adopting this PPP approach, new technology and the experience of other places in operation will be introduced into Hong Kong. So Dr LUI Ming-wah may rest assured that the Government will set up a very stringent monitoring system in advance to ensure that if the plan goes ahead in future, the quality of water supplied will meet the standards imposed by the World Health Organization in respect of potable water as well as the various standards in water supply set up and regulated by the Director of Water Supplies.

As to the question of water tariff, I think Members are all aware that water treatment and supply are only some of the factors while the price paid for the purchase of water is another important factor. Currently the Government subsidizes the supply of potable water. What I am trying to say is, of course, we cannot guarantee that when we go ahead with this, water tariff will become more affordable. I think the most important thing is that if by doing so, efficiency and flexibility can be enhanced, which will in turn lower the costs and the people as a whole will benefit, for the Government may need to subsidize less.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, on the surface, the PPP will in the short run be beneficial to the Government, for the need to fund the construction of facilities can be spared. But in the long run, there could be times when the results expected by the Government cannot be achieved. This can be seen in, for example, the Western Harbour Crossing and Route No. 3 where the projects fail to meet the objective of diverting the traffic as envisaged by the Government. Will the Government consider learning from past experience and lessons before embarking on such plans, rather than rashly putting them into practice merely to gain some short-term benefits?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I think there are some success stories, only that Mr TAM Yiu-chung has not mentioned them. Of course, I would agree with Mr TAM when he says

that once we decide to put this into practice, we must be very careful with the financial arrangements, the contract terms, the performance pledge and the service requirements, and so on. All these are very important and I agree completely that no efforts will be spared to make the project a success.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, the Secretary said in part (a) of the main reply that the WSD had communicated with the staff in January, but actually the meeting was not an attempt to communicate but only to make the intentions known. Sorry, Madam President, I was making a supplement but that is not the supplementary question I wish to raise. In overseas countries as the governments there are usually short of funds, they enter into joint ventures with the private sector companies. In Hong Kong, the quality of water is not bad and it is even 100% safe. Regarding the operation of our treatment works, the staff there have undertaken that they can think about further economizing measures and in fact, they have always been economizing. So, my supplementary question is: What in fact is the motive of the Government in this? Why does it want to adopt a PPP approach in the WSD which has been operating so well and in which the public puts much confidence? What then is the motive behind all this?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): First of all, I think Miss CHAN Yuen-han will know that the Government does not have much money either. The most important thing about this is that when this is implemented, it will definitely be better than having the WSD to do it by itself. That is why we are conducting a consultancy study. The subject of the study will include a comparison between the costs, efficiency, and so on, of the two options. We will examine whether or not the adoption of the PPP approach will enhance efficiency and reduce costs. I think all these should be studied. It is only when we think that it will be advantageous that we will put this into practice. Just as I have said before, there are many successful cases abroad. This mode of co-operation is in fact very common. They have some new technology and operation experience that may help us improve our water quality and efficiency. I believe we will consider all these objectively and draw reference from them. We will hold consultations too. Apart from consulting the staff, we will consult Members of the Council and the public, before we decide whether or not to take this course.

MR HENRY WU (in Cantonese): *Madam President, I have known the Secretary for a long time and I know he is very good at taking the right course and it is only right that he always gets promoted. Madam President, I would like to tell you why. Dr Raymond HO has said that there are failure cases in Australia and the United States..... (Telephone ringing in the public gallery)*

PRESIDENT (in Cantonese): Sorry, Mr WU, please continue.

MR HENRY WU (in Cantonese): *But in the main reply, the Secretary only mentioned successful cases. It was only until Dr Raymond HO had said that there were many examples of failure in other places that the Secretary said that the Government would learn the lessons. May I ask the Secretary whether any attempt has actually been made to see if there are any failure cases in other places? If there are such cases of failure, what lessons has the Government learned?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): First of all, I must say I do not know how to take the best course and I am only doing voluntary work here today. *(Laughter)* As failure is the mother of success, I think Mr Henry WU would know it too well that while there are failures, there are also successes. In fact, I have read about all those cases of failure, including those in Argentina, the Philippines, the United States and Australia. But after reading them, I feel that many factors such as the political environment and exchange rate, and so on, are involved in some of these cases. Besides, I have also read about many successful cases. I would like to stress that there are successes as well as failures. But that does not matter, the most important thing is that we should learn from others as to how they have succeeded and we should not repeat the failures of other people. I think I have answered the supplementary question raised by the Honourable Member. *(Laughter)*

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

MR WONG SING-CHI (in Cantonese): *Madam President, the Secretary has given a reply to the supplementary question asked by Dr Raymond HO and this makes us know that this reprovisioning of a water treatment works through PPP is undertaken without conducting any risk assessment or formulating any crisis management plan. It is an attempt to hand over water, the most important natural resource in Hong Kong which affects human lives, to some consortia for management. Given this, does the Secretary think that the plan is a sound one? When the plan is floated for discussion in such circumstances and when such problems will only be considered after discussions are held, would this not be a waste of time? Would the Government consider submitting the plan to us for discussion only after the entire plan is ready, that is, when the risk assessment has been conducted and the crisis management plan formulated?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I believe Mr WONG Sing-chi must have heard my earlier reply wrongly. I have talked about matters concerning risk assessment and crisis management. These we must do, but we are going step by step. At the present stage, we have not said that we have decided that this should be done or otherwise. What we are saying is that the consultants have compiled a report and there are some recommendations. We are now consulting the staff, the Legislative Council and the public on these recommendations. If all of us think this merits further study and that direction is worth going after, the Government will look carefully into how this plan should be implemented, what the risks are, how these risks can be avoided and how crisis management should be undertaken. We will certainly do these things, but I think these will have to be done step by step.

PRESIDENT (in Cantonese): Last oral question.

Impact of Living Environment on Children

6. **MR WONG SING-CHI** (in Cantonese): *Madam President, regarding the impact of the living environment on children, will the Government inform this Council:*

- (a) *of the number of families on the Waiting List which have children family members and whose applications for public rental housing (PRH) have been frozen due to failure to satisfy the residence rule; the number of children involved;*
- (b) *as Article 27 of the Convention on the Rights of the Child (the Convention), which is applicable to Hong Kong, provides that State Parties should provide children in need with material assistance including housing, how the authorities will implement the provisions of the Convention in this regard; whether the existing housing policy will be revised to accord priority to the PRH applications by families with children; and*
- (c) *whether it has assessed the impact of a poverty-stricken living environment on the life of children after they have grown up, including the possibility of creating a poverty cycle; if so, of the assessment results?*

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

- (a) To ensure rational allocation of public resources, applicants for PRH must satisfy the requirement that at least half of their household members have lived in Hong Kong for seven years when they are due for flat allocation. At present, there are 6 000 families on the Waiting List, including about 4 050 families with children, whose applications for PRH have been frozen due to failure to satisfy this requirement.
- (b) The major objective of the Government's housing policy is to provide basic and adequate accommodation for families in need, including families with children. In the past 50 years, the public housing programme has helped to address the basic housing needs of almost half of the population in Hong Kong, providing a stable living environment for children to develop their potentials and enhance their social mobility. The effectiveness of the public housing programme in promoting social stability and harmony has been widely recognized by the public.

It is suggested that applications for PRH from families with children should be accorded priority. At present, excluding the applications from singletons who do not need family flats, 87% of applicants on the Waiting List come from families with elderly members or children under 18. Under the current policy, families with elderly members are given priority in flat allocation. Extending the same preferential treatment to families with children will inevitably affect the existing priority enjoyed by families with elderly members, and prolong the waiting time of the other applicants.

In fact, the current average waiting time for PRH is just about two years. If the applicant has no particular preference for districts, the waiting time can be shortened to around one year. In view of this, it is hardly justifiable to accord priority in flat allocation to applicants with children.

Nonetheless, families with urgent housing need may seek compassionate rehousing for immediate allocation of public rental flats to meet their special needs.

- (c) The Government has not carried out any academic research to assess the impact of a poverty-stricken living environment on children's future development.*(Telephone ringing in the public gallery)*

PRESIDENT (in Cantonese): The person in the public gallery, this is the second time that your telephone has rung. Please hand your telephone to our security staff. Otherwise, please leave this Chamber.

Sorry, Secretary, please continue.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): However, the Government has all along strived to promote and sustain the economic growth of Hong Kong. Through education and employment, people from different walks of life can maximize their potentials and seek advancement up the social ladder. The Government and the community have made every effort to help needy families and individuals meet their basic needs and integrate

into society. In this respect, the PRH programme has made valuable contribution to the well-being of low-income families through provision of housing to enable their children to grow up and develop in a stable living environment.

MR WONG SING-CHI (in Cantonese): *Madam President, some statistical data reveal that there are about 300 000 children living in poverty-stricken environment, and there are also 30 000 children living in bad conditions such as cubicles, bed spaces, rooftop structures, and so on. However, in reviewing the Comprehensive Social Security Assistance (CSSA), the Government has deleted the subsidy and assistance for children. Besides, when the Secretary gave his reply just now, he had neither said that, in the light of their situation, he would accord priority to children in allocating public housing flats, nor had he carried out any academic research on children living and growing up in such bad conditions. May I ask the Government what actually it has done in this aspect in order to fulfil the responsibility mentioned in the Convention?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, in fact, if someone says that we have reduced our assistance to children under CSSA, I think it cannot be true. As we all know, when we last adjusted the amount of CSSA according to the deflation rate, it was an overall adjustment. Therefore, on a relative scale, the proportions are the same. So we have not reduced our assistance to children. We also know that, regarding the assistance rendered to children within the safety net for their development needs, the standard CSSA amount received by them is higher than adults, and they can also receive subsidies to meet school fees, travelling expenses, food and other schooling expenses. Therefore, regardless of the distance between their homes and their schools, they will not face any tough problems because our subsidies have already taken into account the expenditure arising from their extra travelling need.

As for rents, aided families receive rent subsidy for paying off rents, rates and management fees. If the family in question does not have any income at all, it will receive a rent subsidy up to \$3,333 or \$3,545 monthly. This subsidy can improve their living environment.

Insofar as the Convention is concerned, we have actually been doing our best to improve the living environment of children in the light of the Convention's requirements on us. Just as I have just said, regarding public housing, we shall try our best to let them move into public housing flats. On the supplementary question raised by Mr WONG Sing-chi, relatively speaking, for new arrivals to Hong Kong, if less than half of their household members have lived in Hong Kong for seven years, their application will be frozen. But this has only happened to a small number of cases. Just as I have said in the main reply, there are only some 4 000 such families. As for other families mentioned by Mr WONG Sing-chi, if they apply through the normal procedures, they will be at the latest allocated public housing flats within two years. If they do not have very special preference, it will only take about a year for them to be allocated a flat.

MR FRED LI (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said that the applications of about 4 050 families with children had been frozen due to failure to satisfy the residence requirement. May I ask how many children are involved in these 4 050 families, and whether the Government has tried to understand the present living environment of these children?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I do not have the information now on the profile of members of these families. However, as far as we understand, the families nowadays, especially those from the Mainland, do not normally have too many children, say five or six, like the case in the past. They have two or three at most now. Therefore, if Mr LI requires detailed information in this aspect, I can provide such information in writing later. (Appendix VI)

MR FRED LI (in Cantonese): *The Secretary has not answered part of my question.*

PRESIDENT (in Cantonese): Fine.

MR FRED LI (in Cantonese): *On their living environment. Has the Government actually tried to gain an understanding of this?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, our colleagues have certainly tried to understand the situation. In compiling the report, they have made reference to the situation in this aspect. Besides, we know that the Society for Community Organization (SoCO) has conducted a very detailed survey on this. Therefore, for the problems faced by these children, such as the cramped living conditions in cubicles, we did indicate that we knew the situation in both the report compiled by us as well as those compiled by other organizations. As such, we can deal with such problems specifically.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I would also like to follow up part (a) of the main question raised by Mr WONG Sing-chi. Very obviously, on the issue of poverty, apart from people earning very low incomes or the grassroots who have greater difficulty in securing employment, the poverty problem of new immigrants is also a major concern to society, and in fact, they have more children than Hong Kong people generally.*

Very often, we can see that the living conditions of the children are rather bad, and as less than half of their family members have lived in Hong Kong for seven years, they are not able to live in public housing flats, and they have to wait for a very long time on the list. I feel that, when dealing with this problem, the Government on the one hand keeps saying that the problem is not too serious, with only 4 000-odd families with children not meeting the requirement; yet on the other, it appears it is not too difficult at all to solve the problem of these 4 000-odd families. In fact, on such issues, that is, on issues related to the growing up of children — just as the Secretary has said, the SoCO has also compiled a series of reports highlighting their predicaments — should the Government think seriously about the issue and not let them wait for so many years before they can live in public housing flats? Can the Government change its policy?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, this problem boils down mainly to a resource allocation

problem. In fact, the questions and answers we deal with every Wednesday are all related to how we can allocate our limited resources.

We think that the present rule of requiring seven years' residence in Hong Kong for qualifying an applicant for allocation of public housing flats can reflect the people's contribution to the economy of Hong Kong during this period of time. This principle has already been accepted by society. In spite of this, we have partially relaxed the requirement, that is, they will become eligible as long as half of the family members have satisfied our residence requirement. We have already struck a balance between reasonable allocation of resources and striving ahead to assist new immigrant families as far as possible. If certain families on the Waiting List for public housing do have some special needs, we can arrange for them to live in some other kinds of accommodation, such as interim housing as a transitional arrangement. Just as I have just said, if there are special and urgent housing needs, they can always apply for public housing through compassionate rehousing.

In fact, in the report completed by the Task Force on Population Policy (the Task Force) last year, it is also mentioned that in the provision of social services (not just the housing aspect, but more extensively, on other policy portfolios as well), we should also have such considerations. We should consider the interests of the various sectors in society on a comprehensive scale. And in the course of deliberation, we must also take into account the fact that the Government has to cope with the various needs in society and the long-term sustainable development under very tight financial constraints. Therefore, after taking these factors into consideration, we have struck a balance, and the Task Force and many people also agree that, if the seven-year residence rule is made a benchmark for eligibility for enjoying various social services, it is a reasonable and sensible approach acceptable to all.

MR WONG SING-CHI (in Cantonese): *Madam President, with regard to the reply just given by the Secretary, when I put forward my supplementary question, I did mention that the Secretary had said in part (c) of his main reply that no research had been conducted to assess the impact of a poverty-stricken living environment on children's future lives after growing up. In view of the fact that Hong Kong is developing towards a knowledge-based economy, and if the environment in which the children grow up is not improved, it will be very*

difficult for them to secure opportunities of training or they will be affected to a certain extent, and their competitiveness after growing up will inevitably be undermined. Besides, the future ageing of our population will become very serious, so the training and education of the children will be very, very important. May I ask the Secretary whether he would commission certain universities or scholars to conduct some studies on the relations between the living environment of children and their growth, so as to enable us to better grasp the actual needs of children and the Government to provide suitable services on the basis of these findings?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said in my reply just now, we have not considered carrying out any academic research in this regard. However, we can see that the academic sector has conducted numerous studies on many social issues. Although no research will be conducted on the aspect mentioned by Mr WONG Sing-chi, many studies and surveys have been conducted on similar or related issues. Just as I said just now, the SoCO has also carried out a similar study in this aspect. Yet research might not be conducted on such a narrow scope as proposed by Mr WONG Sing-chi.

In retrospect, during the post-war years, I think many people might have shared our experience in living in unsatisfactory conditions during childhood. Many people were living in cubicles or in housing units in which many families have to share various common amenities. Although the living conditions were bad, these places were the breeding ground for many outstanding talents whom we take pride in now. I do not mean that we must use such a method to nurture talents, I am only saying that our living conditions have been improving. We of course hope that we can eliminate all the limitations in this aspect, but before we can achieve this, we are now doing as much as possible. I have also mentioned just now that this is a resource allocation problem. If we can solve the resource allocation problem, this problem can be solved very smoothly. I can make some enquiries to see if there are people in the academic sector interested in this aspect. We shall consider carrying out research on this in collaboration with them.

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

WRITTEN ANSWERS TO QUESTIONS**Assistance Offered to Hong Kong Residents Running into Trouble Overseas**

7. **MR WONG YUNG-KAN** (in Chinese): *Madam President, regarding the assistance offered to Hong Kong residents who run into trouble overseas, will the Government inform this Council of:*

- (a) *the total number of cases lodged in the past three years with the Chinese consular offices in foreign countries and the Government of the Hong Kong Special Administrative Region (SAR) in which assistance was sought by Hong Kong residents in overseas jurisdictions and, among such cases, the number of those in which the Hong Kong residents concerned were allegedly treated with violence by overseas law enforcement authorities, as well as the average time taken by the SAR Government to complete the handling of a case of this nature; and*
- (b) *the major types of assistance offered by the SAR Government to Hong Kong residents who run into trouble overseas; whether it has provided and will provide assistance to such Hong Kong residents jointly with the Chinese consular offices in foreign countries, and whether it will refrain from intervening if the relevant consular offices have already proceeded to handle the requests for assistance?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) In the past three years (that is, from 1 June 2001 to 31 May 2004), the Immigration Department (ImmD) handled 1 583 cases where requests for assistance were made by Hong Kong residents in overseas jurisdictions. Most of these requests were submitted in the first instance to the ImmD which in turn sought assistance from overseas Chinese Diplomatic and Consular Missions (CDCMs). Requests referred by CDCMs to the ImmD constituted the bulk of the remaining cases. As the circumstances pertaining to individual

requests vary, there is no breakdown on the number of cases where Hong Kong residents have been subjected to violence by overseas law enforcement authorities. Handling each case in the light of its specific circumstances, the ImmD will generally speaking convey the requests or appeals of a client to relevant overseas authorities through CDCMs in a timely manner and follow up as appropriate. It is however difficult to speculate on the processing time of a case as individual circumstances vary.

- (b) Assistance offered by the SAR Government to Hong Kong residents in distress overseas mainly include:
 - (i) finding out their latest situation and informing their family members;
 - (ii) liaising, on request, with their relatives so that financial assistance may be provided in needy circumstances;
 - (iii) arranging urgent issue of travel documents to them and/or their family members;
 - (iv) facilitating the return of Hong Kong residents who have been involved in accidents or have sustained injuries; and
 - (v) liaising, upon request, with CDCMs on the provision of assistance to persons detained overseas.

In dealing with these requests for assistance, the ImmD liaises and works closely with the Security Bureau, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the SAR, CDCMs, foreign consulates in Hong Kong and other relevant government departments and organizations. The objective is to provide clients with viable assistance at an early stage. In other words, even if CDCMs are taking action on a request for assistance, the ImmD will continue to liaise with CDCMs to follow up its development and provide viable assistance when necessary.

Setting up of Offshore Companies by Hong Kong Enterprises

8. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, regarding the setting up of offshore companies by Hong Kong enterprises, will the Government inform this Council:*

- (a) *of the number of Hong Kong enterprises which set up offshore companies in Macao over the past two years, and the types of trades and businesses in which they are engaged;*
- (b) *whether it has assessed the impact of the relocation of business by Hong Kong enterprises overseas on Hong Kong; if it has, of the assessment results; if not, the reasons for that; and*
- (c) *whether it has studied or formulated any corresponding measures to prevent Hong Kong enterprises from relocating their business overseas, and whether it has considered offering tax incentives to new industries or new investment projects at or exceeding a specified amount of money, provided that this will not be unfair to local companies, so as to maintain Hong Kong's attractiveness?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in the absence of Secretary for Commerce, Industry and Technology) (in Chinese):
Madam President,

- (a) According to a preliminary study conducted by the Government Economist, a total of about 220 offshore institutions have been set up in Macao by the end of 2003, attracted by the Offshore Law introduced shortly before the return of sovereignty to the Mainland in late 1999 by the then Macao Government. This Offshore Law aims to attract foreign investors to set up companies engaging in offshore services in Macao by offering various preferential treatments to offshore institutions. The study finds that most of these offshore institutions in Macao are Hong Kong companies engaging in trading activities.

- (b) The above study finds that relocation of companies from Hong Kong to Macao would have potential impact on the tax revenue, trade in goods, export of services and employment of Hong Kong; but as the number of such offshore companies relocated to Macao is still limited, the overall impact on the Hong Kong economy is insignificant. The Government will continue to monitor the development.
- (c) Given our low tax rates, the offer of tax incentives by Hong Kong will not be as attractive to business investors as in high tax jurisdictions. Thus offering tax concessions alone may not be an effective tool to prevent Hong Kong enterprises from relocating their business to Macao or other places. On the contrary, any tax incentive schemes will make our tax regime much more complicated and less certain. They will result in discriminatory treatment among different industries and different classes of taxpayers operating in Hong Kong, thus diminishing many of the attractive features of our tax system. Moreover, many Hong Kong companies engage in both onshore and offshore businesses. The granting of preferential tax treatments to the latter but not the former will create loopholes for tax evasion. We are therefore not in favour of providing discriminatory tax incentives.

Apart from tax incentives, we believe that Hong Kong companies would take into account other relevant factors when deciding where to locate their business. In this regard, we wish to point out that Hong Kong's taxes are among the lowest in the world. Our tax regime is simple and predictable, and applies fairly to both local and foreign individual and enterprises. We provide a level playing field for investors, irrespective of their size and origin. This guarantees a safe and predictable investment environment, which facilitates decision making by executives, making Hong Kong the preferred destination for investors. Moreover, Hong Kong is one of the most open, externally-oriented economies in the world. The cornerstone of our economy rests on free enterprise, free trade and free market open to all. Hong Kong has consistently been ranked as the world's freest economy by the Heritage Foundation and Fraser Institute.

InvestHK will continue to promote Hong Kong's many advantages as a trade, investment and business hub in Asia, and to attract inward direct investment. It will seek to attract and retain Hong Kong economically and strategically important investment. It offers solution-oriented investment promotion, facilitation, and aftercare services to inward investors to ensure that companies have all the support required to establish and expand their operation in Hong Kong.

Voluntary Departure Scheme

9. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, since the launch of the Voluntary Departure Scheme (VDS) in 2000, more than 3 000 staff of the Housing Department (HD) have departed. Regarding the number of staff in the HD and their workload, will the Government inform this Council:*

- (a) of the respective numbers of HD staff before and after the VDS was implemented and the extent of the change, in respect of each grade;*
- (b) whether it has assessed if the workload of the remaining staff has increased due to the departure of their colleagues; if the assessment result is in the negative, of the justifications for that; and*
- (c) whether the HD plans to further reduce the number of staff deployed to manage public housing estates; if so, of the reasons for that?*

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

- (a) The HD introduced the VDS in September 2000 and took part in the two voluntary retirement schemes implemented by the Government in December 2000 and July 2003 respectively. As at 1 June 2004, the establishment was reduced from 14 829 to 10 006, representing a decrease of 33%. A breakdown by grade is as follows:

<i>Grade</i>	<i>Establishment before introduction of VDS (as at 1 August 2000)</i>	<i>Current establishment (as at 1 June 2004)</i>	<i>Decrease</i>
Directorate ranks	69	69 ^{Note}	-
Housing class grade and related grades	7 384	4 038	45%
Works grades	4 297	3 516	18%
Other grades	3 079	2 383	23%
Total	14 829	10 006	33%

Note The HD plans to delete 23 directorate posts, of which eight posts are currently vacant, in the coming two years.

- (b) The voluntary departure and retirement schemes, which allow members of the grades affected to leave the Civil Service voluntarily before they reach retirement age, are aimed to address the problem of staff surplus arising from outsourcing of estate management and streamlining of organization structure. In considering the applications for voluntary departure and early retirement, the HD has fully assessed the future staffing requirements to ensure that there is sufficient manpower to deal with different aspects of work of the HD.
- (c) The HD reviews the staffing requirements for estate management from time to time and will deploy staff as appropriate having regard to actual circumstances. At present, there is no plan to further reduce the number of estate management staff.

Development of E-commerce

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

- (a) *whether it has studied and predicted the development trend of e-commerce in Hong Kong within the next five years;*
- (b) *how the present pace and mode of Hong Kong's industrial and commercial enterprises in utilizing e-commerce for their business*

development compare to those of their counterparts in Europe, the United States and the Mainland; and

- (c) *whether it has studied the monitoring of e-commerce development in Hong Kong through amending or enacting legislation?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in the absence of Secretary for Commerce, Industry and Technology) (in Chinese):
Madam President,

- (a) Since 2000, the Census and Statistics Department (C&SD) has been conducting annual surveys on information technology (IT) usage in the business sector. The survey findings have recorded a steady increase in the adoption of IT and e-commerce in the business sector over the past three years. The penetration rates of personal computer and the Internet have increased respectively from 51.5% and 37.3% in 2000 to 54.8% and 47.5% in 2003. In addition, more and more business establishments have started to order/purchase, receive, sell or deliver goods, services or information through various electronic means.

With a view to encouraging more small and medium sized enterprises (SMEs) to adopt IT, the Information Technology Services Department has been co-operating with the relevant trade associations and IT industry organizations to promote IT adoption by SMEs in specific sectors. We have already started two sector-specific programmes to promote IT adoption by travel agents and private medical practitioners. We expect that e-commerce adoption in Hong Kong will continue to grow steadily over the next few years.

- (b) Hong Kong ranks ninth overall (10th and 14th respectively in 2003 and 2002) in the Economist Intelligence Unit's 2004 e-readiness rankings, which covers over 60 economies. The rankings are based on criteria in six categories and Hong Kong comes 11th in the category of consumer and business e-commerce adoption.

Those ahead of Hong Kong in the 2004 e-readiness rankings are mainly the United States and European countries leading in IT adoption, including Denmark, the United Kingdom, Sweden, Norway, Finland, and so on. The Mainland ranks 52nd.

Regarding the mode of e-commerce utilization, we have studied the research and survey findings of e-commerce adoption in 2002 and 2003 published by the United Nations Conference on Trade and Development, European Commission, National Statistics of the United Kingdom, University of California and the C&SD of the Government of the Hong Kong Special Administrative Region. In general, online shopping is most popular in the United States and European countries, in particular the United Kingdom and Germany. Enterprises in the European Union member states tend to be active in adopting e-procurement and participating in e-marketplace transactions, as well as exchanging business and product information through the Internet with their business partners, suppliers and customers. Among the firms in the United Kingdom and the United States, popular e-commerce utilization includes the use of e-mail and electronic data interchange (EDI), establishment of website and intranet/extranet, as well as electronic fund transfer and payment. As regards the Mainland, some enterprises in the manufacturing, distribution and financial sectors have set up websites and extranets and adopted EDI. Exchange of operational data through the Internet with their customers and suppliers is also quite common. In Hong Kong, receipt of goods, services and information through electronic means has been the most commonly cited e-commerce utilization among enterprises. Some firms have also offered product and service information through their websites, and sold their products and services through various electronic means.

- (c) Electronic means, including the Internet, is one of the media for conducting commercial and trading activities. In general, legislation regulating the various aspects of commercial and trading activities (such as the use/collection/storage of personal data, trade description, consumer goods safety and copyright) is also applicable

to commercial and trading activities conducted through electronic means. If criminal activities are involved, they can be dealt with by the Crimes Ordinance or other relevant legislation.

Moreover, with a view to facilitating the development and adoption of e-business, the Electronic Transactions Ordinance (Cap. 553) was enacted in 2000 to provide a clear legal framework for the conduct of electronic transactions. For instance, the Ordinance accords electronic record and digital signature the same legal status as that of their paper-based counterparts. We also introduced the Electronic Transactions (Amendment) Bill 2003 into the legislature last year with a view to updating and improving the Ordinance, and thereby facilitating the adoption of electronic transactions. The Amendment Ordinance, if enacted, will come into operation on 30 June this year.

Traffic Obstructions and Insufficient Parking Space at Tourist Spots

11. **MR HOWARD YOUNG** (in Chinese): *Madam President, members of the tourism industry have reflected to me that traffic obstructions often occur at tourist spots such as the Peak, Temple Street and the "Ladies Market" and there is insufficient parking space in the vicinity. Coaches have to park closely one behind another at the roadside and vehicle bumping often occur when they pull off due to the limited manoeuvring space. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of complaints about the traffic obstruction and insufficient parking space at tourist spots received in each of the past five years;*
- (b) *whether it has put in place temporary measures to alleviate the problem of insufficient parking space at tourist spots; if it has, of the details of the measures; if not, the reasons for that; and*
- (c) *whether it has long-term plans to provide additional parking sites for coaches in the vicinity of tourist spots?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in the absence of Secretary for the Environment, Transport and Works) (in Chinese): Madam President, from 1999 to 2003, there were altogether 81 complaints about traffic congestion and insufficient parking spaces at tourist spots. The yearly breakdown of the complaint figures is set out below:

<i>Year</i>	<i>Traffic Congestion</i>	<i>Insufficient Parking Spaces</i>
1999	2	1
2000	12	2
2001	14	3
2002	21	5
2003	18	3
Total	67	14

We have been monitoring closely the traffic conditions at tourist spots. Where site conditions allow, we will provide as many coach parking and pick-up/set-down spaces as possible. Details of each tourist spot are set out at the Annex. The police also carry out regular patrols at those locations to regulate traffic.

We will continue to identify additional sites in the vicinity of tourist spots to meet the growing demand for coach parking spaces and pick-up/set-down facilities.

Annex

**Provision of Coach Parking Spaces and Lay-Bys
(for Pick-up/Set-down Activities) at Major Tourist Spots**

<i>Location</i>	<i>Latest Situation</i>
(A) Hong Kong Island	
1. Convention Avenue (near Golden Bauhinia Plaza)	There are nine coach parking spaces on Expo Drive East. For large scale events, these parking spaces as well as the bus terminus at Expo Drive East will be made available.

<i>Location</i>	<i>Latest Situation</i>
2. The Peak	There are 19 coach parking spaces and two lay-bys (for all vehicles) inside the Peak Galleria.
3. Stubbs Road Lookout	Four lay-by spaces are available outside the Lookout from 4.00 pm to 10.00 pm daily since June 2002. The police deploys traffic wardens and police officers for traffic control at the Lookout Point on a daily basis.
4. Central Ferry Piers	One lay-by each is provided outside Piers Nos. 4-7 and Piers Nos. 2-3 respectively.
5. Man Mo Temple and Cat Street Market	There are three coach parking spaces at Hollywood Road, one of which is recently added.
6. Statue Square	<p>There are two lay-bys at Chater Road and one lay-by at Jackson Road.</p> <p>In view of frequent usage and heavy traffic, the existing lay-bys at Jackson Road cannot be reserved exclusively for coaches. "No waiting" road markings are added at the lay-bys on Jackson Road to regulate the usage.</p>
7. Repulse Bay	There are six coach parking spaces and four coach lay-bys at Beach Road and one coach parking space at South Bay Road.
8. Aberdeen Typhoon Shelter	There are nine coach parking spaces at Broadview Court and one lay-by opposite to Aberdeen Marina Club.

<i>Location</i>	<i>Latest Situation</i>
9. Stanley Market	<p>There are four coach parking spaces at Stanley Beach Road, three coach parking spaces at Stanley Mount Road and eight coach lay-bys at Stanley Plaza.</p> <p>The provision of several additional coach parking spaces at Stanley Beach Road is being considered.</p>
(B) Kowloon	
10. Tsim Sha Tsui Waterfront	<p>Arrangement is being made to provide a long general lay-by next to the New World Centre to accommodate 10 coaches. Four coach lay-bys have been included in the proposal for the future Cultural Square at Salisbury Garden. In addition, four pick-up/set-down spaces will be provided along Salisbury Road westbound outside Cultural Centre upon the relocation of the Star Ferry Public Transport Interchange in 2006-07.</p>
11. Middle Road/Hankow Road	<p>There are four coach parking spaces and three lay-bys of a total length of 150 m (for all vehicles) at Hankow Road.</p> <p>Upon completion of the Kowloon-Canton Railway Corporation (KCRC) construction works in late 2004, the three kerbside spaces for coaches on Middle Road will be reinstated.</p>
12. Jade Market	<p>There are three coach parking spaces on Canton Road (north of Saigon Street), one lay-by for all vehicles at Reclamation Street, and one lay-by for coaches at Canton Road (south of Saigon Street).</p>

<i>Location</i>	<i>Latest Situation</i>
13. Temple Street Market	There are one lay-by (for all vehicles) at Reclamation Street and one pick-up/set-down bay at Public Square Street between Temple Street and Shanghai Street.
14. Hung Hom KCR Station	There are eight coach parking spaces and eight coach lay-bys at the open space next to the Hong Kong Coliseum, two lay-bys of a total length of 130 m (for all vehicles) at the podium level of KCR Hung Hom Station and a lay-by for three coaches at the eastern most bay of the Station.
15. Factory outlets at Dyer Avenue	There are six coach parking spaces along Dyer Avenue and a 80 m long lay-by for all vehicles along Hung Hom Road southbound outside Hutchison Park.
16. Wong Tai Sin Temple	There is a temporary vehicle park for private cars and coaches next to Wong Tai Sin Temple. Coaches may also make use of the kerbside space along Wong Tai Sin Road for picking up and setting down passengers.
17. Bird Garden at Yuen Po Street	There are three lay-bys for all vehicles at Flower Market Road, the western side of Sai Yee Street, and a short section of Prince Edward Road between Yuen Po Street and Yuen Ngai Street.
18. Ladies Market	There are 10 coach parking spaces at Sai Yee Street and two general lay-bys along the northern kerbside of Soy Street.

<i>Location</i>	<i>Latest Situation</i>
19. Lei Yue Mun	There are five metered coach parking spaces at Tung Yuen Street, one temporary coach lay-by at Shung Shun Street, one long coach lay-by and one 30 m long lay-by (for all vehicles) at Lei Yue Mun Path.
(C) New Territories	
20. Railway Museum at Tai Po Market	One coach lay-by is provided at Yan Hing Street fronting the Museum.
21. Lung Yuek Tau Heritage Trail	Three coach parking spaces are provided at Sha Tau Kok Road near the entrance of the Trail.
22. Wishing Tree at Lam Tsuen	Forty spaces are temporarily provided at a nearby vacant government land.
23. Sai Kung Town	A short-term tenancy vehicle park with 200 spaces for private cars and coaches will be provided by end 2004.
24. Memorial Monuments for Sai Kung Martyrs during World War II	A general lay-by for all vehicles has been provided at the access road leading to the Memorial.
25. Tsim Bei Tsui at Lau Fau Shan	There are 20 coach parking spaces in a private car park in Tsim Bei Tsui. In addition, eight metered coach parking spaces are also provided along Deep Bay Road.
26. Wan Fau Sin Koon at Tin Shui Wai	Four coach lay-bys will be provided upon completion of widening works along that section of Deep Bay Road in late 2004.

<i>Location</i>	<i>Latest Situation</i>
27. Po Lin Monastery at Ngong Ping	There are 13 coach parking spaces. Upon completion of the public transport interchange in late 2004, an additional 19 coach parking spaces will be provided.

Declaration of Interests by Executive Council Members

12. **MS EMILY LAU:** *Madam President, Executive Council Members are required to declare certain types of interests in a Register of Members' Interests (the Register), which is available for public inspection on request at the Executive Council Secretariat. Executive Council Members are also required to declare to the Chief Executive, on a confidential basis, additional information on financial interests relating to shareholdings in companies and beneficial interests in the form of contracts traded on the Hong Kong Futures Exchange, held either on their own behalf or jointly with a close relative, and currency transactions in the amount of \$200,000 or more. In this connection, will the executive authorities inform this Council:*

- (a) of the reasons for not making the Register available for public inspection on the government websites; and*
- (b) whether they have assessed if withholding from the public information on the aforesaid financial interests declared by Executive Council Members is in compliance with the principles of enhancing the openness, transparency and accountability of their governance; and whether they plan to make public these financial interests declared by Executive Council Members; if they have no such plan, of the reasons for that?*

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, the Executive Council has a long-established mechanism for declaration of interests. On their first appointment and annually thereafter, Executive Council Members have to furnish a return on their registrable interests to the Executive Council Secretariat for record. Executive Council Members are also required to declare

their interests before the deliberation on individual issues at Executive Council meetings.

Executive Council Members have to declare interests in the Register which is made readily available at the Executive Council Secretariat for public inspection. This covers, among other things, essential information on the financial interests of Executive Council Members, including remunerated directorships, remunerated employments, land and properties and companies in which Executive Council Members hold shareholdings of a nominal value greater than 1% of the issued share capital. Having regard to the more prevalent use of the Internet nowadays, we are actively considering the uploading of the Register onto the website.

In addition to the interests recorded in the Register available for public inspection, Executive Council Members are also required to declare to the Chief Executive, on a confidential basis, more detailed financial interests (including day-to-day shareholding and currency transactions). In deciding what information should be made available for public inspection, we need to strike a balance between transparency on the one hand, and the need to protect the privacy of the Members on the other. What is important about the declaration of interests system is that these interests, whether they are open or not, must be recognized, their significance weighed and duly taken into account.

Under the current requirements, the information made available for public inspection has served the purpose of public scrutiny. The registered information enables the Chief Executive to assess whether there is or may be a conflict of interest between an Executive Council Member's interests and investments and his/her official capacity. He may require the Member concerned to take appropriate measures to avoid any conflict of interests. The registered information also enables the Chief Executive to assess whether an Executive Council Member has potential or actual conflict of interests in a discussion item of an Executive Council meeting and whether he/she should be asked to withdraw from the meeting.

The current declaration system has been in place for years and proven to be effective. It strikes a proper balance between the need for transparency and openness and the need to protect the privacy of the Executive Council Members. We consider the system appropriate and do not intend to change it.

Providing Green Corners at Schools

13. **MR HENRY WU** (in Chinese): *Madam President, regarding the scheme to provide green corners at schools, will the Government inform this Council:*

- (a) of the total number of schools participating in the scheme so far;*
- (b) of the details of the green corner facilities of various schools; and*
- (c) whether it has carried out ongoing assessments to find out if the scheme has achieved the expected objectives; and whether it has reviewed if the schools have been provided with adequate ancillary support in this regard, including teachers and other supplementary software and hardware; if so, of the assessment and review results; if not, the reasons for that?*

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

- (a) The green corner is a school building design feature introduced by the Education and Manpower Bureau to improve the school environment and to promote environmental protection among students. Since 2001 we have provided green corners in 50 new schools.
- (b) A green corner is usually about 30 to 40 sq m large, including features such as planting beds, pot-planting areas, a greenhouse, and so on, depending on the school premises layout and school sponsoring bodies' requirements. Among the 50 new schools provided with a green corner, 35 feature the provision of planting beds, 14 have pot-planting areas and 15 incorporate a green house.
- (c) As the provision of green corners is part of the strategy to promote environmental education, we have not carried out any standalone assessment on the scheme itself. However, through our daily contacts with schools, we can generally gauge whether facilities provided in school building projects can meet school education needs. We observe that most of the schools concerned welcome

the setting up of green corners on campus. The Education and Manpower Bureau will continue to take account of the views of school sponsoring bodies, with a view to better ensuring that future green corners meet the needs of the schools concerned.

Apart from including a stronger environmental element in the design of school buildings, the Education and Manpower Bureau is also committed to promoting environmental education in schools at different stages of learning. Elements of environmental education have been incorporated in 26 school disciplines and schools are encouraged to adopt a whole-school and cross-discipline approach. To support teachers in pursuing environmental education, we update and enhance web-based resources on a regular basis. We also arrange school visits and teacher training programmes, including visits to schools which are successful in promoting environmental education, and encourage and sponsor the organization of extra-curricular activities in support of environmental education. At the same time, we promote environmental education among students in close collaboration with various related organizations. We have joined hands, for example, with the Environmental Campaign Committee in organizing a number of annual school activities, such as Schools Environmental Award Scheme cum Student Environmental Protection Ambassador Scheme (the number of participating schools increased to 719 in 2003-04 from 220 in 1995-96) and Hong Kong Green School Award (the number of participating schools increased to more than 180 in 2003-04 from 92 in 1999-2000). To further enhance environmental awareness among students through campus greening and organic planting, we have organized the Organic Farms in the City Competition in conjunction with the Environmental Campaign Committee, Environmental Protection Department and Hong Kong Trees Conservation Association; and have also encouraged schools to join the Greening School Subsidy Scheme organized by the Leisure and Cultural Services Department.

In sum, the Education and Manpower Bureau is committed to implementing environmental education and providing schools and teachers with support and ancillary facilities, including the provision

of green corners to improve the school environment and to promote environmental protection among students.

Advanced Practice Nurse Pilot Scheme

14. **MR MICHAEL MAK** (in Chinese): *Madam President, in regard to the Advanced Practice Nurse (APN) Pilot Scheme implemented by the Hospital Authority (HA), will the Government inform this Council whether it knows:*

- (a) the respective numbers of the APNs employed on contract terms and fixed terms and, among them, the respective numbers of contract and fixed-term APNs who had civil servant status prior to their appointment to such posts, with breakdowns by whether they have given up or are retaining such status, or have not yet decided;*
- (b) whether the HA has issued guidelines to all nursing staff on the division of responsibilities and co-operation arrangements between the APNs and other nursing staff; if it has, of the details of such guidelines; if not, the reasons for that;*
- (c) the equivalent rank of APNs in the current nursing grade; and*
- (d) if the promotion opportunities of other nursing staff not joining the APN Pilot Scheme will be affected; if so, of the details in this regard?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): Madam President, the APN is part of a proposed new nursing grade structure of the HA, designed to enhance professional accountability and role of nurses with the principle of linking career advancement of nurses to professional competence and development. In September 2003, the HA launched an 18-month pilot scheme for the creation of posts of APN.

- (a) A total of 167 APNs had been appointed as at end of April 2004. Among them, 166 are HA employees and one is a civil servant. As this is a pilot scheme, the APNs are appointed for a fixed period of time to tie in with the duration of the scheme. In addition, it is also

the prevailing human resource policy to offer contract/fixed term employment for all promotional ranks. Those who cease their APN status at any time may revert to their previous substantive ranks so long as they are previously employed on a permanent basis.

- (b) The HA has widely publicized details of the APN Pilot Scheme through open forums and nursing staff group consultative committee meetings. Information on the Pilot Scheme including its objectives, guides to appointment, key responsibilities of the APNs and other nursing grade review information are available on the HA intranet, which is accessible to HA staff. The key responsibilities of an APN are to:

- perform specialist role in a clinical specialty;
- provide advanced nursing care to patients and relatives;
- act as a resource and referral agent on clinical expertise;
- teach and advise on clinical practice;
- counsel and teach patients, relatives, staff and public;
- initiate and participate in evidence-based practice and research; and
- lead the nursing team within a clinical unit.

The APN Pilot Scheme is the first step in the building up of the proposed new nursing grade structure which has not been tested in the local clinical setting. One of the objectives of this scheme is to test the proposed roles and responsibilities of the APNs *vis-a-vis* other nursing grade staff. The current roles and responsibilities of the APNs and the division of responsibilities between the APNs and other nursing grade staff are therefore subject to fine-tuning.

- (c) As this is a pilot scheme, for the time being all APNs are appointed using the existing Nursing Officer pay scale.

- (d) The promotion prospect of staff members is generally determined by two factors, namely, the number of promotion posts available and the individual merits of staff. The pilot APN scheme has no impact on the number of other promotion posts in the nursing grade. As for the latter, the suitability of each applicant for promotion positions will be assessed on his/her own merits as against the requirements for the job, including the possession of the requisite academic qualification. There are no changes to the selection or recruitment process in the HA with the introduction of the APN pilot scheme.

Directorate Grade Officers Spending Public Funds on Attending Overseas Meetings and Activities

15. **MR ALBERT CHAN** (in Chinese): *Madam President, I have recently received complaints from the public that some directorate grade civil servants spend several million dollars of public funds each year on attending meetings and activities held outside Hong Kong by international organizations. In this connection, will the Government inform this Council:*

- (a) *in respect of each bureau and department, of the total number of trips incurring public expenditure made by directorate grade officers last year for the purpose of attending meetings or activities held overseas by international organizations, and the total public expenditure; the top 50 officers who made the highest number of such trips, the number of trips made and the public expenditure incurred by each of them; and*
- (b) *whether the Administration has put in place measures to ensure that the participation of directorate grade officers in these meetings and activities conforms to the principle of proper use of public funds; if it has, of the details of these measures; if not, the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, the total number of duty visits outside Hong Kong incurring public expenditure made by directorate civil servants in each bureau and department in 2003-04 for the purpose of attending meetings or activities held overseas by international

organizations and the public expenditure involved are set out in Annex A. The number of duty visits made by the 16 directorate posts with the highest frequency of such attendance ranged from four to 11. Another 18 directorate posts made three such duty visits and 32 made two such duty visits. The number of visits outside Hong Kong and the public expenditure involved in respect of the above 66 directorate posts are set out in Annex B.

Bureaux and departments will, having regard to the circumstances and need, send officers to participate in meetings or activities held outside Hong Kong by international organizations in order to safeguard and promote the interests of Hong Kong. They will, depending on the nature of the events, decide whether directorate or non-directorate officers should be sent. The Administration has put in place measures to ensure that the expenditure incurred by civil servants arising from duty visits outside Hong Kong (including the participation in meetings and activities held by international organizations) are appropriate and in compliance with the principle of financial prudence.

Duty visits outside Hong Kong may only be undertaken with approval from officers of specified ranks. Departmental management must be satisfied that the visit has a *bona fide* purpose when granting approval. They must also be satisfied that both the frequency of duty visits and the number of officers joining such visits are kept to the minimum necessary.

There are regulations governing the class of air passage that may be taken by officers on duty visit outside Hong Kong. For example, officers on Directorate Pay Scale Point 3 and below or equivalent will normally be provided with duty passage at Economy Class. As regards officers on Directorate Pay Scale Point 4 and above or equivalent, they may be provided with duty passage at Business Class. Nevertheless, they are encouraged to travel on Economy Class on short flights where the flying time is less than four hours.

A subsistence allowance at specified daily rates is payable to officers on duty visit outside Hong Kong to cover reasonable additional expenses incurred by the officers arising from such duty visits (for example, accommodation and meals, travelling expenses, and so on). The rates payable differ from place to place, taking into account the different cost in different destinations. The amount of allowance payable will be abated should there be sponsorship of hotel accommodation by relevant parties (for example, the organizer).

Annex A

Participation by directorate civil servants in meetings/activities held
outside Hong Kong by international organizations from 1 April 2003 to 31 March 2004

No. of duty visits and expenditure incurred by bureaux and departments in 2003-04

<i>Bureau/Department</i>	<i>Total no. of duty visits</i>	<i>Government expenditure (2003-04) (\$)^{Note}</i>
Commerce, Industry and Technology Bureau	30	648,627
Information Technology Services Department	4	167,927
Innovation and Technology Commission	5	183,702
Intellectual Property Department	3	26,290
Radio Television Hong Kong	6	206,508
Television and Entertainment Licensing Authority	1	15,270
Trade and Industry Department	24	857,440
Office of the Telecommunications Authority	9	152,942
Economic Development and Labour Bureau	9	162,945
Civil Aviation Department	35	482,569
Hong Kong Observatory	4	83,829
Labour Department	2	42,977
Marine Department	16	562,212
Post Office	39	741,118
Education and Manpower Bureau	3	24,700
Financial Services and the Treasury Bureau	12	235,917
Census and Statistics Department	7	123,089
Inland Revenue Department	5	76,323
Official Receiver's Office	1	20,948
Rating and Valuation Department	4	34,031
Security Bureau	10	227,980
Customs and Excise Department	6	147,897
Correctional Services Department	3	48,990
Fire Services Department	12	248,275
Government Flying Service	3	21,496
Hong Kong Police Force	4	58,717
Immigration Department	3	64,198

<i>Bureau/Department</i>	<i>Total no. of duty visits</i>	<i>Government expenditure (2003-04) (\$)^{Note}</i>
Environment, Transport and Work Bureau	0	0
Architectural Services Department	1	29,695
Civil Engineering Department	1	19,858
Electrical and Mechanical Services Department	4	79,329
Environmental Protection Department	3	55,956
Territory Development Department	2	64,534
Transport Department	2	31,186
Water Supplies Department	2	16,000
Home Affairs Bureau	0	0
Home Affairs Department	1	6,820
Information Services Department	4	30,889
Leisure and Cultural Services Department	1	14,000
Housing, Planning and Lands Bureau	0	0
Buildings Department	1	19,135
Housing Department	3	28,692
Health, Welfare and Food Bureau	14	212,583
Agriculture, Fisheries and Conservation Department	3	43,725
Food and Environmental Hygiene Department	2	28,035
Government Laboratory	3	50,412
Chief Secretary for Administration's Office and Financial Secretary's Office	4	86,568
Legal Aid Department	2	35,380
Department of Justice	17	370,186
Hong Kong Monetary Authority (HKMA)*	1	4,178
Total	331	6,894,077

Note 1. Expenditure includes expenses for passage, travelling, accommodation, meals, and so on, under prescribed rules.

2. Expenditure excludes those incurred for visits of dual or multiple purposes (that is, including purposes unrelated to the organization's activities).

* Only expenditure in respect of directorate civil servants in the HKMA is included.

Annex B

Participation by directorate civil servants in meetings/activities held
outside Hong Kong by international organizations from 1 April 2003 to 31 March 2004

Duty visits by directorate civil service posts in 2003-04

<i>Post</i>	<i>Bureau/Department</i>	<i>No. of Visits</i>	<i>Government Expenditure (\$)^{Note}</i>
Director (EA)	Post Office	11	248,482
Commissioner for Narcotics	Security Bureau	9	211,909
Deputy Director-General of Trade and Industry (Multilateral, Regional Cooperation & Europe)	Trade and Industry Department	8	330,670
Administrative Assistant to Secretary for Commerce, Industry and Technology	Commerce, Industry and Technology Bureau	8	296,277
Assistant Director-General of Trade and Industry (Regional Cooperation)	Trade and Industry Department	7	238,964
Postmaster General	Post Office	7	134,644
Assistant Postmaster General (Postal)	Post Office	7	110,602
Permanent Representative of the Hong Kong Special Administrative Region of China to the World Trade Organization	Commerce, Industry and Technology Bureau	6	78,401
Assistant Postmaster General (Corporate Development)	Post Office	5	118,658
Administrative Assistant to Secretary for Health, Welfare and Food	Health, Welfare and Food Bureau	5	80,422
Director (PDMS)	Post Office	5	68,032
Deputy Representative 3 of the Hong Kong Special Administrative Region of China to the World Trade Organization	Commerce, Industry and Technology Bureau	5	48,838
Assistant Commissioner for Tourism 1	Economic Development and Labour Bureau	4	75,816
Assistant Director-General (ATM)	Civil Aviation Department	4	54,845
Chief Air Traffic Control Officer/C (OPS)	Civil Aviation Department	4	41,780
Commissioner for Rehabilitation	Health, Welfare and Food Bureau	4	35,831

<i>Post</i>	<i>Bureau/Department</i>	<i>No. of Visits</i>	<i>Government Expenditure (\$)^{Note}</i>
Director of Broadcasting	Radio Television Hong Kong	3	141,255
Director of Information Technology Services	Information Technology Services Department	3	124,396
Commissioner of Customs and Excise	Customs and Excise Department	3	101,110
Director-General of Trade and Industry	Trade and Industry Department	3	97,205
Assistant Director of Marine (Shipping)	Marine Department	3	78,585
Director-General of Civil Aviation	Civil Aviation Department	3	72,329
Deputy Representative 1 of the Hong Kong Special Administrative Region of China to the World Trade Organization	Commerce, Industry and Technology Bureau	3	54,050
Commissioner for Census and Statistics	Census and Statistics Department	3	51,207
Assistant Government Chemist (Forensic Science)	Government Laboratory	3	50,412
Deputy Director-General of Civil Aviation	Civil Aviation Department	3	49,863
Chief Electronics Engineer (Project)	Civil Aviation Department	3	47,161
Assistant Commissioner of Customs and Excise	Customs and Excise Department	3	46,787
Assistant Director-General of Trade and Industry (Industrial Support)	Trade and Industry Department	3	44,836
Assistant Director-General (FS)	Civil Aviation Department	3	34,754
Government Economist	Financial Services and the Treasury Bureau	3	34,160
Director, Hong Kong Economic and Trade Affairs, Singapore	Commerce, Industry and Technology Bureau	3	30,900
Director of Information Services	Information Services Department	3	25,135
Assistant Director-General (APS)	Civil Aviation Department	3	17,460
Chief, Technical Policy	Marine Department	2	124,983
Assistant Director of Marine (Multi-lateral Policy)	Marine Department	2	115,927

<i>Post</i>	<i>Bureau/Department</i>	<i>No. of Visits</i>	<i>Government Expenditure (\$)^{Note}</i>
Commissioner for Innovation and Technology	Innovation and Technology Commission	2	84,512
Chief, Marine Accident Investigation	Marine Department	2	82,854
Assistant Director-General of Trade and Industry (Multilateral)	Trade and Industry Department	2	78,274
Administrative Assistant to Financial Secretary	Offices of the Chief Secretary for Administration and the Financial Secretary	2	74,483
Director of Fire Services	Fire Services Department	2	74,229
Director of the Hong Kong Observatory	Hong Kong Observatory	2	70,725
Assistant Commissioner for Census and Statistics (Economic Statistics) ¹	Census and Statistics Department	2	61,592
Deputy Principal Government Counsel (T & L)	Department of Justice	2	58,845
Principal Economist (3)	Financial Services and the Treasury Bureau	2	58,639
Chief Telecommunications Engineer (SM)	Office of the Telecommunications Authority	2	56,371
General Manager (Ship Safety Branch)	Marine Department	2	53,015
Assistant Director-General of Telecommunications (S)	Office of the Telecommunications Authority	2	44,902
Chief Engineer (Energy Efficiency A)	Electrical and Mechanical Services Department	2	40,663
Chief Safety Officer (Security)	Civil Aviation Department	2	40,223
Assistant Director (Energy Efficiency)	Electrical and Mechanical Services Department	2	38,666
Deputy Director-General of Telecommunications	Office of the Telecommunications Authority	2	35,136
Assistant Director-General (E&S)	Civil Aviation Department	2	31,852
Assistant Director (Food Surveillance and Control)	Food and Environmental Hygiene Department	2	28,035

<i>Post</i>	<i>Bureau/Department</i>	<i>No. of Visits</i>	<i>Government Expenditure (\$)^{Note}</i>
Permanent Secretary for Health, Welfare and Food	Health, Welfare and Food Bureau	2	25,468
Commissioner of Insurance	Financial Services and the Treasury Bureau	2	21,164
Assistant Director (Information Systems)	Immigration Department	2	19,801
Director (O)	Post Office	2	19,154
Principal Assistant Secretary (Quality Assurance)	Education and Manpower Bureau	2	17,000
Chief Electronics Engineer (O&M)	Civil Aviation Department	2	16,048
Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) ¹	Commerce, Industry and Technology Bureau	2	14,900
Chief Aircraft Engineer	Government Flying Service	2	13,566
Chief Telecommunications Engineer (R)	Office of the Telecommunications Authority	2	11,490
Deputy Commissioner for Tourism	Economic Development and Labour Bureau	2	11,260
Commissioner of Rating and Valuation	Rating and Valuation Department	2	6,151
Senior Assistant Director of Public Prosecutions (S8)	Department of Justice	2	2,128
Total		217	4,707,832

Note 1. Expenditure includes expenses for passage, travelling, accommodation, meals, and so on, under prescribed rules.

2. Expenditure excludes those incurred for visits of dual or multiple purposes (that is, including purposes unrelated to the organization's activities).

Integrity of Elections

16. **MS EMILY LAU** (in Chinese): *Madam President, recently, some members of the public called up radio phone-in programmes and Members' offices, claiming that some local people and mainland officials or influential people had pressurized them or promised to offer them pecuniary benefits in an attempt to coerce or induce them into voting for candidates belonging to a particular political party in the Legislative Council elections to be held in*

September. Some members of the public even claimed that they had been asked to take photos of their ballot papers while voting to prove their voting decisions. In this connection, will the executive authorities inform this Council:

- (a) whether they have received such complaints; if so, of the details;*
- (b) whether they have assessed if electors will be perplexed by such incidents and even lose confidence in the integrity of the elections; if the assessment results are in the affirmative, of the measures in place to restore the confidence of electors and the details of such measures; if the assessment results are in the negative, of the justifications for that; and*
- (c) of the relevant mainland offices with which they have made enquiries on the above allegations which involved mainland officials or people, and the specific responses received?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): Madam President, taking the question raised by the Honourable Emily LAU as a whole, our reply is as follows:

The Government is committed to ensuring that all public elections in Hong Kong are conducted openly, honestly and fairly. To this end, a comprehensive set of electoral legislation is in place to regulate the conduct of elections. Under the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), a person who offers, solicits or accepts an advantage as an inducement for another person to vote or not to vote for a particular candidate, or uses force or duress against another person to induce the other person to vote or not to vote for a particular candidate, commits an offence and is liable upon conviction to a maximum penalty of a fine of \$500,000 and imprisonment for seven years.

As at 15 June, the Independent Commission Against Corruption (ICAC) has received five reports of different types relating to the 2004 Legislative Council elections. The ICAC is handling the cases in question in accordance with the law, and will contact persons concerned as necessary. Since investigations are still continuing, we are not in a position to disclose details of the cases.

We note that recently there have been media reports on the alleged use of duress against electors with a view to influencing their voting behaviour. As always, the Electoral Affairs Commission (EAC) will work closely with the ICAC to ensure that the Legislative Council election to be held in September is honest and clean, and will not be affected by any corrupt or illegal practices. Recently, at the meetings of the Subcommittee which was set up to scrutinize the subsidiary legislation relating to the Legislative Council election, Members have suggested to the EAC further measures for protecting the secrecy of votes. After consideration, the EAC has put forth preliminary proposals to adopt the following measures for the coming Legislative Council elections:

- (i) a general direction will be given to all electors requiring them to switch off their mobile telephones when they are inside a polling station, regardless of whether their telephones are camera-equipped;
- (ii) the curtains in front of the voting compartments will be removed so that polling staff, candidates and their polling agents can observe generally the conduct of electors inside the voting compartments. A yellow line will be marked on the floor which will be at an appropriate distance from the voting booth, depending on the configuration of individual polling stations. No other electors will be allowed to enter or stay in the area beyond the yellow line when an elector is marking the ballot paper inside the voting compartments, so that the choice of the electors will not be observed by others;
- (iii) when issuing the ballot papers to electors, polling staff will remind electors not to use mobile telephones/cameras or to take photographs inside the polling station; and
- (iv) more prominent signs will be posted at the polling stations to remind electors not to use mobile telephones/cameras or to take photographs inside polling stations.

The Government will continue to discuss with the Subcommittee the arrangements for implementing the above measures.

In addition, the EAC proposes that for small polling stations with less than 200 electors, the ballot papers should be delivered to a main counting station

after the close of poll, to be mixed with those cast at the main counting station before the votes are counted. The EAC is now considering a proposal, put forward by Members, to raise the "200 electors" threshold for the purpose of defining small polling stations. The EAC will also consider a proposal to increase the penalty for using mobile telephones/cameras or taking photographs inside a polling station. We shall continue to follow up the proposals with the Subcommittee.

The Government will also put in place publicity measures to promote public awareness of various arrangements and legislative provisions which protect the secrecy of votes, and to enhance public understanding of measures against corrupt and illegal conduct in elections, including relevant provisions in the ECICO.

Illegal Trading of Industrial Diesel Oil for Use as Motor Vehicle Fuel

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the illegal trading of industrial diesel oil for use as motor vehicle fuel, will the Government inform this Council:*

- (a) *of the number of prosecutions instituted against vehicle owners or drivers for such offence in each of the past three years, together with a breakdown of the classes of the vehicles involved;*
- (b) *whether the criteria for making a decision on forfeiture of the vehicles concerned include the number of occasions on which the vehicles have been involved in such offences; if so, whether it has assessed if the vehicle owners concerned can avoid the forfeiture of their vehicles by changing the vehicles' number plates, so as to conceal the vehicles' previous involvement in such offences; if the assessment result indicates that they can, whether such practice is common and how it will plug the loophole; and*
- (c) *of the number of enforcement actions taken by the relevant departments in each of the past three years against such offence, and whether it has assessed the effectiveness of such actions?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President,

- (a) Under Regulation 5B of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109C), any person who drives or is in charge of any motor vehicle which has marked oil (commonly known as industrial diesel oil) in the fuel tank of that motor vehicle commits an offence. The number of such cases concerning illegal use of industrial diesel oil handled and the number of persons prosecuted by the Customs and Excise Department (C&ED) in the past two years and the first four months of this year are as follows:

Table 1

	<i>2002</i>	<i>2003</i>	<i>2004 (January to April)</i>
(1) Number of cases of illegal use of industrial diesel oil as motor vehicle fuel	135	129	27
(2) Number of persons prosecuted	136	131	26

The C&ED keeps no record of the classes of the vehicles involved.

- (b) Under sections 15 and 48 of the Dutiable Commodities Ordinance (Cap. 109), a member of the Customs and Excise Service may seize, remove and detain any vehicle in which the goods (for example, illicit industrial diesel oil) are found, and wherever there occurs a contravention of the relevant provisions, the vehicle shall be liable to forfeiture whether or not any person is convicted of any offence. After seizing such a vehicle, the C&ED may, as provided for by law, apply to the Court for forfeiture of the vehicle. The decision as to whether the vehicle should be forfeited or not rests with the Court.

The criteria adopted by the C&ED in considering whether to seize a vehicle or not include the number of occasions on which the vehicle has been involved in such offences. According to its departmental guidelines, the C&ED will seize a vehicle and apply to the Court for

its forfeiture if the vehicle is found to have used illicit industrial diesel oil the second time and the registered vehicle owner is the same on both occasions.

Besides the number plate, officers of the C&ED will also check other registered particulars of the vehicle, such as its chassis number and its engine number, to determine if it is the same vehicle. Even if the vehicle owner changes the number plate, he cannot avoid his vehicle being seized by the C&ED because the vehicle will not be taken as another one.

- (c) Officers of the C&ED conduct daily raids at various black spots in the territory on activities involving illicit diesel oil, including industrial diesel oil. The C&ED has also been combating vigorously the smuggling of illicit diesel oil into the territory so as to cut off its supply. The C&ED has also been taking severe enforcement actions against people using such oil, including on-road checks on vehicles. These are daily enforcement actions, which are sometimes taken in the context of other anti-smuggling activities.

The number of cases involving illicit diesel oil and the quantity seized by the C&ED in the past two years and the first four months of this year are listed below:

Table 2

	<i>2002</i>	<i>2003</i>	<i>2004 (January to April)</i>
(1) Total number of illicit diesel oil cases (including cases concerning illicit diesel oil refilling stations, illicit industrial diesel oil detreating plants, smuggling and use, and so on)	672	571	125
(2) Quantity of illicit diesel oil seized (litre)	1 583 448	1 442 396	331 188

As shown in Tables 1 and 2, the numbers of cases and people prosecuted and the quantities of illicit diesel oil seized have remained stable. Through the aforesaid actions taken by it, the C&ED have been effective in reducing the supply of such oil. the C&ED has put the distribution, sale and use of illicit diesel oil under control.

Public Money Spent for Capturing Crocodile at Shan Pui River

18. **DR RAYMOND HO** (in Chinese): *Madam President, will the Government inform this Council of the total amount of public money spent for the purpose of capturing the crocodile at Shan Pui River?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): Madam President, since crocodiles are endangered species protected under the Animals and Plants (Protection of Endangered Species) Ordinance, the Agriculture, Fisheries and Conservation Department (AFCD) had tried various measures to capture the crocodile found at Shan Pui River alive. Since the sighting of the crocodile on 3 November 2003, the AFCD had spent about \$300,000 on the operation. About one third of it was used for making capturing facilities including cage traps, snares, pit-falls and nets, and for setting up temporary outdoor camping facilities for the crocodile experts from Panyu upon their request. The rest was used to hire two security guards for 24-hour surveillance of the crocodile and the facilities since 22 November 2003. The costs incurred by the Australian expert and the mainland experts for coming to Hong Kong to capture the crocodile last year were paid for by two local commercial newspaper companies. The AFCD was mainly responsible for providing supporting manpower and supplies, and was not required to pay any extra cost.

Food Safety

19. **MR WONG YUNG-KAN** (in Chinese): *Madam President, regarding food safety, will the Government inform this Council of:*

- (a) *the existing measures to regulate the safety of foods not imported through local dealers, and the percentage of the samples of such foods among all food samples taken in the routine sampling inspections of foods in the past three years;*
- (b) *the alert mechanism in place to enable the authorities to obtain information on such foods upon their importation, and whether such a mechanism includes a requirement for food importers to declare information on the imported foods; if so, how the authorities deal with the cases where the declared information does not conform to the facts; if not, the reasons for that; and*
- (c) *the specific details about the operation of the food safety notification mechanism set up by the Government of the Hong Kong Special Administrative Region and the State General Administration for Quality Supervision and Inspection and Quarantine, and whether it has discussed with the mainland government departments responsible for food quality inspection the recently disclosed incidents of substandard foods in the Mainland; if it has, of the discussion results; if not, the reasons for that?*

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

- (a) All foods for sale in Hong Kong are subject to the control and regulation under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation to ensure that they are safe and fit for human consumption. Any person in breach of the relevant food safety legislative provisions shall be liable to a maximum penalty of \$50,000 and an imprisonment of six months. The Food and Environment Hygiene Department (FEHD) conducts routine sampling inspections of the food available for sale in Hong Kong. There is no separate figure showing the percentage of food items sampled which are not imported through local dealers.
- (b) The food safety control framework in Hong Kong consists of several main components, including safety control of imported food, food

surveillance, risk assessment, and so on. Certain high risk imported food like milk, milk products, frozen confections, game, meat and poultry are governed by the relevant subsidiary legislation of the Public Health and Municipal Services Ordinance (Cap. 132). For example, the import of meat requires the FEHD's prior approval. In accordance with international practice, we have adopted a risk-based approach in devising our food surveillance programme. Under this approach, the FEHD takes food samples at the import, wholesale and retail levels for microbiological and chemical testing. The FEHD will conduct investigation including requesting the retailers, wholesalers or importers concerned to provide information on the imported food products of which the wholesomeness is found to be problematic or under suspicion. The FEHD will then issue warnings or institute prosecution actions against the persons concerned. In addition, the FEHD also conducts random inspections from time to time to ensure that all pre-packaged food products available for sale in the market are labelled in compliance with the legislation so that consumers can make informed choices when purchasing such products. For any products found not in compliance with the labelling requirements, the FEHD will take follow-up actions. The FEHD will regularly review the control strategy, as well as the quantity and food types sampled under the food surveillance programme to meet changing needs.

- (c) We have established a notification mechanism with the State General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China. In case of food safety incidents affecting the food exported to Hong Kong, the relevant mainland authorities will alert the FEHD proactively for follow-up actions. Regarding the recent disclosure of substandard food products found in the Mainland, the FEHD has approached the relevant mainland authorities for details and follow-up actions. We have been informed so far that all the food products involved in the reported incidents do not include any food products exported to Hong Kong. To ensure food safety, the FEHD has also stepped up random inspections of similar food products available for sale in Hong Kong.

Water Dripping from Air-conditioners

20. **MR ALBERT CHAN** (in Chinese): *Madam President, I have recently received a number of complaints that some public rental housing (PRH) units are not installed with drain pipes for air-conditioners, causing water to drip from air-conditioners. In this connection, will the Government inform this Council:*

- (a) *of the names of the PRH estates not installed with drain pipes for air-conditioners and the numbers of buildings and residential units in each estate;*
- (b) *whether it has concrete measures to help the residents tackle the problem; if it has, of the details of such measures; if not, the reasons for that; and*
- (c) *of the number of complaints received in each of the past three years, and whether it has assessed the impact of the dripping on the environmental hygiene of the housing estates?*

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

- (a) All public housing blocks completed after 1996 are provided with condensate drain pipes. Public housing estates without drain pipes are mainly those completed before 1996. Their names, with numbers of blocks and flats, are set out at Annex.
- (b) Public housing tenants are required to seek prior approval from the Housing Department (HD) for installing air-conditioners to ensure adequate electricity loading to meet the demand. When granting the approval, the HD will issue detailed guidelines to the tenants, reminding them to install flexible lead hoses to re-direct condensate to their flats or use condensate-free air-conditioners to prevent dripping.

To address the problem of dripping caused by improper installation and maintenance of air-conditioners, the HD will first issue warning letters asking the tenants to make necessary improvements. If the

problem persists, the HD will refer the cases to the Food and Environmental Hygiene Department for follow-up actions under the Public Health and Municipal Services Ordinance.

- (c) In the past three years, the HD received 14 375 complaints about dripping from air-conditioners in public housing estates. Water dripping from air-conditioners causes nuisance to tenants on the floors below and passers-by. Therefore, through education and publicity efforts such as distributing leaflets and putting up posters, the HD from time to time reminds tenants of the importance of proper installation and maintenance of their air-conditioners to prevent dripping.

Annex

Public Housing Estates Without Condensate Drain Pipes

<i>Region</i>	<i>Name of Public Housing Estate*</i>	<i>No. of blocks</i>	<i>No. of units</i>
Kowloon East	Choi Fai Estate	2	1 351
	Choi Hung Estate	11	7 448
	Choi Wan (I) Estate	16	5 923
	Choi Wan (II) Estate	5	2 696
	Chuk Yuen (S) Estate	8	6 570
	Fu Shan Estate	3	1 585
	Kai Yip Estate	6	4 300
	Kwong Tin Estate	4	2 453
	Lok Fu Estate	11	3 690
	Lok Wah (N) Estate	8	2 972
	Lok Wah (S) Estate	6	7 001
	Lower Ngau Tau Kok (II) Estate	7	5 406
	Lower Wong Tai Sin (II) Estate	15	6 779
	Mei Tung Estate	2	665
	Ping Shek Estate	7	4 575
	Sau Mau Ping Estate	1	133
	Sau Mau Ping (I) Estate	3	1 554
	Shun Lee Estate	7	4 461
	Shun On Estate	3	3 002
	Shun Tin Estate	7	7 063

<i>Region</i>	<i>Name of Public Housing Estate*</i>	<i>No. of blocks</i>	<i>No. of units</i>
	Tsui Ping (N) Estate	12	4 005
	Tsui Ping (S) Estate	4	2 630
	Tsz Lok Estate	3	1 500
	Tsz Man Estate	3	2 043
	Tung Tau (I) Estate	1	906
	Wang Tau Hom Estate	18	5 900
	Wo Lok Estate	11	1 941
Kowloon West and Hong Kong Island	Ap Lei Chau Estate	6	4 453
	Chak On Estate	4	1 906
	Fu Cheong Estate	1	131
	Hing Man Estate	3	1 998
	Hing Tung Estate	3	2 043
	Hing Wah (II) Estate	7	3 592
	Homantin Estate	3	555
	Lai Kok Estate	8	3 066
	Lai On Estate	5	1 438
	Lee On Estate	8	7 523
	Ma Hang Estate	5	916
	Ma Tau Wai Estate	5	2 075
	Model Housing Estate	6	667
	Nam Cheong Estate	7	1 898
	Nam Shan Estate	8	2 850
	Oi Man Estate	12	6 289
	Pak Tin Estate	12	4 696
	Sai Wan Estate	5	638
	Shek Kip Mei Estate	28	5 824
	Sheung Lok Estate	1	358
	Siu Sai Wan Estate	12	6 162
	So Uk Estate	16	5 314
	Tai Hang Tung Estate	1	624
	Wah Fu (I) Estate	12	4 805
	Wah Fu (II) Estate	6	4 345
	Wan Tsui Estate	10	3 200
	Wong Chuk Hang Estate	9	5 180
	Yiu Tung Estate	11	5 302
	Yue Wan Estate	4	2 180

<i>Region</i>	<i>Name of Public Housing Estate*</i>	<i>No. of blocks</i>	<i>No. of units</i>
Kwai Tsing, Tsuen Wan and Islands	Cheung Ching Estate	8	4 907
	Cheung Fat Estate	4	2 623
	Cheung Hang Estate	6	4 799
	Cheung Hong Estate	13	8 539
	Cheung Shan Estate	3	1 621
	Fuk Loi Estate	9	3 129
	Kwai Fong Estate	6	2 790
	Kwai Shing East Estate	8	4 818
	Kwai Shing West Estate	10	5 262
	Lai King Estate	7	4 215
	Lai Yiu Estate	4	2 402
	Lei Muk Shue (II) Estate	9	3 416
	Lung Tin Estate	9	550
	Ngan Wan Estate	4	459
	On Yam Estate	8	5 492
	Shek Lei (I) Estate	6	4 156
	Shek Lei (II) Estate	4	3 249
	Shek Wai Kok Estate	8	6 592
	Tai Wo Hau Estate	17	7 860
Tai Po, North, Sha Tin and Sai Kung	Chun Shek Estate	4	2 177
	Cheung Wah Estate	10	5 120
	Choi Yuen Estate	10	5 076
	Fu Shin Estate	6	5 518
	Hau Tak (I) Estate	6	4 271
	Ka Fuk Estate	3	2 045
	Lee On Estate	5	3 632
	Lek Yuen Estate	7	3 212
	Lung Hang Estate	6	4 381
	Mei Lam Estate	4	4 161
	Po Lam Estate	6	5 037
	Sha Kok Estate	7	6 424
	Sun Chui Estate	8	6 692
	Sun Tin Wai Estate	8	3 432
	Tai Yuen Estate	7	4 878
	Tsui Lam Estate	8	4 932
	Wah Sum Estate	2	1 481
	Wo Che Estate	12	6 297

<i>Region</i>	<i>Name of Public Housing Estate*</i>	<i>No. of blocks</i>	<i>No. of units</i>
Tuen Mun and Yuen Long	Butterfly Estate	6	5 405
	Long Ping Estate	15	8 483
	On Ting Estate	6	5 049
	Sam Shing Estate	3	1 834
	Shan King Estate	9	8 643
	Shui Pin Wai Estate	7	2 394
	Tai Hing Estate	7	8 915
	Tin Shui (I) Estate	7	4 615
	Tin Shui (II) Estate	5	3 170
	Tin Yiu (I) Estate	6	4 655
	Tin Yiu (II) Estate	6	3 823
	Wu King Estate	6	4 386
	Yau Oi Estate	11	9 153
Total		758	414 750

* Not including estates of Tenants Purchase Scheme/Buy-or-Rent Option Scheme.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

SUPPLEMENTARY APPROPRIATION (2003-2004) BILL

CLERK (in Cantonese): Supplementary Appropriation (2003-2004) Bill.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

SUPPLEMENTARY APPROPRIATION (2003-2004) BILL

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move the Second Reading of the Supplementary Appropriation (2003-2004) Bill.

Section 9 of the Public Finance Ordinance provides that: "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates."

The expenditure accounts for the financial year 2003-04 have been finalized. The overall government expenditure is within the amount originally appropriated for the year 2003-04. The total expenditure from the General Revenue Account for the year 2003-04 was \$239 billion, or reduced by \$40.5 billion compared with the amount originally appropriated under the Appropriation Ordinance 2003, that is, \$279.5 billion. This fully reflects the continued commitment of government departments to cutting expenditure.

Despite savings in the overall government expenditure for the year 2003-04, the expenditure charged to seven heads, out of a total of 89 heads, is in excess of the sum originally appropriated for those heads in the Appropriation Ordinance 2003. The excess expenditure reflects supplementary provision approved by the Finance Committee or under powers delegated by it. Since the expenditure accounts for the year 2003-04 have been finalized, formal verification of accounts at the close of the year is necessary. The Supplementary Appropriation (2003-2004) Bill seeks formal legislative authority for the amount of supplementary provision approved during the financial year 2003-04.

The total supplementary appropriation required in respect of the seven heads of expenditure is \$2.6 billion.

I hope Members will support the Supplementary Appropriation (2003-2004) Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (2003-2004) Bill be read the Second time.

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

Resumption of Second Reading Debate on Bills

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

INLAND REVENUE (AMENDMENT) BILL 2000

Resumption of debate on Second Reading which was moved on 18 October 2000

PRESIDENT (in Cantonese): Dr Eric LI, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

DR ERIC LI: Madam President, as Chairman of the Bills Committee on Inland Revenue (Amendment) Bill 2000 (the Bills Committee), I wish to report on the work of the Committee.

The Inland Revenue (Amendment) Bill 2000 (the Bill) proposes amendments to the Inland Revenue Ordinance (IRO) to revise or strengthen provisions for revenue protection and anti-tax avoidance purposes. The amendments cover the deeming provisions in respect of royalty income and the anti-avoidance provisions on deduction of interest expenses from chargeable profits. There are other amendments in the Bill, the main purpose of which is to make remedies to a number of provisions to reflect more clearly the legislative intent.

The Bills Committee started the scrutiny of the Bill in November 2000, but in view of the grave concerns expressed on the proposals in the Bill, suspended its work from December 2000 to October 2003 to allow the Administration to further consult the industry, professional bodies and the parties likely to be

affected by the Bill. The Bills Committee received submissions from 13 organizations, some of which have also made oral representation to the Bills Committee.

On royalty income, we note that the proposed amendments aim to remedy the current deeming provision in respect of sums received for the use of or right to use intellectual property in Hong Kong to be trading receipts, in the light of a recent ruling of the Court of Final Appeal.

In 1999, the Court ruled that under the terms of the existing provision, only the royalty income attributable to the sale of goods manufactured in Hong Kong could be deemed to be profits arising from the use of the trademark concerned in Hong Kong. The royalty payments attributable to goods manufactured elsewhere should not be taxable in Hong Kong. According to the Administration, the implication of the court ruling is that even if the goods are manufactured in Hong Kong, the royalty payments will not be subject to tax in Hong Kong so long as the process of applying the trademark to the goods or the packaging is done outside Hong Kong. Tax avoidance can be easily achieved by changing the manufacturing process. This was not the original intention in enacting the existing deeming provision. In order to clearly reflect the policy intent in the legislation and to avoid substantial loss of revenue from profits tax, the Bill proposes to add a new section to deem receipts for the use of or right to use intellectual property outside Hong Kong to be trading receipts, so long as these trading receipts are deductible from the chargeable profits of a Hong Kong taxpayer.

In this respect, some deputations have drawn our attention to the issue that the proposed new deeming provision would violate the territorial source principle of Hong Kong's tax system. They have pointed out that the place where an intellectual property is used is a matter of fact which cannot be changed just because it has been used for producing profits chargeable to Hong Kong tax. The principle of "symmetry" between taxability and deductibility, which is introduced explicitly by the Bill, does not currently constitute part of Hong Kong's framework of taxation. The proposed amendment therefore represents a policy change and would create uncertainty among Hong Kong and overseas companies.

In response to these concerns, the Administration has affirmed its position that it is necessary to keep the "symmetry" between the deductibility of royalty

expenses and the taxability of the royalty receipts in order to avoid revenue leakage through tax planning. The Administration stresses that the current proposed amendments merely serve to bring the legislation in line with the policy intent, and that similar approaches are widely used in other jurisdictions. The Administration's response has failed to convince some deputations, in particular the Association of Chartered Certified Accountants Hong Kong and the Hong Kong Society of Accountants (HKSA), which do not subscribe to the argument that the proposed amendments merely serve to reinstate the position which had been widely accepted by taxpayers prior to the said court case. They also do not agree to the application of the "deductibility test", as the test hinges on the economic activities of other parties, instead of the taxpayers themselves or the location of use (in the conventional sense) of the taxpayers' assets. Taking note of the strong views of these associations, the Bills Committee has requested the Administration to review the proposed amendments. Nevertheless, the Administration remains of the view that the proposed amendments are consistent with the original policy intent and are in line with international practice. It also stresses that the effective tax rate on royalty income, which is 5.25%, is highly competitive among other jurisdictions. Hence, the proposed amendments would not have significant effect on Hong Kong's business environment.

The Bills Committee has not taken a position on the proposed amendments, that is, clause 5 of the Bill. It will be for individual Members to decide whether the proposal should be supported.

Turning to the anti-avoidance provisions on deduction of interest expenses from chargeable profits, the Bills Committee has had substantial discussions on the proposed amendments. We have taken note of the very divergent views on the proposed amendments between the Administration and the Real Estate Developers Association of Hong Kong (REDA). Towards the later stage of our deliberation, we also received views from the Hong Kong General Chamber of Commerce (HKGCC) on this subject. Most of its views echo those of the REDA.

The Bill seeks to make specific amendments to the anti-avoidance provisions in section 16 of the Ordinance. The Administration holds the view that interest expense must either meet the "tax symmetry" rule or the "non-associate borrowing" rule before it may be deducted from profits tax liability. According to the Administration, aggressive tax avoidance schemes

began to emerge several years after the enactment of those provisions in section 16 on borrowings from external sources.

Tax-avoidance arrangements which cannot be caught by section 16 are currently tackled by a general anti-avoidance provision under section 61A on a case-by-case basis. According to the Administration, this general provision does not guarantee success in each individual case and is far from effective. This is mainly because under section 61A, only those transactions which are carried out with the sole or dominant purpose of obtaining a tax benefit may be caught.

At the early stage of the scrutiny of the Bill, we already received representations expressing grave concerns about the proposed anti-avoidance provisions. Among the views expressed, it was pointed out that the definition of "associate of the borrower" had too wide a scope. It covered the relatives, partners, associated companies, and so on, of the borrower, as well as the directors or principal officers of the borrowing company and its associated companies. It would be difficult and costly for the borrower to know whether any of his associates was entitled to the loan interest, or any of them was the holder of his debentures. It was also pointed out that the proposed anti-avoidance provisions did not cater for partial deduction of interest payments. Once the prescribed conditions were not complied with, no matter how trivial the failure might be, the whole amount of interest payment would be disallowed for tax deduction.

In response to the Bills Committee's request, the Administration has undertaken two rounds of consultations with the professional and business sectors. In the light of the views received, the Administration agrees to move Committee stage amendments to provide for, among others, a more restricted "connected person" test in place of the "associate" test and partial deduction of interest payment, where only part of the interest payment flows back to the borrower or to a connected person.

As the Administration has made substantial amendments to the original proposals in the Bill, the Bills Committee has further invited views from the public and interested parties. The views received mainly focus on those proposed amendments which have the effect of disallowing interest deduction in respect of marketable debt instruments held by a connected person of the borrower.

The Bills Committee shares the concern about the compliance problem arising from the proposed amendments. In the case of large groups, it is almost inevitable that affiliates will from time to time buy debt instruments issued by their group's companies in the course of their normal trading or market-making activities. It would be incredibly complicated for such groups to monitor the activities of all their worldwide affiliates, particularly where such debt instruments are bought and sold in the course of short-term trading activities. These company groups would therefore face a compliance problem when they are required to apportion their interest expenses so that those paid to their affiliates would be carved out from the deduction on chargeable profits.

According to the Administration, currently, all major debt securities in Hong Kong are issued through financial institutions or issued by corporations which would not engage in market-making activities. Financial institutions are excepted persons as defined in a proposed new section and are thus exempt from the application of the deduction disallowance provisions. Therefore, the compliance problem is not a concern insofar as current market operations are concerned. However, in the light of the future development of Hong Kong's bond market, the Administration agrees to move Committee stage amendments to exempt the market-making activities of registered securities dealers from the restriction on interest deduction.

On the amendments to disallow deduction of interest expenses on debt instruments held by a controlling shareholder of the issuing corporation, the REDA has raised strong reservation about the need and justifiability of the amendments. The HKGCC also shares the view that the amendments would unnecessarily restrict legitimate business practices. They point out that there are genuine commercial reasons for controlling shareholders to participate in their corporations' local debt issues. For example, a controlling shareholder may be required to underwrite the issue. In most instances of debt issues, the controlling shareholder's participation would show confidence to the market and increase the chance of a successful launch. Sometimes, the controlling shareholder may need to acquire convertible bonds issued by his corporation in order to avoid dilution of his percentage shareholding.

The two trade associations hold the view that the proposed amendments will have the effect of discriminating against the controlling shareholder of a Hong Kong company by treating them differently from normal investors. As such, controlling investors would be discouraged from reinvesting their funds in

Hong Kong. If the amendments are put through, Hong Kong corporation groups may be discouraged from issuing debentures. They also consider that the existing anti-avoidance provisions are adequate in dealing with isolated abuse cases, and the Inland Revenue Department (IRD) has been applying section 61A to counteract tax avoidance cases with notable success.

In response to these views, the Administration emphasizes that loans which are internal to a corporation or corporate group should be governed by the symmetry principle. As the existing section 61A only applies where the transaction in question is carried out with the sole or dominant purpose of obtaining a tax benefit, it is far from effective in combating those tax avoidance transactions which also involve some substantive commercial elements.

According to the Administration, tax avoidance cases in relation to interest expenses are far from isolated and the situation is worrying. For the period from 1997 to March 2004, the back tax which the Government has assessed on tax avoidance schemes involving interest expenses by invoking section 61A has exceeded \$6.7 billion. Out of this amount, more than \$1 billion involves debentures.

As to how the tax treatment of interest income and expenses in Hong Kong compares with other major tax jurisdictions, the Administration has provided information on Singapore, the United Kingdom, Australia and Japan as suggested by the Bills Committee. According to the Administration, all the four jurisdictions maintain a withholding tax system on interest payable to non-residents. In addition to the application of the withholding tax system, most of the places studied impose other specific conditions, such as the "thin capitalization rules". The Administration considers that the tax treatment of interest deduction in Hong Kong is generally much more favourable than the jurisdictions studied.

The REDA and the HKGCC however inform the Bills Committee that full tax symmetry in relation to interest is not prevalent in most overseas tax regimes. In all the four jurisdictions studied by the Administration, the interest withholding tax rate is significantly lower than the domestic income tax rate, and they are all in the taxpayers' favour. Moreover, none of the jurisdictions has sought to disallow an interest deduction simply on the basis that the recipient is an affiliate or controlling shareholder of the issuing corporation.

The Administration maintains that "tax symmetry" is the prevalent rule governing deduction of interest expense in other tax jurisdictions. Although the rates under the withholding system may be lower than the income tax rates in these jurisdictions, there is no doubt that an important purpose of the tax withholding system is to maintain "tax symmetry" in order to prevent abuse.

As to whether the proposed amendments will adversely affect the development of the Hong Kong debt market, the Administration's advice is in the negative. The Administration explains that the proposal will not change the tax treatment of debentures which are genuinely issued to the public, that is, the interest paid on those debentures will continue to be eligible for deduction from chargeable profits. The amendments will only disallow deduction of interest expenses on debentures held by controlling shareholders and remove the current unintended tax benefits for arranging overseas debenture issues.

In early May 2004, the REDA submitted a proposal after a meeting with the Administration. The REDA suggested that in line with the relevant arrangement in Singapore, tax deductions should be allowed if a controlling shareholder does not hold more than 50% of the debentures on issue. The Administration does not accept the proposal. It does not find any convincing arguments in the REDA's proposal which may justify an exemption from the "tax symmetry" rule or from the "non-associate borrowing" rule.

In its further submission, the REDA points out that in describing the purchase by a controlling shareholder of debt securities issued by a listed company as "internal borrowings", the Administration seems to have ignored the fact that transactions between a listed company and its controlling shareholder are subject to the most stringent regulatory supervision and public scrutiny. The Administration also seems to have ignored the fact that in the open market, the funds provided by the controlling shareholder are as genuine as the funds provided by the general public.

The REDA also criticizes that the Administration's assertion on the prevalence of tax symmetry for interest expense in most overseas jurisdictions is simply not correct. The REDA's understanding is that tax symmetry is not prevalent in other countries, nor has it been a standard feature of Hong Kong's tax legislation. On the other hand, many countries do recognize the commercial reality that a business could be funded by a mix of capital and debt, including debt from related parties. Accordingly, their tax legislation would allow a

commercially acceptable financial gearing to exist without resulting in a tax penalty, typically through the use of "thin capitalization rules" to regulate the debt to equity ratio.

Having examined the views of the Administration and those of the trade associations, the Bills Committee has not reached a consensus view on the issue of the deductibility of interest expenses on marketable debt instruments held by controlling shareholder of the issuing corporations.

Some members consider that the approach adopted by the Administration may be abrasive, focusing on the need to impose the "tax symmetry" rule to protect revenue but giving no regard to the genuine commercial elements in the holding of debentures by controlling shareholders. The proposed amendments if enacted may cause significant disincentives to local corporations in raising funds through public issue of debt instruments. As such, the development of the local debt market may be seriously affected. Such a possible scenario warrants particular concern when the local debt market is still at the budding stage of development.

Some members do find that the anti-avoidance provisions presently proposed involve a change of policy. Although the Administration has repeatedly stressed that the "tax symmetry" rule has all along been a fundamental principle of Hong Kong's taxation regime, this rule has in fact been applied to different extents at different times by the Government. In this connection, the Bills Committee notes that in the 1986 amendment exercise when the general anti-avoidance provisions under section 61A and B were introduced, the then Financial Secretary made it clear that the anti-avoidance provisions "would only be used to strike down blatant and contrived schemes where there is a clear and dominant tax avoidance purpose. It is not the intention to use the law to penalize genuine commercial transactions." Some members of the Bills Committee consider that the then Financial Secretary's reference to avoiding unnecessary inhibitions on genuine commercial transactions is relevant to the current amendments to section 16, which is also concerned with combating tax avoidance.

The Administration has responded that the then Financial Secretary's reference relates only to the general anti-avoidance provisions of section 61A and B, and is not relevant to the current amendment to plug the loopholes in

section 16, otherwise it would be an anomaly inequitable *vis-a-vis* other related taxation arrangements in the Ordinance.

In view of the controversies raised and the strong concerns from the business sector, a majority of the Bills Committee considers that instead of rushing through the proposed amendments, it would be advisable for the Administration to further study the issue with the business sector. This would be conducive to working out an alternative proposal which would safeguard government revenue from deliberate tax avoidance schemes, and would not cause unnecessary inhibition to genuine commercial transactions. Nevertheless, the Administration reaffirms the need to plug the existing loophole and decides not to pursue the proposal of the REDA or any modified version of the proposal because all such efforts would only enlarge existing loopholes.

The Bill also deals with a number of revisions to set out more clearly the legislative intent of certain provisions. One of them is the expansion of the scope of self-education expenses to include any examination fees, so long as the examination concerned is set by a provider of a prescribed course of education and undertaken by the taxpayer to gain or maintain qualifications for use in any employment. The policy intent is that all employment-related self-education expenses should be deductible from the assessable income of a taxpayer. We support this policy intent and the proposed amendment.

We also notice that under the existing provisions, the term "prescribed course of education" covers only education courses provided by an education provider or a trade, professional or business association. Since education courses nowadays are operated in many different modes, we consider that the existing scope of "prescribed course of education" is too narrow. The scope falls short of recognizing those education courses which are not directly provided by trade, professional and business associations but are subject to strict quality control and recognized or accredited by these associations.

The Administration concurs with the views of the Bills Committee. After reviewing 22 relevant ordinances, the Administration agrees to move Committee stage amendments to extend the scope of "prescribed course of education" to cover courses accredited or recognized by two types of institutions. The first type of institutions are those having a role in the registration and recognition of professional or occupational qualifications, or the granting of permits or licences for practising in the professions, trades or occupations under 22 ordinances.

The second type of institutions are statutory organizations endowed with the function of establishing standards of skill to be achieved and awarding certificates of competence in any particular trade or industry.

We welcome the proposed extension of the scope of education courses for deduction of self-education expenses from the assessable income for salaries tax.

There are also other amendments which are mainly technical in nature.

Firstly, the Bill proposes to revise the method of computation of annual allowances and the determination of balancing allowances and charges in respect of commercial and industrial buildings and structures. We support the amendment.

Secondly, the Bill proposes to allow deduction of the interest paid on the portion of a home loan in respect of a car parking space, if such portion of the loan has been applied for the acquisition of the car parking space. In this respect, we notice that the retrospective application of the proposed amendment alone may not be sufficient to cater for the revision of tax assessments for some eligible taxpayers. In response to our suggestion, the Administration agrees to move a Committee stage amendment to add a saving provision stating a specified period for eligible taxpayers to apply for the deduction.

Thirdly, the Bill seeks to empower the Board of Review to extend the time for lodging notice of appeal against the assessment to additional tax. And lastly, the Bill seeks to provide for certain costs and fees to be specified in a Schedule to the Ordinance and empower the Secretary for Financial Services and the Treasury to vary the amounts by order. We support these amendments.

Madam President, the Bill has taken almost one full term to reach the resumption of Second Reading. Despite our 11 meetings and my 22-minute speech, and the three years given to the Administration to consult the parties concerned, you will notice that consensus could not be reached on quite a number of issues. The Bills Committee has nevertheless completed its deliberation on the Bill. It will be for individual Members to decide which parts of the Bill should be supported.

Madam President, now that the Bills Committee's Report is out of the way, I can, at last, freely speak my mind. I shall try to keep it short. Although I

support the many principles of the Bill in general, I feel obliged, as a professional, to clearly point out a number of seriously flawed arguments which the Administration has deployed in its attempt to persuade the members to support the Bill. These flawed arguments, if stand uncorrected, will muddle the existing foundation of tax policies, and confuse serious investors both locally and overseas. It could also lead to wasteful litigations in future and mislead this Council now, and in future, when considering proper tax legislations.

I am particularly concerned with the fact that this Bill has breached the territorial source principle in defining our tax jurisdiction, resurrected the interest tax through the back door after its abolition in 1989, and inadvertently introduced a new tax policy of symmetry which is ill-conceived and clearly unworkable if applied universally and fairly to the entirety of the IRO.

I shall begin with the territorial source principle. As explained already in my Bills Committee's Report, the accounting profession strongly opposed clause 5 of the Bill on the deeming provision to treat royalty payments in respect of intellectual property used outside Hong Kong as taxable trading receipts. In their submission, they clearly pointed out that the so-called tax policy of symmetry does not currently constitute part of Hong Kong's framework of taxation. I fully agree with this view and consider that this fundamental change in policy should first be seriously debated in public, instead of being selectively applied in a hazardous fashion. The proposed amendment if passed would create damaging uncertainties to Hong Kong's tax policy, and is likely to be ineffective. There is ample judicial authority that laws can only be enacted by this Council which has sufficient nexus to the territory of Hong Kong. In consequence, the laws cannot deem income to arise in Hong Kong when, as a matter of fact, it arises outside Hong Kong. I personally doubt the wisdom of this amendment which would be open to challenges on constitutional grounds. I am therefore opposing this amendment and also urge Members to consider this ill-conceived proposal carefully before passing it into law.

On the even more controversial subject of interest deduction, I shall begin by clearly stating that no one is opposing the tax anti-avoidance efforts of the Administration. The issues at hand are where the legitimate parameters of taxation are and how we define that scope for taxation. To bring in new sources of taxation is not an anti-avoidance measure, and to label existing taxpayers who are legally exempt from taxation as tax avoiders is clearly unjustified, unhelpful and unfair.

In analysing this issue, some reflection on history is unfortunately necessary. In 1989, the Government of Hong Kong abolished interest tax for the express purpose of promoting Hong Kong as an international financial centre. It then clearly recognized the fact that Hong Kong must be more favourable, not just equal, or not just comparable, to the other jurisdictions to which the Administration has now only sought to draw a parallel. The Government then also clearly recognized the fact that it would involve not insignificant revenue loss, but it was a clear and good tax policy which has benefited Hong Kong's investment environment for over 15 years.

The problems of tax avoidance are historically tackled by a number of clear and specific anti-avoidance provisions, such as section 62C and D in 1984, and then even more conclusively by section 61A and B, the "general anti-avoidance provisions".

Madam President, you and I might recall that at that time, I was a representative of the HKSA. I made a submission to the then Bills Committee, and Madam President, you yourself were a concerned Member of the legislature. I hope that you would indulge me in quoting two short statements by the Financial Secretary which are instructive to the policy intent at the time and up to now. In his Budget speech in 1984-85, the Financial Secretary said, "I believe that the proposals are essential for the protection of revenue and should deter tax avoiders. At the same time, they are carefully designed to leave ample scope for genuine business borrowers to obtain full deductions for interest expenses incurred." He again replied to a question of this Council in 1986 which I have already quoted actually. He said, "I can also confirm for Mrs FAN's benefit that section 61A and B will only be used to strike down blatant and contrived schemes where there is a clear and dominant tax-avoidance purpose. It is not the intention to use the law to penalize genuine commercial transactions."

I note that throughout the deliberations of the Bills Committee, the Administration did not contest that the many transactions now caught by the new provision could be genuine commercial transactions. For the avoidance of doubt, they have even gone to propose transitional provisions to ensure that the Bill will not have retrospective effects. The proposed amendments are therefore clearly bringing in an element of new taxation, or, in effect, to partially resurrect the interest tax regime which it has abolished in 1989 through the back door.

The problem becomes more confusing when the Administration insists that there has been an implied policy of tax symmetry for some time, a fact which has already been refuted by tax professionals, and the so-called policy has never been expressed on any official government record before.

It is, I submit, a very conscious decision of the Administration for good reasons. It is because of the fact that the concept is so difficult to have it universally and fairly applied to the whole of the IRO that tax symmetry will hardly succeed. In particular, Hong Kong imposes tax only on a territorial basis, and it is not a worldwide tax. It also distinguishes trading income from capital gain, and under these circumstances, it is not uncommon for deduction to be tax allowable but the corresponding income to be exempt from taxation. To elevate the concept of tax symmetry to the level of a tax policy, and not simply a factor for consideration would create uncertainty and in the end be counter-productive. Unless otherwise expressed in the legislation, should tax professionals now treat all expenses deductions inadmissible, unless there is full tax symmetry on the income side? I wish the Administration can clarify its policy intent before real confusion sets in.

Another case in point is that even applied to this proposed legislation, the target is only the major shareholders of companies, and that others are still exempt from the symmetry rule. It shows how difficult, how unfair, and just how selective this policy can be in actual practice.

In conclusion, I understand the frustration which the IRD must have in its difficult task of combating tax-avoidance, and the pressure of the present budget deficit. However, despite the limitations of the present section 61A and B, they are still very powerful and much feared weapons of the IRD which has a track record of considerable successes. More importantly, it has struck the right balance between genuine business interests and the need to deter tax avoiders.

The Administration must come clean, I think, before this Council, before it legislates for specific provision and extends this general avoidance legislation to include new taxes. Where does the Government stand now on taxing interest income? Is it permissible for businesses to deduct interest expenses or not? Why should the deductibility of an expense depend upon the tax status of the recipient instead of the tax status of the person incurring the expense? Are we not resurrecting the interest tax through the back door, but disallowing interest deductions for selected major business groups? If so, why is that there is not

proper open debate on the matter, and how can the Government say that it does not affect the business environment by taking this backward step from 1989 when interest tax was abolished?

The present legislation clearly runs beyond the existing definition of anti-avoidance, and would have the effect of extending the scope of tax to bring in additional revenue by including those transactions with genuine commercial substance. It is also specifically targeted at a selected group of majority shareholders of large companies. Where is the equitable ground for this move? Why is it disguised as an anti-avoidance measure?

Madam President, unless there are still changes in the fundamental tax policy and thinkings are honestly and fairly debated, I agree with the business community of Hong Kong that the present proposals are ill-conceived, poorly explained and unsafe to support. I urge Members of the Council to consider these factors carefully and not to trade principles for expedience or possible additional revenue. With these remarks, I shall oppose clauses 5 and 6 of the Bill together with their consequential amendments. Thank you, Madam President.

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, it has indeed been a difficult task scrutinizing this Bill. I wish to thank Dr Eric LI, the Chairman of the Bills Committee, for giving me the opportunity to take part in the scrutiny of this Bill so that I can get a better understanding of taxation issues.

This Bill is called the Inland Revenue (Amendment) Bill 2000. In fact, it has been discussed for four years, during which there has not been much activity or discussions for two or three years, pending a study conducted by the Government and the trade. I believe the study carried out was sufficient, and with regard to striking a right balance between anti-avoidance and deduction of interest expenses, I believe the Government has made a tremendous effort.

The Democratic Party supports this Bill, and this support applies to the decision of the Government during the scrutiny period or the current stage. I just wish to state clearly that the Democratic Party will not oppose anything

simply for the sake of opposition, this Bill is a good example to illustrate this. Today, the roles have changed; Dr Eric LI represents the opposition while we support the Government's amendments. During the deliberation process, we have considered an issue seriously: Will this issue affect the development of the local debt market? We have asked officers of the Inland Revenue Department (IRD) to provide us with the detail information, in which we found some interesting things. That is, it will make the debt market boom, but the market benefited from this would be the one in Luxembourg, not the one in Hong Kong. In that case, will there be any material implications on Hong Kong? The problem that leads from this is the market is undoubtedly in Luxembourg, but the professionals are in Hong Kong, and the work would be done in Hong Kong.

Nevertheless, we still have to see how high the price is, and determine what price we have to pay based on realistic consideration. Definitely, I feel that there must be room for professionals in Hong Kong to carry out the tasks in this respect, and if that involves billions of dollars in transaction, then we should find out the problem and examine this issue seriously. During the period, some people from the trade, corporations and institutes who had been engaging in the issuance of debentures and trade organizations had expressly stated that they would not oppose this proposal. Moreover, the Secretary had also explained to us personally that he was very much concerned about the influence on the development of the local debt market. Frankly speaking, in the past two years, the Democratic Party has been proposing to the Government to take the initiative to issue bonds, for example, the Hong Kong Link and the issuance of \$20 billion worth of bonds are projects that we have supported all along. We even support the Airport Authority's proposal of surrendering \$6 billion to the Government for the purpose of issuing bonds. In this respect, are we concerned about the bond market? We are deeply concerned about that, besides, we will not support any proposal that will damage the bond market of Hong Kong.

However, from the information we have obtained from various sectors, we understand clearly that this exercise will not affect the local market. As to whether it will have impact on overseas markets, I consider that a question beyond our consideration. However, I consider that when we take this question into consideration, we should understand whether or not the Inland Revenue Ordinance will give local listed companies some leeway to issue bonds through normal channels, and in fact, the relevant ordinance has already provided the relevant channels. I believe I do not have to explain it as the Secretary will be

obliged to explain that to colleagues later on. Having listened to the Government's explanations, I consider the fact that our decision to support the Government today could strike a balance between the prevention of tax avoidance and the impact on debentures issuance in Hong Kong. As to this judgement, the Government has its own stance, and after listening to views from all parties, we consider that it is not a big problem.

With regard to other aspects of the Bill, I also wish to take this opportunity to commend colleagues of the IRD. This time around, the Bill has introduced the deduction for self-education expenses under salaries tax and adds the examination fees of a number of professional bodies to the Schedule. This is a commendable and practical approach. As to the fact that the authorities have accepted the suggestions of the Bills Committee, I consider that praiseworthy. On the whole, we support the Bill, but we think that the Government is obliged to explain clearly that it would not impact on the bond market of Hong Kong. I so submit.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Inland Revenue (Amendment) Bill 2000 comprises several major components, such as royalty income, anti-avoidance provisions on deduction of interest expenses, annual allowances relating to the depreciation of industrial and commercial buildings, and expenses of self-education. With regard to certain contents, the Government has, in response to advice of the Bills Committee, further consulted the industry, professional bodies and other relevant organizations and subsequently proposed the Committee stage amendments. The DAB supports the Government's approach, whilst the major content of the Bill of which the Second Reading debate is resumed today has been accepted by the industry and there is no controversy.

The Bills Committee has spent a longer time on the anti-avoidance provisions on deduction of interest expenses. The Bill has prescribed that the deduction of interest expense from chargeable profits has to satisfy the conditions for anti-avoidance purposes under the Ordinance, while the Bill seeks to tackle some existing tax avoidance arrangements, that is, the fabrication of false interest income and expenditure activities through the circulation of capitals within companies of the same group, in which no actual external borrowings which require interest payments are involved. The DAB supports the legislative

rationale in principle. As to suggestions we have recently heard in society, including the waiving of 50% to 70% of interest expenses on debt instruments held by a controlling shareholder in order to comply with the symmetry principle, the DAB could not agree to such. We agree that it is a common practice to maintain tax symmetry in the international community with regard to interest expenses, and after the Government's amendments are implemented, provisions relating to interest expense deduction will still be more relaxed than that of other jurisdictions. For that reason, the DAB supports the Bill submitted by the Government. Nevertheless, the DAB also notes that some people are concerned about the fact that the amended legislation will cause certain impact on the development of the bond market, and that move may not have fully catered for some genuine capital formation activities in the market. For that reason, the DAB urges the Government to keep an eye on the market and maintain communication between the Government and the trade after the passage of the new legislation from time to time, so as to ensure that the anti-avoidance provisions will not stifle the healthy development of the bond market.

With these remarks, Madam President, I support the resumption of the Second Reading of the Bill proposed by the Government. Thank you.

MS MIRIAM LAU (in Cantonese): Madam President, the purpose of the authorities in proposing the Inland Revenue (Amendment) Bill 2000 is to curb tax avoidance and protect the Government's revenue. The Liberal Party agrees to this general principle, and we believe nobody would have any objection. In particular, the Government is facing a huge fiscal deficit and trying to find ways to plug some tax loopholes, so one can easily understand the situation. Nevertheless, I have to state one thing clear, that is, although the Liberal Party supports the amendments in principle this time around, we are deeply concerned about certain details, especially certain amendments which would probably cause impact on the industrial and commercial sector.

I wish to talk about rules governing the deduction of interest expenses from chargeable profits mentioned by some Members just now. Specifically, clause 6 of the Bill proposes to amend section 16(2)(f) of the Inland Revenue Ordinance in relation to deduction of the interest expense on the subscription of debentures or commercial instruments. The Government explained that the purpose of the amendment was to make it consistent with the principle of

symmetry and to plug loopholes. We have reservations about the across-the-board approach of the Government for the Government's assumption that all controlling shareholders would invest in the debentures issued by their own listed companies, and all of that would be tax-avoidance arrangements, thus totally ruled out their genuine commercial reasons.

In fact, controlling shareholders may invest in the debentures issued by their own listed companies out of different reasons, and it is probably irrelevant to tax avoidance. For example, a bank may require the controlling shareholders to show the public their confidence in the bonds issued by their own companies and generally, it will require the controlling shareholders to purchase the relevant bonds. If we can limit the percentage of purchase by controlling shareholders at a certain low level, say below 25% or a specific percentage, then most of the bonds will be acquired by the public, and the possibility of tax avoidance is in fact very low. However, in case of any actual tax avoidance, of course such move will be governed by section 61A of the Inland Revenue Ordinance. Nevertheless, the Government has ignored all of these suggestions and also cold-shouldered warnings raised by the Real Estate Developers Association of Hong Kong (REDA) and the Hong Kong General Chamber of Commerce (HKGCC), that is, the amendment this time around would discourage the issuance of bonds and impact on the development of the local bond market.

However, we wish to point out that both the Chief Executive and the Financial Secretary have stated in the policy address and the Budget speech respectively that efforts would be redoubled to establish Hong Kong as a major bond centre in Asia and to develop the bond market in order to consolidate Hong Kong's position as an international financial centre. While these promises still ring in our ears, the Administration has introduced this legislative amendment the impact of which on the developing bond market is still largely unknown. I agree that the bond market in Hong Kong is relatively small, but if the legislation is passed, the market will become even smaller. If things turn out as unfortunate as the REDA and the HKGCC have predicted, investors issue less bonds locally due to the high-handed across-the-board approach of the Government, it is possible that Hong Kong will gain less than it loses. For that reason, the Liberal Party has reservations about the proposal of the Government.

However, the Liberal Party still welcomes some other parts of the Bill, such as the deduction of self-education expenses from the assessable income for

salaries tax, expanding the definition of expenses of self-education to include fees paid in respect of certain courses accredited or recognized by a trade, professional or business association but not provided by them in the scope of deduction to cover even fees in respect of a specified examination undertaken by any taxpayer. The Liberal Party supports all of the above proposals. We consider that it is a positive move to encourage employees to obtain professional qualifications as that will enhance the qualification of individuals and, in the long run, upgrade the overall competitiveness of Hong Kong.

Madam President, I so submit.

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

MR ABRAHAM SHEK: Madam President, I strongly oppose the Administration's Committee stage amendments on the proposed provision to eliminate the deduction from chargeable profits of interest payments on debt instruments held by controlling shareholders of an issuing corporation. In my view, the proposed provision is unacceptable because it unnecessarily restricts legitimate business practices. More importantly, it breaches the core values of Hong Kong business, incites antagonism among different sectors of society and will weaken investors' confidence. Although the Government has emphasized that passage of the Amendment Bill may bring billions of revenue to the Government, the fact is that they just cannot find new means to eliminate the fiscal deficit. Specifically, they have not been able to explore any new sources of income or introduce a new tax. The Administration figures that it can just squeeze more funds from the rich, and that is the easiest way to do. Banks have a lot of money, why do you not rob them? However, such a measure goes against Hong Kong's fundamental right of equality and fairness for all.

The proposed amendments if enacted may deal a serious blow to the international business image of Hong Kong and to overseas investors' confidence. I would like to remind Members of this Council that it is not worth ruining Hong Kong's economic foundations just for a trivial amount of revenue. It is like saving a tree and losing a forest.

Madam President, the Administration's proposed section 16(2C) on the deduction of interest incurred on debt securities is discriminating because it treats

investors who are controlling shareholders different from the normal investors. If it has the guts, then it should treat all investors the same. The proposed amendments are designed to penalize the rich in society. The amendments infringe on the rule of law and go against the spirit of a fair and just society. In my view, all Hong Kong citizens should be equal before the law. Legislation should not be created just to penalize a certain class of citizens who have done no wrong under the existing law. If such is the case, then it must be a bad law.

I do realize that we are presently facing a difficult time and we are having a lot of political problems, but introducing the Bill at this time actually adds fuel to fire. It actually divides society more. I really hope that the Government could think twice before it does this.

Hong Kong is a society which respects the rule of law. The guiding principle of law is based on fairness and equality and that all men are equal before the law. These are the core values of our society. As a major financial centre, members of the business sector are also law-abiding and understand and appreciate the importance of good laws. That is why they make Hong Kong the favoured city for their investment. They also believe that any shareholder, including the controlling shareholders, should be entitled to all privileges and should not be discriminated. Yet, the Government is introducing this Amendment Bill to penalize the affluent, the major shareholders, during this time of fiscal deficit. Although I am sure this will generate some short-term windfall, in the long run, the Government will lose more if the Amendment Bill is passed. It would damage the very foundation of our commercial success and ruin our reputation as a world financial centre.

Before joining the Government, our Financial Secretary, Mr Henry TANG, and the Secretary for Financial Services and the Treasury, Mr Frederick MA, were both senior members of the business community. They therefore have a profound understanding of how companies operate in Hong Kong. If they just listen to their underlings and think that they can find a solution to this by passing this amendment, I am sure they know what I know. During the pre-1997 era, even in the colonial administration, such laws would never come near to this building, but sadly so, after seven years of Hong Kong people ruling Hong Kong, such discriminating laws start to emerge. This is a sad day for Hong Kong's businesses. The Hong Kong Government has repeatedly stressed the need to improve the business environment and remove constraints to economic development. If the Amendment Bill is passed, it will bring serious impact to

Hong Kong's business sector. The business environment will deteriorate severely and investors will somehow be scared away. I wonder if Mr TANG and Mr MA have considered these potentially disastrous consequences?

In addition to chastising the Government, I would like to say that I am totally disappointed with you, the Honourable SIN. You have strayed away from the Democratic Party's declared ideals of a fair and just society. The democrats have always positioned themselves as the guardians and custodians of the rule of law and a society of fairness and justice. But, at a critical moment like this one which requires you to take a position, possibly, you might, however, think that such a position might not be in the interest of your constituents, you forget your high principles and ideals. Why should one sector of society be punished? For what reason? Since the amendments are unlikely to affect the working class, you form an alliance with the Government and support an autocratic administration in steam-rolling this Bill. A bill built on a principle of discrimination is not a good bill. This just shows how the Government is making use of you, as a party, to achieve its means. I urge you, when you still have time, to rethink your position and withdraw your support for the Government. This time, it is wrong and you would be wrong.

As for the Democratic Alliance for Betterment of Hong Kong (DAB), I am not surprised that you support the Government on this issue. But, Mr CHAN Kam-lam has said in many of the meetings that the Government should consider a different position. Anyway, the DAB still supports the Government, and likely so, it has always done so on every issue. But I want to remind them that it is incumbent on them to give equal priority to Hong Kong's core values too, and consider the territory's future economic prosperity. I truly think that their obligation should be to vote in the negative, against the Government on this provision, if they too feel this proposal will not be beneficial to the long-term interests of Hong Kong. Mr CHAN Kam-lam and your members, what you had done in the past was right, but this time, again, you would be judged and weighed by the wrong hand which you raise. So, I urge you to vote "No".

The Breakfast Group will oppose this part of the Amendment Bill because we understand that the issue is not simply about taxation. The more important issue for us to consider is Hong Kong's core values, preserving Hong Kong's prosperity and our sense of equality and fairness. We would vote "No". I sincerely hope that members of the Liberal Party and the Hong Kong Progressive

Alliance would vote together with the Breakfast Group. Hopefully, this will mean opposing this proposed provision so we can safeguard the genuine interests of Hong Kong. Even if we are to lose the game, we would stand tall among the Ayes.

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 Financial Services and the Treasury to reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Inland Revenue (Amendment) Bill 2000 (the Bill) is a Bill incorporating a number of amendments to the Inland Revenue Ordinance (the Ordinance) and the principal intent is to reflect more clearly the legislative intent and to plug the tax avoidance loopholes to protect tax revenue.

The Bill was introduced in 2000 and after several rounds of consultation with the industry, two meetings with the Bills Committee and many rounds of deliberation, the Government agreed to introduce amendments to some of the provisions. The Chairman of the Bills Committee, Dr Eric LI, and its members have spent a lot of time scrutinizing the Bill. I wish to express my thanks here.

One important aspect of the Bill is to enhance anti-avoidance provisions relating to the deduction of interest expenses to clamp down effectively on increasingly aggressive tax avoidance activities. For the interest payable upon any money borrowed to qualify for deductions of profits tax liability, the interest payment has to satisfy the conditions prescribed for anti-avoidance purposes under the Ordinance. In essence, they aim at combating tax avoidance schemes which seek to create allowable interest deduction where the corresponding interest income is not taxable or the recipient of the interest income is in fact an associate of the borrower.

As it stands now, we have been relying on general anti-avoidance provisions in dealing with tax avoidance schemes on a case-by-case basis. However, between 1997 and 2004, tax of over \$6.7 billion has been assessed through disallowing interest expense deduction claims related to tax avoidance by the Inland Revenue Department (IRD) according to general anti-avoidance provisions, of which over \$1 billion is attributable to schemes on debenture in seven cases. The tax avoidance cases involving debentures all relate to one particular commercial sector.

The relevant provisions must be strengthened. We propose to add technical provisions to sections 16(2)(d) and 16(2)(e) to explicitly disallow interest deduction involving more indirect interest flow back such as through setting up trust or alienation of interest. The purpose is to prevent the abuse of interest expense deduction in respect of borrowings from financial institutions and borrowings raised for specified commercial purposes. The Bill also seeks to amend section 16(2)(f) to reflect the policy intent more clearly, such that either the "tax symmetry" rule or the "non-associate borrowing" rule shall apply to debenture and financial instrument interest expenses, so as to ensure that companies can no longer gain interest deduction benefits by creating artificial interest expense streams through issuing debentures or commercial instruments and then subscribing them back through their associates.

The restriction that only interest payable to non-associates can be exempted from the requirement of tax symmetry and is therefore tax deductible is aimed at, apart from preventing tax avoidance, fulfilling an important taxation principle and arrangement, that is, dividend payments to shareholders which are pay-offs for equity injection should not be deducted from profits tax liability. From the viewpoint of taxation policy, the controlling shareholders of a company is in fact the shareholders of the business and are different from people unrelated to the business or the company or shareholders who have no control over the business or company. In fact, the stipulation that interest paid to shareholders of a sole proprietorship or partners in a partnership is not tax deductible was prescribed at an early stage and an established principle in our taxation system. Our principle is that if the interest on loans advanced by shareholders to their company is not taxed, then it is not tax deductible. This is also a principle that is widely adopted in other places. To secure loans through the sale of debentures to controlling shareholders or other associates is essentially the same as an injection of capital by the shareholders of a business in the form of equity

or loans, therefore, the interest should not be exempted from the principle of tax symmetry or deductible from profits tax liability.

We have introduced a number of concessions in the light of the views expressed by the trades and the Bills Committee. I will present in detail the details and justifications of the amendments proposed by us at the Committee stage later.

Most of the organizations consulted found the amended provisions acceptable, however, the Real Estate Developers Association of Hong Kong (REDA) expressed opposing views. The REDA submitted a representation on the 5th of last month, requesting the Government to exempt companies whose interest expenses on debentures subscribed to by controlling shareholders account for not more than 50% or 75% of the debentures on issue from compliance with the tax symmetry principle.

Some members also suggested that the Government should adopt the proposal of the REDA to lower the threshold, for example, to 20% or 30% rather than the 50% or 75% put forward by the REDA as a reconciled solution.

We believe the REDA's view is not backed by any convincing arguments and the Government cannot accept the proposal for the following reasons:

- (1) the existing amendment to section 16(2)(f) proposed by the Government is only intended to reflect more clearly the policy intent of the amendment made in 1986 and does not involve any policy change.
- (2) The prevailing international practice is to maintain tax symmetry on interest payments. After the Government has implemented the proposed amendments, the requirements of tax deduction from interest in Hong Kong is still far more lenient than those in other tax jurisdictions.
- (3) The existing provisions cannot deal with abuses of interest expense deduction effectively.

- (4) The REDA's proposals will render the tax treatment given to the issue of debentures or debt instruments by a very small number of large corporations far more favourable than other companies (Mr SHEK is not present now). This also runs counter to the policy and legislative intent of section 16(2)(f) concerning tax symmetry.
- (5) The REDA's proposal will legalize tax avoidance through debenture interest and the proposal will seriously compromise the work of the IRD against tax avoidance relating to debenture interest. This will lead to a worse-off situation in the loss of tax revenue compared with that under existing legislation and drastically reduce the tax revenue receivable by the Government, estimated to be in the order of tens of billions of dollars.

After the Government has made a number of concessions on interest deductions, the present proposal has struck a balance between consistency and fairness of the taxation policy, considerations of market operation, international practice and the need to protect tax revenue. The Government's present proposals will not alter the taxation arrangements for genuine public issues of debentures. These debentures will continue to enjoy interest deductions without having to comply with the condition of tax symmetry. We believe the Bill will not have any impact on the local bond market.

The Financial Services Branch and the Hong Kong Monetary Authority have sent representatives to explain to the Bills Committee that the Bill will not cause any adverse impact on the bond market in Hong Kong. The Government's present proposal will not alter the taxation arrangements for genuine public issues of debentures. These debentures will continue to enjoy interest deduction without having to comply with the principle of tax symmetry. This amendment will only affect interest expenses on debentures subscribed to by controlling shareholders and remove the tax advantages obtained by issuing debentures overseas rather than locally. I am wearing two hats for while I am responsible for public finance, I am also responsible for consolidating Hong Kong's position as a financial centre. As we all know, I have been doing my utmost to promote the bond market in Hong Kong, therefore, if this proposal will impact badly on the bond market in Hong Kong, as a Member has said, I will definitely not have proposed it.

Among the organizations consulted by the Government, some even suggested that the request of the REDA should not be accepted, since the request will make it difficult for the Government to combat tax avoidance activities.

The second part of the amendments in the Bill relates to the royalty income received by overseas business entities for the use of its trademark in Hong Kong.

The proposed amendment is made in the light of a Court of Final Appeal (CFA) decision in a case in 1999. The CFA ruled in that case that only the royalty income attributable to the sale of goods manufactured in Hong Kong could be deemed to be profits for the purpose of levying profits tax. Given that most of Hong Kong's manufacturing base has been relocated out of Hong Kong, the relevant persons can avoid paying profits tax in Hong Kong by changing the manufacturing process. This is not in line with the original policy intent and has also deviated from the IRD's long-standing assessment practice. Ever since the existing provisions relating to royalty income came into effect in 1971, the IRD has adopted the following principle: where a Hong Kong business entity could be said to have generated taxable profits from the use of trademarks, the royalty income should be taxable in Hong Kong, regardless of where the products are manufactured or sold. Similar approaches are widely adopted in other taxation jurisdictions such as Singapore, Malaysia, Australia and New Zealand.

The amendment proposed by the Government seeks to bring the provision in line with the policy intent and plug the loophole in the original provision. This amendment will enable the IRD to continue to adopt its long-standing approach which is widely accepted by taxpayers, who can arrange their business operations accordingly. We estimate that this amendment can protect about \$200 million of tax revenue each year.

Some people consider that the amendment violates the territorial principle of Hong Kong's tax system. We do not subscribe to this view. No ruling was made on the source of royalty income or profit in the case concerned. It only gave an interpretation to the meaning of the term "the use of trademark in Hong Kong" in the relevant provision according to the law. This means the provision cannot reflect the original policy intent and an amendment is in order. We believe that if royalty payments are tax deductible expenses arising from the

business activities of the payer in Hong Kong, this means such expenses are relevant to business activities in Hong Kong and should be regarded as income originating from Hong Kong.

The third part of the proposed amendment to the Ordinance relates to the depreciation allowances for capital expenditure on industrial and commercial buildings. As it is now quite common for industrial buildings to be converted into commercial buildings and the arrangement in which the allowances granted and calculated in respect of the building's previous use are disregarded is vulnerable to abuse in tax planning. We propose to amend the Ordinance to the effect that any initial, annual and balancing allowances granted, and balancing charges made will be aggregated with the allowances under its current use to derive the net overall position and the balancing allowance or balancing charge when a building asset is disposed of.

The fourth part of the proposed amendments to the Ordinance relates to the deduction of self-education expenses from salaries tax. We propose to expand the definition of "expenses of self-education" in section 12(6) to cover examination fees paid for any examination to obtain qualifications for use in any employment. The existing definition of "expenses of self-education" does not include the examination fee paid by a taxpayer who merely sits an examination without paying any course fee. This is not entirely in line with the original policy intent of the Government. The original policy intent is that all expenses of self-education on prescribed courses of education relevant to employment and within the maximum deduction limit will qualify for deduction from a taxpayer's assessable income. Therefore, it is necessary for us to make the amendment.

In the course of scrutinizing the Bill, many members suggested further extending the scope of deductible self-education expenses. I will present our amendments in detail at the Committee stage that will take place later.

The gist of the fifth part of the amendments has to do with the arrangements for the Board of Review. We propose that the Board of Review be empowered to extend under specified circumstances the time for lodging notice of appeal against the assessment to additional tax. At present, even if the Board of Review believes that the appellant has failed to give notice of appeal due to illness, absence from Hong Kong or other reasons, it has no power to

extend the existing one-month period. Therefore, we propose that an amendment be made. We also propose to move the provisions in the principal Ordinance concerning the amount of costs that may be imposed by the Board on frivolous appeals and the application fee for requesting the Board of Review to state a case on a question of law to the Schedule. The amendment also seeks to empower the Secretary for Financial Services and the Treasury to vary the actual amount by an order, but any amendment will be subject to negative vetting by the Legislative Council. The aim is to streamline the legislative process.

The other amendments not falling under the five areas mentioned above are mainly technical.

Honourable Members, the Bill will serve to plug the loopholes in the existing Ordinance effectively and protect tax revenue, to clarify existing provisions inconsistent with the original legislative intent, and to remedy irregularities and inflexibilities. Among the amendments, those concerning deductions of interest expenses and royalty can serve to effectively stem the exploitation of existing loopholes for tax avoidance and recoup or prevent loss of billions of dollars in tax revenue.

The Bills Committee has expressed support for the resumption of Second Reading of the Bill. I urge Members to support the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Inland Revenue (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(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): Inland Revenue (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

INLAND REVENUE (AMENDMENT) BILL 2000

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

CLERK (in Cantonese): Clauses 1, 3, 8, 10, 11, 12, 16, 18 to 22 and 24 to 27.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 9, 13, 14, 15 and 17.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

Since a period of time has elapsed after the Bill was introduced into the Legislative Council and a number of new provisions have been added in the course of scrutiny by the Bills Committee, we propose amending clause 2, which is an application provision. After amendment, the amendments to the provisions on allowances for industrial and commercial buildings and new provisions on extending the deduction for expenses of self-education expenses to include recognized courses provided by trade or professional associations will come into effect in the year of assessment 2004-05. We also propose to add section 82B(1A) to the principal Ordinance to specify the date on which the Bill will come into effect as the date of application of the provision.

In addition, we propose to replace the title of "Secretary for the Treasury" with "Secretary for Financial Services and the Treasury".

On the amendments concerning allowances for industrial and commercial buildings, we propose to make a technical amendment to the definition of "residue of expenditure" and to set out more clearly the date on which the provisions amended by the Inland Revenue (Amendment) (No. 2) Bill 1998 will come into effect, so as to avoid confusion with the amendments to the Bill.

I hope Members will support the amendments proposed by the Government.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex)

Clause 9 (see Annex)

Clause 13 (see Annex)

Clause 14 (see Annex)

Clause 15 (see Annex)

Clause 17 (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 Financial Services and the Treasury be passed.

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 amendments passed.

CLERK (in Cantonese): Clauses 2, 9, 13, 14, 15 and 17 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) thereof be suspended in order that this Committee may consider new clause 20A ahead of the remaining clauses as it is related to clause 4.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, you have my consent.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 20A ahead of the remaining clauses as it is related to clause 4.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 20A ahead of the remaining clauses as it is related to clause 4.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 20A Schedule 13 added.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 20A, as set out in the paper circularized to Members, be read the Second time.

In the course of scrutiny, some members suggested that the tax deduction on self-education expenses be extended to cover fees paid in respect of courses recognized by but not offered by major trade associations, so that more taxpayers could benefit from the deduction on self-education expenses. We agree with this suggestion and will move an amendment to clause 4 of the Bill later to implement the relevant proposal.

The purpose of clause 20A of the Bill is to add Schedule 13 to the principal Ordinance to list the names of institutions that may give accreditation or

recognition to courses. After reviewing 22 pieces of relevant legislation and consulting the relevant Policy Bureaux and departments, we propose extending the scope of self-education expenses to cover the fees paid for courses accredited or recognized by 35 institutions and two statutory training bodies. These 35 institutions have a role in the granting of permits or licences for practice in the professions or trades regulated by existing legislation and the two training bodies referred to are the Vocational Training Council and the Construction Industry Training Authority. Since these 37 associations or statutory training bodies enjoy some degree of credibility, it is expected that allowing tax deduction on the courses accredited or recognized by them will not lead to any abuse.

I hope Members will support this amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 20A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 20A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the addition of new clause 20A to the Bill and the amendments to clause 4, as set out in the paper circularized to Members.

As I pointed out earlier in moving the Second Reading of new clause 20A, the Government agreed, in response to the suggestion of the Bills Committee, to extend the scope of deductible self-education expenses to courses recognized by trade or professional associations regulated by legislation.

In order to implement this suggestion, I move that clause 4 of the Bill be amended to allow expenses for training or development courses accredited or recognized by institutions set out in the new Schedule 13 in the principal Ordinance to be tax deductible, and empower the Secretary for Financial Services and the Treasury to amend Schedule 13 when he deems it necessary.

In addition, in response to the suggestions of the Bills Committee, I also propose to extend tax deduction on fees in respect of courses offered or examinations set by trade or professional associations to cover people who have not yet become members of these associations.

I hope Members can support the amendments proposed by the Government.

Thank you, Madam Chairman.

Proposed addition and amendment

New clause 20A (see Annex)

Clause 4 (see Annex)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 20A be added to the Bill and the amendments moved to clause 4 be passed.

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 amendments passed.

CLERK (in Cantonese): Clause 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5 and 7.

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

DR ERIC LI (in Cantonese): Madam Chairman, I already raised a number of points in this aspect in the Second Reading debate because the accounting profession strongly opposes this part of the Bill. First of all, we are of the view that even if the Bill is passed, should this so-called income actually not exist in Hong Kong but is deemed to exist by the Government, it could lead to challenges on constitutional grounds. In my opinion, it is definitely not safe to enact a piece of legislation which will stand such a good chance of being challenged on constitutional grounds.

Besides, I also consider it inappropriate of the Government to apply the tax symmetry rule to this provision. Firstly, this policy has never been expressed in any official government record before. Now the Government applies this policy with undue emphasis that it is a government policy for certain parts of the Ordinance. Such an approach will definitely lead to uncertainty in the tax regime and even tax professionals will be rendered at a loss to deal with similar bills in the future. Under such circumstances, I really cannot support the amendment. I also hope that colleagues will consider my points and oppose it in the end.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, as I mentioned earlier, clause 5 of the Bill proposes to amend section 15(1) of the existing Ordinance in order to bring the provision in line with the policy intent and plug the loophole due to uncertainty in the provision. After the amendment, the handling of royalty payments will be restored to the well-established tax assessment principle since 1971 until the ruling by the Court of Final Appeal (CFA) in the end of 1999.

If the Ordinance is not amended, the estimated revenue loss from profits tax is in the order of \$200 million a year. As I said earlier, given that most of

Hong Kong's manufacturing base has been relocated outside of Hong Kong, when more enterprises become aware of this ruling and take advantage of it to reduce their tax liability, the amount of revenue loss may increase in multiples. That is why we have to amend this Ordinance and we hope Dr LI will understand our situation.

Furthermore, it is clear that the original intent of enacting section 15(1)(b) in 1971 should cover the royalty payment made by a Hong Kong business and is used by that business for the purpose of producing its profits chargeable to Hong Kong profits tax. The Inland Revenue Department (IRD) had adopted such an approach in enforcing the Ordinance until the ruling of CFA on the relevant provision gave a different interpretation. Therefore, in our opinion, there is no question of deviating from the territorial source principle of taxation, as mentioned by Members and professional bodies. Approaches similar to the proposed section 15(1)(ba) are widely used in other jurisdictions.

Regarding the concern that proposed section 15(1)(ba) may affect investment in Hong Kong, we consider that since the proposed amendment is consistent with the long-standing enforcement principle of the IRD until the end of 1999, the relevant amendment should not bring any adverse impact on our economy.

I therefore hope that Members will support the amendment proposed by the Government.

Thank you, Madam Chairman.

Proposed amendments

Clause 5 (see Annex)

Clause 7 (see Annex)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 5 and 7 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Eric LI rose to claim a division.

CHAIRMAN (in Cantonese): Dr Eric LI has claimed a division. The division bell will ring for three minutes.

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

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

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Michael MAK, Mr Albert CHAN, Mr LEUNG Fu-wah, Mr WONG Sing-chi, Mr IP Kwok-him and Ms Audrey EU voted for the motion.

Dr Eric LI, Dr LUI Ming-wah, Mr Bernard CHAN, Dr Philip WONG, Mr Abraham SHEK, Mr Henry WU, Dr LO Wing-lok and Mr LAU Ping-cheung voted against the motion.

Mr Timothy FOK abstained.

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

THE CHAIRMAN announced that there were 51 Members present, 41 were in favour of the motion, eight against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MS MIRIAM LAU (in Cantonese): Madam Chairman, I move that in the event of further divisions being claimed in respect of each of the other clauses or amendments to the Inland Revenue (Amendment) Bill 2000, the Council do proceed to such divisions immediately after the division bell has been rung for one minute.

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

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 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.

I order that in the event of further divisions being claimed in respect of each of the other clauses or amendments to the Inland Revenue (Amendment)

Bill 2000, the Council do proceed to such divisions immediately after the division bell has been rung for one minute.

CLERK (in Cantonese): Clauses 6 and 23.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to clauses 6 and 23 as printed on the paper circularized to Members.

Clause 6 proposes to amend section 16(2) of the Inland Revenue Ordinance by laying down conditions on deduction of interest expenses payable on any money for the purpose of producing taxable profits. This is to plug the loophole, prevent tax avoidance and protect revenue.

When introducing the Bill, I elaborated the needs and justifications of the relevant amendments. To put it simply, in order to effectively prevent tax avoidance, clause 6 proposes to add technical provisions to section 16(2)(d) and (e) explicitly disallowing interest deduction involving indirect interest flow back through setting up of trust and alienation of interest. In order to reflect more clearly the policy intent, it is also proposed to amend section 16(2)(f) such that the "tax symmetry" rule or the "non-associate borrowing" rule, which apply to other interest deduction allowance provisions, shall apply to debentures and financial instrument interest expenses, so as to prevent abuse.

The Government has consulted the trade several times on the Bill in the past few years. In response to the recommendations of the trade and the professional bodies and in view of the anti-avoidance effect of the Bill, I have proposed substantial amendments to clause 6 on the major principles as follows:

- First, deduction of interest on loans borrowed from non-financial institutions (section 16(2)(c)), borrowed from financial institutions (section 16(2)(d)) or borrowed for specified purposes (section 16(2)(e)) will all be subject to two additional tests: (1) the loan is not secured by a deposit or loan, where the interest generated by such deposit or loan is not taxable; (2) the interest payment is not

ultimately paid back to the borrower or to a person connected with the borrower;

- Second, partial deduction of interest payment is permissible to avoid that the whole amount of interest payment is disallowed just because part of the loan fails to comply with the requirements;
- Third, when determining whether interest flows back to a person related to the borrower, a more restricted "connected person" test is used in place of the "associate" test originally proposed in the Bill;
- Fourth, the interest flow-back test will not apply if the interest is ultimately paid to an "excepted person", such as the Government or financial institutions;
- Fifth, exemption is granted to interest generated from debentures issued by associated companies which are held due to market making activities; and
- Sixth, a grand fathering provision is added to exempt from the application of the new law the interest on a loan that is covered by a favourable advance ruling or advance clearance given by the Commissioner of the Inland Revenue before the enactment of the Bill.

Members of the Bills Committee and most of the bodies consulted on the Bill expressed satisfaction with the amendments proposed by the Government.

After a number of concessions made to clause 6 by the Government, the present proposal has struck a balance among various factors, including the consistency and equity of taxation policy, the consideration of market operation, the international practice and the need to protect revenue. As I explained earlier, the proposed amendments to the Ordinance by the Government do not involve any policy change. But they are necessary for counteracting tax avoidance activities in an effective manner so as to prevent loss of tens of billions in revenue.

After implementation of the Government's proposed amendments, the stipulations in respect of interest deduction in Hong Kong are still more lenient

compared with other tax jurisdictions. So, it will not have any adverse impact on the local bond market.

I hope Members will support the amendments proposed by the Government.

Thank you, Madam Chairman.

Proposed amendments

Clause 6 (see Annex)

Clause 23 (see Annex)

DR ERIC LI (in Cantonese): Madam Chairman, I already spoke at length during the resumed Second Reading debate. So, I am not going to speak in detail. I only wish to add a couple of points.

First, I would like to take this opportunity to commend the hard work of the Government and the Inland Revenue Department in combating the so-called tax-avoidance activities. I think some of these tax-avoidance activities have probably been curtailed, and the Government has also been applying section 61A to check such activities. But speaking of the numbers game, the Government cited a lot of numbers earlier and I wish to seek some clarification. It is because from the information provided to us by the Government, the points that we are arguing with the Government include the so-called "back duty" for the last five to six years totalling about \$6 billion, with \$1 billion of which involving debentures. The Secretary said earlier that this amount was in excess of \$10 billion, which is a bit surprising to me. Although he said that it "may" exceed this amount, I wonder how calculation was made to conclude that there is this possibility. I hope colleagues of this Council will not be scared by this estimate.

However, be it \$1 billion, \$6 billion or \$10 billion, the amount can be worked out very easily. The abolition of the interest tax in 1989 was an obvious attempt of the Government to encourage the (development of the) bond market by reducing the burden of cost. But now, it is suddenly said that a tax revenue

of \$10 billion will have to be recovered and yet, the Government is saying that this is not going to affect the market. Where does the money come from? Who is to bear this burden? A huge sum of money is in question here. How possibly can the market not be affected? The Government told us that some of the money would not be recovered through arrangements in the bond market of Hong Kong and so, they are not to be listed in Hong Kong and the effect is hence minimal. But in spite of this, who will be working on it? The accountants in Hong Kong will be working on it, lawyers in Hong Kong will be working on it and companies in Hong Kong will be working on it. The money is borrowed for use in Hong Kong.

So, whether or not it involves the bond market here in Hong Kong is basically not the thrust of the question. For example, regarding the so-called venture capital fund in Hong Kong, and as we have discussed in the tax committee, tens of billions of dollars of the investment are Hong Kong-oriented, which are intended to make Hong Kong a financial centre. But only less than one tenth of the capital is used in Hong Kong. The fact is that even if the money is not used in Hong Kong, it does not mean that the money cannot be Hong Kong-oriented. So, sometimes, the arguments of the Government are, in my view, far from plausible.

Now that the contentions have persisted for such a long time. Madam Chairman, I do not wish to be entangled in this issue any longer. I only wish to briefly respond to Mr SIN Chung-kai. Earlier on a number of Members mentioned "royalists", "non-royalists", and so on. I am not good at taking advantage of these identities. I only wish to argue on reasons. I do not know when I am a royalist, or when I am not. But I think if the Government does not give all matters careful consideration (I am not suspicious of its motive, just that I am worried that it does not exercise sufficient care in its consideration), I, being a professional, have the responsibility to clearly put on record that the Government will surely run into troubles in this endeavour in future. When the Government reviews today's record in future, it should realize that it is not given no advice today, because advice has indeed been tendered to it. In enacting this piece of legislation, the Legislative Council should keep its eyes peeled for its implementation. We should be held responsible for anything that goes wrong.

I oppose this motion. Thank you, Madam Chairman.

MR JAMES TIEN: Madam Chairman, the Hong Kong General Chamber of Commerce and the Real Estate Developers Association of Hong Kong (REDA) have raised strong concerns about the proposed amendment to clause 6, in particular about the fact that the proposed amendment would cast unnecessary inhibitions on genuine commercial transactions. The Liberal Party believes that these concerns are valid.

We note that the Administration had originally indicated that they were prepared to consider amending the Bill in certain circumstances where majority shareholders are involved in debts issued by their listed companies. We believe such further consideration is appropriate and necessary as the funds provided by the majority shareholders are external to their listed groups, and are as genuine as the funds provided by the general public. Accordingly, any proposed amendment should not discriminate against the majority shareholders by imposing an undue taxation burden.

We also note that the REDA had responded to the Administration with suggestions which appear to be largely within the ambit set by the Administration.

Based on the response from the REDA, I understand that the majority of the members of the Bills Committee considered that it would be advisable for the Administration to further discuss the matter with the business sector and work out a solution. To my disappointment though, the Administration has failed to do so. It has simply reaffirmed its original position without addressing the valid concerns raised by the business sector.

The Administration tried to explain its rigidity by the tax symmetry principle. However, the Administration seems to have lost sight of the overall importance of having a legal framework which is conducive to the growth of the economy, and would not cast unnecessary inhibitions on genuine business transactions. We do not want to have tax symmetry just for the sake of it, not to mention that as the business sector has submitted, tax symmetry is not prevalent in Hong Kong or other jurisdictions.

The Administration also attempted to justify its rigidity by alluding to the potential loss of revenue due to the perceived avoidance arrangements. However, the Administration cannot explain why the proposal of the business sector would have failed to differentiate the majority of these perceived avoidance arrangements.

Madam Chairman, in the last two to three weeks, the Honourable Abraham SHEK had tried to offer further compromise on behalf of the REDA. The REDA's original 50% threshold for majority shareholders to hold the debts issued by their own listed company was reduced to 15% to 20%. Still, the Administration refused to consider this new proposal.

With these remarks, Madam Chairman, the Liberal Party will oppose this amendment, that is, clause 6. Thank you.

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

MR SIN CHUNG-KAI (in Cantonese): Madam Chairman, the Democratic Party supports this clause. Not that we intend to assist the evildoer. Nor is it because large companies are involved that we therefore seek to nail them. We absolutely have no such intention. Mr Abraham SHEK asked earlier whether we intend to punish the rich. That is absolutely not the case. In fact, we should look at it from another angle. To borrow a saying of the Communist Party, "Labour is the greatest honour." In Hong Kong, paying tax is the greatest honour. This has always been a feature of Hong Kong's capitalism.

However, I am commenting on this based on the so-called principle of fairness. Earlier on, the Democratic Party was challenged for not incorporating the principle of fairness. Companies of sole proprietorship or partnership are not listed in Hong Kong and so, they do not enjoy this benefit. So, it transpires that fairness seems to have different interpretations. For instance, insofar as large companies are concerned, why can their controlling shareholders enjoy this benefit or tax concession, whereas companies of sole proprietorship or partnership cannot? From this angle, it is also necessary to consider this point when we talk about fairness.

Madam Chairman, I think we are looking at it on the principle of fairness and we absolutely do not mean to punish the rich. When it comes to tax payment, I think it must be fair. Whether it be wealthy people, taxpayers or small shareholders, the same set of criteria should apply.

I so submit.

DR ERIC LI (in Cantonese): Actually, I do not wish to go into the details. But regarding the principle of fairness mentioned by Mr SIN Chung-kai, I think I should give a brief response to it.

I think for any law or taxation legislation, as long as the same group of people are given the same treatment under the same stipulations, it should then be considered fair. The scale of the company, big or small, shall make no difference in the way it is treated in law. Only that when certain arrangements are necessary and as their costs are basically higher, small companies may not be able to make such arrangements and so, it may seem to be unfair in the treatment given to them. But in Hong Kong, insofar as the operation of a company is concerned, a small company may develop into a medium company, and a medium-scale company may turn into a large company. All these companies may therefore be subject to the same taxation legislation and be given the same treatment. From this perspective, the principle of fairness is not violated. That said, I do share the view of Mr SIN Chung-kai that there are different angles and different viewpoints. Even in the same company, the big shareholders are affected in terms of their taxation burden while the small shareholders remain unaffected under this Ordinance, and this is also unfair. So, why should we relate this to fairness? This Ordinance, even if amended, still may not be any fairer than its provisions before amendment. Such being the case, this is not a reason for opposition.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to speak again.

Secretary for Financial Services and the Treasury, do you wish to speak again?

(The Secretary for Financial Services and the Treasury indicated that he did not wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Dr Eric LI rose to claim a division.

CHAIRMAN (in Cantonese): Dr Eric LI has claimed a division. The division bell will ring for one minute.

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

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

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr LEUNG Fu-wah, Mr WONG Sing-chi, Mr Frederick FUNG, Mr IP Kwok-him and Ms Audrey EU voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr

Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok and Mr LAU Ping-cheung voted against the amendment.

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

THE CHAIRMAN announced that there were 51 Members present, 32 were in favour of the amendment and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CLERK (in Cantonese): Clauses 6 and 23 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 16A Section added.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 16A be read the Second time as set out in the paper circularized to Members.

In response to the proposal of the Legal Adviser of the Legislative Council, I move that clause 16A be added to introduce savings provisions clearly

stipulating that taxpayers can, in pursuance of clauses 4 and 8 of the Bill, apply for revision of assessment before the specified period in respect of deduction of home loan interest in relation to the year of assessment 1998-99 and subsequent years and deduction of self-education expenses in relation to the year of assessment 2000-01 and subsequent years to ensure the retrospective application of the relevant provisions.

I hope Members will support the amendments.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 16A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 16A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 16A be added to the Bill.

Proposed addition

New clause 16A (see Annex)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 16A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

INLAND REVENUE (AMENDMENT) BILL 2000

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the

Inland Revenue (Amendment) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Inland Revenue (Amendment) Bill 2000 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Eric LI rose to claim a division.

PRESIDENT (in Cantonese): Dr LI has claimed a division. The division bell will ring for three minutes.

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

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

Dr David CHU, Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Dr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Michael MAK, Mr Albert CHAN, Mr LEUNG Fu-wah, Mr WONG Sing-chi, Mr Frederick FUNG, Mr IP Kwok-him and Ms Audrey EU voted for the motion.

Dr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mr Bernard CHAN, Mr Abraham SHEK, Mr Henry WU, Dr LO Wing-lok and Mr LAU Ping-cheung voted against the motion.

Mr Kenneth TING, Mr James TIEN, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK and Mr Tommy CHEUNG abstained.

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

THE PRESIDENT announced that there were 49 Members present, 31 were in favour of the motion, eight against it and nine abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Inland Revenue (Amendment) Bill 2000.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I move that the resolution proposed under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), as set out on the Agenda, be passed. The objective of the resolution is to amend the respective provisions of the ordinances set out in the resolution to transfer the statutory powers and functions of the Chief Secretary for Administration and the Financial Secretary under these provisions to the Secretary for Economic Development and Labour.

All of the powers and functions proposed to be transferred fall within the Secretary for Economic Development and Labour's policy portfolio, and most of them relate to procedural or administrative matters involving the statutory organizations under the Secretary for Economic Development and Labour's purview, such as:

- (a) fixing or extending the deadline for submission of annual estimates, programme of activities, statement of accounts, the auditor's reports and annual reports by these organizations;
- (b) approving the annual estimates and programme of activities of these organizations;
- (c) tabling in the Legislative Council the statement of accounts, the auditor's reports and annual reports of these organizations; and
- (d) approving the appointment of auditors by these organizations.

Others relate to:

- (a) the determination of remuneration rates for members of various appeal boards established under the Consumer Goods Safety Ordinance, the Toys and Children's Products Safety Ordinance, and the Electricity Ordinance;
- (b) the determination of expenses allowed for witnesses under the Hong Kong Civil Aviation (Investigation of Accidents) Regulations;

- (c) powers in the Travel Agents Ordinance to ensure proper operation of the Travel Industry Compensation Fund and the Travel Industry Council; and
- (d) powers provided in three marine-related ordinances, namely, the powers to:
 - (i) appoint members of the Seafarers' Appeals Board under the Merchant Shipping (Seafarers) Ordinance;
 - (ii) lay before the Legislative Council in January each year a special report stating the cases in which the Chief Executive has exempted any vessel during the preceding year under the Merchant Shipping Ordinance; and
 - (iii) certify membership of the committee of the Sailors Home and Missions to Seamen under the Sailors Home and Missions to Seamen Incorporation Ordinance.

Subject to the approval of the motion by the Legislative Council, the amended provisions will come into force on the date of their publication in the Gazette.

Madam President, I hereby move the motion.

The Secretary for Economic Development and Labour moved the following motion:

"RESOLVED that –

- (1) the functions exercisable by the Chief Secretary for Administration by virtue of any of the following provisions be transferred to the Secretary for Economic Development and Labour —
 - (a) section 118(1) of the Merchant Shipping Ordinance (Cap. 281);

- (b) section 19(2) of the Hong Kong Tourism Board Ordinance (Cap. 302);
 - (c) sections 18(3) and 19(1)(c) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478); and
 - (d) section 3(2) of the Sailors Home and Missions to Seamen Incorporation Ordinance (Cap. 1042);
- (2) the functions exercisable by the Financial Secretary by virtue of any of the following provisions be transferred to the Secretary for Economic Development and Labour —
- (a) sections 15 and 16(1), (3) and (5) of the Consumer Council Ordinance (Cap. 216);
 - (b) sections 32G(2), 32H(2)(c)(ii), 32I(1)(b), 32K(1) and (2)(b), 32L(5), 32M(1), (3) and (5), 32N(2) and (4)(the definition of "specified"), 32O(1), 32P(1) and (2), 32Q and 53 of the Travel Agents Ordinance (Cap. 218);
 - (c) section 17B(1), (2)(b) and (8) of the Hong Kong Tourism Board Ordinance (Cap. 302);
 - (d) sections 39(3) and 45(5) of the Electricity Ordinance (Cap. 406);
 - (e) section 16(3) of the Toys and Children's Products Safety Ordinance (Cap. 424);
 - (f) regulations 10(4) and 14(6) of the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448 sub. leg. B); and
 - (g) section 15(3) of the Consumer Goods Safety Ordinance (Cap. 456);
- (3) for the purpose of giving full effect to paragraph (1) —

- (a) the provisions specified in paragraph (1)(a) to (d) be amended by repealing "Chief Secretary for Administration" wherever it appears and substituting "Secretary for Economic Development and Labour"; and
 - (b) the Specification of Public Office (L.N. 324 of 1999) be repealed; and
- (4) for the purpose of giving full effect to paragraph (2) —
- (a) the provisions specified in paragraph (2)(a) to (g) be amended by repealing "Financial Secretary" wherever it appears and substituting "Secretary for Economic Development and Labour";
 - (b) the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) be amended by repealing —

"Financial Secretary	Consumer Council ordinance (Chapter 216), section 16(1) and (5)."; and
-------------------------	--
 - (c) the Specification of Public Office (L.N. 350 of 1994) be repealed."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Public Finance Ordinance.

PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move that the first motion under my name, as printed on the Agenda, be passed.

This motion seeks to authorize the transfer of \$40 billion from the Land Fund to the General Revenue Account under section 29 of the Public Finance Ordinance in order to meet the cashflow requirements of the General Revenue Account during the course of 2004-05.

The Land Fund was established on 1 July 1997 by resolution of the Provisional Legislative Council to receive and hold all of the assets, net of expenses, transferred from the Hong Kong Special Administrative Region (SAR) Government Land Fund. With the establishment of the Government, the assets of the SAR Government Land Fund with a net value of \$197 billion were handed over from the Trustees to the SAR Government, and the Deed of Declaration of Trust ceased to have effect. It was thereafter for the SAR Government to decide how the Fund should be expended. The Chief Executive appointed the

Financial Secretary as the public officer to receive these assets as part of the SAR Government's fiscal reserves. These assets became part of the general revenue in accordance with section 3 of the Public Finance Ordinance.

The arrangement to set up the Land Fund as a separate fund within the fiscal reserves was mainly to facilitate the management of the assets and to provide flexibility for the Administration to decide on the long-term use of the assets. From the tenor of the resolution, the Land Fund can be used only for investment and not for the provision of any government services. The resolution also had no provision to allow the Government to transfer money from the Land Fund to the General Revenue Account or other government funds.

To cope with the continued budget deficits, we sought the authorization of the Legislative Council on 7 May 2003 to enable the Government to transfer \$120 billion from the Land Fund to the General Revenue Account in order to meet the fiscal deficits formerly envisaged for 2003-04 to 2005-06. The fund transfer was effected in May 2003.

According to the updated asset sale/securitization programme published in this year's Budget, total proceeds from the sale/securitization of assets in 2004-05 will be \$13 billion less than the forecast in last year's Budget. There may also be slippage in the cashflow of the land revenue forecast of \$12 billion in the year. These will necessitate the transfer of funds from the General Revenue Account to the Capital Works Reserve Fund to ensure that there is a sufficient cash balance in the latter to meet capital expenditure requirements prior to the completion of the planned asset sale/securitization as well as the budgeted issuance of \$20 billion government bonds during 2004-05. The 2003-04 year-end balance of the General Revenue Account would only be about \$76 billion, approximately equivalent to four months' recurrent expenditure. As a result, the General Revenue Account will likely have a shortfall of about \$28 billion in the third quarter of 2004-05 if there is no topping up by transfer of funds within the fiscal reserves.

I wish to emphasize that our proposal is to help solve the cashflow requirements and is not meant to provide additional funds to finance government spending, which will be subject to the approval of the Legislative Council via the Appropriation Bill at the beginning of the financial year or the Finance Committee during the year. The Government will remain committed to enforcing strict financial discipline in controlling its expenditure. In view of the

prevailing fiscal condition, our proposal is a measure necessary to provide funds from one part of the fiscal reserves to meet the expected cashflow shortfalls in other parts.

The estimated balance of the Land Fund is \$158 billion by the end of March 2004, representing about 57% of the Government's fiscal reserves. In 2003, we undertook to examine and consult the Financial Affairs Panel of the Legislative Council in future on the review of the long-term use of the Land Fund, including whether or not the Land Fund should be abolished and the fund balance be transferred to the general revenue. We consulted the Financial Affairs Panel on our preliminary proposal on the way forward for the Land Fund on 3 May 2004. While some Panel members supported the dissolution of the Land Fund, others opined that the entire balance of the Fund should not be transferred to the General Revenue Account in one go and that each fund transfer be subject to the approval of the Legislative Council on a need basis. As a consensus view has not been reached, we will review the issue in the light of further consultation with Panel members.

Madam President, I wish to conclude by reiterating that the proposed resolution would enable us to utilize part of the Land Fund to meet the cashflow requirements of the General Revenue Account during the course of 2004-05. I hope that Members will support the resolution.

Madam President, I beg to move.

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

"RESOLVED, with respect to the Land Fund established by resolution made and passed by the Provisional Legislative Council on 23 July 1997 and published in the Gazette as Legal Notice No. 398 of 1997, that a sum of \$40,000,000,000 be transferred from the Land Fund to the general revenue."

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?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Airport Authority Ordinance.

PROPOSED RESOLUTION UNDER THE AIRPORT AUTHORITY ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move that the second motion under my name, as printed on the Agenda, be passed.

The purpose of the resolution is to reduce the authorized share capital of Airport Authority (AA) by an amount of \$6 billion, which would then be returned to the Government in exchange for the cancellation of the AA's shares of an equivalent value held by the Government. Payment received by the Government would be credited to the Capital Investment Fund.

The draft resolution has been considered in parallel by the Bills Committee when scrutinizing the Airport Authority (Amendment) Bill 2004.

As I have pointed out in my speech at the previous Legislative Council meeting, in comparison with public utilities in Hong Kong and many airports in the world, the AA has a low debt to equity ratio. The restructuring of the capital base to an optimal level would reduce the cost of capital of the AA, improve its return on equity in the longer term and make it more attractive to potential investors.

The Administration is confident that the financial position of the AA would not be undermined because of the capital reduction and that its current credit rating could be maintained. The proposed capital restructuring would not affect the ownership, corporate structure or operations of the AA.

Madam President, I earnestly hope that Members would support the resolution. I beg to move. Thank you.

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

"RESOLVED that –

- (a) the authorized share capital of the Airport Authority referred to in section 23(1) of the Airport Authority Ordinance (Cap. 483) be reduced by an amount of \$6,000 million to \$30,648 million;
- (b) the Airport Authority shall distribute to the Government in cash an amount of \$6,000 million, such amount in the hands of the Government to be credited to the Capital Investment Fund established by resolution made and passed by the Legislative Council on 14 March 1990 under section 29 of the Public Finance Ordinance (Cap. 2); and
- (c) with effect from the date of receipt by the Government of the distribution referred to in paragraph (b), shares previously issued at par by the Airport Authority in accordance with section 23(3)(a) of the Airport Authority Ordinance (Cap. 483) and representing at the time of such issue a value of \$6,000 million in total be cancelled."

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?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee on the time limits of Members' speeches. As the recommendations are completely the same as those in the past, I will not explain them in detail. I only wish to point out that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Review of land policy.

REVIEW OF LAND POLICY

MR ABRAHAM SHEK: Madam President, I move that the motion, as printed on the Agenda, be passed.

Today's motion debate is based on my belief that the present land policy has strong inadequacies in servicing the needs of our present society due to inappropriate allocation and management of our valued land resources. I strongly believe that there is an immediate need to review the policies of land supply, utilization and allocation in relation to infrastructural development, particularly the commercially operated ones, and also in particular, the West Kowloon Cultural Development project, the two railway corporations and the Airport Authority(AA), to name a few. As the existing land policy is a remnant of the colonial era, it should be revised so that our limited land supply which belongs to the people of Hong Kong could only be allocated through a market-driven mechanism, apart from the non-commercial infrastructural developments for public purpose.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

Land and revenue generated from its sale has traditionally been one of the most important sources of income for the Government. Everybody in Hong Kong knows that land is valuable. Not only valuable; Hong Kong is a densely populated metropolis and land is therefore a very precious asset, to individuals as well as to the public.

Last month, the Government held its first land auction since the moratorium was lifted. The three residential sites fetched prices far higher than expected, and generated more than a billion dollars to the government coffers. With the Administration still struggling to make ends meet, land sale revenue provided some relief for our fiscal deficit.

Let us look at the land subsidy in the pre-handover days. Apart from land auctions, the Government also utilized land as indirect subsidies for the construction of many schools, hospitals, social service centres and railways. These were non-governmental organizations and statutory bodies and

corporations which may or may not be listed on the stock market. Done this way, the use of land for an organization's own vested interest did not occur.

I support the use of land provision as an indirect subsidy to these organizations like schools, hospitals and railway corporations and others for a specific purpose and not for property development. Without land subsidy, these organizations would have had difficulties in sustaining themselves, resulting in inadequate provision of public facilities all round. However, such land subsidy in the pre-handover days had a systemic problem — the process lacked transparency to the extent that public interests could be easily subverted for the interests of some organizations which converted their land into property development, away from their core businesses. In turn, normal market operations were disrupted.

In the post-handover days, after the reunification with China with Hong Kong people governing Hong Kong, we have all the reasons for land and public funds derived from it to be regarded as assets which are owned by everyone in Hong Kong, and not just by a few.

I believe there is a need to review the existing policy of using land to subsidize infrastructural projects which may have a significant commercial component and are managed by autonomous entities active in the competitive land-developing market, such as the Mass Transit Railway Corporation (MTRC), the Kowloon-Canton Railway Corporation (KCRC) and the AA.

In the past decades, it has been established that the most efficient, the most open, and the fairest means of disposing public land for private use was through open, competitive bidding.

Selling land through open, competitive bidding ensured that the market forces of supply and demand determined the price of land. It ensured that the Government could gain maximum financial benefits. More importantly, it eliminated the possibility of corruption or under-the-table deals. Justice was not only done, it was seen to be done.

Madam Deputy, I believe the above principle is not controversial and should be agreed by all people in Hong Kong. However, in reality, the picture is far more complicated. A lot of land has been transferred into private hands

through means other than open, competitive bidding. This is what we call backdoor land utilization.

First, the Housing Authority (HA).

Initially, land was needed for building public rental housing for those who could not afford it in the private market. This is fair enough. Then, the Government started providing the HA with land for home ownership, and later on, the Housing Society with land for sandwich class housing, and still later on, selling public rental units to sitting tenants. These are back doors for releasing land into the market without going through open, competitive bidding. Even so, we can accept this because the Government is doing a service to the community and has done a good job.

The back doors were not limited to residential use however. Office space and shopping areas were also provided for premises developed by the HA, the Housing Society, the Urban Renewal Authority, the MTRC, the KCRC, the AA, the Cyberport and the Science Park. These are something which we must look into.

Every time land is transferred into private hands through means other than open, competitive bidding, the Government must have a good reason. It is understandable that land is provided as welfare to the people who cannot afford to look after themselves in the private residential market. And in such cases, the land should be restricted to building public rental housing only so that there will not be any undue interference in the market. The Government has done this by doing away with the Home Ownership Scheme.

An important line was crossed when the Government started to use land as indirect subsidy for commercially operated projects. If these infrastructural projects were financially viable, no government subsidy should have been required. And if they were not financially viable and required government subsidy, that subsidy should have been provided in a transparent manner and not hidden in the form of private land grants. If these organizations need cash, give them cash. Let them go to the Government and give them the cash, and convince the Legislative Council to approve it — this is stipulated in the Basic Law.

Let me take you for a quick ride down the MTR/KCR trail. In recent years, revenue from property developments has been the biggest contributor to the MTRC's bottomline.

As reported, the MTRC plans to invest \$5 billion to \$6 billion to improve the underground railway network in Beijing — good luck to them. While I congratulate the MTRC in exploring business opportunities nearby, I wonder why then it has to ask for public funds for the proposed new Hong Kong Island line when the MTRC is able to absorb the financial cost of the Beijing project? Beijing authorities have already declared that co-operation with the MTRC would not involve property development. Then, why does the MTRC have to ask for cash or land for developing the Hong Kong Island line? Why is it then that the HKSAR Government finds it hard to realize the weakness of its land subsidizing policy? The Government must answer this.

To add insult to injury to the people of Hong Kong, the KCRC — I have to declare interest: I am a board member there — and the MTRC together will be producing some 70 000 new flats over the next five years. Such numbers are frightening as they would have serious impact on the property market in the next few years. In the light of these facts, there is ample reason for the Government to halt uncontrolled property development and critically review this policy of subsidizing commercial infrastructural projects. Madam Deputy, I believe the rail companies' reliance on receiving land subsidy is unhealthy and unsustainable, and ultimately soul destroying. After all, the MTRC is a listed company; why should it receive land subsidies which benefit its shareholders — be they big (like the Government) or small (like the 400 000 shareholders) — at the expense of Hong Kong people?

This policy of using land to subsidize commercially operated infrastructural projects may be simple for the Government, but it has serious undesirable side effects for us in Hong Kong.

In the first place, using land as indirect subsidy for commercially operated infrastructural projects does not mean that these projects incur no cost to the public. The cost lies in the lost revenue which could have been obtained from the public sale of land. While the Government may still attach a premium to the piece of land in question, which the Secretary would answer later, it is more likely that the premium is lower than the price fetched through open, competitive

bidding. Or else, why do people go into joint venture with the MTRC which they share 50% or more of the profit?

To the public, the cost is not just limited to dollars and cents, great as this might be. There is no effective public scrutiny of land subsidy for commercially operated infrastructural projects. In other words, the greatest fault lies in the public's loss in its right to know. And this is the duty of the Legislative Council.

To make matters worse, a well-intentioned policy could affect market dynamics in a way which was not even intended by the Government. In this case, when the supply and demand of land in the market is upset by the current "backdoor" policy, investors in property will find their investment plans derailed and the value of their capital destroyed.

Take the examples of the Cyberport and the Science Park. Phase 1 of the Science Park and the three phases of the Cyberport — which we call the Bel-Air now — supply approximate 2.5 million sq ft of office space on the market. In order to "encourage" utilization of those space and as a gesture to promote technological development, the Government may pitch the monthly rental at \$10 per sq ft below market rent. The face value of the subsidy is therefore \$300 million per annum. However, this apparently "minor" subsidy could trigger off a colossal loss to the property sector.

At the end of 2002, the total office space in Hong Kong was about 150 million sq ft. If the property investors who provide this space wish to compete against the government-subsidized premises and cut their rental levels by \$10 per sq ft as well, they will suffer a revenue loss of \$18 billion per year. For \$300 million, we have to suffer \$18 billion. This is very destructive.

The loss in revenue would bring about significant destruction of wealth for property investors. Assuming revenue loss of \$18 billion and using a P/E ratio of 20 for calculation, the property investors' capital would have diminished by \$360 billion! And when the rental market is depressed, these investors' businesses will suffer, and their capital will be destroyed. The chained effect will have serious impact on the community and the Government's revenue. The picture, ladies and gentlemen, is a very grim one indeed.

Exactly because of the problems discussed, in the long run, the policy of using land to subsidize commercially operated infrastructural projects is not sustainable. The policy is effective only when the land price is high. Nonetheless, a policy of high land price could not be sustained forever. The property bubble bursted in 1997-98, and we have all learnt our lesson the hard way.

Unfortunately, the West Kowloon Cultural District (WKCD) has thrown a spanner in the works. Undoubtedly, we all welcome the Government's initiative to realize cultural development in Hong Kong, and we believe that throughout the world, arts and culture require subsidy either from the Government or through private sector support. This subsidy should, nevertheless, be in form of cash, tax allowances or other incentives, but not through the use of land which disrupts the operation of a free market.

Even though the Government denies it, the WKCD is rightly perceived by property developers, cultural leaders and the public as a real estate development project exactly like the Cyberport. Numbers indeed speak for themselves: 8 million sq ft of the site will be devoted to commercial and residential use, and only 4 million sq ft will be allocated to cultural facilities.

As we can see, this project is highly commercial in nature. If so, why then should the people of Hong Kong subsidize a commercial, real estate development project? Have we not learnt our lessons in the past? The destruction of wealth caused by subsidizing the technology sector and railway companies is still being felt, and there is the very real and imminent danger of history repeating itself. The Administration may deny it, but it is clearly apparent that the WKCD is a real estate development.

The WKCD case shows that the Government's policy is unclear and unstable. This is not conducive to sustaining public confidence and market stability. The Government should restate its intention by completely disengaging itself from the property market and clearly announce its firm commitment to plug leakages in the system.

DEPUTY PRESIDENT (in Cantonese): Mr Abraham SHEK, your speaking time is up.

MR ABRAHAM SHEK: The Government should regain control over the supply of land. Thank you.

Mr Abraham SHEK moved the following motion:

"That, as land is a precious asset possessed by all people of Hong Kong and is also an important source of revenue for the Government, and given that the West Kowloon Cultural District development project involves substantial subsidy in the form of 40 hectares of land (as large as 50 standard soccer pitches), this Council urges the Administration to critically review its policy, which is a remnant of the colonial era, of subsidizing commercially operated infrastructural projects in the form of land, based on the principle that, apart from ensuring an adequate supply of land for public housing development, the supply of land should be determined by the market according to demands and prices, in order that the Government can, through fair market competition, gain the maximum financial benefits, avoid disorderly development and the loss of public funds, safeguard public interest and maintain market stability."

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

DEPUTY PRESIDENT (in Cantonese): Mr IP Kwok-him and Mr WONG Sing-chi will move amendments to this motion respectively. Their amendments have been printed on the Agenda. The motion and the two amendments will now be debated together in a joint debate.

DEPUTY PRESIDENT (in Cantonese): I now call upon Mr IP Kwok-him to speak first, to be followed by Mr WONG Sing-chi; but no amendments are to be moved at this stage.

MR IP KWOK-HIM (in Cantonese): Madam Deputy, infrastructure development requires high investment but yields low return. Most of the bridge repairs or road construction works used to be undertaken solely by the Government. But as the fiscal deficit of the Government worsens, direct equity

injection has become difficult for these projects. As a result, some of the large-scale infrastructure projects can only be packaged as attractive projects for private investment, thus changing the role of the Government into an auxiliary one with comparatively small funding commitment. In fact, there are many ways of financing infrastructure projects. The Democratic Alliance for Betterment of Hong Kong (DAB) will not focus on one particular method of financing, as we consider that a decision should be made in accordance with the practical situation of each project. But if the Government should subsidize infrastructure projects by the provision of land, it is not our wish to see the focus on infrastructure development being distracted and subverted for other purposes, causing the infrastructure project to eventually degenerate into a property development project.

The motion moved by Mr Abraham SHEK today specifically targets on the provision of land subsidy for infrastructure projects. In fact, this approach of financing is by no means a novelty. This approach was adopted for the MTR and there were not many contentions in society back then. It was only after the Cyberport incident that people questioned the effectiveness of "granting land in exchange for goods". The recent West Kowloon Cultural District (WKCD) development project has triggered another round of controversies over the sale of land at pitiable prices by the Government.

Madam Deputy, I understand that as land is the most precious resource in Hong Kong, land subsidy for infrastructure development has therefore become the focus of public attention. The DAB supports this motion proposed by Mr Abraham SHEK today. However, insofar as the content of the motion is concerned, the DAB is of the view that apart from emphasizing public sector housing, it will be undesirable if the Government cannot develop land flexibly. I have listened very attentively to Mr Abraham SHEK earlier on. He had explained very clearly that he did not only mean housing, or public housing, and that some community services, measures, or hospitals, schools, and so on, should be included. So, the DAB proposes an amendment to Mr Abraham SHEK's motion by adding a line to the effect that on the principle of compatibility with public interests and under reasonable circumstances and given the latitude, the Government should be enabled to maintain its role in land development.

I wish to say a few words on land subsidy. Let us first review the Cyberport project briefly. The project was an example of land subsidy for

commercially operated project. In 1999, the Government co-operated with the Pacific Century Group, and the project included the Cyberport and the ancillary residential development. It was agreed that the developer would provide and raise funds to meet all the expenditure, while the investment from the Government would be in the form of land grant at market price then, which was about \$7.8 billion. Upon the completion of the Cyberport, the developer will have to return it to the Cyber-Port Limited. According to the agreement, the developer can share the proceeds generated from residential development in the Cyberport, while part of the rental income from the Cyberport will go to the Government.

The Cyberport has been criticized as a real estate development in disguise, not an information technology project. The DAB agrees that the completion of hardware may not instantly achieve the objective of developing information technology and so, it may not be appropriate to comment on the actual effectiveness of the Cyberport at this stage. But according to government information, as at January this year, there were 26 tenants in the Cyberport and the aggregate take-up rate was about 63%. Whether such tenancy involves high technology and activities related to digital technology is actually still questionable. But with regard to the residential development, over 90% of the residential flats have been successfully sold. Why is there entirely different feedback to the developments in the same place? The Government should draw on how the community perceives the Cyberport in the development of the WKCD.

Madam Deputy, there are actually many examples worldwide and in Hong Kong of "granting land in exchange for goods". The development of a cultural complex in Tai Po, which has been discussed at the Panel on Home Affairs, is a case in point. The Government has submitted many reports, hoping to draw on private funding for the construction of the cultural complex and to entrust private companies with the management of the cultural complex upon its completion. It is initially planned that commercial facilities will be provided within the cultural complex to generate profits, which will be used to meet the operating expenses of the complex. As far as I understand it, this is supported by people in the district and agreed by many colleagues in this Council. They agree to entrust the operation of this complex to the private sector, in the hope that this will bring good results. Yet, this approach of investment or operation is supported for financial considerations.

Madam Deputy, the development of a cultural complex in Tai Po is exactly a miniature of the WKCD project. Let us look at the Cyberport and even the WKCD now. There seems to be no strong opposition in the community to the Government's financing approach of "granting land in exchange for goods". The point at issue is, in fact, the tendering process, that is, whether it is open, as also stressed by Mr SHEK, and also the question of adopting a single tender approach.

The WKCD involves an area measuring 40 hectares. According to its plan, the Government will sign an agreement with the developer on a 50-year land grant and the latter will be given the right to operation for 30 years and upon the expiry of this period, the facilities will have to be returned to the Government. Insofar as this project is concerned, the Government has not yet set the plot ratio ceiling, and the use of close to 11 hectares of land there has not yet been finalized. Such being the case, the community now begins to worry if this last piece of virgin land will eventually degenerate into a real estate project.

Madam Deputy, the DAB does not oppose any financing approach for infrastructure. However, we hold that the proposed approach should ensure the best use of public money. Given the enormous scale of the WKCD project, the Government should be more careful in handling the mode of its development. The DAB adopts a cautious attitude towards the adoption of a single tender approach. Because we understand that the scale of development is proportional to risk exposure and if we rely on only one single developer, any single mistake might turn the entire project into a fiasco. By then, not only will it fail to become a "first-class project", an objective set by the Chief Secretary for Administration, it may even become totally outclassed.

Madam Deputy, the consultation period of the WKCD development project will end three days later. I hope the Government will expeditiously submit the relevant papers to this Council and fulfil its undertaking by enabling discussions among Members, so that Members can perform their monitoring role. Otherwise, continued disputes will indefinitely put off the birth of WKCD in the end.

Finally, I would like to express the views of the DAB on Mr WONG Sing-chi's amendment. Mr WONG proposes that the projects involving land grants of the two railway corporations and the Airport Authority should be subject to the approval of the Legislative Council. The DAB considers that the

role of the Legislative Council, being the legislature, should be monitoring the Government. If it is involved in the approval of each and every project, it would be directly intervening in the decision-making of the executive and hence confusing the duties of the Legislative Council.

Furthermore, the Government is a shareholder of these statutory bodies, and their projects are generally funded by the Government either through equity injection or provision of loans. Their funding is subject to the approval of the Finance Committee, and the Legislative Council also has a part to play in monitoring the financial position of these three organizations. I think as long as their financing approach is agreed by the Legislative Council in principle, they should be given the green light. Otherwise, if we allow ourselves to be entangled in the financing arrangement of each project, the financial arrangement of the entire railway will be directly affected. For this reason, the DAB does not agree with the amendment of Mr WONG. We will vote against Mr WONG's amendment.

I so submit. Thank you, Madam Deputy.

MR WONG SING-CHI (in Cantonese): Madam Deputy, I move that the motion of "Review of land policy" proposed by Mr Abraham SHEK be amended. The purpose of my amendment is to make the Government understand a very important concept and that is, land in Hong Kong is indeed a precious asset of the people, as precious as genuine gold and silver. It is, therefore, imperative for the Government to avoid, through open and fair competition in the market, disorderly development and disposal of land at low prices. The Democratic Party has all along advocated that the land policy must be open, fair and subject to monitoring.

In fact, the Lands Department will announce every year the sites to be disposed of by auction and tender within the year, and there has not been much opposition in the community to such practices of the Government, for they are open and fair. Regrettably, the Government has allowed a huge grey area to exist and with the use of executive orders, it has given away the precious land of Hong Kong by way of private treaty grant.

Regarding land grants, it has been the policy of the Government that under certain circumstances, the Government can sell land by way of private treaty

grant. In these cases of private treaty grant, the premium charged by the Government ranges from a nominal value to full market price. Under which circumstances will the Government sell land by private treaty grant? How is the land premium determined? The Legislative Council is not in a position to know anything about the decision of the Government.

There have been cases before and after the reunification of the Government departing from the established policy on land grant and bypassing the conventional process of competitive bidding. As early as 12 years ago, the then Hong Kong-British Government granted land for Container Terminal No. 9 by private agreement and the berthing arrangement had been alleged as favouring the British companies and had therefore caused disputes between China and Britain.

Several years later, the Government played the same old trick and set an even worse example, for the right to develop the Cyberport and the ancillary residential development was granted by way of private treaty grant to a company which had no experience in real estate development at all in Hong Kong. Although the Government explained that it had not deviated from the well-established principle of competition using such pretexts as technological development and the "first-mover" advantage, the dispute over the Cyberport had prompted 10 major property developers to jointly issue a letter to the Government through the lawyer, hoping that the truth could be revealed.

To date, we still do not understand how the Government decides on which projects to be awarded by private treaty grant. Which projects should be awarded by open, competitive bidding? What projects are included in private treaty grant? Does it include high technology, cultural or industrial components or just the wish of the Chief Executive?

In fact, has the development of the Cyberport truly brought about a breakthrough in high-tech industries in Hong Kong nowadays? Has it brought many employment opportunities in this field? This, we all know only too well! On the contrary, the prestigious residential premises near the Cyberport and the cinema equipped with the largest screen in the territory in Cyberport are known to more Hong Kong people. What is the genuine purpose of developing the Cyberport?

In answering questions from Members of the Legislative Council back then, government officials vowed to ensure a level playing field and a greater degree of transparency and consider formulating policies on a joint venture approach with the business sector and also set clear guidelines on the capital requirement and other procedural arrangements. But today, we have not seen any such policy or guideline. It goes to show that history keeps on repeating itself. Recently, there is one more example of "black-box operation" by the Government, namely, the West Kowloon Cultural District (WKCD) development project.

The WKCD covers an area as large as 50 soccer pitches. It can be said as the last piece of precious land in Hong Kong, and the total amount of investment may even exceed \$20 billion. Earlier on, banks have stated that the WKCD will very likely be the most ludicrous site in recent years, just like another Cyberport. To the developers, it is a gold mine. There comes then an even greater worry: Will the WKCD be a gold mine dressed in an outfit of a "cultural and arts district"?

In fact, commercially operated infrastructure projects which involve land subsidies include not only the Cyberport and the WKCD, but also projects of the Kowloon-Canton Railway Corporation, MTR Corporation Limited and the Airport Authority which involve land grants. For example, in the financial year of 2003-04, among the many projects involving land grants awarded by way of private treaty grant, about 24 hectares of land have been allocated for residential development along railway alignments. Besides, about 82 hectares of land have been allocated for non-residential purposes, such as ancillary facilities for railway and community facilities. These are large infrastructure projects in terms of the amount involved and scale. Therefore, it is necessary for the authorities to review the policy of land subsidy for commercially operated infrastructure projects, with a view to making the policy more open and transparent.

Furthermore, some public works projects which require subsidies from public coffers, such as the construction of schools and the repairs of bridges and roads, may involve costs at an amount between ten million dollars to tens of millions of dollar and even a hundred million dollars. But to ensure more effective and reasonable utilization of public coffers, there is still the Legislative Council Public Works Subcommittee serving as the gatekeeper. Unfortunately, the Government has often made use of private treaty grant to evade checks by the

Legislative Council and monitoring by the community. This may be how our most precious land resources are destroyed in the absence of monitoring. This is not something that the people will wish to see.

Finally, we hope that the Government can review this ambiguous land policy and subject such infrastructure projects to the approval of the Legislative Council, so as to facilitate in-depth discussion by an informed public. Meanwhile, we hope that the Government can, through open and fair competition in the market, gain the maximum financial benefits and avoid disposal of land at low prices.

I so submit. Thank you, Madam Deputy.

MR JAMES TIEN (in Cantonese): Madam Deputy, the Government has frequently stated that to subsidize the development of infrastructure facilities with commercial potentials in the form of land grant is nothing new at all. It is said that the success stories of the Hong Kong Convention and Exhibition Centre (HKCEC) Phase I in Wan Chai back in 1984 and also the superstructure projects of the two railway corporations can all testify to the feasibility and cost-effectiveness of such a practice. However, I wish to point out that while this development approach is no doubt feasible under some special circumstances, one must not think that it is necessarily suitable for all projects, nor should one regard it as a cure-all simply due to the successful experience of HKCEC Phase I and the two railway corporations.

The reason is that all development projects are marked by their own uniqueness, so it is impossible to treat them all alike. In the case of the project mentioned in the original motion, the West Kowloon Cultural District (WKCD) development project, the Government has adopted the unprecedented approach of subsidizing the development of large-scale cultural and sports facilities in the form of land. This approach has never been adopted for existing cultural and arts facilities such as the Hong Kong Cultural Centre in Tsim Sha Tsui, the Hong Kong Coliseum in Hung Hom and the Science Museum and the Hong Kong Museum of History in Tsim Sha Tsui East. Why has it changed its approach this time and introduced such a major policy change?

Many in society, many professionals such as architects and surveyors, have told us that it may not be most desirable to entrust the operation of cultural

and arts facilities to private developers, especially a single developer, because they do not have the required experience. Besides, they will not know what types of cultural and arts programmes they should introduce. For example, will they know which foreign singers they should invite? How are they going to determine the charges? Will they look at things solely from the perspective of a property developer and set down unreasonably high charges? "The fleece comes off the sheep's back", as the saying goes. Property developers are businessmen, so they will never tolerate any commercial losses. That being the case, will the operation of cultural and arts facilities be affected, with the result that members of the public are denied the performances they should or wish to enjoy? Members of the public are thus worried about this. We think that there are huge risks if a single property developer unfamiliar with arts and culture is entrusted with such a large project like the WKCD development.

Madam Deputy, we are of the view that in order to prevent such risks, it may be more desirable to divide the project (the WKCD development) into two parts — the arts and culture part and the property development part — for separate handling. The Government should assume responsibility for the arts and culture part, and the related property development should be split up into different portions, so that more property developers can take part in bidding. As for bidding prices, they need not be set too high, as in the case of the lot yesterday, because if there is a greater number of bidders, lands will certainly be sold at better prices in the end. In any case, the bidding prices must not be such that only one or two property developers which can afford billions of investment can take part in bidding, because this may give people an impression of monopoly, making them think that only a handful of large developers, not all developers, are capable of taking part. Such an approach can better achieve the original objective of the project.

As for the amendment of Mr IP Kwok-him, the Liberal Party will render its support, because it only proposes to add "and other developments compatible with the public interest" to the original motion. We think the idea is good and merits the Government's consideration.

But the Liberal Party on the other hand has some reservations about Mr WONG Sing-chi's amendment, which proposes that all commercially operated infrastructure projects subsidized in the form of land, including those involving land grants to public corporations such as the Kowloon-Canton Railway Corporation (KCRC), MTR Corporation Limited (MTRCL) and Airport

Authority (AA), should be subject to the approval of the Legislative Council. Our argument is that there is currently no need to secure any Legislative Council approval for all the lands auctioned by the Government. In the case of the lot yesterday, for example, the Government simply proceeded with the auction after making its own decision. It is thus inconsistent with our long-standing practice if the KCRC, MTRCL and AA have to secure the approval of the Legislative Council every time they sell a lot or sign a contract with others. Land sales and property development projects by the two railway corporations are already governed by existing legislation.

I also wish to raise the point that the main duties of the Legislative Council are to scrutinize legislation and approve public expenditure. Land grants should fall within the responsibilities of the executive. If even such a power is given to the Legislative Council, will the respective roles of the executive and the legislature be confused?

In addition, the MTRCL, for example, is a listed public corporation which must be accountable to its small shareholders. And, the various superstructure development projects along its alignment account for more than 50% of its profits, constituting a major financial source of subsidizing its railway services. Therefore, any changes to the land grant approval right in respect of the MTRCL are bound to affect the interests of small shareholders and weaken its revenue flexibility. If the Government really wants to do so, it must make an additional equity injection into the MTRCL for the purpose of recovering the right of land sales. We think that this is worth consideration from the standpoint of protecting the interests of small shareholders. Besides, from the perspective of investors, any changes to the current land grant approval right in respect of the two railway corporations (not just the MTRCL) will necessarily weaken confidence in their merger listing or spin-off. And, the Government may also fail to sell its assets at satisfactory or better prices.

Lastly, I wish to reiterate that the Liberal Party supports an open and fair land policy that upholds the principle of free competition. More importantly, we think that the cheap sale of any land must be prevented. However, we also hope that the Government can achieve better co-ordination in land supply and the land grants of the two railway corporations. We are especially worried that at this time when the property market has just started to recover, if the two railways corporations can continue to auction lands or reach development agreements with property developers at any time they like, the reviving market may be impacted.

Therefore, we hope that the Government can try to co-ordinate the land sale patterns of the two railway corporations.

Madam Deputy, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Madam Deputy, the total land area of Hong Kong measures 1 100 sq km, but Kowloon and Hong Kong Island together occupies only 130 sq km of this total area. Land is a precious resource in Hong Kong, not least because its population is close to 7 million. How can our limited supply of land be effectively utilized? The answer is that a sound land policy must be put in place to avoid any wasteful use and to make sure that all members of the public can enjoy the related benefits.

Madam Deputy, Hong Kong is densely populated, marked by large numbers of urban problems and a huge demand for land. One of these problems involves the provision of sufficient land for the construction of public housing, something which is indispensable to the community. The allocation of land for public housing construction has always been government-led. For example, as we can all see, in order to enhance the position of urban centres under the town planning policy, the Government has been vigorously developing new towns since the 1970s and 1980s to accommodate the surplus urban population. This is referred to as land use intervention, and it is the only proven means of catering for the needs of society. I believe that without this type of intervention, and if all has been left to the market, there will still be many dwellers of squatter huts and cottages or even homeless people. The important principle is of course that the Government should intervene only when such a move is compatible with the public interest. The Government must not grant any land to any commercial organization unconditionally, and it must not seek to funnel all the benefits to any consortium. We can see that projects such as the Cyberport have led to numerous criticisms in society.

Madam Deputy, since land belongs to the people, our town planning and land policy must be primarily people-based. The formulation of a land policy actually involves various policy areas that have a bearing on our social, economic and environmental development. It also involves the professional sectors of town planning, road construction and property development. A sound land policy and satisfactory town planning are meant to cater for our social, economic and environmental needs, both now and in the future. The Government needs to consider various factors in terms of the interest of a

number of sectors when it conducts planning. We are of the view that the factors to be considered must include environmental protection, the promotion of the economy and employment prospects, the provision of effective and environmentally-friendly transportation means, the construction of transport systems and the construction of housing, schools and other facilities.

The formulation of social policies will always involve the consideration of various social values. One must consider this factor instead of simply stating the objectives. The whole process should at least cover the identification of social problems, the prioritization of objectives by the Government and even policy assessment and the adoption of various standards. The main objective of the Government's land policy has been to ensure considerable proceeds from land sales and the protection of asset owners' interests. It has thus been turning a blind eye to the high degree of monopolization in the property market and the activities of speculators. As a result, the wealth gap between property owners and those incapable of buying any properties has widened geometrically. The point is that if the individual's rights to housing, employment and a wholesome life have been duly recognized from the outset of policy formulation, have been recognized as even more important and fundamental than the rights of asset owners to transfer their properties freely, and if these values have been reflected in policy enforcement, then perhaps, the people of Hong Kong may not have to be tortured so much by mortgage loan repayment and inflation now. Nor do they have to be bothered so much by having to look for green and leisure zones.

Madam Deputy, the land grant process and policy of the Government have been based on a lease system, under which public auctions and bidding are held to grant land leases to the highest bidder. As a result, the sales of land in the market are highly commercialized. Land is actually our most important natural resource, but we can see so clearly that the Government is laying so much emphasis on commercialization and the market. As long as a reasonable and open mechanism is not put in place in our society, we are bound to see the continuation of property developers' cartel to suppress land prices, to force the Government to sell lands cheaply. We will also see the continuation of land grants to a single consortium or large consortium, one recent example being the West Kowloon Cultural District development project, which has led to huge controversies over its distortion of the market. Therefore, we must put in place a sound and reasonable mechanism, and the Government must seriously reconsider the overall land lease system.

The Hong Kong Federation of Trade Unions is of the view that the people's opinions about land issues should be considered. We maintain that the people do have a say in matters relating to urban construction, town planning and land use. Members of the public should take part in making decisions on the development and land use of their respective communities and even the whole of Hong Kong; and, they should also be allowed to make their value judgements. As an example to illustrate my point, I can actually refer to a hot topic these days, the transfer of plot ratio for reasons of antiquities preservation. Do people support this? What discussions are held in society? Well, society as a whole has not actually conducted any discussions on this. Whenever a case arises, the Government will try to deal with it in a piecemeal manner. Society as a whole has never discussed whether the transfer of plot ratio is totally unacceptable. I think that when considering the transfer of plot ratio for reasons of antiquities preservation, we should follow the example of other cities and attach extra conditions. I think that the Government really needs to foster such discussions.

I also wish to raise another point. Many factory buildings in Hong Kong are now deserted, but the Government still insists that anyone wishing to change the designated land use of a factory building must first pay a regrant premium. But can we just follow the example of Vancouver, allowing people engaged in creative industries to live and operate their businesses in the factory buildings of San Po Kong without requiring them to pay any regrant premium? Can the Government turn this into a topic of discussion in society? I think that since Hong Kong is now faced with economic and employment problems, it is necessary for the Government to discuss with members of the public in some cases. I hope that the Government can treasure every lot of our land, and I also hope that it can take on board the opinions of the people. This is always better than keeping so many vacant factory buildings when so many people are jobless, when so many people wish to own land.

Madam Deputy, in 1984, the Government released the Territorial Development Strategy, the first ever comprehensive assessment of the land development potentials in all the districts and also the ancillary facilities required for development. A few years ago, the Government proposed to rename the latest territorial development outline plan as "Hong Kong 2030: Planning Vision and Strategy", in which the issues of urban development, land use and transport packages in Hong Kong were explored in detail. Madam Deputy, I have discussed this issue with the departments under Mr SUEN, and the question I wanted to raise was: Given the recent changes in Hong Kong, how can it develop

another economy that can ensure the employment of those not included in the mainstream economy? Land development, construction and land use are all very important topics.

I hope the Government can realize that we do not wish to see the endless exploitation of Hong Kong's resources or any wasteful use of its land resources. That is why we urge the Government to review its existing land policy, introduce principles of fairness and allow the people's participation, with a view to achieving sustainable development.

Thank you, Madam Deputy.

DR TANG SIU-TONG (in Cantonese): Madam Deputy, Hong Kong is a tiny but densely populated place, where land resources are precious. Land lots in the urban areas are especially scarce and "increasingly hard to come by". Although the property bubble of Hong Kong has burst, its economy is still dependent on the property market for vitality, and proceeds from land sales are still the main source of government revenue. One can see from all this that any changes to the Government's land policy are bound to produce direct and heavy impacts on the local economy. That is why the Government must be extremely cautious when considering its land policy or the use of land resources.

Under the long-standing land policy of the Government of the Hong Kong Special Administrative Region (SAR), public auctions and bidding are held in accordance with commercial principles to sell government lands to the highest bidders. This is entirely in keeping with the principles of free market economy, and the Independent Commission Against Corruption and members of the public can all monitor the whole bidding process to ensure that there is no favouritism and partiality. Besides, the quantities of land supply are also determined on the basis of prevailing market demand and prices to ensure maximum revenue for the Treasury. As a matter of fact, with the exception of 2003, when land sales were suspended, proceeds from land sales have been the main source of government revenue every year. Therefore, I believe that the Government will definitely be very cautious in regard to ensuring the effective utilization of land resources.

The motion today urges the Government to review a remnant of the colonial era, that is, the policy of subsidizing commercially operated infrastructure projects in the form of land. It must be pointed out, however, that this is not actually the regular land policy of the Government, but just one of the financing arrangements adopted for some commercially operated infrastructure projects. Under this arrangement, the process of land grant does not involve any public auction. I am of the view that there is nothing wrong with the Government trying to reduce treasury expenditure by subsidizing certain infrastructure projects in the form of land instead of actual funding. But care must be taken to assess the relative values of land subsidy and actual funding in each case, so as to identify the most cost-effective approach. If, for example, the land lot concerned is sold in the usual way, that is, in a public auction, and the proceeds are then used to subsidize the project in question, will the Treasury get more benefits? These are all the questions that the Government must consider. Selling lands at low prices will mean less public revenue, and this is something not to be welcomed by us all.

As I have said earlier, land is a precious asset jointly owned by all members of the public. And, the Government frequently tells the community that owing to the acute fiscal deficit, there is a need to increase revenue and reduce expenditure. For this reason, the Government should make the whole process more transparent by explaining to the public every time before it subsidizes any infrastructure projects in the form of land, so that the community can monitor the process and take part in the relevant discussions. It must be noted that large-scale infrastructure projects all involve the interests of the community at large and also huge expenditure to the public coffers. For this reason, it is most imperative that a general consensus in the community must be reached before the commencement of these projects. Therefore, I support the idea that the Government should review the existing financing policy of subsidizing commercially operated infrastructure projects in the form of land, with a view to making this policy more transparent and cost-effective.

As for a Member's request that land subsidies for all commercially operated infrastructure projects, including those involving land grants to public corporations such as the KCRC, MTRCL and Airport Authority, should be subject to the approval of the Legislative Council, I must say I cannot render my support. The reason is that under Article 7 of the Basic Law, "the land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative

Region shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development." Therefore, the power of approving land use should belong to the executive, and under the existing legislation, no Legislative Council approval is required. It is inappropriate for the Legislative Council to arrogate to itself the power of approving land use.

I consider that a more appropriate approach is for the Government to increase the transparency of utilization of land resources. In this way, the people can have access to the relevant facts and adequate channels to voice their views and play a monitoring role. And, after collecting the views of the people, the Government should do some rethinking and work out the most cost-effective land use scheme. Public monitoring and transparency are far more effective and representative of public opinions than Legislative Council approval, which is a breach of the Basic Law. What is more, land use is an economic matter, so if it is brought into this Chamber for discussion, I am afraid that given the increasingly politicized climate these days, it may be dragged into the whirlpool of political disputes. If our economy or infrastructure development is thus adversely affected, leading to the waste of our precious land resources, the losers will be all Hong Kong people. Therefore, I do have some reservations about this proposal.

Madam Deputy, I so submit.

MR ALBERT CHAN (in Cantonese): Madam Deputy, land is in fact a type of natural resource, or a common asset of all Hong Kong people. Land in Hong Kong is not owned by any individual, and what Hong Kong people own is the rights of use. In its land management capacity, the Government is empowered to allow individuals or companies to use the lands in Hong Kong in accordance with established land grant provisions. Therefore, land is the common asset of all Hong Kong people, so they should have the right to monitor the use of their common asset and to make relevant decisions.

Over the past one or two decades, the supply of land and housing in Hong Kong has been dependent on three main sources. The first is redevelopment. The second is modification of land use. The third is land disposal by the Government. Land auctions were suspended two times in the past, but every time, the Government did not suspend its approval of applications for

redevelopment and modification of land use. During the suspensions, some property developers took advantage of the grey area and all of a sudden filed large numbers of applications for changing the designated use of lands — from agricultural use to residential use. In this way, while the Government was trying to control housing supply for the sake of the property market, some people tried to "enter through the back door" and thus managed to have huge quantities of land for housing construction. This was entirely due to the serious blunder and dereliction of duty on the part of the Government, and some people were thus able to "enter through the back door". The property developers concerned were usually hoarding large reserves of land. They were usually the same handful of developers whose relationship with the Government was the closest.

Such a practice runs completely counter to one of the requests made in Mr Abraham SHEK's motion, the request for "fair competition". Since the suspension of land sales cannot be foreseen five or 10 years beforehand and it must be implemented at extremely short notice, unfair competition is inevitable for a short period of time. Many property developers are strongly discontented with the Government's permission for some developers to "enter through the back door".

Madam Deputy, in regard to land management, several parties are involved: the Government, the Legislative Council, statutory bodies such as the Town Planning Board, the MTRCL and the Science Park, for example. Over the past few years, the roles of many of these parties have been distorted. The approach of the Government has been characterized by executive hegemony, by a downright departure from the rules, right? In cases such as the Cyberport, the Hong Kong Disneyland and even the Shiu Wing Steel Company, the Government invariably exercised its administrative authority and illicitly granted the rights of land use to the organizations concerned. There was no open competition, and the Government simply made all the decisions without ever bothering to let the market decide — as requested by Mr Abraham SHEK. Resorting to such dictatorial and autocratic administrative means, the Government simply ignored the public interest, simply ignored its role of safeguarding the public interest, and granted the rights of land use to the institutions and organizations concerned. Such an approach is truly very horrible and in total violation of basic public administration concepts.

As far as land management is concerned, the Government can perform the functions of planning and research; administratively, it can make arrangements

on the quantity of land supply. But when it comes to who should be given the rights of land use, the Government must let the market decide on its own in ways that are open, fair and competitive. When the Government distorts this principle, resorts to administrative dominance and illicitly hands over the common assets of society to anyone at the expense of taxpayers and the general public, it will totally violate the basic principles of public administration, especially land management. I am outraged by and extremely discontented with the Government's approach, but I feel so helpless.

Land is money, and its realization must require the approval of the Legislative Council. Whether as a means of financing or as a form of subsidy to any particular organization, land is still money. At the peak of the land and property markets, housing and land supplies, as well as housing construction and property transactions, constituted roughly 60% of the entire economy. In other words, roughly 60% of the economic activities at that time were attributable to land. The Government once distorted this relationship, resorting to administrative measures as a means of funnelling an actual financial resource to various consortia and companies without the approval and handling of the Legislative Council. This amounts to a total negation of the Legislative Council's sacred mission and duties. This is an autocratic practice that spoils the relationship between the executive and the legislature. I must therefore voice my strongest condemnation and outrage.

Madam Deputy, I find Mr Abraham SHEK's motion today very appropriate because it raises a very significant problem. I think it is really the right time to raise this problem, because since the reunification some six years or even seven years ago, especially over the past couple of years, the Government has been adopting this damaging practice. In respect of public housing supply, the Government has sacrificed the public interest to satisfy the needs of private developers. I think this is a negation of the four pillars advocated by the colonial administration in the 1970s: housing, social welfare, education and health care (Mr SUEN should know only too well what I am saying). Housing as one of the four pillars of community building has started to collapse. This pillar has been subject to increasing disfiguration and corrosion, with its reinforcing bars, concrete and bricks being prised away every now and then. The collapse of this pillar is imminent, and when the time really comes, the economy of Hong Kong, its people's livelihood and social order will all sustain severe damage.

I hope that Mr SUEN can still remember his past 30 years in the Civil Service. He must not, after becoming a Bureau Director, think only about..... I am not saying he is trying to fawn on property developers. But at least he must not think only about property developers and ignore the public interest. Thank you, Madam Deputy.

MR ALBERT HO (in Cantonese): Madam Deputy, it is clearly stipulated in Article 73(3) of the Basic Law that the powers and functions of the Legislative Council of the Hong Kong Special Administrative Region shall include the power to approve taxation and public expenditure. The meaning of this provision cannot be clearer, and there is no need to cite other provisions to help us understand what is meant by public expenditure.

(THE PRESIDENT resumed the Chair)

As mentioned by many Members just now, land is a precious asset of Hong Kong. For years, the Government has been deriving substantial revenue from property transactions and other related activities. Very often, land and title transfers will mean the transfer of an equivalent amount of wealth and money. Therefore, how can it be claimed that the Government is not incurring any public expenditure when it resorts to title transfer as a means of replacing payment in cash?

A moment ago, I heard Mr James TIEN say that the Legislative Council should not be given the power of approval. According to him, land auctions or title transfer by the MTRCL and the KCRC are just normal transactions, so why should there be any need to secure the approval of the Legislative Council? And, he also thinks that if even such cases require the approval of the Legislative Council, the situation will become very complicated. I hope Mr James TIEN can understand that why we want to give the Legislative Council the power of approval. This can be seen from Mr Abarham SHEK's original motion today, which focuses on the policy of subsidizing commercially operated infrastructure projects in the form of land. The focus is "subsidizing". If it is just a normal transaction, we will of course agree that there is no need to secure the approval of the Legislative Council as long as the MTRCL, the KCRC or any other

company for that matter has already paid up the land premium to the Government. But the key point is whether or not the element of subsidy is involved. I can tell Members that this is also true in those cases where the MTRCL purchases land at market prices after evaluation. I remember that in 1998, when we passed the legislation on the MTRCL, we already pointed out if the MTRCL was not given any land for development, it would be unable to operate. They also admitted that there was a certain degree of subsidy. Therefore, if an offer in the form of subsidy is involved, how can one say that it is not a type of expenditure?

Similarly, let us imagine that we are looking at a development project which costs \$50 million. The Government may tell the developer that it is not going to pay any cash, but will instead offer a land lot with a valuation of \$50 million for development, and the developer must then complete the project. Why is such an offer not regarded as public expenditure? The only difference is that payment is not made in cash but in the form of land. Is the replacement of cash payment by land transfer in fact a way of bypassing monitoring by the Legislative Council? Is such a practice in breach of the legislative intent of Article 73(3) of the Basic Law?

The Government will of course deny that it has violated the Basic Law. It will argue that money is not involved, and the legislative intent is just to monitor expenditure. But I do not think that we need to dwell any further on whether there is any violation of the law and whether there is any need for lawsuits. I only think that in the interest of good governance, the Government must respect the Basic Law provision on empowering the Legislative Council to monitor public expenditure. The Government should voluntarily submit to the Legislative Council information on land transfers with elements of subsidy, and it should also work out clearly the values of all the subsidies. This is what a responsible Government should do. This is the first point.

I also agree to the point raised in Mr Abraham SHEK's original motion. I agree entirely with him that to offer land development rights to a contractor, especially a commercial contractor, as a form of payment for infrastructure construction is actually in breach of the principles of fairness and openness. As I have pointed out, especially when the Government insists on granting a land lot to a single developer, it will be impossible to ascertain the value of the transfer of land development rights, because there will be no public tendering. There is no public tendering, and for this reason, all will depend on government evaluation. But even government evaluation cannot preclude the possibility of subsidy,

because there is no public tendering. The second point is that even if infrastructure projects and development rights are both subject to public tendering, there are still many problems, because the rules are very unclear. The West Kowloon development project is a good example. I have discussed this many times before. So, I do not want to repeat my points here.

There is another point. Very often, there is the problem of misplaced emphasis. When the Government wants to hand over a project to a contractor for construction, it must select one with knowledge about the project, who has the required expertise and experience, and who is capable of planning, construction and management. All these should be regarded as important qualities required of the successful bidder. But the situation now is not like this. The bidders are property developers, and the associated property development items are their only interest. In regard to infrastructure projects, they may be just "laymen". They may not have the required expertise. This has very often led to the problem of misplaced emphasis, with property development becoming the core and the required infrastructure facilities being reduced to secondary importance. This is tantamount to putting the cart before the horse; this is totally against the public interest. Therefore, *(A hubbub in the public gallery)*

PRESIDENT (in Cantonese): Please keep quiet in the public gallery. Please go out. No clamour in the public gallery is allowed. *(Advice ignored and hubbub continued)*

PRESIDENT (in Cantonese): Please stop doing this. No clamour in the public gallery is allowed. Please leave the public gallery. *(As security officers attempted to take away the man in the public gallery, he continued with his clamour and accusations)*

PRESIDENT (in Cantonese): Please leave the public gallery. Security officers, please take him away from the public gallery. *(The man in the public gallery still refused to leave the public gallery and continued with his clamour and accusations)*

PRESIDENT (in Cantonese): You must stop clamouring. Please leave the public gallery. You must obey the rules. Security officers, please hurry up. *(The man in the public gallery was taken away from the public gallery by security officers)*

I am so sorry, Mr Albert HO. You may continue.

MR ALBERT HO (in Cantonese): That is alright, Madam President. Finally, under such circumstances, I think that property development items and tendering items requiring complex designs should be handled separately. Only in this way can it be called fair. Anyway, I hope that Members can at least support the original motion, and I of course also hope that Members can support my amendment. Thank you.

MR LAU PING-CHEUNG (in Cantonese): Madam President, before I venture any further, I wish to make a declaration of interest. The company I work for once provided consultancy service on materials surveying to one of the organizations that has indicated an interest in the West Kowloon Cultural District (WKCD) development project. I made the same declaration of interest to the Panel on Planning, Lands and Works in December last year.

Former United States President Ronald REAGAN, who passed away recently, once remarked, "The nine most terrifying words in the English language are: I'm from the government and I'm here to help." This sums up President REAGAN's governance philosophy of "big market, small government", showing his opposition to indiscriminate government intervention. The Hong Kong Government proposes to adopt Public Private Partnership (PPP) for the WKCD development project. In principle, I support the Government's move to involve market participation in large-scale construction projects, but I must still point out that the project details proposed by the Government, such as single tender and the construction of the largest canopy in the world as a mandatory requirement, have led to huge controversies in society. The related arguments were already discussed during the motion debate on the WKCD development project in November last year, so I shall make no repetition here. I am however very grateful to Mr Abraham SHEK for moving this motion, which seeks to discuss the WKCD development project from a fresh perspective.

Madam President, land is a precious resource for Hong Kong and also an important source of government revenue. As the largest supplier of land, the Government is obligated to proceed with land use planning prudently, so as to balance the competing claims in society for land to construct public housing, roads and community facilities and also to ensure Treasury revenue. As we all know, the Government's adoption of PPP for the WKCD development project is intended to draw on the financial strength and experience of the private sector to satisfy the people's demand for large-scale cultural and sports facilities. And, the price to be paid is a land lot measuring 40 hectares. This means exchanging land profits for the construction and operation of cultural and sports facilities by the private sector.

A mammoth development project like the WKCD actually requires a mass transit system comprising railways, bus interchanges, and so on, for the provision of transport services. Under the existing policy, if a large-scale mass transit system is to be routed via the WKCD, the alignment concerned must be commercially viable; if not, subsidies have to be provided in the form of land. In the past, the operators concerned were given the development rights pertaining to the superstructure projects of railway and MTR stations as a form of compensation for the possible losses resulting from inadequate patronage in the initial periods of operation. This was the case with the Tung Chung Line of the MTR, and the situation with the railway development project for Island South is similar. But if bus interchanges are to be constructed instead, there will not be such a problem because the costs involved will be comparatively low. There will thus be no need to designate the superstructure projects to any specific railway corporations; the market can then be left to determine the prices by way of open tender.

So far, nothing has been finalized in respect of any transport solutions for the WKCD. Assuming that the Government is to select a railway system for the provision of transport service, and that it will adhere to the existing policy of relying on superstructure development as a means of subsidizing fares and effecting the early implementation of the project, there will be two possible scenarios. First, the properties inside the WKCD and railway superstructure properties are likely to face direct competition from each other. But since these two types of properties are different in background, there will be the possibility of vicious competition, and once this occurs, the related project will be affected, thus injuring the public interest. Second, the Government may co-ordinate the land use planning for the area, grouping superstructure properties and those

inside the cultural district into one mini-community equipped with performance venues, residential blocks, shopping malls and sitting-out areas, where activities of all sorts can go on 24 hours a day, thus pre-empting any wastage of resources due to a tilt towards any particular type of activities.

Madam President, consortia surely have to rely on land proceeds generated inside the cultural district to cover development costs as well as future operating expenses, and also to yield reasonable profits. But equally, railway corporations also have to rely on property development to subsidize railway operation and cover the possible losses arising from compliance with the Government's land policy. Therefore, I support in principle Mr Abraham SHEK's motion, which asks for a review of the policy of "subsidizing commercially operated infrastructural projects in the form of land" and emphasizes that "the supply of land should be determined by the market according to demands and prices". However, the Hong Kong Institute of Architects, an organization in the functional sector I represent, has pointed out that since, in addition to public housing, lands for community uses will also be used for the construction of public facilities such as roads, hospitals, police stations, sports venues and premises of non-profit-making organizations, proceeds from land sales should not be emphasized so much.

The principle of "big market, small government" does not mean that the Government should keep its hands off the market entirely. The Government is still obligated to give clear indications to the market on the development prospects of the area in the next few years and also the quantity and nature of land supply, so that consortia (including the management of the two railway corporations and MTRCL small shareholders) can form their own ideas on the potential risks before putting forward their development proposals. This is the only way to achieve fair competition, maximize the overall benefits brought about by planning, attract private-sector participation in the construction of public facilities and bring market forces into full play.

Mr WONG Sing-chi's amendment proposes that "commercially operated infrastructural projects, including those involving land grants to, should be subject to the approval of the Legislative Council". As I have pointed out, while the two railways corporations must rely on superstructure projects to subsidize fares, so that the railway concerned can be constructed as early as possible, they also have to keep in line with the Government's land policy. So, I really cannot see what approval criteria the Legislative Council can adopt.

From the perspective of small shareholders, the proposed extension is not cost-effective because there will not be sufficient patronage in the Southern District to support its daily operation; from the angle of Southern District residents, while the Southern District extension must be constructed as soon as possible to solve the congestion problem in Happy Valley outside the Aberdeen Tunnel, the fares must also be set at low levels, so as to increase transport options and foster competition among different modes of transport. These are two extreme viewpoints. The former is a purely commercial one: since there will not be enough passengers, the extension should not be constructed, and superstructure development can be considered separately and subject to open tender. The latter emphasizes subsidy as a means of effecting the early construction of infrastructure projects that can serve the public interest. And, the time saved after the elimination of traffic congestion is a kind of intangible social benefit. It is difficult to compare and weigh the pros and cons of the two directly.

I so submit.

MR NG LEUNG-SING (in Cantonese): Madam President, land in Hong Kong is basically an extremely precious natural resource which belongs to the public. The formulation and implementation of the land policy of the Government must ensure reasonable and effective use of this resource. Only in this way can we lay a solid foundation for the healthy development of the economy of Hong Kong in the long term. Before the Asian financial turmoil in 1997, Hong Kong featured high land prices and a bubble economy, and this created a far-reaching impact on the subsequent direction of public finance and the business economy. Land policy is extremely important and I had had the pleasure to participate in the work of the Sino-British Land Commission before the reunification. I can still remember the problems with the land policy of Hong Kong during that period of time, and it is worthwhile for us to draw lessons from some of the problems then.

Indeed, the pre-1997 executive authorities were rather slow in the production of usable land, and there was even a shortage in the supply of approved land. So, before the financial turmoil, all sectors of the community were concerned about how to ensure and increase the supply of land and housing, in order to arrest the escalating property prices and to address public discontent in respect of their demand for housing. During the transitional period, the Chinese side, through the Sino-British Joint Declaration, proposed the

establishment of the Sino-British Land Commission. The purpose was to protect the precious land resources of Hong Kong, so as to ensure their reasonable and effective utilization, and to provide the conditions for sound public finance of the future SAR Government through proper management of proceeds from land sale, which is the purpose of the Land Fund as stated by the Secretary today. On the other hand, according to Annex III of the Sino-British Joint Declaration, the Chinese side had adopted the principle of practicality by considering from the actual needs of the socio-economic development of Hong Kong and increasing land grants reasonably and appropriately in the interest of the sustained development of Hong Kong and for improvement to the quality of living of the people. During the 13 years of the transitional period, evidence showed that new land granted by the Sino-British Land Commission reached 2 972 hectares. It means an average of 248 hectares of land granted per annum, which has far exceeded the stipulated limit of 50 hectares yearly. It should be particularly noted that many of the sites granted were large in scale and they have made significant contribution to maintaining and upgrading the competitiveness of Hong Kong. For example, they included 1 248 hectares for the new airport, 71 hectares for container terminals, 60 hectares for The Hong Kong University of Science and Technology, and so on.

However, the actual supply of land and housing could not meet the needs of society during this transitional period. The experience and lesson that we should draw from this is that infrastructure development failed to keep pace with social development and there was obviously a shortage of formed land that could be made immediately available for development. Take the sites for public housing development of the Hong Kong Housing Authority (HA) as an example. The demand for these sites was outside the scope of consideration of the Sino-British Land Commission in granting land. But in the eight years before 1996, the HA was in fact granted 285 hectares of land for housing production, 75% of which (or 213 hectares) was unformed land. Undoubtedly, this had greatly impeded the progress of housing production by the HA, which was then within the purview of Secretary Michael SUEN. From this we can see that site formation did not synchronize with infrastructure development and the situation was extremely unsatisfactory, resulting in unstable figures in the actual public and private housing production yearly. A serious imbalance thus emerged between supply and demand in respect of land and housing in society as a whole.

Therefore, the above information can prove and justify the validity of this topic discussed in this Council today, and I think it is necessary to call for a

serious review of the land policy of the SAR, focusing on the need to provide suitable conditions for the normal operation of the market mechanism. While the existing application list system has laid the initial foundation, it is still necessary for the Government to take necessary steps to achieve synchronization between site formation and other construction and development works in the light of the actual employment situation of construction workers, thereby truly ensuring that effective adjustment can be made to the supply in line with the demand. Regarding the policy of providing land subsidy to commercially operated organizations, I agree that different reviews and adjustment should be made at different times. After the bursting of the property bubble, the community has begun to be concerned that insofar as the overall land supply in Hong Kong is concerned, the right of the two railway corporations to develop a substantial number of residential flats will have a huge impact on the property market. The community is now concerned about whether the provision of land subsidy should be continued to promote large-scale infrastructure development or whether subsidy should be provided in the form of cash. This is indeed worthy of in-depth consideration. Certainly, in handling the financial arrangement for similar public projects, it is necessary to solve some very complex problems. Many of them are projects with social benefits and so, they may not be sufficiently viable financially speaking and may require subsidy from public resources. On the other hand, while some development projects may carry certain commercial value, their social benefits may be more important, and it is indeed not easy to draw a line in these cases. In the final analysis, it is still necessary to carefully make an executive decision by giving consideration to balancing social benefits, economic benefits, the interests of all sectors and the overall interest on the premise of not intervening in the operation of the market.

Madam President, I so submit.

MR TIMOTHY FOK (in Cantonese): Madam President, the West Kowloon development project involves a total land area of 40 hectares. The lot is the most precious public asset in Hong Kong, and the project is estimated to cost as much as \$24 billion, which is why since it was mooted in 1999, it has been the focus of concern and arguments among the various sectors.

The West Kowloon development project is a large-scale construction project featured by cultural and arts facilities. Its aim is to turn the reclamation

area into a cultural oasis that can enrich the people's life, attract more visitors and enhance the beauty of one of the most impressive skylines in the world. Since the project will involve huge capital investment, and also due to the need for considering the mutual appreciation of commercial and residential properties in the surrounding areas, it is realistic to permit the participation of private developers, so that properties can be used to "support" arts and culture. However, under the plan of the authorities, only 20% to 30% of the lot, often described as the last cultural site in Hong Kong, will be used for the construction of arts and cultural facilities, and the remaining 70% will be devoted to property development. Such a ratio does not seem to be appropriate at all. Besides, the project may easily be dominated by property developers, and the cultural and arts sectors, which are supposed to be the protagonists, may only be able to play a secondary role. This is nothing but putting the cart before the horse.

As a matter of fact, during the consultation period, the sectors concerned did put forward many constructive proposals on the suitability or otherwise of selecting a single developer, the construction of performance arts venues and museums, the compatibility of the project with the planning for surrounding areas and also the participation of the cultural and arts sectors. All these proposals can show the huge discrepancy between the demands of the sectors and the original "property-led" approach. Therefore, in order to achieve the objective of constructing a cultural oasis, the authorities must fully consult the sectors concerned and enable their full participation in the entire process from planning to design and future management, so as to ensure that the West Kowloon development will not become the Cyberport of the arts and cultural sectors. In this way, the project will be marked by a wide variety of cultural features and contents, thus really achieving the aim of cultural diversity and inheritance.

Madam President, the Government has all along been tackling land use issues from commercial perspectives, focusing on the demand, supply and price fluctuations of industrial, commercial and residential buildings. Although some attention has been paid to environmental protection recently, the demands for cultural, arts and even sports facilities have not yet been given due attention. As a result, there is a shortage of facilities, and the existing ones are outdated. Very often, it is only after disputes have arisen that "emergency" steps are taken to allocate lands and provide temporary facilities. The issue of gymnasium venues these days is an obvious example. And, even in the case of Cantonese

Opera, the gem of Guangdong culture, the shortage of performance venues has not yet been solved. Therefore, the Government must amend its existing land use planning policy. It must also set down a long-term cultural and sports policy, so as to ensure that cultural, arts and sports activities, which are so essential to the wholesome development of the youth and the improvement of people's quality of life, can enjoy adequate facilities and develop on a sustainable basis .

I so submit.

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, regarding an earlier bill, my views differed greatly from those of Mr Abraham SHEK, and I was even criticized by him. But every case is a different case. With regard to this motion, I hold more or less the same views as those of Mr SHEK. However, there are certain details which we may argue about.

If the land is allocated for subsidizing a non-profit-making organization wholly owned by the Government, I believe there would not be too much controversy, nor is it the concern of Mr Abraham SHEK. Now the crux of the matter is, if the land is allocated to a company or a commercial organization which aims at making a profit, and if the land is granted through such means as valuation, the degree of fairness involved must not be as high as that may be achieved through the traditional approach of land auction. And the amount of subsidy provided in this approach is not specific as well. Maybe I should say, such a practice is not so convincing to everyone — such a description is more direct.

Therefore, in the course of deliberation of this motion, we have classified such organizations into two categories, first, those wholly owned by the Government, or some so-called non-government organizations which are non-profit-making. If such organizations are subsidized in the form of land, I feel that (maybe the Democratic Party will also agree) such a practice will not be binding factors for the Government, and I believe Mr Abraham SHEK will not object to such a kind of subsidy in the form of land. Another category is more controversial, and the contention is, if we allocate the land to some commercially operated organizations or commercial establishments, as far as the motion moved

by Mr Abraham SHEK is concerned, it in fact warrants careful deliberation by the Government. The reason is simple, for through land auctions, we can clearly know the prices of the land involved. By subsidizing some so-called non-commercial projects after the lands are auctioned, the Government is acting like making direct subsidies from the public coffers. In this way, we can achieve the objectives as set by Mr Abraham SHEK. More importantly, by adopting this approach, we can comply with the principles of greater fairness and higher degree of transparency.

I hope the Government will not be deterred from subsidizing some non-commercial activities in the form of land. I believe this is not the core concern and intention of the Democratic Party in raising its objection in this regard. Frankly speaking, we really worry about what the Government will do in future. This is because in the past, for example, in its dealing with the MTR — well this may not be a good example, or in the case of the Science Park, all these are non-profit-making organizations. As the lands granted to them carry certain value, so these are subsidies by the value of the land. I believe these are not the focal points of our discussion.

I just want to take this opportunity to say that, the Government should not be affected by the endorsement of this motion and therefore withhold its subsidies by land grants to non-profit-making projects which are not operated for commercial purposes. As for other organizations which are operated for profit, the spirit of this motion related to land is crystal clear. The Democratic Party and I will clearly support this part. I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Abraham SHEK, you may now speak on the two amendments. You have up to five minutes to speak.

MR ABRAHAM SHEK: Madam President, I support the Honourable IP Kwok-him's proposed amendment which seeks to explain more clearly the conditions under which land should be given away as a subsidy. In particular,

he suggested that an adequate supply of land must be ensured for developments compatible with public interests. This was also my original intention, and he enhanced the wording further. I agree with this principle. Along with public housing, there are other non-commercial infrastructural projects, such as schools, hospitals and even churches, which are essential to the community and could only be built on subsidized land.

As regards Mr WONG Sing-chi's amendment, I have listened to him, and to his arguments, carefully. His amendment has two parts. He further identified the institutions, such as the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, and the Airport Authority, which I fully support. However, as regards the requirements for such projects to be put to the Legislative Council for scrutiny and approval, this is something which I cannot accept because this would be in violation of the Basic Law. However, I think he has explained very clearly, and his party member Mr HO Chun-yan has made further explanation on the aspect of that particular request. Nonetheless, because of the wording of that particular amendment, I cannot support it. Thank you.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the Honourable Abraham SHEK's motion today, in brief, urges the Government to review its policy of using land resources to subsidize commercially operated infrastructural projects. It also demands the Government to supply land through market mechanism and the principle of fair competition. The amendment by the Honourable IP Kwok-him requires the Government to, apart from reserving sufficient land for public housing development, reserve land for other developments compatible with the public interest. The Honourable WONG Sing-chi's amendment proposes that commercially operated infrastructural projects involving land grants should be subject to the Legislative Council's approval. Today's debate involves topics that are rather technical and complex, including the Government's normal land grant policy and the arrangements for financing infrastructural projects by means of land. I wish to take this opportunity to explain and clarify the issue.

First of all, I wish to explain the source of authority and legal basis of the Government's land policy. Article 7 of the Basic Law provides that "The land and natural resources within the Hong Kong Special Administrative Region (SAR) shall be State property. The Government of the SAR shall be

responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region." The Chief Executive and officials authorized by him discharge the duties stated in Article 7 of the Basic Law, including leasing land in Hong Kong, on behalf of SAR Government. It could thus be seen that it is legitimate for the SAR Government to exercise the authority to grant land. This is in accordance with the Basic Law and should not be construed as the Government's mere administrative act.

As to considerations relating to land grant, given the scarcity of land in Hong Kong and in order to fully utilize such precious natural resources, land use planning is determined in accordance with society's development needs. The Government will then develop the planned uses having regard to the resources available and development priorities, or will lease the land to individuals, legal persons or organizations for their use or development. The above aims to optimize land uses and promote economic development with a view to enhancing the living environment for the Hong Kong citizens. It could thus be seen that land grant arrangements often need to be in line with the development of Government's other policies in order to maximize the benefits to the community. I believe it is more meaningful to make clear the essence of land grant arrangements before looking at the motions by Members.

It is the view of some commentators that the Hong Kong Government fails to follow fully the principle of fairness in the grant of land in certain areas. I need to emphasize that such a comment is unfair to the Government. Nor does it tally with the facts. The Government's land allocation policy has always been based on the principle of fairness and transparency. We have been granting land mainly through open bidding (such as land auction and tender) for commercial, residential and other private developments. The land goes to the highest bidder. The price at which the land is sold reflects the prevailing market value of the land concerned. It is the Government's policy that we will not sell land at a pathetic price.

Apart from open bidding, the Government also grants land by way of private treaty to non-government or private organizations under certain circumstances. This method of granting land has been in use for a long time for the purpose of meeting social needs. It is mainly adopted for land devoted to community use or for public utility purposes. Examples include

non-profit-making community uses such as schools, welfare and charitable organizations, as well as land for essential public utility services like power station. The arrangement of direct land grant to these service providers for the related purposes is appropriate and in the public interest. Level of land premium charged on such direct land grants depends on the uses of the land. For example, nominal or concessionary premium will normally be charged for community uses because of their non-profit-making nature. For commercial land uses (like power station), full market premium will still be charged. Criteria for direct land grant is of grave concern to the public. I will thus explain it. Criteria for direct land grant are set according to relevant policies approved by the Executive Council. Department responsible for land allocation cannot act according to its own wishes. Instead, relevant criteria and policies must be followed to ensure the land grant arrangement is in line with the Government's relevant policy objectives. This practice has a long history and has won public recognition. It is also simple, transparent and fair.

The above spells out the general land disposal arrangement and land policy. If an organization proposes to the Government a development project involving land grant for which there is no precedent or which falls outside any type of land grants mentioned above, the relevant Policy Bureau needs to consider each and every such proposal carefully. In general, consideration will be given based on certain basic principles, such as whether the proposal complies with approved government policies or will assist to meet predetermined policy objectives; the assessed economic and other benefits, the strategic importance or otherwise of the proposal; whether it is the right timing, and the ability of the applicant in implementing the proposal, and so on. If the relevant Policy Bureau considers that the proposal meets these principles and there are sufficient policy grounds to justify the development plan, including the land grant arrangement involved, it will need to submit each and every relevant proposal to the Executive Council for approval before the plan can be implemented.

It can be seen from the above arrangements that the Government will definitely not allow disorderly development of land. All land grant arrangements have policy justifications and objectives. Land supply has followed an established strict mechanism to ensure that all infrastructure and developments undertaken comply with the public interest. In this regard, we have already met the land disposal principles put forward in Mr Abraham SHEK's original motion and in Mr IP Kwok-him's amendment.

I now turn to the original motion in which the Government is asked to review the policy of giving subsidy in the form of land to commercially operated infrastructural projects, and the request made in Mr WONG Sing-chi's amendment that commercially operated infrastructural projects, including certain land grant items, be subject to the Legislative Council's approval. Both of them consider the proposals made could achieve the principle of fair competition, maximize financial gains for the community and maintain market stability.

As the original motion and amendments involve a number of topics, I think we must not mix them up. First, it is inappropriate for Mr WONG to mix up land grant arrangements and infrastructural projects. Land grant is just one of the steps in carrying out infrastructural development. Moreover, as I said in the beginning, the authority to grant land is conferred on the Chief Executive by the State through the Basic Law. The Chief Executive and the relevant officials need to discharge the duties stipulated in the Basic Law and fulfil the responsibility of granting land. It is not the function of the Legislative Council.

Regarding the request put forward by Mr WONG, we consider it unnecessary for commercially operated infrastructural projects to be subject to the Legislative Council's approval. At present, all infrastructural projects financed by public funds are subject to scrutiny by the Legislative Council through such mechanisms as that for approving the Budget as well as via the Finance Committee. The Legislative Council thus has an active role to play in this respect. As regards infrastructural projects not funded by public money and operated purely on a commercial basis, there is indeed no ground for them to be subject to the Legislative Council's approval.

Some Members view the financing arrangements for infrastructural projects involving land grant as comprising an element of government subsidy and take it as part of the "land disposal policy". I find it arguable to discuss this issue in such a manner. A limited number of infrastructural projects by public corporations involve the grant of land by the Government for property development. This is part of the financing arrangement of the projects concerned. The policy referred to in Mr WONG's amendment is not a land grant policy, but a financing arrangement between the Government and the public corporations concerned, such as the financing arrangement between two railway corporations mentioned by him earlier.

In respect of railways, I wish to point out that both of the two railway corporations operate in accordance with prudent commercial principles and do not need any government subsidies for their operation. However, in considering the financing arrangement for new railway projects, the Government will consider whether financial assistance should be provided having regard to the circumstances of individual cases, so as to ensure that maximum benefits for the public will be achieved from railway development. Only when the concerned capital works are of substantial benefits to the public (for example, alleviating traffic congestion problems) will the Government consider to provide subsidies. The Environment, Transport and Works Bureau is responsible for studying and ascertaining the traffic needs and transport efficiency. In the light of such study, the Financial Services and the Treasury Bureau will decide whether, and if so, in what form, subsidies should be provided to allow the railway projects to comply with the principles of commercial operations.

The planning for railway projects and that for related property developments are often proceeded in parallel, mainly for the reason that property developments will bring about a stable source of patronage for the railway service. Planning railway projects together with the related property developments will bring about a major synergic effect, making the railway projects more cost-effective.

In considering the proposed merger of the two railway corporations, the Government will study the financing arrangements for future railway projects at the same time. In this regard, the Government will certainly study and review these issues in detail and make appropriate arrangements.

It is mentioned in Mr Abraham SHEK's motion that the West Kowloon Cultural District (WKCD) Development Project involves substantial subsidy in the form of land. I must clarify this matter. As the Government and our colleagues have clarified time and again publicly, the Government's policy is to develop world-class arts, cultural and entertainment facilities on this piece of land in West Kowloon and, at the same time, promote Hong Kong's status as a cosmopolitan city. However, the experience of other countries is that the development and operation of arts and cultural facilities may not be profitable. The Government is required not only to provide the funding for the development of these facilities, but also take the risk of sustaining ongoing losses. In view of the above, the Government has decided to adopt an integrated approach for the development of WKCD by including commercial facilities in the project. It is

hoped that the private sector, with their business know-how and experience, can develop and operate the whole District in a self-financing mode.

In fact, this is not the first time that the Government has joined hands with the private sector in pursuing large-scale projects. For instance, a similar approach was adopted in 1984 when a site in the Wan Chai Reclamation Area was granted to the Trade Development Council for the development of the Hong Kong Convention and Exhibition Centre, and the adjoining hotel, commercial and residential facilities. More recently, in order to enhance the convention and exhibition facilities in Hong Kong, a joint-venture agreement was signed between the Government, the Airport Authority and a private consortium in August 2003 to construct an international exhibition centre at Chek Lap Kok.

I wish to point out here that the Government makes no promise in the Invitation for Proposals (IFP) for the Development of the WKCD that land will be granted unconditionally for the project. On the contrary, it is clearly stated in the IFP that details on the form and projected amount of payment concerning various fees and charges including land premium, shall be included in the proposals. Proponents need to take into account the impact that such payments to the Government will have on the returns generated from the project. Thus, the land within the development zone of the WKCD shall in no way be seen as a kind of government subsidy for the project.

The Government has all along adhered to the principles of free market and fair competition, with policies formulated according to those principles. The existing land disposal policy has been in use for years. Under this policy, we put up sites for open bidding and grant them to the highest bidders. This is a fair and reasonable arrangement.

Where the granting of land is to facilitate certain government policies in order to maximize social benefits, each land grant arrangement will be given careful consideration by the relevant Policy Bureau and departments. "Disorderly development of land" would not occur. The Government's land policy is very clear and is in line with Members' demand. It follows the free market principle fully and is operated in an open and fair manner.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr IP Kwok-him to move his amendment to the motion.

MR IP KWOK-HIM (in Cantonese): Madam President, I move that Mr Abraham SHEK's motion be amended, as printed on the Agenda.

Mr IP Kwok-him moved the following amendment:

"To add "and other developments compatible with the public interest" after "public housing development"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr IP Kwok-him's amendment to Mr Abraham SHEK's motion, be passed.

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 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 amendment passed.

PRESIDENT (in Cantonese): Mr WONG Sing-chi, you may move your amendment.

MR WONG SING-CHI (in Cantonese): Madam President, I move that Mr Abraham SHEK's motion as amended by Mr IP Kwok-him, be further amended by my amendment, as printed on the Agenda.

Mr WONG Sing-chi moved the following further amendment to the motion as amended by Mr IP Kwok-him:

"To add "and commercially operated infrastructural projects, including those involving land grants to public corporations such as the Kowloon-Canton Railway Corporation, MTR Corporation Limited and Airport Authority, should be subject to the approval of the Legislative Council," after "demands and prices,"; to add "open and" after "through"; to delete "and" after "avoid disorderly development" and substitute with ",,"; and to add "as well as disposal of land at low prices" after "the loss of public funds"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr WONG Sing-chi's amendment to Mr Abraham SHEK's motion as amended by Mr IP Kwok-him, be passed.

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.

(Members raised their hands)

Mr WONG Sing-chi rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Sing-chi has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, four were in favour of the amendment, 15

against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, eight were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): As the meeting comes to this stage, it should be Mr Abraham SHEK's turn to reply. However, as Mr Abraham SHEK already used up his speaking time in moving his motion, (*laughter*) so, this part will be dispensed with.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Abraham SHEK, as amended by Mr IP Kwok-him be passed.

PRESIDENT (in Cantonese): 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 as amended passed.

PRESIDENT (in Cantonese): Second motion: Promoting Hong Kong as a world-class financial services and asset management centre.

PROMOTING HONG KONG AS A WORLD-CLASS FINANCIAL SERVICES AND ASSET MANAGEMENT CENTRE

MR AMBROSE LAU (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. In this year's policy address, the Chief Executive said that the Government intended to develop Hong Kong into an international financial services and asset management centre such as Switzerland. The Hong Kong Progressive Alliance (HKPA) thinks that the Government should expeditiously and widely consult the views of the industry and other sectors, so as to pool collective wisdom to identify the strategic focus and direction for achieving this goal. In this way, we shall be able to implement a series of specific measures for enhancing the strengths of our financial services industry. It must be stressed that, whatever type of centre the Government intends to develop Hong Kong into, it must not lose sight of other considerations. The Government must take into account the balance in our industry structure and the solution to our unemployment problem. The Government should also guard against repenting its past mistake in putting forward plans on establishing all kinds of centres and shelving them all or forgetting them all some time afterwards.

There are similarities in many different aspects between Hong Kong and Switzerland. For example, the size of the population of Switzerland is similar to that of Hong Kong; both places are providing services to our respective vast economic hinterland; the standard of living of both places are higher than the hinterland they serve respectively; half of the amount of currency supplied in Switzerland is in foreign currencies, which is similar to the situation in Hong Kong; both places rely on their respective service industry as the economic mainstay, and both places are the financial centres of the regions in which they are situated. In contrast to Switzerland, Hong Kong's unique characteristics lie in the five following areas:

First, the traditional manufacturing industries in Hong Kong have already declined. For Hong Kong industrialists who have established production plants in the Pearl River Delta (PRD) Region, their banking credit transactions, such as financing for production projects, have been transferred to the PRD. So, in recent years, the Hong Kong banking industry has been facing a consistently declining demand for loans in the local market. With such a change in the trends of the markets of Hong Kong and the PRD, the area of business with the best potential in the local banking industry has started to emerge, that is, the

development of personal finance and private banking services by making use of the better legal system, the better regulated and more advanced financial market, as well as an abundant supply of top calibre financial talents in Hong Kong.

Secondly, the development of the local fund management industry is among the best in the region. As at the end of 2002, the total value of asset portfolios managed by Hong Kong amounted to \$1,635 billion. The bulk of the world's savings are generated within Asia. This is especially true as the economy of mainland China has been developing most rapidly in recent years, so the legal wealth of the individuals has kept on accumulating. At the moment, the capital in the saving accounts on the Mainland alone amounts to about RMB 9,000 billion yuan. Such capital forms a driving force for the development of the highly liquid capital market in Hong Kong.

Thirdly, though the financial services industry is the mainstay of the industry structure of Switzerland, its industries still account for 34% of its economy. Its high value-added and high-tech industries also possess very strong competitiveness. Apart from enjoying a high reputation in its watch manufacturing industry, Switzerland is also among the several countries in the world that have the most advanced and competitive advantages in advanced high-tech industries such as biology, chemical industry, medicines and health care and maintenance as well as environmental protection. In comparison, Hong Kong's industry structure suffers an imbalance with the services industry accounting for 85% of the production value in the local economy, whereas the corresponding figure for Switzerland is 65%. Therefore, Hong Kong should develop high value-added industries such as brand industry, thereby bringing up the industrial production value to account for about 30% of the GDP. According to the present situation of small developed economies, a proportion of 25% to 30% for high value-added industries will be able to absorb over 20% of the employed population. This will fundamentally ameliorate Hong Kong's problems in the respect of structural demand for talents, financial structure and employment.

Fourthly, Switzerland on the one hand places a heavy emphasis on its local education and actively absorbs overseas talents on the other. The country possesses first-class technology and management talents. The proportion of overseas students in local schools is the highest in the world, and it is the place where high-quality talents are most readily available among industrialized

developed countries. Hong Kong obviously lags behind Switzerland in terms of the supply of talents as well as education.

Fifthly, Switzerland attaches great significance to environmental protection and urban design, and it is widely acknowledged in the world that Switzerland has the best natural and living environment in the world. This is an important attraction to first-class talents, multinational enterprises and international organizations. The natural factors of Hong Kong are comparable to those of Switzerland, but when compared to the living and working environments of Switzerland, Hong Kong still lags behind by a substantial margin.

Madam President, in light of the above unique characteristics of Hong Kong, the HKPA thinks that any attempt to develop Hong Kong into the "Switzerland of the Orient" must maintain a balance of our industry structure on the one hand, and solving the employment problem on the other. The Government should implement the following measures:

Firstly, leveraging on the implementation of CEPA and the co-operation with and the development of the Pan-Pearl River Delta (Pan-PRD) Region, Hong Kong should speed up its economic integration with the Mainland, especially with the Pan-PRD Region, and it should try to minimize obstacles that would impede the two-way free trade between both sides. According to the estimation of the Trade Development Council, the enterprises in mainland China will have a capital requirement of US\$215 billion in the next five years. In the meantime, there will also be a substantial increase in supporting financial services arising from trade financing and export insurance in the foreign trade of China. The Government should adopt measures to seek more commissioned assignments such as project financing, trade financing and capital formation by seeking a listing in the stock exchange, and so on. In this way, the depth and the magnitude of the local financial market can be further extended.

Secondly, the bulk of non-government wealth is mostly accumulated in Asia. However, there is not any place in Asia that possesses the same conditions and strengths as Hong Kong that can attract such wealth and capital for value added management. At present, Hong Kong is already a major fund management centre in Asia. Hong Kong possesses many advantages in asset management, including the availability of a large number of fund management companies, an abundant supply of talents, no foreign exchange control, sound

rule of law, excellent corporate governance and a simple and low tax regime. With reference to the fact that the legal wealth of individuals in the Mainland keeps accumulating and the lack of investment channels, the SAR Government should grasp this opportunity to speed up discussions with the mainland authorities to gradually increase the channels to enable mainland investors to buy investment products in Hong Kong, so that we can further create the right conditions for launching the Qualified Domestic Institutional Investor (QDII) Scheme in the Mainland.

Thirdly, in the financial services industry, a large proportion of their business lies in private banking, that is, the provision of confidential and tailor-made investment advisory services for high-income persons and billionaires. In launching private banking business, Hong Kong must build up an internationally reputable banking secrecy system which is trusted by holders of international capital. This will attract the investment of mainland billionaires. The Government should provide clear guidelines to financial institutions operating private banking business, so as to reduce their risk of accepting problematic capital. With regard to the issue of money laundering which is a major concern in the financial market, the Financial Services and the Treasury Bureau should expedite conducting the relevant studies and, taking account of the local conditions, formulate the appropriate criteria to facilitate the healthy development of Hong Kong into an asset management centre in the region.

Fourthly, the Hong Kong Exchanges and Clearing Limited should strive to provide more financial products in future as well as to step up its promotion in the Mainland to provide more information and assistance to mainland enterprises and the high-income individuals. The Government also needs to continue with its multi-pronged initiatives: while providing an environment conducive to promoting the development of the bond market, it should also step up the education for investors in the meantime in the interest of promoting the development of the market.

Fifthly, for Hong Kong to develop into the "Switzerland of the Orient", it is necessary to put in place a better regulatory system to ensure that transactions are conducted in the market in a fair and open manner. Only in this way can we attract more investments to Hong Kong. Although the Securities and Futures Commission has already established the Investor Education Advisory Committee, it must identify a suitable channel to enable investors to receive educational information more effectively in order to gain an understanding of the ever increasing investment tools.

Sixthly, with regard to making improvements to the financial infrastructure, the Government should speed up finalizing the network for linking up the bond custodians in both Hong Kong and the Mainland, as well as building up the business relations between cross-boundary bond settlement organizations. Apart from laying a foundation for co-operation in the development of financial infrastructure in both Hong Kong and the Mainland, it will also provide mainland financial institutional investors approved for conducting foreign exchange business with an optional channel to buy and sell Hong Kong dollar bonds. In addition, this will reduce the exchange rate risk and settlement costs when handling transactions of Hong Kong dollar bonds.

Madam President, Switzerland's status as an international financial services and asset management centre is attributable to its stable political environment, a balanced industry structure, a highly educated working population and an excellent living environment which attracts billionaires from different parts of the world to live there. Therefore, if Hong Kong is to be developed into the "Switzerland of the Orient", the Government must adopt the following support measures:

Firstly, although Hong Kong entails higher costs, it has many advantages such as a better legal system (including legislation on intellectual property protection); transparent, regulated and reputable operations, higher standards of quality management, good financial and banking services, and convenient and speedy import and export of goods. The Government must make full use of such advantages in conjunction with the zero-tariff arrangements under CEPA to promote the development of high value-added and high-tech industries. The Government should encourage the sector to make use of the momentum and reputation of products designed in Hong Kong to develop brand-name products and tap the emerging high-class consumer market in the Mainland by using the "Made in Hong Kong" labels. By making use of the zero-tariff arrangement to develop the local emerging industries and brand-name products, we may improve the talents requirement structure, financial and tax structures and employment problems in Hong Kong. These measures are helpful to Hong Kong in achieving the goal of making it an international financial services and asset management centre like Switzerland.

Secondly, the Government should strengthen local education and step up the training to upgrade the quality of our workers. At the same time, the Government should actively attract overseas and mainland talents to come and

work here. The Government should enhance the measures for upgrading the English standard of Hong Kong people, so as to consolidate the foundation of Hong Kong as an international financial services and asset management centre.

Thirdly, Hong Kong should attach great significance to promoting urban renewal and beautifying the environment in order to create the basic conditions for attracting high-income individuals and billionaires to Hong Kong. In rebuilding the urban areas, the Government should proceed with a comprehensive planning for an entire district, increase the green areas and strengthen the regional functions.

Madam President, the position of Hong Kong in the Asia Pacific Region and the size of its population are similar to those of Switzerland, and Hong Kong even has a better market hinterland than that of Switzerland. However, in terms of the living and working environments, industry structure, talents, educational standards, Hong Kong is not as good as Switzerland. Hong Kong should highlight our strengths but conceal our weaknesses. In the light of our unique characteristics, we should give full play to our strengths and make it a goal to develop Hong Kong into an international financial services and asset management centre like Switzerland. In this connection, this Council urges the Government to expeditiously and widely consult the views of the industry and people from various sectors, and to implement a series of measures to strengthen the competitive edge of Hong Kong's financial industry, so as to achieve the above goal.

Madam President, I so submit.

Mr Ambrose LAU moved the following motion: (Translation)

"That, to achieve the goal mentioned by the Chief Executive in this year's policy address to develop Hong Kong into an international financial services and asset management centre such as Switzerland, this Council urges the Government to expeditiously and widely consult the views of the industry and other sectors, and to implement a series of measures to strengthen the competitive edge of Hong Kong's financial industry, including enhancing manpower training, improving the English standard of Hong Kong people, upgrading the financial infrastructure, as well as studying the provision of more tax concessions, so as to provide the entire Asia with high value-added services in fund management,

corporate investment management, personal banking, insurance sales and various investment and savings instruments."

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

MR CHAN KAM-LAM (in Cantonese): Madam President, with the positive effect brought about by the Individual Visit Scheme and CEPA, Hong Kong has recently seen an obvious trend of economic revival, thus raising hopes for better prospects among many people in Hong Kong. However, we know it very well that, in order to put Hong Kong onto the road of a full revival, the most crucial point is whether the economy of Hong Kong can seek a breakthrough or excel on the present foundation. Today's motion mentions the intention of developing Hong Kong into an international financial services and asset management centre such as Switzerland. This has obviously expressed the aspiration of elevating Hong Kong to a higher level or, just as some people in the financial sector have said, developing Hong Kong into the Switzerland in Asia. Hong Kong has already possessed advantages in many different aspects, such as the low tax rates, status as a free port, a sound legal system, policies that allow free flow of capital, effective operation of the financial market and close trading relations with mainland China, the economy of which is developing most rapidly.

The goal of becoming the Switzerland in Asia should not be unattainable for Hong Kong, so to speak. However, as pointed out by a lot of people in the financial market, since there is no banking secrecy law in Hong Kong, they have no confidence whether such banking secrecy law can be formulated and strictly complied with in Hong Kong. In addition, as Hong Kong is part of China, the sovereignty risk makes overseas investors have some reservations about channelling capital into Hong Kong. As such, with regard to the goal of making Hong Kong "the Switzerland in Asia", everyone does not have full confidence to be really optimistic. However, insofar as such hesitation is concerned, the Democratic Alliance for Betterment of Hong Kong (DAB) thinks that it is not necessary for us to be excessively worried because Hong Kong and the Mainland are now practising "one country, two systems", which acknowledges that there must be some intrinsic differences in the legal, social and even financial systems between the two places.

During the seven years since the reunification, the system under the principles of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" has been functioning very well. Although the Government of the Hong Kong Special Administrative Region (SAR) had to enter the market direct in order to defeat the market speculators during the financial turmoil, the financial market has since managed to maintain a high degree of stability. In addition, with the arrangement of "one country, two systems" and the advantage of our close relation with the Mainland, we have very solid support for our moving ahead to become a more liberalized financial centre. Taking the local stock market as an example, among companies listed in Hong Kong during the past few years, most of them are mainland companies or successful companies in the Mainland funded by Taiwanese capital. Now, in the stock market of Hong Kong, mainland-related stocks account for about 30% of the total market capitalization, and their transactions in the stock market account for more than 40% of the total turnover of the market. In the first initial public offering of last year, over 85% of the capital raised was absorbed by such enterprises. Besides, regarding the QDII system, that is, the Qualified Domestic Institutional Investor system which we often refer to recently, it is believed that it will be launched very soon and will benefit the stock market of Hong Kong. In the light of the fast developing trading relations between Hong Kong and the Mainland, and provided that the Mainland continues to open up its market and its economy keeps on growing, there are increasing chances for Hong Kong to provide financial and asset management services to the Mainland.

Firstly, in this way, Hong Kong can easily become the financial centre of China. As mainland China is the growth engine of Asia, if we can make good use of this driving force, it is only natural that Hong Kong will become the financial centre of Asia. However, it is not all smooth sailing for Hong Kong on the road of achieving such a goal — the hidden worry stems from the competition from Singapore. Our Southeast Asian neighbour already launched similar development strategies many years ago. In 1998, Singapore allocated US\$21 billion as a seed fund for strategic development of fund management. This strategy, together with many preferential measures, has successfully enhanced the attraction of its market. And the banking secrecy law in Singapore is also better formulated than the relevant legislation in Hong Kong. As such, after making careful observation of the situation, the SAR Government must implement effective measures in time. Only in this way can it talk of plans to develop Hong Kong into a world-class financial services and asset management centre similar to Switzerland.

Therefore, the DAB puts forward the following proposals: First, we should actively seek to communicate with the Mainland, so as to expedite the QDII system in stages. In this way, we can unite the strengths of local banks participating in Renminbi business, thereby boosting the amount of cash flow into the market. Secondly, we should actively explore the possibility of formulating a banking secrecy law, in order to enhance our attraction to investors in the region and lure them to inject capital into Hong Kong. Of course, insofar as measures for combating money laundering activities are concerned, we think that the Government must have sufficient measures in place to deal with them. Thirdly, the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited must further identify ways of upgrading our financial products that can cater to the interests of the market, so as to intensify the diversification of products in the local market, thereby enhancing our market competitiveness in this area. Fourthly, we must actively study the model of the European Union for developing a system of reciprocal recognition of funds in Asia, so that fund companies may market standardized fund products in the region. If we can enhance the flexibility, we can in effect increase the investment options in the market; and fifthly, we should establish wealth management departments or even wealth management colleges, so as to train up appropriate talents to tie in with the development of our financial strategies.

Madam President, if Hong Kong can be developed into an international asset management centre such as Switzerland, it will have very significant implications on the economic restructuring and sustainable development of Hong Kong, apart from creating a large amount of job opportunities. We also hope that, in the light of such a goal, the Chief Executive and the SAR Government can make active planning in respect to implementing the relevant policies and the specific measures.

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, after more than 20 years of development, the financial industry of Hong Kong basically possesses the required conditions to become an international financial centre, for example, tariff-free, the long-standing low-tax system, absence of foreign exchange control, free flow of capital, good communication networks, good financial

management, sound legal system, low tax rate, and so on. All these conditions are good attractions for foreign business to make investments in Hong Kong, and they are all elements contributing to the successful development of the financial industry of Hong Kong to date.

However, with the rapid development of neighbouring places, such as Shanghai, and so on, and the rapid growth achieved by Singapore, the Hong Kong Government must revamp outdated policies in order to seek greater scope of development, enhance the competitiveness of Hong Kong and strengthen the financial industry in the long run, thereby enabling Hong Kong to meet future challenges.

The Democratic Party supports the Government's initiatives in exploring the possibility of abolishing estate duty and exempting the profits tax of offshore funds. We believe that this move will minimize the worries of investors when they transfer capital to Hong Kong. Moreover, the Government should strive for discussions with the Central Government on expediting the process of allowing mainland capital to be invested in the asset market of Hong Kong, so as to expand the scale of the fund market in Hong Kong. Finally, the training up of elites is the driving force for the ongoing future development of the financial industry. The Administration should, in the interest of the future development of Hong Kong, consider making greater investments.

Among different methods of luring foreign capital in the world, tax concession is invariably the simplest and most effective method. Therefore, the Democratic Party supports the Government's initiatives in exploring the possibility of abolishing the estate duty and exempting the profits tax of offshore funds. The administrative procedures related to estate duty are rather cumbersome. If someone has unfortunately passed away, it is stipulated in law that all the related assets under the name of the deceased will be frozen immediately until all the procedures involving the administration of the estate are completed and the relevant estate duty is paid. The entire process could take a few years, causing a lot of inconvenience and liquidity problems to the families and business partners of the deceased. This will indirectly deter foreign investors from coming to Hong Kong. On the other hand, the revenue generated from estate duty in 2003-04 amounted to HK\$1.5 billion, but it only represented 1% of the total revenue of Hong Kong.

Beside, we must take a look at the fact that our neighbours in the Asia Pacific Region, such as Singapore, Australia and Malaysia, have abolished estate duty. So the Hong Kong Government must compare the pros and cons between the financial burden caused by the abolition of the estate duty and the attraction and increase in foreign investments, and find out which option is more favourable to Hong Kong.

Apart from this, the Government should also study the possibility of exempting the profits tax of offshore funds. This will also enhance our appeal in luring more foreign funds into Hong Kong for investment. In recent years, Singapore has launched various preferential measures, such as granting a 10% exemption to the profits tax of offshore funds, providing a tax holiday of two years to companies established in Singapore, and so on. With these initiatives, Singapore has inevitably lured away some of the offshore funds which originally had intended to register in Hong Kong. Therefore, the Government proposes in the Budget to discuss with the industry and is considering to put forward proposals on exempting the profits tax of offshore funds, so as to bring Hong Kong to an equal footing with Singapore as far as the preferential policies are concerned. However, the Hong Kong Society of Accountants has pointed out that some of the exemption requirements are much too stringent, and the proposals may not be able to benefit the majority of offshore funds. As such, we hope that the Administration can fully consult the industry and the professional bodies, so as to help expedite the implementation of feasible and reasonable exemption measures, in order that Hong Kong not be made to lag behind in the competition for capital.

On the initiatives to attract more mainland capital for investment in Hong Kong, apart from making suitable reviews in the taxation aspect, Hong Kong must strive further to develop itself into an international financial centre. The crux lies in the integration of the local and mainland capital markets in future. Our financial services industry will continue to provide services to mainland enterprises in seeking listings and raising capital. Apart from this, the Government should develop Hong Kong into an offshore asset management centre recognized by the Central Government, and the way to achieve this is to expedite the implementation of the Qualified Domestic Institutional Investor (QDII) system. It is the so-called "channelling northern capital to the south" in the financial aspect, thereby allowing domestic institutions to invest in foreign stock markets. Of course, we hope that such investments could mainly be made in Hong Kong, thus making Hong Kong a major gateway for mainland capital.

On the other hand, after China's accession to the World Trade Organization, the fund management market has been opened to the outside world, and Hong Kong institutions can make investments in the mainland market through Qualified Foreign Institutional Investors (QFII). This will be a strong attraction to international investors, who will be lured into making investments in Hong Kong funds and making Hong Kong the bridgehead to the mainland market.

Being an international city, Hong Kong possesses not only brilliant financial and legal talents, but also a mature financial management system as well as an exchange environment that is highly transparent. Therefore, Hong Kong possesses the conditions to become the prime trading market of financial products in Asia.

In the long term, Hong Kong should also strive to become an offshore asset management centre recognized by China, and it should, through diversified funds as well as other financial products, absorb idle funds in the Mainland and then invest them in foreign markets and enterprises with good prospects. Apart from this, the Government may even help recognized funds in Hong Kong to obtain Asian passports, further leading the local fund industry to develop in the regional direction. Now, funds registered in Luxembourg and other countries can be sold reciprocally in different countries of the European Union without requiring the approval of individual authorities. But the situation is not so in Hong Kong, in which our recognized funds cannot be sold in other parts of the Asia Pacific Region, such as Taiwan or Korea, and prior approval must be sought from the respective local authorities. This is not only causing inconvenience to the industry, but also hindering the development of the fund market. It is necessary for the Government to follow this up.

Lastly, the Administration should continue making investments for the future of Hong Kong, and it should develop quality professional financial courses in conjunction with universities. This will help train up more brilliant management and professional talents, so as to consolidate Hong Kong's status as an international financial centre in the region.

However, I must mention one point, that is, Mr Ambrose LAU has just said that Hong Kong should strive to achieve the same status as Switzerland. This is of course a good goal, but we worry that the message the Government has been conveying to the international community in recent years is that: Our rule of

law has seen some retrogression. Therefore, I hope, while implementing the various measures, the Government should strengthen our rule of law.

I so submit.

DR DAVID CHU (in Cantonese): Madam President, the Chief Executive said in this year's policy address that Hong Kong could be developed into an international financial services and asset management centre similar to Switzerland. I agree to this proposal and would like to support it. The Financial Secretary, Mr Henry TANG, pointed out in the 90th paragraph of this year's Budget, "Many people have suggested to me that estate duty be reviewed in order to attract foreign capital, thus developing Hong Kong into the premier asset management centre for Asia. Towards this end, we will study the effects on the economy and on government revenue of adjusting estate duty and how best this should be effected to achieve the purpose of attracting foreign capital."

I think estate duty is one of the major obstacles in Hong Kong's development into the Switzerland in Asia, a world-class financial services and asset management centre. With estate duty in place, it is impossible for Hong Kong to become as popular as Switzerland among billionaires in the world, so they will not be willing to come to Hong Kong to spend their retirement years here. This also makes billionaires in Hong Kong to engage the service of taxation experts to make financial arrangements for their families, thereby causing an enormous outward drain of wealth from Hong Kong.

In fact, apart from tax havens such as Bermuda, countries like Australia, Thailand, Malaysia, India, and Canada, and so on, also do not levy any estate duty. Singapore is also in the process of reforming its estate duty. Hong Kong is thus in a disadvantageous position in the competition in the international arena.

The original intention of estate duty is to levy a tax on wealthy successors to such great estates, thus achieving the purpose of redistribution of wealth. However, what usually happens in the reality is most people choose to evade paying the duty by legal means, and the Government could only get a very small amount of estate duty. For society as a whole, we are losing more wealth than the duty we collect.

Statistics show that revenue generated from estate duty last year was only \$1.4 billion, which accounted for 0.8% of the total revenue of the Government. After deducting the complicated administrative costs, the real income generated from this duty is actually very small. Given an outward drain of capital and the lack of appeal to capital outside Hong Kong, the real loss incurred may be higher than the revenue generated.

In addition, as the present situation stands, the group who suffers most in terms of estate duty is the middle class because the wealthy people will have the financial capacity to make arrangements to remove assets to places out of Hong Kong for management, thereby evading tax. Only the middle class people who cannot afford the service of taxation experts or people who are not familiar with taxation matters have to pay estate duty.

In conclusion, the abolition of estate duty on the one hand can help to retain more local assets in Hong Kong, and on the other also attract more international billionaires, people owning enormous assets and members of international consortiums to Hong Kong to take up residency here. It will enhance Hong Kong's appeal to foreign capital. This is essential to promoting the economic development of Hong Kong, making it the international financial services and asset management centre as well as turning Hong Kong into the true Switzerland in Asia. Meanwhile, the abolition of estate duty will alleviate the tax burden of the middle-class people. We hope Financial Secretary Henry TANG can bring Hong Kong people the good news of abolishing estate duty next year.

With these remarks, Madam President, I support the amendment of Mr Ambrose LAU.

MS MIRIAM LAU (in Cantonese): Madam President, the Chief Executive mentions in this year's policy address that Hong Kong is well placed to further develop as an international financial services and asset management centre such as Switzerland in order to provide Asia with high value-added services in fund management, corporate investment management, personal banking, insurance sales and various investment and savings instruments. The Liberal Party agrees that Hong Kong should progress in this direction.

Due to historical factors and the fact that many international organizations have set up headquarters there, Switzerland is a highly internationalized country. With a population of 7.26 million, the ratio between Swiss and non-Swiss possessing the right of abode in Switzerland is 4:1, which is a rather high ratio. There are also plenty of international talents in the country, such as experts who are well-versed in the laws of different countries, international law and the operation of financial markets. Such experts can act as consultants to render valuable assistance in the process of absorbing assets from various countries. Besides, as there are three language zones in Switzerland, and many people are attracted to work there, it has trained up a large pool of talents who are conversant in many languages and able to provide services to clients from different countries.

As Hong Kong has a good regulatory mechanism and a good legal system in place, together with such conditions as low tax rates, a sound financial and banking system, free flow of capital, and so on, it should not be too difficult for Hong Kong to achieve the above development goal. However, Hong Kong's status as an international financial centre is being challenged as a result of the rapid development of our neighbouring cities and countries and the resultant competition. This situation should by no means be underestimated, and it is precisely for this reason that we need to enhance our competitiveness substantially. For example, the Singapore Government is making active efforts to develop the country into an asset management and private banking centre in Asia. Delegations comprising Singaporean officials have been dispatched to various European countries to launch promotional campaigns and attract investments. Therefore, several European banks have come to Singapore to set up their Asian headquarters or offices there. Another noteworthy example is our close neighbour Macao. With the enactment of the Macao Offshore Law in 1999, Macao endeavours to attract more companies to go and set up operations there by offering lots of tax concessions. The number of offshore companies in Macao has increased substantially from less than 10 in 1999 to 215 at the end of last year, some of which are even listed companies in Hong Kong. This has caused some concern among certain financial experts in Hong Kong.

Madam President, the Liberal Party has all along been advocating that the SAR Government should maintain a simple and low tax regime, so as to create a good business and investment environment to retain local capital and further absorb foreign capital. In providing tax concessions, the Government must be fair and impartial and give no special preference to any specific industry, nor

should any "winner-picking" policies be implemented. The abolition of estate duty is a feasible approach to offer tax concessions. In fact, estate duty will lead to some unfair situations in society because some people with substantial assets can legally evade tax without paying a single cent, whereas the middle-class people who cannot afford the asset management costs have to pay estate duty. This is obviously a violation of the principle of fairness. Many scholars and people from the accounting and banking sectors are also advocating the abolition of estate duty because this is instrumental in luring wealth to Hong Kong from different parts of the world, as this will make people from Southeast Asia and unstable areas invest in Hong Kong without any worry and apply for status of investment migrants. And this will certainly help Hong Kong substantially in becoming a private banking centre and a bond trading centre. Besides, it will also become a major driving force for revitalizing the property market and all kinds of investment in Hong Kong, as well as enhancing local employment opportunities. Therefore, the Liberal Party has actually started to advocate the expeditious abolition of estate duty as early as several years ago.

Madam President, as the international financial centre of China, Hong Kong should make good use of its better financial system to expand into the extensive market in the Mainland. The Liberal Party advocates that we should boost the development of Renminbi (RMB) business in Hong Kong. Apart from the present RMB savings and credit card business, we may also introduce new businesses such as RMB loan services, bond issuance services and even the payment for goods. The Hong Kong Government should provide complementary initiatives to develop Hong Kong into an international bond issuance centre. At the end of last year, when China issued foreign currency national bonds globally amounting to US\$1 billion and 500 million Euro, Hong Kong was the first promotion point. In order to absorb the savings deposit of RMB 900 million yuan in the Mainland, Hong Kong should actively work to cope with the implementation of the QDII scheme, so that mainlanders may invest in the funds of Hong Kong. In particular, we should encourage mainlanders visiting Hong Kong under the Individual Visit Scheme to make investments. For example, the restriction on the amount of money they can bring into Hong Kong should be relaxed, so as to enable them to buy and sell stocks, bonds, properties and other financial products, thus enhancing their demand for local financial services.

Besides, in order to further develop Hong Kong into an international asset management centre like Switzerland, Hong Kong must have an abundant supply

of international talents. The SAR Government must fully co-operate with the industry in stepping up the training of financial services talents in bond markets, fund management, investment portfolio management, private banking business, insurance and all sorts of investment savings. In addition, ways should be identified to encourage workers in the financial services to better equip themselves. Apart from professional knowledge, training should be given to the young people so as to ensure that they can possess an international outlook as well as a good command of English. Only in this way can they cope with the challenges posed by an international financial services and asset management centre. On top of all this, the Government may attract more mainland financial professionals to Hong Kong through reciprocal recognition of qualifications between Hong Kong and the Mainland.

Madam President, after the occurrence of the Enron and WorldCom incidents, the public and international financial regulators have tightened their requirements on the transparency of the accounts of enterprises. The United States has introduced a more stringent quarterly accounting system, whereas earlier on the Hong Kong Government planned to conduct a consultation on the monitoring of the conflict of interests of analysts. The Liberal Party thinks that while it is understandable that, in the light of the needs of the market and the institutions, suitable measures and legislation have to be introduced, they should not be over-stringent because over regulation will excessively suppress the scope of development of the financial market and render people of the industry at a loss as to what to do. The Hong Kong Monetary Authority and the Treasury should keep a close tab on the need of the market and enhance the effectiveness of the local financial market. For example, in order to enhance the clearing efficiency, the Hong Kong Exchanges and Clearing Limited should consider implementing the conversion of physical share certificates of locally registered companies currently deposited with the Central Clearing and Settlement System into paperless shareholding in stages. The Liberal Party hopes that the Government can conduct sufficient consultation before implementing each measure, so as to take on board the views of people of the industry.

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

DR TANG SIU-TONG (in Cantonese): Madam President, after the publication of the Chief Executive's policy address in January, we have been exploring

whether Hong Kong can develop into the "Switzerland in Asia". In my understanding, two mutually related concepts are embedded in the notion of the "Switzerland in Asia". The first one is that Hong Kong should develop its personal banking business and become an international financial services and asset management centre like Switzerland. The other one is that Hong Kong should adjust its industry structure so that our economy will be led by the financial sector and service industries complemented by the logistics and high-value added industries.

This is an important issue concerning the economy and people's livelihood relevant to the future of Hong Kong, covering various aspects and various fields. My main point is, only with the support of China can Hong Kong develop into the "Switzerland in Asia" and I would like to make some suggestions.

The geographical advantage of Switzerland lies in its close proximity to Germany, France, Italy and Austria, speaking the common languages with these four neighbours, a people of high educational standards and an advanced information system. Hong Kong, on the other hand, has advantages in various aspects such as a sound legal system and free flow of human resources, information, management skills and capital. And the greatest edge is that Hong Kong lies at the southern tip of China, the hub of Asia, and implementation of "one country, two systems" with "a high degree of autonomy" authorized by the Central Government. It benefits from the back-up and support of China, the largest economy maintaining sustained development in the world. The international community has also recognized the outlook of China: By 2020, China's Gross Domestic Product will have quadrupled compared with 2000, that is, from US\$1,000 billion to US\$4,000 billion. This is attainable. Doubtlessly, China will reach the level of a medium developed country, ranking among the top few in the world in terms of the size of its economy by 2050. Therefore, the fact that Hong Kong can develop into the "Switzerland in Asia" is closely related to China's economic development, the affluence of the people and the growing strengths of the country. These factors are not isolated. In view of this, I would like to make five suggestions:

Firstly, after 20 years' economic development since China's reform and opening up, three advanced coastal economic regions including the Pearl River Delta (PRD) Region, Yangtze River Delta Region and Bohai Sea Encircling Zone have formed. In addition, there are other major economic zones such as

the old industrial zone, the middle and the western development zones in the three provinces of Northeast China. Each of these major economic regions covers several provinces with over 100 millions of population and unique resources of its own, equivalent to a medium-sized country in the world. Hong Kong should set up offices in these major economic regions and promote economic co-operation with them and develop their financial services.

Secondly, the first meeting of the Pan-PRD Regional Co-operation and Development Forum was held and attended by the nine provinces/regions of the Pan-PRD Region, Hong Kong and Macao (it is commonly known as "9+ 2"). At the meeting, the Pan-PRD Regional Co-operation Framework Agreement was signed, symbolizing a new stage of material regional co-operation. Around 120 000 enterprises have been set up by Hong Kong businesses with total investments of US\$150 billion. I would like to suggest that Hong Kong should conduct an essential review and study on 10 aspects in relation to co-operation with the nine provinces/regions. These 10 aspects include business certification and trade, agriculture, industries, industries and investments, technologies, energy resources, transportation, exchange of information, tourism, environmental protection and labour services. The Government should also consider how Hong Kong can further participate in the co-operation in the financial sector and Renminbi business. It should also commence negotiations on the contents of co-operation with relevant departments and individual provinces/regions.

Thirdly, the first China-ASEAN Expo will be held in Nanning, Guangxi from 3 November to 6 November this year. In this co-operation model of China-ASEAN Free Trade Zone (commonly known as "10+ 1"), Hong Kong should actively take part in this co-operative platform for mutual benefits in order to create an all-win situation. Otherwise, Hong Kong will be marginalized and its position as a financial centre in Asia will be adversely affected.

Fourthly, in the "9+ 2" model of co-operation, the governments of various provinces/regions will play an important role in the construction of infrastructure. I would like to suggest that the SAR Government should expedite the implementation of co-operative projects in such areas as highways, railways, aviation and shipping which are relevant to Hong Kong. It should also expedite the planning, verification and construction of the Hong Kong-Zhuhai-Macao Bridge. Meanwhile, in the "9+ 2" model of co-operation, the Government

should play the role of creating a fair and open market environment conducive to the expeditious implementation of CEPA through regional co-operation.

Fifthly, in order to be a world-class financial services and asset management centre, Hong Kong must be backed up by its own high-value added industries. However, the foundation of electronics and information technology is not sound enough. In view of the relocation of our light industries and diminishing role of the real estate sector as an economic powerhouse, we suggest that Hong Kong should set up and develop a modernized automobile industry in the river-loop area at the boundary between Hong Kong and Shenzhen. With the advantages brought about by CEPA, Hong Kong should become an important feature in China's automobile market which has seen the most rapid development, the fastest growth rate in demand and the biggest market capacity. The industrial chain driven by the automobile industry will help develop a number of related trades and promote the development of high-value added industries. As a result, the structural difficulties arising from economic transformation can be solved. When this suggestion is being commended, supported and implemented by the senior officials in Hong Kong and the Mainland, relevant financial bodies should consider establishing automobile industrial funds or specialized banks for this sector so as to provide services for such a mammoth programme and get prepared for entry into the financial market in the Mainland. In so doing, Hong Kong will stand good chances of becoming the "Switzerland in Asia".

With these remarks, Madam President, I support Mr Ambrose LAU's motion.

MR HENRY WU (in Cantonese): Madam President, I am very grateful to Mr Ambrose LAU for proposing the motion on promoting Hong Kong as a world-class financial services and asset management centre. I support this motion, particularly the reference in its wordings to "we urge the Government to expeditiously and widely consult the views of the industry and other sectors" and "to enhance manpower training and improve the language standard" — I think not only English, the level of Putonghua has to be enhanced — and "provide tax concessions". However, I would like to speak on "regulation and publicity".

In fact, regarding the goal of developing Hong Kong into an international financial services and asset management centre like Switzerland, I made a rather detailed account during the debate on policy address this year that the financial

systems and the regulatory legislation between the two places are different, particularly as sound laws on confidentiality are embedded in Switzerland's financial system to protect personal privacy and investment. Therefore, we cannot blindly follow other's example. We should attain the goal of developing Hong Kong into an international financial services and asset management centre in accordance with our unique conditions.

I mentioned in the debate on policy address that, in order to achieve the goal, relevant support legislation and investor confidence and preference are essential, particularly appropriate amendments should be made to the draconian Securities and Futures Ordinance, which came into operation last year, and appropriate checks and balances should be applied in respect of the excessive powers of the Securities and Futures Committee (SFC).

Madam President, I would like to cite an example to illustrate the excessive powers of the SFC. May I quote a press release issued by the SFC in October last year: "Pursuant to the Securities and Futures Ordinance, the SFC prohibits a person (I do not want to disclose the name) of attempted theft from re-entering the industry for life". Madam President, "for life" is the main point. I believe, in our society today, prohibiting someone from doing something "for life" is inconceivable and horrifying. According to the press release, the reason for such prohibition order was that the person concerned had attempted to steal \$12,000 from a client. Mr Alan LINNING, Executive Director of Enforcement of the SFC, emphasized in the press release: "As there is a need to protect the investors and the market from being affected by such kind of behaviour, we must issue the permanent prohibition order to the relevant person."

The industry has been very concerned about the investors and recognizes the importance of protecting the investors because they are our "bosses". Without investors, we will be out of business. Therefore, we also agree to severely punish those unlawful elements who have committed serious offences to inflict heavy losses on the investors. But the point is, should the person from the above example be punished by a permanent prohibition order? This is open to question. According to the press release, the severe punishment was imposed by the SFC pursuant to section 194(1)(b)(iv) of the Securities and Futures Ordinance. It provides that ".....prohibit the regulated person from doing all or any of the following for such period — applying to be licensed or registered". I believe the meaning of "for such period" in the section does not

refer to "for life". From this, we can see that the SFC is inconceivably powerful.

Madam President, it can be seen from another press release if the punishment by the SFC is fair. According to a press release in May this year, a former employee of a sizeable company had embezzled more than \$ 2.2 million during a period of over 10 years. However, the SFC did not impose any permanent prohibition order on him. Obviously, the SFC's approach and the punishment imposed are unfair and unreasonable.

During the past few years and on various occasions in the Legislative Council including in the Chamber, at the meetings of panels and Bills Committees and even in the Ante-Chamber, I have clearly pointed out the SFC's excessive powers and its draconian enforcement actions to the Financial Secretary and several Bureau Directors. But they seemed to have turned a deaf ear to this and showed no signs of response. As securities brokers are subject to the licensing control of the SFC, they tend to resign themselves to adversity in order to protect their livelihood. However, some very minor offences such as failure of making report to the SFC within one day will be regarded as a violation of the law or regulation even though remedy has been made the following day.

Madam President, I ran into a colleague in the industry a few days ago. He pointed out that his company had hired a new employee for accounting work. Having worked for less than a month, the employee inadvertently made a wrong entry for a sum of money. In fact, the wrong entry had neither caused any pecuniary loss to the client nor to the company, and subsequently the company had also corrected the mistake. The SFC, after conducting an investigation and seeking clarifications from the company, had accepted the company's explanation that the whole incident was due to the fact that the staff concerned was newly employed who did not clearly understand his work. So, the SFC demanded a written explanation from the company. The colleague in the industry had thought that the whole incident was over. However, the company recently received a letter from the SFC accusing the company of violating the stipulation of reporting the wrong entry within one day.

Madam President, in March this year I asked a question in the Legislative Council about the number of press releases issued by the SFC in relation to disciplinary and prosecution cases over the past three years. I found that there were 316 cases, meaning an average of two cases per week. Does it mean that

our industry has been so disappointing? Certainly not. Comparatively serious cases actually only account for around 20%. The issue of so many such press releases by the SFC is actually a smear on the industry. Madam President, publicity is also very important. If we cannot minimize the negative news, I believe it is very difficult for us to achieve the goal of today's motion.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I would like to thank the Honourable Ambrose LAU for moving the motion and I also thank Members for their valuable views.

The Government's long-standing policy is to further enhance Hong Kong's position as an international financial centre and as the premier capital formation centre for the country. Thanks to the concerted efforts of the Government, the regulators and the industry over the past few years, the financial services in Hong Kong, irrespective of whether it is securities, fund management, the banking or insurance industry, have seen robust development with obvious achievement.

Being the 10th biggest stock market worldwide, Hong Kong's stock market has a total market capitalization of over \$5,370 billion as at April 2004, representing an increase of more than 50% compared with the same period last year. For the first four months of this year, the daily trading volume reached \$19 billion which is almost two times of that in the same period last year.

As at the end of last year, unit trust funds and mutual funds recognized by the Securities and Futures Commission (SFC) have a total net asset value of more than \$4,100 billion, representing an increase of 56% compared with 2002. Hong Kong is also the 12th largest banking centre and the seventh largest foreign exchange trading centre worldwide. In respect of personal banking, assets managed for clients have recorded a more than 75% increase during 2001 to 2003.

Meanwhile, Hong Kong, as one of the most open insurance markets worldwide, is also one of the regions with the highest concentration of insurance companies. In the past two years, our insurance industry has recorded an average increase of 15% per annum in terms of premium received, with an overall premium income exceeding \$100 billion last year.

We have also seen encouraging development in the bond market. In the past two years, many public corporations, including the Airport Authority, the Kowloon-Canton Railway Corporation and the MTR Corporation Limited, have engaged in bond issuance, particularly bonds of long maturities and Hong Kong dollar bonds available to retail investors. Also, the Government has just successfully issued \$6 billion in securitization bonds backed by revenues to be generated by government-owned toll tunnels and bridges. It is the largest securitization bond offer ever made in Hong Kong as well as the first securitization bond offer available to retail investors. The Government has also planned to issue not more than \$20 billion government bonds in 2004-05. Bonds issued by the public sector will help provide a benchmark yield curve for the reference of the market. The private sector has also become more active in participation of bond issuance than ever before. During the past five years from 1999 to 2003, the average annual growth rate of bond issuance is more than 10%. As at end-March 2004, the outstanding amount of Hong Kong dollar bonds, including Exchange Fund Bills issued by the Hong Kong Monetary Authority (HKMA), totalled \$568.9 billion, representing an increase of 92% compared with that at end-March 1997.

In order to attract investors, capital raising organizations and financial services providers to make investments and raise capital in Hong Kong, the Government has adopted a myriad of measures in the following aspects, including:

- (1) provide an efficient and transparent regulatory framework that meets international standards so as to ensure market quality and maintain investors' confidence;
- (2) streamline procedures so as to reduce costs and lead time for transactions;
- (3) provide an efficient financial infrastructure of international standard;

- (4) update our laws and regulations constantly to tie in with the launch of new products in the market;
- (5) safeguard investors and depositors and enhance education for them;
- (6) offer tax concessions;
- (7) strengthen talents training;
- (8) Mainland/Hong Kong Closer Economic Partnership Arrangement;
- (9) promote Hong Kong's financial services and investment opportunities overseas; and
- (10) maintain close co-operation with overseas regulators and related bodies.

I shall be elaborating on the measures implemented by the Government and the regulators in recent years in respect of these 10 major aspects as well as tasks under planning:

(1) Perfect regulatory framework and upgrade corporate governance

We have completed a number of tasks in this area since sound corporate governance is the key to enhancing market quality. In the Corporate Governance Action Plan promulgated by me early last year, there is an elaboration on the concrete plans proposed by the Government and relevant regulators for upgrading corporate governance. We have actively and gradually implemented the relevant measures, including enhancing regulation of listing and tightening the regulation of intermediaries and the accountancy profession.

The Securities and Futures Ordinance, which came into operation last year, has provided for a tougher regime for the disclosure of information. By introducing the dual filing system to improve the disclosure of market information, it enables the investors to grasp more comprehensive and more accurate company information. Besides, we are now drafting a bill to give the more important listing requirements statutory status.

Regarding tightening the regulation of the accountancy profession, the Hong Kong Society of Accountants has, at my request, made a series of proposals on enhancing the transparency and accountability of the regulatory mechanism, including the setting up of an Independent Investigation Board. Meanwhile, we are also working on the establishment of a Financial Reporting Review Panel to improve the quality of financial reports.

(2) Streamline procedures and promote market development

With the co-operation of the SFC, we are now working on the reforms to the existing regulatory structure related to issuance of shares and bonds in three phases, including formulating guidelines, amending the Companies Ordinance and a comprehensive review of the laws and regulations with a view to reducing costs of issue so as to encourage capital raising and facilitate market participants.

(3) Perfect financial infrastructure

With a perfect financial infrastructure system that can minimize transaction risks and enhance effectiveness, transaction costs can also be reduced. The Government and various regulators have made a lot of efforts in this aspect. First of all, the Government is now legislating on the Clearing and Settlement Systems Bill in order to ensure the soundness and effective operation of the clearing and settlement systems.

Besides, the HKMA established two-way links between the Central Moneymarkets Unit (CMU) and Euroclear/Clearstream respectively in November 2002 and January 2003, enabling investors in Hong Kong and the region, through their accounts in the CMU, to directly hold and settle international bonds, thereby greatly enhancing the settlement efficiency. In April this year, the HKMA also signed an agreement with the China Government Securities Depository Trust and Clearing Company Limited so as to establish a direct link between the CMU and the government securities book-entry system of the Company. This will enable mainland investors to invest and hold foreign bonds more safely and more cost-effectively through the HKMA's CMU.

In respect of the securities market, the Hong Kong Exchanges and Clearing Limited (HKEx) successfully introduced in April this year a new settlement and clearance system for derivative products. Furthermore, the HKEx also published the consultation conclusions on a scripless securities

market at the end of May. Based on this market consensus, the Government is doing the preparatory work for amendment of the relevant legislation.

(4) Update laws and regulations

In order to tie in with the launch of new products in the market, the Government and regulators have also been reviewing and updating the laws, regulations and guidelines. For example, the SFC published the Code on Real Estate Investment Trusts and the Guidelines for Regulating Index Tracking Exchange Traded Funds last year. The SFC will review with the next year the Hedge Funds Guidelines based on the experience accumulated from vetting and approving hedge funds in the past, with a view to further facilitating the development of retail hedge funds. Furthermore, the SFC, understanding the importance of diversified investment in properties overseas to the long-term development of Real Estate Investment Trusts, has set up an ad hoc committee to study the relevant issues.

(5) Protect investors and depositors and enhance education for them

Protection for investors and depositors, particularly those small ones, is an important cornerstone of maintaining confidence in the entire financial market. After the passage of the Deposit Protection Scheme Bill by the Legislative Council last month, we will formulate the subsidiary legislation as soon as possible and expect to bring the protection scheme into operation in 2006 at the soonest come. Besides, we have been promoting investor education vigorously through publishing articles monthly in my column on the Bureau's website and a variety of educational initiatives organized by regulators. We are committed to enhancing investors' knowledge in the nature and risks involved in various investments and help them put market information to the best use in making investment decisions.

(6) Tax concessions

Regarding tax concessions, Hong Kong already has a simple and stable tax regime with extremely low tax rates. Besides, we just introduced a tax measure to upgrade qualified debt instruments last year. We are now studying what amendments should be made to the Inland Revenue Ordinance so as to exempt offshore funds from profits tax liability which is the point mentioned by Mr SIN Chung-kai earlier. Besides, we have started to study the impact of an

adjustment in estate duty on the economy and government revenue and what adjustments should be made in order to attract foreign capital. This is a matter of concern for quite a number of Members.

(7) Enhance talents training

Talents are an important pillar to our financial industry. In order to enhance the competitiveness of Hong Kong as an international financial centre, the Government has set up the Advisory Committee on Human Resources Development in the Financial Services Sector, which comprises members from the financial services sector, professional bodies, universities, related training institutions, regulators and government departments. They are now studying the development strategies on upgrading the human resources of the sector. The Committee will organize a seminar at the end of this year to explore Hong Kong's outlook as an international asset management centre, the talents required and how to further enhance the quality of local talents.

A good command of English is an important prerequisite to support the continuous robust development of our financial services. The Government has introduced various subsidy schemes and training programmes in recent years to promote people's English proficiency level. At the school level, efforts are made to promote students' learning ability in English through revision of syllabus and the introduction of the Native-speaking English Teacher Scheme in secondary and primary schools in the hope that students' confidence and competency using English can be enhanced. As regards the needs of employed persons, the "English in the Workplace" Campaign supported by the Language Fund was launched in February 2000. Furthermore, the Government has also set up the Continuing Education Fund, which provides, amongst others, subsidies for English language courses.

(8) Mainland/Hong Kong Closer Economic Partnership Arrangement

Under the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA), the strengths of the Mainland and Hong Kong can be integrated to create an all-win situation beneficial to both sides and inject a new impetus into Hong Kong's financial services industry. The banking, securities, accountancy profession and insurance sector will all stand to benefit. Financial services providers and professionals will be facilitated in obtaining operational or

professional qualifications in the Mainland, and enabled to grasp the earliest opportunity in access of the mainland market, thereby enhancing the growth prospects of the sectors.

Since the introduction of Renminbi (RMB) business in Hong Kong this year, responses from various sectors have been very good. This development will not only help promote the integration of the economies of Hong Kong and the Mainland and facilitate travel and consumer spending by residents in both places, but also provide a tremendous advantage to the banking sector in expanding their scope of business. At present, the average weekly consumer spending with RMB credit cards in Hong Kong is \$23 million. Currently, more than 40 banks are operating RMB business with an estimated total RMB deposits exceeding RMB 6 billion yuan. We envisage that the overall RMB business will continue to see steady growth.

(9) Promote Hong Kong overseas

In order to further promote Hong Kong's financial services, I have visited Europe and various cities in the Mainland to promote our quality financial services. I just returned from a visit to various countries in Southeast Asia at the end of May. During that visit, I introduced to the local investors the financial services in Hong Kong and the Capital Investment Entrant Scheme. Besides, various regulators have been working closely with the industry to promote market development, including encouraging the industry to participate in promotional activities in overseas markets.

(10) Close co-operation with international institutions

Being a member of many major international organizations and forums worldwide, Hong Kong has been actively maintaining close co-operation with international financial institutions to ensure Hong Kong keep abreast of the international standards and development trends in order to maintain and enhance Hong Kong's status as an international financial centre.

Before I conclude, Madam President, I would like to respond to several suggestions made by a number of Members. Mr Ambrose LAU requested that active enforcement actions against money laundering be taken. I cannot agree more. In fact, Hong Kong, being an active member of the Financial Action Task Force on Money Laundering, was the chairman for 2001-02. Hong Kong

is now implementing the 40 new measures against money laundering proposed by the Task Force. This is very important to Hong Kong as an international financial centre.

I would also like to respond to the secrecy law mentioned by Mr CHAN Kam-lam. We have no intention to formulate a bank secrecy law because under common law and the Personal Data (Privacy) Ordinance, sufficient protection has been provided for the personal data of the banks' clients. Bank secrecy law is in fact a very controversial issue since some personal banking centres are facing international pressure to relax bank secrecy law in an attempt to combat money laundering. Therefore, we have no such plan.

Just now I have mentioned in my speech the issue of estate duty which will be reviewed by the Financial Secretary. A while ago, a number of Members also mentioned the Qualified Domestic Institutional Investor (QDII) Scheme. I only wish to point out that we have a very sound market infrastructure to receive these mainland measures. In other words, if the QDII Scheme is launched, I believe Hong Kong will be the premier market for mainland investments.

Ms Miriam LAU just mentioned turning Hong Kong into a bond centre for the Mainland for fund raising. I totally agree. But I would like to make the scope even wider, that is, Hong Kong should be a bond centre in Asia, which is our goal.

Finally, I would like to draw a conclusion on the 10 points I have just mentioned and the position of Hong Kong as an international financial centre and asset management centre.

Hong Kong has a very sound financial market infrastructure and a unique competitive edge in the support from the Motherland, which is an advantage that Switzerland lacks. We have an abundant pool of talents, enterprises, experience and facilities that connect us to the rest of the world. We also have a very close relationship with the Mainland which is under rapid economic development. We must grasp the opportunities to further develop Hong Kong into a financial services and asset management centre of international standing so as to create more business opportunities in the financial services sector for the Motherland, Hong Kong and even the whole region. At the same time, this will also bring even greater impetus to our economic development. Finally, I must stress that the Government will continue to work together with the industry,

widely consult their opinions with a view to fostering a favourable environment in order to attract more foreign capital and promote the intensified development of our market.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Ambrose LAU, you may now reply and you have three minutes 25 seconds.

MR AMBROSE LAU (in Cantonese): Madam President, first of all, I would like to thank all Honourable colleagues for their enthusiastic speeches. While agreeing and supporting my motion, they have suggested many valuable ideas and shown great insight on how to promote Hong Kong as a world-class financial services and asset management centre. I hope the Government can seriously consider and take on board this Council's views. With the implementation of CEPA and the co-operation and development of the Pan-Pearl River Delta Region, Hong Kong has advantages in the areas of access to good natural conditions, favourable geographical position, and harmonious personal factors, which help it develop into the "Switzerland of the Orient". However, the point is, the Government should adopt proactive policies and measures. Singapore is competing with Hong Kong in striving to become an international financial services and asset management centre. In view of this, the Government should have a sense of urgency and crisis, absorb the views of the Legislative Council when implementing the relevant actions to achieve the goal in order to expedite the economic transformation of Hong Kong and solve the unemployment problem.

Madam President, I so submit.

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

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 23 June 2004.

Adjourned accordingly at twenty-three minutes past Nine o'clock.

INLAND REVENUE (AMENDMENT) BILL 2000

COMMITTEE STAGEAmendments to be moved by the Secretary for Financial Services
and the TreasuryClauseAmendment Proposed

- 2 (a) In subclause (1), by deleting "Section" and substituting "Subject to subsection (4), section".
- (b) In subclause (3), by deleting "2001/02" and substituting "2004/05".
- (c) By adding -

 "(4) Section 4 (in so far as it relates to section 12(6)(c)(iii) and (f) of the Inland Revenue Ordinance (Cap. 112)) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment.

 (5) Section 20A -

- (a) subject to paragraph (b), applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment;
- (b) in so far as it relates to item 17 of Schedule 13 to the Inland Revenue Ordinance (Cap. 112), applies in relation to the year of assessment in which section 5(1)(e) of

ClauseAmendment Proposed

the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) comes into operation and to all subsequent years of assessment."

4 In the proposed section 12(6) -

(a) by deleting paragraph (b)(ii) and substituting -

"(ii) fees in respect of an examination set by an education provider or a trade, professional or business association, and undertaken by the taxpayer to gain or maintain qualifications for use in any employment,";

(b) in paragraph (c) -

(i) in subparagraph (i), by deleting "or";

(ii) in subparagraph (ii), by deleting "for its members;" and substituting "; or";

(iii) by adding -

"(iii) a training or development course accredited or recognized by an institution specified in Schedule 13;"

(c) in paragraph (e), by deleting the full stop and substituting a semicolon;

(d) by adding -

ClauseAmendment Proposed

"(f) the Secretary for Financial Services and the Treasury may by order amend Schedule 13."

6 By deleting the clause and substituting -

"6. Ascertainment of chargeable profits

Section 16 is amended -

(a) in subsection (1)(a) -

(i) by repealing "the conditions set out in subsection (2) are satisfied" and substituting "the condition for the application of this paragraph is satisfied under subsection (2), and subject to subsections (2A), (2B) and (2C)";

(ii) by repealing "upon" and substituting "on";

(b) in subsection (2) -

(i) by repealing "conditions referred to in subsection (1)(a) are that -" and substituting "condition for the application of subsection (1)(a) is satisfied if -";

(ii) by repealing paragraphs (d), (e) and (f) and substituting -

"(d) the money has been borrowed from a financial institution or an overseas financial institution;

ClauseAmendment Proposed

- (e) the money has been borrowed wholly and exclusively to finance -
 - (i) capital expenditure on the provision of machinery or plant incurred by the borrower, where such expenditure qualifies for an allowance under Part VI; or
 - (ii) the purchase of trading stock by the borrower, where the trading stock purchased is used by the borrower in the production of profits chargeable to tax under this Part,and -
 - (iii) the lender is not an associate of the borrower; and
 - (iv) where the lender is a trustee of a trust estate or a corporation controlled by such a trustee, neither the trustee nor the corporation nor any beneficiary under the trust is the borrower or an associate of the borrower; or
- (f) the borrower is a corporation and the deduction claimed is in respect of interest payable by it -

ClauseAmendment Proposed

- (i) on debentures listed on a stock exchange in Hong Kong or on any other stock exchange recognized by the Commissioner for the purposes of this subparagraph;
- (ii) on instruments (other than debentures described in subparagraph (i)) -
 - (A) issued bona fide and in the course of carrying on business and marketed in Hong Kong or in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of this sub-subparagraph; or
 - (B) issued pursuant to any agreement or arrangements, where the issue of an advertisement, invitation or document in respect of the agreement or arrangements has been authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance (Cap. 571), and the advertisement, invitation or document has been issued to the public; or

ClauseAmendment Proposed

- (iii) on money borrowed from an associated corporation of the borrower, where the money borrowed in the hands of the associated corporation arises entirely from the proceeds of an issue by the associated corporation of debentures described in subparagraph (i) or of instruments described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of such debentures or instruments.";

(c) by adding -

"(2A) Where -

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e);
- (b) at any time during the basis period of the borrower for the year of assessment concerned, the payment of any sum payable by way of principal or interest in respect of the money borrowed is secured or guaranteed, whether wholly or in part and whether directly or indirectly, by a deposit or loan made by the borrower or an

ClauseAmendment Proposed

associate of the borrower with
or to -

(i) the lender or an associate
of the lender;

(ii) a financial institution or
an associate of a financial
institution; or

(iii) an overseas financial
institution or an associate
of an overseas financial
institution; and

(c) any sum payable by way of
interest on the deposit or loan
is not chargeable to tax under
this Ordinance,

the amount of the deduction which, but for this
subsection and subsections (2B) and (2C),
would have been allowed under subsection
(1)(a) for the year of assessment concerned in
respect of sums payable by the borrower by
way of interest on the money borrowed shall be
reduced, having regard to the sum payable by
way of interest on the deposit or loan, by an
amount calculated on such basis as is most
reasonable and appropriate in the
circumstances of the case.

(2B) Where -

(a) the condition for the
application of subsection (1)(a)
is satisfied under subsection
(2)(c), (d) or (e); and

ClauseAmendment Proposed

- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the lender or otherwise, whereby any sum payable by way of interest on the money borrowed or on any part of the money borrowed is payable, whether directly or through any interposed person, to the borrower or to a person (other than the lender) who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2E)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2C), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, shall be reduced by an amount calculated in accordance with the following formula -

$$\frac{A}{B} \times C$$

where: A means the total number of days during the basis period of the

ClauseAmendment Proposed

borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding and the arrangements are in place;

B means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding; and

C means the total amount of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, which, but for this subsection and subsections (2A) and (2C), would have been deductible under subsection (1)(a) for the year of assessment concerned.

(2C) Subject to subsection (2G), where -

(a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f); and

ClauseAmendment Proposed

- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the holders of the debentures or instruments concerned or otherwise, whereby any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable, whether directly or through any interposed person, to the borrower or to a person who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2F)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2B), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of -

- (c) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(i) or (ii)) the sum payable by the borrower by way of interest on the

ClauseAmendment Proposed

debentures or instruments concerned or on the relevant interest in the debentures or instruments concerned, as the case may be; or

- (d) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(iii)) the sum payable by the borrower by way of interest on money borrowed from the associated corporation, being money arising entirely from the proceeds of the issue of the debentures or instruments concerned or of the relevant interest in the debentures or instruments concerned, as the case may be,

shall be reduced by an amount calculated in accordance with the following formula -

$$\frac{X}{Y} \times Z$$

Where: X means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in

ClauseAmendment Proposed

the debentures or instruments concerned, as the case may be, is outstanding and the arrangements are in place;

Y means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding; and

Z means the total amount of sums referred to in paragraph (c) or (d), as the case may be, which, but for this subsection and subsections (2A) and (2B), would have been deductible under subsection (1)(a) for the year of assessment concerned.

(2D) For the purposes of subsection (2A), if a deposit or loan is made by a trustee of a trust estate or a corporation controlled by such a trustee, the deposit or loan shall be deemed to have been made by each of the trustee, the corporation and the beneficiary under the trust.

(2E) For the purposes of subsection (2B) -

ClauseAmendment Proposed

- (a) any reference in that subsection to any sum payable by way of interest on the money borrowed or on any part of the money borrowed, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is -
 - (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed; or
 - (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed;
- (b) if any sum payable by way of interest on the money

ClauseAmendment Proposed

borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and

(c) "excepted person" (除外人士) means -

(i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a);

(ii) in the case of a person (other than the lender) who is connected with the borrower -

(A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of -

ClauseAmendment Proposed

- (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;
- (II) a beneficiary of a unit trust to which section 26A (1A) (a) (i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
- (III) a member of a retirement scheme which is either a recognized

ClauseAmendment Proposed

retirement
scheme or a
substantially
similar
retirement
scheme
established
outside Hong
Kong, where
the
Commissioner
is satisfied that
the latter
scheme
complies with
the
requirements of
a supervisory
authority within
an acceptable
regulatory
regime;

(B) a public body;

(C) a body corporate,
where the
Government owns
beneficially more
than half in nominal
value of the issued
share capital of that
body corporate for
the time being; or

(D) a financial institution
or an overseas
financial institution.

ClauseAmendment Proposed

(2F) For the purposes of subsection
(2C) -

(a) any reference in that subsection to any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is -

(i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned; or

(ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or

ClauseAmendment Proposed

interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned;

(b) if any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and

(c) "excepted person" (除外人士) means -

(i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned,

ClauseAmendment Proposed

as construed in
accordance with
paragraph (a);

(ii) in the case of a person
who is connected with the
borrower -

(A) a person who is
entitled to any sum
referred to in
subparagraph (i) in
the capacity of -

(I) a person acting
as a trustee of a
trust estate or
holding
property
belonging to
others pursuant
to the terms of a
contract, where
the person is
not beneficially
entitled to the
sum in
question;

(II) a beneficiary of
a unit trust to
which section
26A(1A)(a)(i)
or (ii) applies,
where the sum
in question is

ClauseAmendment Proposed

payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or

- (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;

ClauseAmendment Proposed

(B) a public body;

(C) a body corporate, where the Government owns beneficially more than half in nominal value of the issued share capital of that body corporate for the time being; or

(D) a financial institution or an overseas financial institution.

(2G) Subsection (2C) shall not apply where under the relevant arrangements, the relevant sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable to a market maker who, in the ordinary course of conduct of his trade, profession or business in respect of market making, holds such debentures or instruments or such interest for the purpose of providing liquidity thereof.

(2H) In subsection (2G), "market maker" (市場莊家) means a person who -

(a) is licensed or registered for dealing in securities under the Securities and Futures Ordinance (Cap. 571) or authorized to do so by a

ClauseAmendment Proposed

regulatory authority in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of subsection (2)(f)(ii)(A);

(b) in the ordinary course of conduct of his trade, profession or business in respect of market making holds himself out as being willing to buy and sell securities for his own account and on a regular basis; and

(c) is actively involved in market making in securities issued by a wide range of unrelated institutions.";

(d) in subsection (3) -

(i) by repealing "subsection (2) and this subsection" and substituting "this section";

(ii) by repealing the definitions of "control" and "debentures";

(iii) in the definition of "overseas financial institution", by repealing "subsection (2)" and substituting "this section";

(e) by adding -

"(3A) In this section -

ClauseAmendment Proposed

(a) a corporation shall be regarded as being controlled by a person if the person has the power to secure -

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or

(ii) by virtue of any power conferred by the articles of association or any other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with his wishes; and

(b) a person (other than a corporation) shall be regarded as being controlled by another person if the first-mentioned person is accustomed or under an obligation, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings, to act, in relation to his investment or business

ClauseAmendment Proposed

affairs, in accordance with the directions, instructions or wishes of that other person.

(3B) In this section, a person shall be regarded as being connected with a borrower if the person is -

(a) an associated corporation of the borrower;

(b) a person (other than a corporation) -

(i) who controls the borrower;

(ii) who is controlled by the borrower; or

(iii) who is under the control of the same person as is the borrower.";

(f) in subsection (4), by repealing "subsection (2)" and substituting "this section";

(g) by adding -

"(5A) The amendments made to this section by section 6(a), (b), (c), (d), (e) and (f) of the Inland Revenue (Amendment) Ordinance 2004 (of 2004) ("the Amendment Ordinance") do not apply to sums described in subsection (1)(a) which were incurred -

ClauseAmendment Proposed

- (a) before the commencement of the Amendment Ordinance;
- (b) under a transaction which was the subject of an application for advance clearance made to the Commissioner before 1 April 1998, and the Commissioner has before the commencement of the Amendment Ordinance expressed the opinion that the transaction would not fall within the terms of section 61A; or
- (c) under an arrangement which was the subject of an application made to the Commissioner under section 88A, and the Commissioner has before the commencement of the Amendment Ordinance made a ruling under that section that the arrangement would not fall within the terms of section 61A."."

9

- (a) In paragraph (b) -
 - (i) in subparagraph (ii), by deleting the full stop at the end and substituting a semicolon;
 - (ii) by adding -

ClauseAmendment Proposed

"(iii) in paragraph (b)(i), by repealing "in which this section commences" and substituting "commencing on 1 April 1998";".

(b) By adding -

"(c) in subsection (4), by repealing "commencement of this section" and substituting "commencement of the Inland Revenue (Amendment) (No. 2) Ordinance 1998 (32 of 1998)".

13

(a) By deleting paragraph (a)(i) and substituting -

"(i) by repealing everything after "in relation to" and before the proviso and substituting -

"a commercial building or structure -

(i) subject to subparagraph (ii), means the amount of the capital expenditure incurred on the construction of the building or structure reduced by -

(A) the amount of any initial allowance made under section 34(1);

(B) the amount of any annual allowance made under section 33A or 34(2);

ClauseAmendment Proposed

(C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004);

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004); or

(ii) where the building or structure is a building or structure to which section 33A(4) applies, means the amount of the capital expenditure incurred on the construction of the building or structure as determined under section 33A(4)(a) reduced by -

ClauseAmendment Proposed

- (A) the amount of any initial allowance made under section 34(1) in respect of any year of assessment commencing on or after 1 April 1998;
- (B) the amount of any annual allowance made under section 33A or 34(2) in respect of any year of assessment commencing on or after 1 April 1998;
- (C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004), in respect of any year of assessment commencing on or after 1 April 1998,

ClauseAmendment Proposed

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004), in respect of any year of assessment commencing on or after 1 April 1998:";".

- (b) In paragraph (b)(i), by deleting everything after "substituting -" and substituting -

""(i) the amount of any initial allowance made under section 34(1);

(ii) the amount of any annual allowance made under section 33A or 34(2);

(iii) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004),

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004):";".

<u>Clause</u>	<u>Amendment Proposed</u>
14(b)	In the proposed section 68(9A), by deleting "The Secretary for the Treasury" and substituting "The Secretary for Financial Services and the Treasury".
15(b)	In the proposed section 69(1A), by deleting "The Secretary for the Treasury" and substituting "The Secretary for Financial Services and the Treasury".
New	By adding -

"16A. Section added

The following is added -

**"70AA. Revision of assessment due to
commencement of section 4
or 8 of Inland Revenue
(Amendment) Ordinance
2004**

(1) Notwithstanding any other provisions of this Ordinance, if, upon application in respect of a year of assessment ("the relevant year") that expires before the date of commencement of section 4 or 8 of the Inland Revenue (Amendment) Ordinance 2004 (of 2004) made within 12 months after that date, or within 6 years after the end of the relevant year, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the relevant year is excessive solely by reason of the commencement of that section, the assessor shall revise the assessment for the relevant year.

ClauseAmendment Proposed

(2) Where an assessor refuses to revise an assessment in accordance with an application under this section, he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this Part as if such notice of refusal were a notice of assessment."."

17(b) In the proposed section 82B(1A), by deleting "1 April 2001" and substituting "the commencement of the Inland Revenue (Amendment) Ordinance 2004 (of 2004)".

New By adding immediately before the heading "**Consequential Amendments**" -

"20A. Schedule 13 added

The following is added -

"SCHEDULE 13 [s. 12]

INSTITUTIONS THAT MAY ACCREDIT OR RECOGNIZE
TRAINING OR DEVELOPMENT COURSES FOR THE
PURPOSE OF SECTION 12(6)(c)(iii)

Item

Institution

1. The Architects Registration Board established by section 4 of the Architects Registration Ordinance (Cap. 408)

ClauseAmendment Proposed

2. The Chinese Medicine Council of Hong Kong established by section 3 of the Chinese Medicine Ordinance (Cap. 549)
3. The Chiropractors Council established by section 3 of the Chiropractors Registration Ordinance (Cap. 428)
4. The Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap. 317)
5. The Dental Council of Hong Kong established by section 4 of the Dentists Registration Ordinance (Cap. 156)
6. The Engineers Registration Board established by section 3 of the Engineers Registration Ordinance (Cap. 409)
7. The Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap. 511)
8. The Hong Kong Academy of Medicine established by section 3 of the Hong Kong Academy of Medicine Ordinance (Cap. 419)
9. The Hong Kong Bar Association referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159)
10. The Hong Kong Institute of Architects incorporated by section 3 of The Hong Kong Institute of Architects Incorporation Ordinance (Cap. 1147)

ClauseAmendment Proposed

11. The Hong Kong Institution of Engineers incorporated by section 3 of The Hong Kong Institution of Engineers Ordinance (Cap. 1105)
12. The Hong Kong Institute of Housing incorporated by section 3 of The Hong Kong Institute of Housing Ordinance (Cap. 507)
13. The Hong Kong Institute of Landscape Architects incorporated by section 3 of The Hong Kong Institute of Landscape Architects Incorporation Ordinance (Cap. 1162)
14. The Hong Kong Institute of Planners incorporated by section 3 of The Hong Kong Institute of Planners Incorporation Ordinance (Cap. 1153)
15. The Hong Kong Institute of Surveyors incorporated by section 3 of The Hong Kong Institute of Surveyors Ordinance (Cap. 1148)
16. The Hong Kong Society of Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50)
17. The Hong Kong Society of Notaries referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159) as amended by section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998)
18. The Housing Managers Registration Board established by section 3 of the Housing Managers Registration Ordinance (Cap. 550)

ClauseAmendment Proposed

19. The Land Surveyors Registration Committee appointed under section 6 of the Land Survey Ordinance (Cap. 473)
20. The Landscape Architects Registration Board established by section 3 of the Landscape Architects Registration Ordinance (Cap. 516)
21. The Law Society of Hong Kong referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159)
22. The Medical Council of Hong Kong established by section 3 of the Medical Registration Ordinance (Cap. 161)
23. The Medical Laboratory Technologists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
24. The Midwives Council of Hong Kong established by section 3 of the Midwives Registration Ordinance (Cap. 162)
25. The Nursing Council of Hong Kong established by section 3 of the Nurses Registration Ordinance (Cap. 164)
26. The Occupational Therapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
27. The Optometrists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)

ClauseAmendment Proposed

28. The Pharmacy and Poisons Board established by section 3 of the Pharmacy and Poisons Ordinance (Cap. 138)
29. The Physiotherapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
30. The Planners Registration Board established by section 3 of the Planners Registration Ordinance (Cap. 418)
31. The Radiographers Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
32. The Security and Guarding Services Industry Authority established by section 4 of the Security and Guarding Services Ordinance (Cap. 460)
33. The Social Workers Registration Board established by section 4 of the Social Workers Registration Ordinance (Cap. 505)
34. The Surveyors Registration Board established by section 3 of the Surveyors Registration Ordinance (Cap. 417)
35. The Travel Industry Council of Hong Kong referred to in section 32A(1) of the Travel Agents Ordinance (Cap. 218)
36. The Veterinary Surgeons Board established by section 3 of the Veterinary Surgeons Registration Ordinance (Cap. 529)

ClauseAmendment Proposed

37. The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap. 1130)".

23

By deleting everything after "substituting" and substituting ""where the condition for the application of section 16(1)(a) of the Ordinance is satisfied under section 16(2)(c), (d) or (e) of the Ordinance and section 16(2A) of the Ordinance does not apply"."

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Mr Henry WU's supplementary question to Question 2

Information provided by the Insurance Claims Complaints Bureau (ICCB) is appended below for Members' reference:

Complaint cases in respect of
claims on medical insurance
mediated and adjudicated by the ICCB

<i>Year</i>	<i>Number of cases with claims successfully settled</i>	<i>Amount settled (HK\$)</i>
2001	21	340,990
2002	19	581,780
2003	23	643,803

The amount of claims relating to the complaints was similar to the amount settled, that is, the complainants were able to obtain nearly full compensation.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Health, Welfare and Food to Mr WONG Sing-chi's supplementary question to Question 3**

The major measures taken by the Government to tackle youth smoking are as follows:

1. It is costly and difficult to get young smokers to quit smoking once they are addicted. Hence, the best strategy against youth smoking is to deter young people from trying to smoke. In this connection, the Government has been discouraging youth smoking by introducing a variety of educational and promotional measures as follows.
2. The Student Health Service (SHS) of the Department of Health (DH) provides annual health assessments to primary and secondary students. The SHS also runs an Adolescent Health Programme in secondary schools to improve their psychosocial health through life skills training and resilience building using interactive activities. Part of the life skills training is to impart knowledge and refusal skills on substance abuse, including tobacco.
3. The Hong Kong Council on Smoking and Health has been promoting smoke-free messages among primary and secondary school students through educational programmes. In 2003, a total of 139 health talks were delivered to primary/secondary schools. The "Education Theatre", an anti-smoking drama tour covering 200 primary/secondary schools and some 65 000 students, was a notable recent achievement.
4. Non-governmental organization such as the Life Education Activity Programme and the Action on Smoking or Health have also been running programmes on smoking prevention.
5. On the remedial front, the DH regularly conducts smoking cessation activities in various service units including chest clinics, elderly health centres, and so on. To further enhance the smoking cessation service, the DH has introduced nicotine replacement therapy in its Education and Training Centre in Family Medicine.

WRITTEN ANSWER — *Continued*

6. The DH has set up a hotline (2961 8883) to provide counselling and information on smoking cessation to the public. Over 5 000 calls have been handled since its establishment.
7. Separately, the Hospital Authority (HA) is providing smoking cessation services through smoking counselling and cessation centres in 10 hospitals/clinics around the territory. The beneficiaries of the HA's services are mostly in-patients.

Appendix III

WRITTEN ANSWER

Written answer by the Secretary for Health, Welfare and Food to Mr WONG Sing-chi's supplementary question to Question 3

According to the Thematic Household Survey (formerly known as General Household Survey) Reports published by the Census and Statistics Department, the prevalence of youth smoking in the past two decades is set out below:

<i>Year</i>	<i>Male (15 to 19 years old)</i>		<i>Female (15 to 19 years old)</i>	
	<i>%</i>	<i>No. ('000)</i>	<i>%</i>	<i>No. ('000)</i>
1982	7.9	21.7	0.4	0.9
1983	6.3	15.9	0.3	0.8
1986	7.3	16.4	0.5	0.9
1988	5.5	12.7	1.3	3.0
1990	7.8	18.1	1.1	2.5
1993	7.5	14.8	0.9	1.8
1996	5.9	14.1	1.3	2.4
1998	4.2	9.1	1.3	2.7
2000	6.4	14.9	2.6	5.7
2003	5.3	11.8	2.3	4.9

Note: The 2003 survey covered persons who smoked all forms of tobacco while the previous surveys from 1982 to 2000 only covered persons who smoked cigarettes.

Appendix IV**WRITTEN ANSWER****Written answer by the Secretary for Economic Development and Labour to Mrs Selina CHOW's supplementary question to Question 4**

Regarding planning for water transportation, the Government closely monitors the operation of public water transportation services on an ongoing basis to ensure that efficient ferry services are provided to meet passengers' demand. Ferry services are reviewed and adjusted as and when required. In considering the need to adjust existing services or introduce new routes, the Government will take into account different factors including:

- (1) current service standard and state of operation;
- (2) other public transportation options (for example, railways and buses);
- (3) availability of adequate and suitable pier facilities;
- (4) impact of future development projects on water transportation demand; and
- (5) public/passengers' views.

A case in point is the development of Ma Wan. To tie in with the population intake, new ferry services have been introduced with new piers constructed as part of the development project. Continuing service adjustments will be made as and when required to meet passengers' demand arising from growth of population thereat.

Tourism projects are also planned with consideration given to the need for providing or improving water transportation services and pier facilities. For instance, the Government is presently exploring ways to facilitate water-based tourism in Tolo Harbour and the outlying islands in the north-eastern waters of the New Territories, as part of the development of tourism in the Northern New Territories. These include improving pier and related facilities on the islands concerned and at other relevant landing points, as well as encouraging and facilitating the trade to provide related water tours and sight-seeing services. In the Stanley Waterfront Improvement Project, the Government will construct a new pier in Stanley whose works are expected to commence at the end of this year. This pier will provide berthing for leisure and tour service vessels.

WRITTEN ANSWER — *Continued*

The Hong Kong Tourism Board (HKTb) actively facilitates visitors' use of water transportation through publicity and promotion. For example, the HKTb assisted New World First Ferry Services Limited to develop an "Island Hopping Pass", which allows visitors unlimited ferry rides to Cheung Chau, Lantau Island and Peng Chau within a day facilitated by a guidebook in both Chinese and English. The HKTb also promotes water tour services of good quality to visitors, such as outlying island guided tours provided by private operators.

Regarding the provision of piers, the Government considers the construction of new public piers according to the nature of individual development projects and users' need. When reconstructing old piers, the Civil Engineering and Development Department will consider implementing enhancement measures, such as increasing the number of berths and improving related facilities like adding pier roofs and seats to make the pier more user-friendly. In the past five years, enhancement works to four piers have been completed. Five are now in progress and are expected to be completed in 2005-06.

Appendix V**WRITTEN ANSWER****Written answer by the Secretary for Economic Development and Labour to Mr LAU Kong-wah's supplementary question to Question 4**

The Stonecutters Island Sewage Treatment Works (SCISTW) is a key component of the Harbour Area Treatment Scheme (HATS). Apart from the beaches in Tsuen Wan, the Environmental Protection Department's (EPD) water quality monitoring data show that the discharge from the SCISTW has not had any significant impact on the quality of water in the western harbour area. The waters around Lantau and the beaches there are even further away from the discharge point of the SCISTW, and the EPD's monitoring data shows that they have not been subject to any noticeable influence due to the discharge.

As regards the Tsuen Wan District, Tung Wan Beach on Ma Wan is still open for public use. The Government is now consulting the public on the way forward for Stage 2 of the HATS. As a measure to further reduce the bacterial level of treated effluent so as to enable the earliest possible reopening of the affected beaches, it is the Government's plan to expedite part of the disinfection facilities required under Stage 2 for early completion in 2008-09. The Leisure and Cultural Services Department will liaise closely with the EPD and the Drainage Services Department to arrange for the early reopening of the affected Tsuen Wan beaches once the water quality has improved to a level suitable for swimming.

Appendix VI**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Mr Fred LI's supplementary question to Question 6**

As regards the total number of children involved in those families whose applications for public rental housing have been frozen due to failure to satisfy the residence rule, as at 8 June 2004, there were 4 052 families with children whose applications have been frozen on this ground. The total number of children involved in these cases is 5 188.