

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 5 November 2003**

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

## **MEMBERS PRESENT:**

THE PRESIDENT

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN

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

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

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE 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.

**MEMBER ABSENT:**

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

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

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

**CLERKS IN ATTENDANCE:**

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Admission and Registration (Amendment) (No. 2) Rules 2002 (Amendment) Rules 2003 .....	237/2003
Legal Practitioners (Risk Management Education) (Amendment) Rules 2003 .....	238/2003
Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 8) Notice 2003 .....	239/2003
Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2003.....	240/2003

**Other Papers**

- No. 20 — Annual Report of the Protection of Wages on Insolvency Fund Board 2002-03
- No. 21 — Report of changes to the approved Estimates of Expenditure approved during the first quarter of 2003-04 (Public Finance Ordinance : Section 8)

**ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. Of the six oral questions to be raised today, the first four relate to various aspects of the "Hong Kong Harbour Fest" (the Festival).

The subject of the first question relates to the ability and experience of the organizer of the Festival.

The subject of the second question relates to publicizing and promoting the Festival; the shows' attendance rates; and the roles played by the Government, the organizer and the contractors in organizing the Festival.

The subject of the third question relates to the details in arranging the performers' schedule and the distribution of free tickets before the Festival.

The subject of the fourth question relates to the criteria for selecting performers and the organizations to be given free tickets.

I dwell at length on the subjects of the four questions because I hope Members would not go beyond the scope of each question when asking supplementary questions.

First question.

### **Selection of Organizer of Hong Kong Harbour Fest**

1. **MR ABRAHAM SHEK:** *Madam President, with regard to the Hong Kong Harbour Fest (the Festival) organized by the American Chamber of Commerce (AmCham) and sponsored by the Government, the Financial Secretary has admitted that the Government overestimated the AmCham's ability "to pull off such a complex event in such a short period of time". In this connection, will the Government inform this Council:*

- (a) whether, before agreeing to sponsor the AmCham in organizing the Festival, the Government had assessed the latter's ability and experience in organizing such a large-scale entertainment event; and whether it had considered selecting interested parties to organize the event by way of open tender or appointing the Leisure and Cultural Services Department as the organizer;*
- (b) whether it knows if the AmCham had assessed the entertainment promoters' relevant skills and experience before engaging them to provide services for the event; if the AmCham had done that, of the details; if it had not, the reasons for that; and*

- (c) *whether the Government has assessed if entrusting an event with a budget of over \$130 million to an organizer the ability of which has been overestimated constitutes dereliction of duty on the part of the senior government officials concerned; if the assessment result is in the affirmative, whether it will initiate disciplinary proceedings; if the assessment result is otherwise, of the justifications for that?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, as there are four questions this afternoon relating to different aspects of the Festival supported under the Government's Economic Relaunch campaign, with your agreement, Madam President, I would wish to recall the background of this campaign first.

As a result of the outbreak of SARS earlier this year, Hong Kong's economy and its image — both internationally and in the Mainland — had suffered a severe blow. Because of this, the Chief Executive had announced in April that the Government would make available a sum of \$11.8 billion to fund an economic relief package. Of this amount, \$1 billion had been set aside to launch large-scale publicity and promotions internationally and locally, with a view to restoring Hong Kong's reputation, getting the economy moving again, and reinstilling confidence in the local community.

In May, the Financial Secretary set up and chaired two ad hoc bodies, namely the Economic Relaunch Strategy Group (with non-official participation) to advise on a comprehensive framework for the Economic Relaunch campaign and the Economic Relaunch Working Group (ERWG) (consisting of officials only) to consider and decide which proposed projects should be supported under the campaign.

Time was of the essence in terms of actions to be undertaken because of the then perceived and widely recognized need to get the economy back on its feet and to boost morale in the community. I recall that when we approached the Finance Committee of the Legislative Council for a commitment of \$1 billion for the Economic Relaunch campaign in late May, hotel occupancy was 20%, the number of airline passengers was down by about 70%. Retail sales had decreased significantly and the local catering industry had also been hard hit. I believe most Members also shared the sense of urgency and supported the need to take quick actions, when they approved the commitment of \$1 billion for campaign.



From the outset, it was our firm intention that the Economic Relaunch campaign should be a joint effort involving the community at large, the business sector and the Government. We publicly welcomed input from the entire community. I am happy to say that many community-spirited bodies responded enthusiastically with ideas and actions. The proposal from the AmCham to organize a large-scale international entertainment festival at Tamar, which subsequently became known as the Festival, is a fine example of efforts by the business sector. I wish to take this opportunity to commend the AmCham for its commitment and services to Hong Kong and for coming forward with the Festival initiative.

The main objectives of the Festival are to encourage return to normal economic activities, convince international and mainland communities that they should visit Hong Kong for business and pleasure, boost morale in Hong Kong, and enhance confidence in the local community. As contracted between the Government and the AmCham, the latter is the planner, organizer and implementer of the Festival in accordance with commercial principles and having regard to the overall objectives of the Festival. The Government is the major sponsor and the sponsorship is capped at \$100 million of the net deficit of the event. The AmCham is required to consult the Government on material changes to the programme line-up and budget for the Festival. The Government also renders assistance and advice to the AmCham from time to time. The intention is for the Government to maintain an overview of the AmCham's preparation of the Festival to ensure that the overall objectives are met, but not to micro-manage the detailed planning and organization by the AmCham.

I am aware that there have been a number of organizational shortcomings, particularly in the beginning days of the Festival; and calls for greater transparency in various aspects of the AmCham's organization of the Festival. I also know that there are questions concerning the Government's role in the Festival. The Administration has therefore decided to establish a panel of inquiry on the Festival to be appointed by the Chief Executive. We will announce the terms and reference and membership of this panel shortly. The panel will report its findings to the Chief Executive, and the report will be released to the public.

- (a) Madam President, I would now like to turn to part (a) of the question. Representatives from the AmCham presented a proposal

to the ERWG on 2 July. The main elements of the proposal included the organization of a variety of entertainment events by international, Asian and local artists running from Friday to Sunday for four consecutive weeks starting in early October; and the production of a video on performance highlights for broadcast in the United States and other countries. The AmCham estimated that the proposal would require a subsidy of \$100 million from the Government. The ERWG endorsed the proposal in principle. On 12 July, it formally approved the proposal for the Government to underwrite the event in the form of a sponsorship fee not exceeding \$100 million.

When making its decision, the ERWG was fully aware that organizing entertainment events is not the core business of the AmCham. However, the AmCham's membership includes half a dozen world-class entertainment companies and other companies in entertainment marketing, entertainment legal services, TV and media entertainment networks, and so on. The AmCham would be able to draw on the expertise and services of these member companies in the planning organization of the Festival. This has indeed turned out to be the case.

The Festival is an initiative from a group in the business sector, namely the AmCham. The decision by the ERWG to support this initiative is very much in line with our publicly stated aim that the Economic Relaunch campaign should be a joint effort by the community at large, the business sector and the Government. We have, therefore, not considered appointing the Leisure and Cultural Services Department as the organizer of the Festival. We have also not considered conducting a tender exercise partly because the Festival is a creative idea from the AmCham, and partly because of the free service and expertise volunteered by the AmCham in various aspects of the planning and organizing of the Festival.

- (b) On part (b) of the question, the Government has entered into three Memoranda of Understanding and one comprehensive contract with the AmCham on the sponsorship of the Festival. As stated earlier, the AmCham is responsible for planning, organizing and managing

the operation and implementation of the whole Festival in accordance with commercial principles and having regard to the objectives of the Festival. We understand that in its selection of entertainment promoters for the Festival, the AmCham has approached a number of companies in this area and evaluated them largely on the basis of their willingness to support this community effort as manifested by the overall fees they wish to charge for their services; and their previous experience in booking international performing talents.

- (c) On part (c) of the question, as I noted earlier, the decision to sponsor the Festival with the AmCham as its organizer was taken by the ERWG. As Chairman of this Working Group, I accept the responsibility for this decision.

The Government has a well-established mechanism to assess a civil servant's performance; and well-established due process to determine whether a civil servant has been derelict in the discharge of his or her responsibilities and duties and, if so, the appropriate punishment. We will, with reference to the findings of the panel of inquiry, make an assessment on whether there has been any possible under performance or misconduct in respect of civil servants involved, and if so, we will initiate appropriate actions accordingly.

**PRESIDENT** (in Cantonese): Members, there are 14 Members waiting to ask supplementaries. The Financial Secretary has spent 12 minutes answering this question, so I will exercise my discretion to extend the time to be spent on this question.

**MR ABRAHAM SHEK:** *Thank you, Madam President. I thank the Financial Secretary for giving us a detailed reply of five pages. I would like to follow up by asking if it is a normal government policy or a new government policy to award a scheme to any party who presents a creative idea to the Government, even when it would involve a subsidy of a hundred million dollars? If this is not a normal policy, why should this time be different?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, in establishing the ERWG, it was hoped that the business sector, the community at large and other government departments or semi-official organizations would be encouraged to put forward proposals and join hands in organizing activities. As for the overall and main objective, it was to relaunch the economy. Therefore, when the AmCham submitted the proposal for our consideration, we deemed the plan to be quite original, so we took it on board. That did not mean the Government had changed its policies, since other organizations have also come up with fairly original plans under the campaign and we have also accepted them. If Members ask if the Government has changed its policies and whether the same approach will be adopted for other campaigns in the future, I can hereby confirm that our policies have not changed.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, it is said in the main reply that the Government will establish a panel of inquiry. May I ask the Secretary why, before the panel of inquiry has come up with any findings, the Secretary has wasted no time in commending the AmCham for its commitment and services to Hong Kong? Is this because it has never occurred to the panel of inquiry to investigate the role of the AmCham in this incident and you have jumped to the conclusion that the AmCham should be commended? Moreover, as you have indicated, as the Chairman of the ERWG, you are willing to accept responsibility. Does the ambit of the panel of inquiry include investigating the extent of responsibility that you have to bear?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the panel of inquiry was established because the Festival has raised widespread concern in society. In view of the widespread public concern about the Festival, the Government believes that it has the responsibility to give a full account of the whole issue, therefore it took the initiative to establish a panel of inquiry. As regards the work of the panel of inquiry, the focus will be to conduct a full inquiry and give a full account of whether there is any inappropriate or unsatisfactory areas in decision-making or implementation. Of course, the scope of inquiry will range from the chairman of the panel of inquiry, that is, the Financial Secretary, to the AmCham. The Chairman of the AmCham, James THOMPSON, also welcomes the establishment of this panel of inquiry and will co-operate with it.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, he has not given an answer as to why the AmCham has been commended when the jury is still out.*

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

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I would like to thank Mr LEE Cheuk-yan for reminding me. In fact, I had a mind to answer the supplementary because there is no chance that I can get away with it. *(Laughter)*

Madam President, why did I commend the AmCham? This is because the AmCham has been established in Hong Kong for many years and there are a large number of Americans living and working in Hong Kong. They constitute an integral part of the Hong Kong society and economy and the United States is also our second major trading partner. This time, the AmCham put forward this proposal because during the SARS epidemic, it has also noted that many Hong Kong people were feeling very dejected. Since we had introduced the Economic Relaunch campaign and reserved \$1 billion, the AmCham took the initiative and suggested that we organize the Festival. This large-scale international musical festival was organized in a hundred days. I believe many people seated here who have watched some of the performances found the programmes quite good and rich in diversity. The AmCham has organized this event voluntarily, out of its own initiative and free of charge. In addition, James THOMPSON and several members are well versed in the entertainment business. They worked day and night and nearly full time to organize the Festival. I think their spirit is highly commendable. Of course, many people in Hong Kong have also displayed such a commendable spirit, but in this instance, the AmCham voluntarily took the initiative to provide the service to bring about the results we see today — I think the effect of public relations may not be entirely satisfactory, but all the people who have seen the performances found that they were quite good. Therefore, I believe what the AmCham did was commendable.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the last paragraph of the main reply says that the Financial Secretary, as Chairman of the ERWG, will accept responsibility for this decision. My supplementary is,*

*whether the responsibility that the Financial Secretary and the Bureau Directors under the accountability system have to assume is related to their decision to organize the Festival, or to their failure to monitor the implementation of the event conscientiously? If the performance of some civil servants have been undesirable, of course they have to assume responsibility, but if the Financial Secretary and the four Directors of Bureaux did not carry out supervision conscientiously, do they also have to assume political responsibility? If they only assume responsibility for making the decision but not for failing to carry out supervision conscientiously, is that an evasion of responsibility?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, since the ERWG was chaired by me, I have the overall responsibility. Any event funded with the \$1 billion allocated to the Economic Relaunch campaign is my responsibility. The ERWG's decision to support organizing the Festival was a collective one. As regards supervision and implementation, I wish to reiterate that the Government has the responsibility because on this occasion, \$100 million was spent — the maximum amount of public funds underwritten was \$100 million. Therefore, the Government had an unshirkable responsibility to carry out appropriate supervision because public funds were involved. However, clearly we have made a contractual agreement with the AmCham which stipulated that the specific arrangements of the whole Festival would be implemented by the AmCham and the Government would offer assistance and sponsorship and be consulted on material issues such as the programme, financial arrangements or important decisions. Since public funds were involved, the Government had the unshirkable responsibility to carry out supervision.

**MR CHEUNG MAN-KWONG** (in Cantonese): *The Financial Secretary did not seem to have replied as to whether the Financial Secretary and the four Directors of Bureaux have to assume political responsibility for failing to carry out supervision conscientiously.*

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

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I reiterate that as the Chairman of the ERWG, I will assume full responsibility for the funds granted by the ERWG.

**PRESIDENT** (in Cantonese): Council has spent more than 23 minutes on this question. I will now allow the last supplementary.

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary has mentioned just now that the AmCham has many professional members. Since this item involved \$100 million, may I ask the Secretary whether or not he knows if the AmCham has established any organizing committee and whether any of the so-called experts you have mentioned are included in this organizing committee? Did the committee invite any government official or representative to join it? If it did, who was it? If not, why was an invitation not made? If the AmCham did not make any invitation, why did the Government not take the initiative and make a request? Since the event involved over \$100 million, was the Government's course of action irresponsible?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the AmCham has an Entertainment and Sports Committee, which was responsible mainly for making some of the specific arrangements of this Festival. This Committee comprised several major members who all played a part in organizing this Festival, including Disney, NBA, Star Media, Yahoo and IMG. Representatives from these companies have been organizing this event day and night in the past hundred days.

However, the Government did not appoint any person to this Committee because firstly, the Government is not a member of the AmCham, and secondly, it was stipulated clearly in the contract made with the AmCham that the specific arrangements and implementation of the Festival were under the charge of the AmCham while the participation of the Government would be in decision-making, programme lineup and financial decisions. I believe that the entertainment industry is quite different from the ordinary financial or commercial businesses. Therefore, a number of changes were made and the Government was also consulted. Concerning the powers and responsibilities, the Government has fulfilled the responsibilities prescribed by the contract. As regards supervision, the answer is the same as that which I have given in response to Mr CHEUNG Man-kwong's supplementary.

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary did not answer the last part of my supplementary, that is, for an event involving \$100 million, the Government did not play any part in it. Is such a course of action an irresponsible one?*

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

**FINANCIAL SECRETARY** (in Cantonese): Madam President, for an event involving \$100 million as this one, the mode of operation specified in the contract was mainly to engage in a division of labour with the AmCham. Of course, the AmCham is in charge of the actual implementation and the Government, sponsorship. We have fulfilled our responsibility prescribed by the contract.

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

### **Promotion of and Government's Role in Hong Kong Harbour Fest**

2. **MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, regarding the Hong Kong Harbour Fest (the Festival), will the Government inform this Council:*

- (a) *of the respective amounts spent on publicizing and promoting the Festival locally and overseas; details of other publicity and promotion activities apart from the production of a television special showcasing the Festival highlights for broadcast around the world as claimed by the Administration, and whether it has reviewed why most Hong Kong people, other than receiving continuous negative news about the Festival from the media, have been unaware of the specific programmes and schedule of the Festival; if it has, of the findings of the review;*
- (b) *whether the Administration has, during the preparation process, assessed the average attendance of each show of the Festival and the lowest acceptable attendance; if it has, of the assessment results; and*



- (c) *whether the Administration, as the major sponsor of the Festival, is only responsible for providing the subsidy, leaving the organizer to make its own selection of contractors for organizing the Festival; of the organizations or contractors responsible for steering and co-ordinating the various shows of the Festival; and whether the Administration has ascertained that the various contractors share the same objectives and interests as those of the Government?*

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

- (a) On part (a) of the question, the information provided by the organizer of the Festival event show that it has budgeted just over \$6 million for promotion, marketing and publicity expenses. We understand that most of this amount has been spent on print advertisements in various local Chinese and English language newspapers, advertisements on local radio and TV stations; short videos for broadcast on TV stations reaching overseas audiences; posters and flyers; and a dedicated website in conjunction with Yahoo. In addition, we understand that the organizer has obtained sponsorship in the form of some promotional and marketing services from media companies. The organizer has also undertaken a number of radio and TV interviews to publicize the 2003 Harbour Fest. Its ticketing agent has also been promoting the event on its website.

In addition, I note that the local printed and electronic media has devoted coverage to various aspects of the Festival event almost on a daily basis for the last month or so. While most of the coverage has been on the various problems associated with the organization of the event, it has ensured that the Hong Kong community is made aware of the event. As I said earlier, there have been shortcomings in the organization of the event and the organizer has been making improvements. Regretfully, the negative reports may have overshadowed the positive aspects of the event, including the rich and diverse programme line-up and the appearance by a number of local and international talents. I also understand that the shows already performed were much enjoyed by most in the audience.

Under the contract between the Government and the American Chamber of Commerce in Hong Kong (AmCham), the latter is required to procure the production of a Hong Kong marketing video, being one special TV programme, capturing the highlights of the 2003 Harbour Fest, for airing and distribution to networks for broadcast overseas in the months to come. With the broadcasting of the video, we hope to enhance the exposure of Hong Kong overseas, promote the image of Hong Kong as an events capital, convey the message that Hong Kong has not only recovered from the SARS outbreak but has bounced back with more energy and vitality, and encourage more visitors to come to Hong Kong for business or leisure.

- (b) On part (b) of the question, the Government has no preconceived idea about the lowest acceptable attendance or the average attendance for each show. When the Economic Relaunch Working Group (ERWG) agreed to underwrite the 2003 Harbour Fest in the form of a sponsorship fee not exceeding \$100 million in early July, the budget as then developed by the organizer had projected the likely revenue receivable on the assumption of a close to full-house attendance (80% to 100% of around 12 000 seats) for three daily performances every Friday to Sunday for four weeks, with tickets priced at a relatively low level (\$100 to \$150). On the advice of the ERWG, the organizer had reviewed its pricing strategy and decided to go for a wider range of ticket prices, with the higher end comparable to market prices for similar concerts held in Hong Kong to maximize revenue, and the lower end sufficiently affordable by the majority of the general public to encourage attendance by more people. At the same time, the organizer had revised downwards its earlier almost full-house attendance assumption for all the performances.

In the paper from the Administration to the Panel on Financial Affairs sent in advance of the Panel's meeting on 11 October, we stated that the maximum commitment of the Government for the Festival events was \$100 million. We also stated that the most recent budget from the organizer, based on the revised pricing strategy described above, the sale of 50% of the tickets on average and some limited commercial sponsorship, showed that the likely call on public funds was in the order of \$80 million.

We hope to obtain from the organizer a very provisional and un-audited out turn of expenditure and revenue for the Festival soon after the completion of the last show on 9 November.

- (c) On part (c) of the question, as I have stated in answer to an earlier question, under the arrangement approved by the ERWG and agreed with the organizer of the Festival event, the Government is the major sponsor of the event and maintains an overview of the preparation of the event by the organizer to ensure that the stated objectives are met. It is consulted by the organizer on material changes to the programme line-up and the budget. In addition, it facilitates the lease of the Tamar site and the issue of the relevant licences and permits to the organizer. It maintains, largely through InvestHK, close liaison with the organizer.

As the organizer is responsible for planning, organizing and implementing the Festival event in accordance with commercial principles and the stated objectives of the event, it alone decides whether to engage any contractors or entities to undertake different aspects of the event, what selection process to adopt, and whom to engage. It is not required to seek the Government's prior agreement before engaging any contractor or entity. To do so would have substituted the Government's judgement for the organizer's commercial judgement. We understand from the organizer that in its selection process for paid services from contractors, it had taken into account various considerations, including relevant expertise and experience, and the willingness to support this community effort under the Economic Relaunch campaign as manifested by the fee quotations from those companies interested to offer their services to the Festival event.

**PRESIDENT** (in Cantonese): There are 11 Members who have indicated that they wish to raise a supplementary question. Members please ask their questions concisely so that a few more Members may have the chance to ask their supplementary questions.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, part (b) of the main reply mentions that the Government has no preconceived idea about the lowest acceptable attendance for each show. But the people of Hong Kong have no idea about the contents of the Festival or the time for each show except the rather negative reports about it on the TV or in the media. As a result, a lot of the seats were left vacant and these vacant seats are situated in some very conspicuous positions, that is, in the front rows. I would think that this would first, affect the revenue, second, for those international superstars.....*

**PRESIDENT** (in Cantonese): Please ask your supplementary question.

**MR HUI CHEUNG-CHING** (in Cantonese): *Yes. I now raise my supplementary question. (Laughter) Though this ticketing arrangement was a commercial decision made by the organizer, how will the Government prevent similar things from happening again in future?*

**FINANCIAL SECRETARY** (in Cantonese): *Madam President, the scope of responsibilities of the panel of inquiry which we have set up are to conduct a review on the implementation details of the programme to see if anything has gone wrong and to see what can be done to improve it. The main task of the group is to review the entire procedure of the event and to learn lessons from it as well as to sum up experience. As to the supplementary question raised by Mr HUI Cheung-ching, I would rather not make a rash judgement at this point, I hope the matter could be accounted for when the group submits its report.*

*As to whether or not the ticketing arrangements could be improved, I would think that this is based on an assumption that we will organize large-scale musical festivals in future. (Laughter) So I think that it would not be late for the question to be considered when such festivals are really organized.*

**MR BERNARD CHAN** (in Cantonese): *Madam President, part (a) of the main reply mentions that under the contract between the Government and the AmCham, the latter is required to procure the production of a special TV programme. On many occasions, the Financial Secretary has also said that this is one of the most important aims about the Festival and that this is not merely a concert event, for*

*a special TV programme will be produced to market Hong Kong abroad. May I ask what does the Secretary mean by abroad, and is it because the organizer is the AmCham, so it is the United States which he is chiefly referring to, or does he refer to some other countries? If it is only the United States that he has in mind, would the marketing campaign be conducted through national networks or local networks, or through paid TVs such as MTV, VH1 and so on? How will they actually market Hong Kong? As a huge sum of money has been paid by Hong Kong, that seems to be a very important point.*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I know that Mr Bernard CHAN is involved in a traffic accident lately. I can see that he is okay now. May I wish him good health. *(Laughter)*

Mr CHAN mentions that the Festival will be edited into an one-hour marketing video and this special TV programme will be broadcast around the world to market our vibrancy and our abilities to organize international music festivals. According to the latest information from the AmCham, they are now finalizing a one-hour broadcast with the national television network of the United States. The AmCham will discuss with other places in the world, including local TV networks to broadcast this one-hour footage.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the last part of the main reply says that the organizer is not required to seek the Government's prior agreement before engaging any contractor or any entity. There are recent reports that the organizer has found some newly set up companies to undertake public relations and publicity work. Does the Government just sit back and do nothing after contracting out the programme, without caring even about the quality? As all the money spent is public money, hence even though the whole thing is contracted out to the organizer, there is no reason to justify the Government's doing nothing about it, for the organizer has sub-contracted the project to other parties.*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the problem which Mr LAU Ping-cheung is referring to is exactly the scope of duties of the panel of inquiry. The panel will conduct a review of the entire process to see if anything should be improved, learn the lessons and sum up the experience.

Having said that, I can say objectively that the performances in the Festival, that is, those by the international artistes they have invited to come here through the sub-contractors, are on the whole not bad at all. Those who have gone to see the shows think that the contents are not bad indeed. We are being practical and whatever we do we treat it as important business. We have specified in the contract that they are required to organize what kinds of shows and when the shows are over, we will see if they are really worth the money we have paid them. In this respect, as far as I know, the Audit Commission has started a value-for-money audit and as to whether the \$100 million spent is really worth it, the value-for-money audit made by the Audit Commission will speak for itself.

**MR LAU PING-CHEUNG** (in Cantonese): *May I follow up on that?*

**PRESIDENT** (in Cantonese): Mr LAU Ping-cheung, which part of your supplementary question has not been answered?

**MR LAU PING-CHEUNG** (in Cantonese): *The issue of quality, that is the issue of quality which I have mentioned, the Secretary says that some shows.....*

**PRESIDENT** (in Cantonese): Mr LAU Ping-cheung, which part of your supplementary question has not been answered? You may only point that part out.

**MR LAU PING-CHEUNG** (in Cantonese): *I would just like to point out the part on quality.*

**PRESIDENT** (in Cantonese): Then please repeat that part of the question you have raised.

**MR LAU PING-CHEUNG** (in Cantonese): *Yes, Madam President. The Secretary thinks that it is okay with the quality. It may be that nothing is wrong*

*about certain individual performers, but a show is usually divided into two or three parts. So if one part is taken up by the Rolling Stones, the other part may be by the Twins. Those who like the Rolling Stones may not like the Twins. And spectators would usually watch the entire show after they are admitted, and so there may be a scenario where the quality of individual performers is very good, but it may not be the case for the show as a whole. Madam President, that is what I meant by the issue of quality.*

**PRESIDENT** (in Cantonese): I would think that for this supplementary question, you should wait for your turn to ask it when we come to the fourth question.

**MR LAU PING-CHEUNG** (in Cantonese): *No problem, no problem.*

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Now the last supplementary question.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the Secretary in his main reply mentions the rich and diverse programme line-up and that the shows were much enjoyed by most in the audience. Such a statement gives people an impression that the Secretary is lavishing praises on his own work. If the shows were really that good, there would not have appeared things like a low attendance, serious losses and lots of embarrassments and so on. Could the Secretary say something.....*

**PRESIDENT** (in Cantonese): Please raise your supplementary question directly.

**MR ALBERT CHAN** (in Cantonese): *Madam President, now I will raise my question. What I have said just now is only the preamble. There are grave blunders in the planning of activities by the ERWG and the result is turning an activity which could have injected vitality into Hong Kong into one which has brought disgrace to Hong Kong.....*

**PRESIDENT** (in Cantonese): Have you asked your supplementary question?

**MR ALBERT CHAN** (in Cantonese): *That belongs to the same question. (Laughter) Is that bringing consequential disgrace to Hong Kong? Or could the Secretary tell us when will the Government change its way of doing things with the mentality of aiming high but lacking the required abilities?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, details of the activities under the Economic Relaunch campaign which involves a \$1 billion commitment from the Government are all made public and we are glad to answer any question which Members may have on any one of these activities.

As for the Festival, we will of course sum up the experience we have gained and learn the lessons. Therefore, the Chief Executive will form a panel of inquiry to inquire into the matter and conduct a review on the whole process. When conclusions of the review are reached, we will be glad to give an account before this Council.

As to the point I have made on the rich and diverse programme line-up of the Festival, we have received a lot of feedback from those who are in the audience and they have a high opinion of the contents of the concerts, including the quality of the sound equipment, the outstanding performance of the artistes and so on. Such information forms the basis of the above comment. I have gone to one of the concerts myself and I do feel that the performance is good.

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

### **Confusing Arrangements for Hong Kong Harbour Fest**

3. **MS EMILY LAU** (in Cantonese): *Madam President, there are comments that the arrangements for the Hong Kong Harbour Fest (the Festival), which is supported by the Government with public fund, are confusing and the ticket sales of its various programmes are poor, putting Hong Kong to shame. In this connection, will the executive authorities inform this Council:*



- (a) *given that the Administration told the Panel on Financial Affairs at its meeting on the 11th of last month that the Rolling Stones would not come to perform in the Festival as scheduled but, three days later, the band told a news agency that they would come to Hong Kong as scheduled and had received a deposit, whether the Administration has reviewed if it had been kept in the dark, resulting in the arrangements going out of control;*
- (b) *given that the organizer of the Festival announced on the 20th of last month that three local singers "had withdrawn from the Festival" but advised three days later that they would appear in the Festival as scheduled, of the reasons for such a state of confusion; and*
- (c) *as the organizer announced on the 22nd of last month that a British singing group could not take part in a concert scheduled for the 24th of last month and that it would distribute free tickets for the concert the following day, and some people were dissatisfied with the arrangements for distributing these tickets, whether the Administration has reviewed the relevant arrangements and assessed the impact of the distribution of free tickets on the income of the Festival and the reputation of Hong Kong; if so, of the review and assessment results; if not, the reasons for that?*

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

- (a) On part (a) of the question, the Government had already provided to the Panel on Financial Affairs of the Legislative Council on 17 October the chronology of events leading up to the signature of the contract between the organizer of the Festival event and the Rolling Stones management. From the chronology, it is clear that the Government had informed the Panel of the then prevailing factual position on 11 October, namely that the Rolling Stones management had up to that point declined to sign the contract with the Festival organizer. The chronology of events also clearly shows that the organizer, in consultation with the Government, had conveyed to the Rolling Stones management, orally on 9 October and in writing on 10 October, that "the contract is off the table".

Without any prior notification to the organizer of the Festival event, the Rolling Stones tour director announced to the media on 13 October (Los Angeles time) that the group would go ahead with the shows in Hong Kong. On learning about this announcement from the media, the organizer had to decide whether to react positively to this belated and irregular form of notification of acceptance of contract; or to stick with its earlier decision and reiterate to the Rolling Stones management that it had already taken the contract off the table because of the failure on the part of the Stones management to respond by the stipulated deadline. The organizer, in consultation with the Government, decided on balance to pursue the first option on the conditions that the Rolling Stones management would provide written confirmation of acceptance of the contract on 14 October, that tickets could go on sale on 15 October, and that the Rolling Stones would lend special assistance to marketing effort to help make up for lost time. The organizer took this decision partly because it considered that the shows by the Rolling Stones would be a fitting climax to the Festival, partly because it noted that many in the community would welcome a chance to see the Rolling Stones perform live in Hong Kong, and partly because of the possible legal actions that might ensue in the recovery of the deposit paid to the Rolling Stones management when the contract was first offered.

- (b) On part (b) of the question, the Government has not been consulted by the organizer on the changes made relating to the participation of three local singers in the Festival. According to the information subsequently obtained from the organizer, it was a matter of the production logistics relating to the international acts involved in the performance.

All along, the organizer has intended every performance to showcase Hong Kong's diversity of culture as far as possible. According to the organizer, all contracts with the international artists contain a clause, which allows them to approve any other acts for their shows. In the original plan, two of the local singers were scheduled to open the shows of the Rolling Stones. As the Rolling Stones' shows on 7 and 9 November were not confirmed until 15 October (Hong Kong time) when the group's management finally

signed the contract, little time was left for the organizer to confirm the production logistics, for example the length of the shows, the timing for set-up, any special staging, and so on, and seek the Stones' approval for opening acts in their shows, before the two local artists could be fitted in. At one point in time, the organizer felt that it had not enough time to get the Stones' approval for the opening acts. It also realized that the Stones would require almost the entire allotted show time before the 11 pm noise curfew, thus allowing little room for opening acts. As a result, the organizer at one point decided to drop the idea of opening acts for the two shows, and tried to explore alternative slots for the two local artists. After further discussion with the agent company representing the two local artists and with the final agreement by the Stones, the organizer had a change of heart and decided that the two artists should appear as part of the performance, by bringing forward the Stones' concerts to start at 7.00 pm.

We understand from the organizer that similar constraints in lining up opening acts were also encountered with an Australian artist. This artist had also been dropped at one point in time, and was subsequently brought back to the line-up under similar circumstances. This artist will now open the Stones show on 7 November and the two local artists on the other Stones show on 9 November.

The other local artist involved related to the opening act for the Santana show last Saturday. Santana also had a long show, which could have limited the length of any artist's opening act. The organizer eventually was able to reach agreement with Santana and fit in the local artist for an opening act in the show.

- (c) On part (c) of the question, the decision to issue free tickets for the show on the 24th of last month was taken by the organizer, in consultation with the Government. Upon receiving information that one of the three groups booked for the show could not come to Hong Kong, the organizer had to decide whether to go ahead with the show with the remaining two groups and deal with the likely significant claims for refund, or cancel the show. In the latter case, the organizer still had to pay in full the artist fees for the two

remaining groups. The organizer decided that proceeding with the show but making tickets free for all was the best way forward in the circumstances. In reaching this decision, the organizer had taken into account all relevant considerations, including the implications on the income and expenditure of the 2003 Harbour Fest event, the reputation of Hong Kong, and the enjoyment that the audience would derive from the performance by the two groups of artists. The organizer fully understands and accepts that the \$100 million ceiling of sponsorship from the Government will not be revised as a result of its decision to turn the show into a free concert for the enjoyment of the people of Hong Kong.

The Government appreciates that some people were disappointed that they could not obtain free tickets to the show and that some were not happy with the organizer's distribution arrangements. Regretfully, some disappointment was inevitable when there was only a limited supply of tickets for the organizer to distribute. We understand that the organizer had endeavoured, with the very short lead time available, to prepare for and execute an orderly and fair distribution of the free tickets. Nonetheless, parts of the arrangements may be improved, such as advising those queuing up of the likelihood of their being allocated tickets because of the number of people ahead of them.

**MS EMILY LAU** (in Cantonese): *Madam President, in respect of the state of confusion surrounding the Rolling Stones concert, I hope the relevant panel of inquiry will find out whether there has been negligence on the part of the American Chamber of Commerce (AmCham). Madam President, though the concerts of the Rolling Stones are to be staged on 7 and 9 November, the contract was only formally signed on 15 October — Madam President, I have also bought the ticket for the concert on 7 November. I understand the time available for publicity was extremely short and the situation was quite difficult at that time. But I want to know whether the launching of marketing activities is feasible? Perhaps the Secretary may inform us of the present position of ticket sales. Madam President, in the second paragraph of part (a) of the main reply, it is mentioned that the Rolling Stones would lend special assistance in marketing. Madam President, I would like to know what kind of assistance had been rendered.*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I have to thank Ms Emily LAU for buying the tickets for the Santana show and the Rolling Stones concerts. I hope she did enjoy the performance of Santana last week as well as that of the Rolling Stones in the coming concerts. As for these two concerts, does Ms Emily LAU want to know the position of their ticket sales just now?

**MS EMILY LAU** (in Cantonese): *Yes, Madam President, I have asked about the extent of tickets sold. I want to know the present position of ticket sales. The most important point is that the contract for the concerts on 7 and 9 November was only signed on 15 October, leaving very limited time for preparation. The trade is of the view that arrangement for these concerts is impossible and that they should not be staged. Moreover, I wish to know what specific assistance the Rolling Stones have rendered in promoting the concerts.*

**PRESIDENT** (in Cantonese): Secretary, you may try to answer. The question raised by Ms Emily LAU just now is actually the same one that she put forth earlier, which are both related to the Rolling Stones. It does not matter even if you miss out part of it, for Ms Emily LAU may follow up this later.

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the duration between the date that the contract was formally signed, 15 October, and the dates that the shows are to be staged, 7 and 9 November, is quite short. Up till yesterday, about 10 000 tickets have been sold for the concert on 7 November and about 8 000 tickets have been sold for the one on 9 November. One of the singers of the Rolling Stones, Mick JAGGER, just arrived at Hong Kong yesterday. According to information provided by the AmCham, I understand that he will participate in some of our promotion activities, such as publicity programme on radio. I do not know whether he will sing during the programme, perhaps we will have to buy tickets to see his performance, but he has promised to do some special interviews with the media. These are some of the promotion activities. He will, of course, allow us to put him on the one-hour special television programme.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, part (b) of the main reply mentioned the performance arrangement of the Rolling Stones and local*

*artists that seems quite confusing, though it turned out that the chaos has been resolved within a very short period. May I ask the Secretary whether the performance of local artists in the concerts has been included in the contract provided to the Rolling Stones at the outset? If it has, whether they have been informed of who those artists were?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I will provide the supplementary information in writing after the meeting. (Appendix I)

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Financial Secretary said that 10 000 tickets and 8 000 tickets have been sold for the first and second concerts of the Rolling Stones respectively. However, I am sure that the people of Hong Kong are really angry when the Rolling Stones first declined to come to Hong Kong but changed their minds afterwards. They think that when the Rolling Stones decline to come, we should stay put. Why should we let them come again when they changed their minds? At that time, people felt that the Rolling Stones are apparently "playing on" Hong Kong. In part (a) of the main reply to Ms Emily LAU's main question, the Financial Secretary said that the Government had two options at that time, and the first option was finally chosen. Who is responsible for making the choice? Did the Government hear the angry voices of the public querying why we should tolerate such attitude of the Rolling Stones? What are the justifications for the Government to make such a decision?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I also consider the process involved in the contract of the Rolling Stones unusual. At first they said they would not come to Hong Kong but later decided to come. According to the information we have at hand as provided by the organizer, the Rolling Stones has planned to make a tour to perform in Beijing, Shanghai and Hong Kong. The main reason they first declined to come to Hong Kong but changed their mind later was that the approval documents for their performance in Beijing and Shanghai had not yet been granted. At first, they thought that if they could not finalize the performance arrangements in Beijing and Shanghai, they would not make a trip to perform in Hong Kong only. But I believe they have probably changed their mind later and decided to accept the invitation. At that time, one of the options that the AmCham might take was to tell the Rolling

Stones that the contract had already been taken off the table and they were not required to come to perform. Perhaps after consideration, however, the AmCham had wanted them to come. I have explained in the main reply the reason for the final decision of allowing the Rolling Stones to perform in Hong Kong. Miss CHAN Yuen-han's supplementary question asked whether the Government was involved in making the decision, the answer is "yes", the Government had participated in the decision-making process.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I am sorry. May I ask who in the Government is responsible for making the decision?*

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

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the final decision was made by the AmCham. At that time, Invest Hong Kong under the Government has offered their opinions to the AmCham.

**PRESIDENT** (in Cantonese): This Council has spent more than 18 minutes on this question. Last supplementary question now.

**MR JAMES TIEN** (in Cantonese): *Madam President, the Liberal Party supports the setting up of a panel of inquiry by the Government, which will report to the Chief Executive. I wish that the report would be a comprehensive one with the inclusion of the aspects covered by these four questions in the scope of inquiry. Following this, I want to raise a more specific question regarding the confusing arrangement. The number of tickets sold for the first and second concerts of the Rolling Stones is about 10 000 tickets and 7 000 tickets respectively, but there is still a great number of tickets left. May I ask, during the discussion between the Government and the AmCham, why the Government had not proposed to the AmCham to allow the participation of all other business associations to share out the responsibility on ticket sales, just like the arrangement for other feast gatherings, so that tickets can be sold out? There are a lot of comments in the community saying that tickets were not available for they had been taken up by the AmCham, in particular those seats at better*

*locations. Regarding the sale of the several thousands of tickets that remain of the Rolling Stones concerts, has the Government discussed with other business associations? Has it considered giving the tickets for better seats to other business associations instead of allowing the AmCham to take up all the tickets at the best locations in the front rows?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, according to information provided by the AmCham, they have not reserved any tickets exclusively for sale to members of the AmCham. This event is solely a proposal made by the AmCham without entering into any joint undertakings by other business associations. They thought they managed to stage the event all by themselves at that time. When we found out that they could not sell all the tickets, we mobilize friends from all sectors and other business associations to promote ticket sales. I also know that some business associations had already made efforts to help the AmCham to sell the tickets. Regarding the number of tickets sold finally, I think we have to wait until the conclusion of the event before a comprehensive figure is available.

**MR JAMES TIEN** (in Cantonese): *Madam President, the Secretary has not yet answered my supplementary question. At present, several thousands of tickets have still remained unsold: for the first concert, only 10 000 tickets are sold; for the other one, only 8 000 tickets are sold. The tickets already sold are certainly those seats at better locations. As far as I know, many of those tickets were distributed by the AmCham. I want to ask the Secretary whether he will discuss with the AmCham asking them to call back those tickets for seats at better locations and sell them to other business associations, while the tickets that remained unsold will be returned to the AmCham?*

**PRESIDENT** (in Cantonese): Mr James TIEN, the Secretary has given you the answer: there is no such case, the AmCham has not reserved any tickets for its members. Is that what the Secretary mean? Perhaps the Secretary may explain it further to let Mr TIEN understand the situation better.

**FINANCIAL SECRETARY** (in Cantonese): Madam President, we have discussed this issue with the AmCham yesterday. According to the information



provided by the AmCham, the AmCham has not reserved any seats for members of the AmCham, that means all the seats are open for sale to the public and groups.

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

### **Attendance at Hong Kong Harbour Fest**

4. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, it has been reported that, due to poor ticket sales, the organizer of the Hong Kong Harbour Fest (the Festival) has quietly given away free tickets to boost the attendance. Moreover, there are also comments that the audience's motivation to attend has been adversely affected because the foreign singers invited by the organizer are not appealing enough and they are also mismatched with local singers who are to perform in the same shows. In this connection, will the Government inform this Council whether it knows:*

- (a) *the criteria adopted by the organizer of the Festival for selecting organizations to be given the free tickets, as well as the total number and total value of the tickets given away; and*
- (b) *if the organizer of the Festival has conducted market research to ascertain the audience's preference before arranging the shows; if so, of the research results; if not, the measures taken by the organizer and the authorities to ensure that these publicly-funded shows will secure a satisfactory attendance?*

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

- (a) On part (a) of the question, we understand that the organizer had given 1 500 free tickets for the opening show to the Hospital Authority (HA) for distribution to staff, as a token of recognition for their valiant efforts in combating SARS. The organizer had also made available 4 200 free tickets for two Family Festival shows to the Home Affairs Department for forwarding to a number of charitable and social services organizations for distribution to

members of the community. Besides, the organizer had given 2 000 free tickets for the two Family Festival shows to the Community Chest.

In addition, the organizer gave a number of additional tickets to the three shows on the first weekend to commercial sponsors who had signed up to support the 2003 Harbour Fest in cash or kind, over and above the number they were entitled to under their sponsorship agreements. We understand this arrangement is in line with standard industry practice to ensure a good turnout for the kickoff shows which helps to inspire the artists in their performance and to promote subsequent shows.

The organizer has made a public announcement that, except for the show on 24 October where free tickets were distributed under very special circumstances, there will be no more free tickets for the remaining shows.

We have not yet received from the organizer the total value of the free tickets distributed for the relevant shows. Under the contract signed with the Government, the organizer is required to submit a full set of audited accounts to the Government not later than 28 February 2004, which will include a detailed analysis of the revenues and expenditures for the whole event.

- (b) On part (b) of the question, as I stated earlier in answer to another question, the initiative from the organizer to mount a large-scale international entertainment festival came at a time when the economy of Hong Kong was still reeling from the impact of the SARS outbreak and the morale of the community at large was very low. With the objectives of promoting Hong Kong as a safe place to visit both for business and leisure, lifting the morale of the community and engendering the sense of return to normal business, the Festival event needed to proceed as quickly as possible because time was of the essence.

When the initiative was first presented to the Economic Relaunch Working Group (ERWG), the organizer had intended to stage the event in early October in order to leverage on the peak season of

inbound tourists from the Mainland during the National Day holidays. However, because of the constraint on the availability of the Tamar site, and the concerns expressed by ERWG about the likelihood of inclement weather in early autumn, the organizer subsequently decided that the event would be held from mid-October to early November. Under the then prevailing circumstances when time was of the essence, the organizer did not have time to conduct a market survey, before it could secure the bookings of those top-class talents available within the small window of the four weeks from mid-October to early November.

In answering an earlier question, I have already described the promotional and publicity efforts undertaken by the organizer. Senior government officials have also been encouraging the community to support the Festival event.

We understand from the organizer that so far the best selling shows are the ones by Westlife, Air Supply, Santana and the Rolling Stones, who are all world-class international performing talents.

The Festival event is intended to address a number of targets. It is of course a series of live popular music performances, providing a festive entertainment event for the local residents and visitors. But it is more than that. A key component of the event is the one-hour TV programme of Festival highlights, which will help promote the image of Hong Kong as an events capital worldwide for months to come after the conclusion of the 2003 Harbour Fest. The organizer has developed the programme line-up and the matching of performing acts with these targets in mind.

**MISS CHOY SO-YUK** (in Cantonese): *The Secretary explained in part (b) of the main reply that although the Festival had missed the Golden Week in October, it still have to launch anyway, and since time was of the essence, the organizer did not have time to conduct a market survey. The Secretary also explained in an earlier reply that he knew the organizer did not have the experience and the duration for preparation was too short. It was reported that the Government also received some other suggestions. I wish to know that on what ground did the Government approve the enormous amount of the \$100 million funding.*

*Besides, at present it seems very likely that at least \$80 million or even \$100 million would come to naught. I wish to ask was it because the Government had been too imprudent in the course of allocating the funding; if so, who should be held responsible; if not, why it was not imprudent?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the purpose of setting up this panel of inquiry (the panel) is to take a look at the common concerns of the general public towards a series of incidents of the Festival. We also hope that the panel can give a full account of the whole incident. We are also of the opinion that the Government is obliged to explain how the \$100 million was spent. The panel will carry out a comprehensive inquiry, so as to sum up our experience and lessons. As to why we approved the funding, I believe this also falls within the purview of the panel. With regard to whether it is proper and worthy to spend the \$100 million, the Audit Commission will carry out a value-for-money audit on the Festival's sponsorship capped at \$100 million. The Report of the Audit Commission will give an account in that aspect.

**MS AUDREY EU** (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that 1 500 free tickets for the opening show were given to the HA for distribution to staff. Can the Secretary tell us when did the authorities decide to give away these tickets, when the tickets were given away and who was responsible for that? Was it because not all of the tickets were sold out that it was not until the final moment then decision was made to inform other people of that, whom did they inform? Had it been decided at the beginning that it could be used as a token of recognition for the valiant efforts of certain HA staff in combating SARS, and had the HA been informed at the outset that it would receive these free tickets? Madam President, even distribution of tickets requires certain skills. Had these tickets been distributed to people who were interested in the show, and had these people been given sufficient time to be prepared to watch the show? Or just because it was found that tickets could not be sold out at the final moment that they had to post the notice on the very last day before the show and to forcibly give away those tickets?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the 1 500 free tickets I mentioned just now were just for the opening show of the Festival, that is, the show performed by Prince. I remember that a meeting was convened at

that time to review the ticket sales of the Festival. If I remember it correctly, three days before the Friday opening show, that is, on Tuesday, we were told in the presence of representatives of the American Chamber of Commerce in Hong Kong (AmCham) that the box office for the show by Prince was not ideal. If my memory does not fail me, we had discussed whether we should give away tickets to a certain group of people with a view to boosting to the attendance as well as the atmosphere of the show. For that reason, we decided to give away some tickets to our HA colleagues. With regard to the distribution of tickets, perhaps it was due to haste as the time from the decision making to ticket distribution was too short. After some of these people had watched the show performed by Prince, they considered the show quite good, but I cannot exclude the possibility that some HA staff did not watch the show after receiving the ticket.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, the Secretary explained in part (b) of the main reply that a key component of the event was the one-hour TV programme of Festival highlights. How much does the Secretary reckon that the production of this one-hour TV programme should spend; who would be hired to be responsible for the production; why they should be hired; what will the programme be used, and up to this moment, where has this programme been arranged to show?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, with regard to the production cost, I will provide that in writing after the meeting. (Appendix II)

As to the entire production, the organizer of the Festival hired two Americans, one being a producer director and the other, a director, all of the equipment and crew were locally purchased and recruited. The programme would mainly be broadcast abroad, therefore the organizer was of the view that it was necessary to hire two foreigners in order to cater for foreign taste.

**MR FRED LI** (in Cantonese): *I am not sure whether Secretary Henry TANG has read this promotion pamphlet? It says that the Festival is an event that the people of Hong Kong would be proud of the most. But we could see from the reply of the Secretary that the attendance of a number of shows were below 50%,*

*and apart from the shows mentioned by the Secretary just now, the attendance of the rest of them was below 50%. Does the Secretary still consider that the Festival is something to be proud of? Can the three objectives which the authorities and the AmCham originally signed up for be achieved?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, it seems that these four oral questions are drawing to a close, and I wish to take this opportunity to reiterate that at the time when the Festival was conceived, all parties concerned had indeed demonstrated their good faith, unreserved efforts and commitment to organize an unprecedented international popular music festival. The fact that the AmCham made this music festival possible within 100 days was a result of the round-the-clock hardwork of James THOMPSON, who is the President of the AmCham, as well as other key organizers from the AmCham. According to a number of my friends who have watched the show, James THOMPSON and his family went to watch the show almost every evening. I think for a person about my age to watch more than a dozen shows, apart from the hardship of work, attending shows will be also a tough task. For that reason, I commended them in the first oral question, as it was quite remarkable for them to have such commitment and capability to organize this Festival, besides, people who have watched the show also considered that the show was not bad at all. I do not know whether Mr Fred LI has been there, but if he has not been there, I urge him to support the Government by purchasing some tickets to watch the Rolling Stones' show on Friday or Sunday, I believe he would not be disappointed.

With regard to the question of whether setting up 13 000 seats was too much at the time when the idea was conceived, our original plan was to make every show a full-house one by setting the price of tickets as low as \$100 to \$150. If we have to make every show full-house, we should not just make a small number of seats available, as the ticket would soon be sold out within a short time if only a few seats were available. For instance, all of the free tickets for the 24 October show were given away in just 35 minutes. For that reason, if we are to create the atmosphere by offering a rather low admission charge level, a significant number of seats would allow greater participation of people, which would help to achieve the objectives of revitalizing the economy and organizing the Festival. After we have discussed that, with regard to the price of tickets, we were hoping that the price of some expensive tickets could match the market

price of tickets for shows of similar type, and some less expensive tickets should be made affordable and available to the majority of people. I believe that just because of this reason, perhaps 13 000 seats were too much. I trust that panel of inquiry will provide a full account of the areas in the arrangement that have been less satisfactory.

**MR FRED LI** (in Cantonese): *Madam President, my supplementary was in fact whether the three objectives could be achieved? I am not sure whether the Secretary has ever taken a look at the agreement, there were three objectives in the agreement, but the agreement was not signed by the Financial Secretary.....*

**PRESIDENT** (in Cantonese): Which part of your supplementary is unanswered? You only need to repeat that part.

**MR FRED LI** (in Cantonese): *Madam President, were the three objectives achieved? It is as simple as that.*

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

**FINANCIAL SECRETARY** (in Cantonese): Madam President, these three objectives are: First of all, to attract tourists around the world to visit Hong Kong and take part in this Festival. We learnt that some tourists have attended the concert, but we do not know how many of them were tourists, expatriates or mainland visitors. The fact is that we have not requested people to indicate whether they were local residents or tourists when they buy the tickets. I only know that quite a lot of foreigners have attended the shows.

The second objective is to organize a spectacular event once a year, which would make Hong Kong a quality world-class entertainment centre, that is, a destination for entertainment, or where the world comes to perform. This time around, the organizer is thrilled to host this Festival, nevertheless, we also consider that the idea is not that bad at all. Since they were in high spirits, we therefore awarded them the rights to organize an international music festival for a five-year period under the name of the Harbour Fest. Certainly, this will not

prohibit other parties from organizing music festivals on the Tamar site, as long as they are not organizing the shows under the name of the Harbour Fest. With regard to the fact that whether they would organize similar music shows again in future, I think this is an issue for the future, as the public relation effect this time is not ideal as we expected.

The third point is related to what I have just said. Performers who performed in Hong Kong on this occasion, such as Westlife, have commended Hong Kong as a beautiful and vibrant city with enthusiastic people during a radio interview, they therefore felt very happy to perform here. Upon their departure, they spoke well of the quality of the people of Hong Kong and their passion for life. As to whether more activities would be held in the background of the Victoria Harbour, I believe that the project the ERWG supports this time has played a significant part in the economic rebound of Hong Kong from the low ebb of the SARS outbreak period to the level of the pre-SARS period, and the number of tourists has even surpassed the pre-SARS period. With regard to the future, I believe that after watching the show, enterprises from the private sector would definitely find it not a bad idea at all, they may thus be interested in hosting similar activities with the help of professionals in these areas. I believe this a matter for the future.

**PRESIDENT** (in Cantonese): We have spent more than 21 minutes on this question. This is the last supplementary.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, I almost thought that I could not raise my supplementary. Since we are under the unfavourable influence of extensive negative news, we do not even dare to buy the tickets. However, the Secretary said just now that we would have liked it if we have participated in this Festival. I wish to ask the Secretary, besides broadcasting the one-hour TV programme of Festival highlights abroad, will it be also broadcast locally, so that the people of Hong Kong could gain a more updated and better understanding of it?*

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the suggestion of Mr TAM Yiu-chung is quite good, I will convey this idea to the organizer and we will discuss that.



**PRESIDENT** (in Cantonese): Members, we have spent a total of one hour and a half in these four oral questions. A lot of Members have indicated their wish to raise supplementaries for each question, but of course, the question time does not allow us to do so. However, as far as I know, the Panel on Financial Affairs will hold a follow-up meeting on 15 November. Accordingly, I believe Members who do not have the opportunity to raise their supplementaries could have the chance to follow the matter up then. By that time, the Financial Secretary will give Members detailed answers just as he did today.

Fifth question.

### **Fuel Surcharge Collected by HEC**

5. **MR FRED LI** (in Cantonese): *Madam President, in 2000, the Hongkong Electric Company Limited (HEC) increased the basic tariff. As Hong Kong's economy at that time had not fully recovered, the Government agreed that the HEC increased the Fuel Clause Rebate in order to maintain the overall tariff. However, such rebate would be entered into the Fuel Clause Account of the HEC's balance sheet. At the end of last year, the balance in the Account was \$1,235 million. According to the agreement reached between the Government and the HEC last year, the HEC would gradually recover the amount from its customers by way of an additional surcharge so as to recover the Account balance in full by the end of 2008. In this connection, will the Government inform this Council:*

- (a) *when the HEC put forward and when the Government approved the proposal to increase the Fuel Clause Rebate for the year 2000; the time until which the rebate would last; and whether the effect of such an arrangement was only to allow HEC customers to hold over payment for the increased portion of the tariff and make such payments in arrears in the subsequent years;*
- (b) *whether it has assessed if the HEC's failure to set the Fuel Clause Rebate or Surcharge in accordance with fuel cost variations was already a breach of the Scheme of Control Agreement (SCA); and*

- (c) *of the reasons for allowing the HEC to build up the balance in the Fuel Clause Account to \$1,235 million; the estimated annual amount which the HEC would recover from its customers from 2004 to 2008; and, as Hong Kong's economy has yet to recover and the unemployment rate is high, whether it will request the HEC to postpone the recovery of the balance in the Account; if it will not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, my reply to the three-part question raised by Mr Fred LI is as follows:

- (a) The Annual Tariff Review in late 1999 indicated that, according to the provisions in the SCA, the HEC had to increase their tariff for the year 2000. In view of the then prevailing economic situation in Hong Kong, and to avoid increasing the burden on their consumers, the HEC proposed:
- (i) to increase the Fuel Clause Rebate for 2000 from 8.5 cents per unit to 15.2 cents per unit; and
  - (ii) to reduce the debit balance thus accumulated in the Fuel Clause Account by gradually adjusting downward the Fuel Clause Rebate during the period of the 1999-2004 Financial Plan.

Having regard to the fact that consumers would not have to pay a higher net tariff rate in 2000 and that the HEC would not earn more than the return permitted under the SCA, the Government agreed to the HEC's proposed arrangement for the Fuel Clause Account. The Executive Council approved the arrangement in May 2000 in the context of examining the 1999-2004 Financial Plan and the tariff for the year 2000.

- (b) The arrangement was consistent with the terms of the SCA. Under the SCA, the Basic Tariff includes a standard fuel cost, and fuel cost is borne by consumers. Through the Fuel Clause Account mechanism, the difference between the standard fuel cost and the

actual fuel cost will be returned to or recovered from the consumers each year by means of a Rebate or a Surcharge.

The Fuel Clause Rebate or Surcharge for each year is determined during the Annual Tariff Review. Over the years, in deciding on the Rebate or Surcharge, we take into account various factors, including the fuel cost differential, the balance in the Fuel Clause Account as well as the need to stabilize tariff. The Fuel Clause Surcharge or Rebate in a year may therefore be different from the fuel cost differential for that year, and there could be a credit or a debit balance in the Fuel Clause Account.

- (c) Under the Fuel Clause Account mechanism, the balance in the account is a running figure. The HEC reduced the Fuel Clause Rebate by 5.9 cents and 2.2 cents per unit in 2001 and 2002 respectively, so as to gradually reduce the debit balance in the Fuel Clause Account. However, since fuel prices increased in both 2001 and 2002, and the fuel cost differentials could not be fully reflected in the Fuel Clause Rebate, the debit balance in the Fuel Clause Account as at end 2002 amounted to \$1.235 billion. With fuel prices stabilizing in the first half of 2003 and a further reduction in the Rebate by 1 cent per unit this year, the HEC's 2003 Interim Report indicates that the debit balance in the Fuel Clause Account at the end of June this year has been brought down to \$1.184 billion.

As mentioned earlier, the tariff for each year, including the Fuel Clause Rebate or Surcharge, will be determined in the Annual Tariff Review, having regard to all relevant data and the objective of stabilizing tariff. At the time of the Tariff Review in late 2002, the Government accepted the HEC's proposal to defer the recovery of the Fuel Clause Account deficit to beyond 2004 to be completed before the expiry of the current the SCA in 2008, in order to alleviate the burden on consumers. This arrangement contributed to the tariff freeze in 2003.

The tariff, including the Fuel Clause Rebate or Surcharge, to be charged by the HEC during 2004 to 2008, will be determined annually in accordance with established arrangements under the SCA.

**MR FRED LI** (in Cantonese): *Will the Secretary please clarify whether it was due to the fact that while the HEC has discovered its power consumption rate in 1999 was not as high as expected, there is no way in which it could recover the profit that has fallen short of its maximum permitted return at a later date even when it failed to reach the maximum level of its permitted return, that the HEC has tried to increase its Fuel Clause Rebate, so as to increase its income from basic electricity tariff? Will the Government please inform me whether it was in the picture then? And, in permitting the HEC to do so, whether the Secretary is assisting the HEC in disguise to take profits unreasonably from consumers?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to stress that I have said in my main reply that the Annual Tariff Review in late 1999 indicated that, according to the provisions in the SCA, there is a need for the HEC to increase the rate of its tariff in 2000. I believe everyone was aware of the relevant figure. Under the then prevailing circumstances, if we did not increase the Fuel Clause Rebate, then the electricity tariff must be increased. I would like to stress that our approval would not result in the HEC earning a profit that was more than its permitted return under the SCA. In other words, the burden of the public will not be increased as a result.

**DR YEUNG SUM** (in Cantonese): *Madam President, I think the Secretary has not answered the latter part of part (c) of Mr Fred LI's main question. In fact, everyone knows that Hong Kong's economy has yet to recover and the unemployment situation is far worse than those of 1999 and 2000. In this regard, will the Government continue to request the HEC to postpone the recovery of the balance in the Account? This is because in doing so, the HEC will be forcing the consumers to be in arrears with the company against their own wishes, so can the Government ask the HEC to further postpone the recovery of the balance?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I would like to thank Dr YEUNG for his question. In fact, like Dr YEUNG, the Government is equally concerned about the stability of electricity tariff and does not wish to see any roller coaster-like sudden and drastic increase in tariff for otherwise the people will have to accept a hefty increase in tariff

under the prevailing economic environment. And, it is also against such a background that I have explained in my main reply why we gave our approval at that time to further extend the deadline for the recovery of the debit balance. I have also mentioned in the main reply that in our Annual Tariff Review on the Fuel Clause Rebate or Surcharge, and that is, the decision on when the tariff should be increased and by how much, actually depends on factors such as the prevailing economic situation and stabilizing electricity tariff to be discussed on a yearly basis, and the relevant amount requires the approval of the Government.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, according to the Secretary's reply, we can be assured that such a Rebate can have a stabilizing effect on tariff. However, if this debit balance (that is \$1.184 billion) is to be reduced to zero within such a short time as the coming four years, it will be quite difficult. Unless there is a substantial decrease in fuel prices, otherwise, the Rebate will have to be greatly adjusted downwards, thus this could hardly be completed in four years' time. I would like to know whether the Government has discussed with the HEC during its interim review to follow the Financial Secretary's example of extending the deadline for eliminating the deficit and to extend the deadline for the recovery of the debit balance to two or three years? This is because such a measure will not have a very great impact on the tariff.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I would like to thank Mr CHAN for his question. First of all, I would like to say it is true that the current SCA will expire in 2008. Mr CHAN asked earlier whether the deadline could be extended for two years. Actually, an assumption has already been made in this way and that is, assuming that the SCA will still be in practice after 2008, otherwise, how will we be going about this matter? Madam President, of course, I cannot possibly tell Members right now what will happen after 2008 because we are still studying the case. We have undertaken to consult the public next year on how to carry out the relevant arrangements, whether a new agreement can be reached, whether the existing approach is the best and on matters relating to interconnection, so we have been studying a lot of issues. I would like to point out that when we held discussions on tariff each year, we would actually consider a series of factors, including the power demand, conditions of sale, operation costs such as how to implement cost control, whether there are measures to increase productivity and so on, and if

everything goes well in all these aspects, can the cost be lowered. In other words, whether such measures are conducive to alleviating the urge for tariff increase, and will not necessarily lead to a substantial increase in electricity tariff. In my earlier response to Dr YEUNG Sum, I indicated that we felt that it is most important that the matter can be considered on a year-by-year basis in light of the economic conditions. Everyone can see that we are actually working very hard and we have tried every means over the past several years to prevent roller coaster-like drastic increases in tariffs. We prefer to extend the recovery period and then make considerations on a year-by-year basis. Of course, today, I cannot make any commitments for matters beyond 2008.

**DR RAYMOND HO** (in Cantonese): *Madam President, the SCA is an agreement with a comparatively longer term and there are times when the economy of Hong Kong may not be so favourable during this lengthy period. If consumers were to be truly benefited while at the same time, the income of the two power companies were not to be jeopardized, what other areas will the Government consider in relation to these two aspects? Will the Government take any initiative in putting forward such aspects or arrangements for the consideration of the two power companies or will the Government only sit back and wait for the two power companies to come up with proposals for its consideration?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): We are well aware of our needs and those of the public. At the same time, we are also aware of the importance of a stable power supply. Just now, Mr CHAN Kam-lam asked about our interim review with the two power companies in his earlier supplementary question. We have certainly raised a lot of issues, but since we are now at the final stage of our discussion, I cannot go into the details. What is of prime importance is that we understand the need to balance the interests of both parties. One consideration is that there should be permitted revenue under the existing SCA, and we hope that the company can continue to make investments to ensure the stability of our power supply. This is a very important factor for consideration. The other factor for consideration is that tariffs should be set at a reasonable level and remains stable. I have mentioned many times earlier that we did not wish to see great fluctuations in tariffs. In the course of our liaison and discussions with the two power companies, these have always been very important factors for consideration.

**MS AUDREY EU** (in Cantonese): *Madam President, the Secretary said in part (a) of his main reply that the HEC and the Government agreed in late 1999 to increase the Fuel Clause Rebate for 2000 from 8.5 cents per unit to 15.2 cents per unit. Madam President, my supplementary question is, if this agreement was really reached in late 1999 just as what the Secretary said, why was it that when we received the HEC's electricity bills, the Fuel Clause Rebate was still 8.5 cents per unit from January to October and was only raised to 15.2 cents in November, can the Secretary explain why changes were not introduced until November? If the Secretary said this agreement was really reached in late 1999, does the Secretary have any document to show that this agreement was reached in late 1999 and can he provide us with a copy of that document?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, perhaps Ms EU has not listened carefully to my reply. What I actually said in my main reply was that the Annual Tariff Review was conducted in late 1999, with the tariff review commencing at that time. Later, I also said in my main reply that this arrangement was approved by the Executive Council at the end of May 2000. In other words, this arrangement was approved in mid-2000 and then the HEC was notified, and in accordance with its usual practice, the HEC subsequently notified its consumers about the arrangement.

**MS AUDREY EU** (in Cantonese): *Madam President, the Secretary said the Executive Council approved the arrangement in May but he did not explain why changes were not reflected in our electricity bills until November. Is there any document that shows this agreement was actually reached in November, despite the fact that the Secretary said the arrangement was already approved by the Executive Council?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I would like to repeat that the Executive Council approved the arrangement in mid-2000, and that is, at the end of May. The HEC was then notified of the arrangement and it in turn informed its consumers of the arrangement on the electricity bills according to its usual practice. I would like to stress that the HEC has also made due announcement in the newspapers in September. In fact, this does not have any impact on consumer interests because for consumers, the net tariff is virtually the same, and that is, as in the

year before, there are no changes at all. I have already stated in my earlier reply the purpose for doing so is we do not wish to increase the burden of the public in respect of net tariff, and such an arrangement has not increased but only frozen tariffs. This is the aim of our arrangement, which will not affect the interests of consumers.

**PRESIDENT** (in Cantonese): This Council has spent more than 17 minutes on this question. Last supplementary question.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I would like to follow up Mr CHAN Kam-lam's supplementary question. The Secretary said several options will be discussed during the period from 2004 to 2008 for alleviating the burden of the public, can the Secretary give us more details? 2004 is neither a very long nor a very short period of time from now, so the Government should have already come up with some options. When can it confirm the time when certain options can be implemented at the latest?*

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, do you wish to ask about the arrangements for the period from 2004 to 2008 or the situation beyond 2008?

**MR LAU KONG-WAH** (in Cantonese): *Madam President, in his reply to Mr CHAN Kam-lam's supplementary question, he only mentioned that several options will be discussed, and I only wish to know more about the details of those options.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): In my earlier reply to Mr CHAN Kam-lam's question, I indicated that during the interim review, we have finally discussed with the two power companies on what arrangements could be made for the benefit of the people. Such issues are still confidential at the moment as discussions are still underway, but I believe we can come to report to the Legislative Council shortly or within the coming few weeks.

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



## Anti-mosquito Campaigns

6. **MR WONG YUNG-KAN** (in Cantonese): *Madam President, in spite of the three rounds of anti-mosquito campaigns launched by the Government from February to early October this year, Hong Kong's first locally-contracted Dengue fever case for the year occurred in October. In this connection, will the Government inform this Council:*

- (a) *whether it has plans to launch another round of anti-mosquito campaigns focusing on mosquito prevention measures in rural areas; and*
- (b) *of the respective numbers of warning letters and summonses issued by the authorities to owners of private land that breed mosquitoes during the three large-scale anti-mosquito campaigns completed not long ago, and whether the authorities have any new strategies to tackle the problem of mosquitoes on private land left unattended for a long time?*

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

- (a) Since 2001, the Administration has launched an annual anti-mosquito campaign to tackle the mosquito problem. Each campaign comprises several phases (each lasting up to six weeks) between early spring and autumn during which intensive efforts and anti-mosquito measures are taken to eradicate mosquito harbourage and breeding grounds. Mosquito prevention measures in rural areas such as construction sites, vacant government land and illegal cultivation sites have always been an integral part of our campaign strategy.

The next territory-wide anti-mosquito campaign will commence in February 2004. We will identify areas/venues for focused control measures and publicity efforts in the light of our experience with past campaigns, community feedback and the latest ovitrap findings. In view of the prevalence of mosquito breeding sites in the rural areas, we will intensify our mosquito control efforts in these places in the coming campaign.

In addition to anti-mosquito campaigns, it is our strategy to sustain anti-mosquito efforts by the community and government departments throughout the year. In collaboration with the Home Affairs Department, the Food and Environmental Hygiene Department (FEHD) has implemented a wide range of vector control, publicity and public education measures targeted at rural communities. Specific measures taken included thematic control operations for village-type houses, minor improvement works to remove mosquito breeding grounds in rural setting, organization of talks and other publicity activities on dengue fever prevention and distribution of educational posters/leaflets to rural leaders and villagers.

- (b) During the 2003 Anti-mosquito Campaign, the FEHD issued 127 summonses against mosquito breeding in construction sites and other private premises and 153 warning letters against stagnant water accumulation in such premises.

The Administration is mindful that private land unattended for a long time could be a source of mosquito problems. We have been encouraging local residents to report mosquito black spots in their neighbourhood to facilitate vector control and enforcement actions by the FEHD. Where an unattended private site is found to have mosquito breeding risks, the FEHD will obtain the owner's information from the Land Registry and serve a notice on the owner requiring him to clear the breeding spots within a specified time. Failure to comply with the notice requirements will render the owner liable to prosecution under section 27 of the Public Health and Municipal Services Ordinance (Cap. 132). Where the situation merits immediate control measures or where the owner cannot be contacted/identified, the FEHD will expeditiously apply for a warrant from the Court to enter the site to eliminate mosquito breeding places therein.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, despite the fact that a very thorough reply has been given by the Secretary, I still wish to ask the Secretary a question. The recent ovitrap index clearly indicated that the anti-mosquito efforts in Ho Man Tin and Tai Po appeared to be unsatisfactory. The*

*Anti-mosquito Campaign has been launched for three years, but why were high figures still recorded in these areas? Is there any other way to do better?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, Mr WONG Yung-kan has raised a very good question. We have in fact made some progress in the Anti-mosquito Campaign launched in the past few years. Compared to the highest index of over 30 last year, the highest mosquito index recorded this year was 20 on average, far lower than that of last year. In addition, mosquito indices are recorded separately for different areas this year. Even if the average index recorded territory-wide is not too high, the FEHD will focus work on a particular area where the index is relatively high. This year, we encounter difficulties in three areas, namely, Tin Shui Wai, Tai Po and Wong Tai Sin. From the recent figures, the highest index was recorded in Tin Shui Wai. However, from the downward adjustment shown in the index for that area this month, we have indeed made some improvement. We maintain presently an area ovitrap index which enables us to ask workers to focus on particular areas once problems have been identified.

**DR LO WING-LOK** (in Cantonese): *Madam President, the media reported today a worrying mosquito-transmitted disease which is the first local case of Japanese encephalitis (JE) within the past years in Hong Kong history. JE is closely related to pig/pigs. I would like to take this opportunity to ask the Secretary if anti-mosquito measures have been adopted against those areas where people keep pig/pigs; if so, of the details of these measures?*

**PRESIDENT** (in Cantonese): Dr LO Wing-lok, the subject of this question is cases relating to Dengue fever. Though the new disease mentioned in your question is also a mosquito-borne disease, I am not sure if the Secretary has any information at hand.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I do not have detailed information on other mosquitoes at hand. Nonetheless, regarding the question raised by Dr LO Wing-lok, the Health, Welfare and Food Bureau (the Bureau) and departments concerned have held discussions on how the problem should be handled.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, as indicated by the Secretary, a number of anti-mosquito campaigns have been carried out in the past few years. I would like to know the estimated cost for each campaign; which is the item that involves the largest expenses and of its ratio in the total expenditure?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I do not have at hand the itemized expenditure of each anti-mosquito operation. I guess the major spending is on salaries as we have a dedicated team for carrying out anti-mosquito operations. As a matter of fact, we adopt a four-pronged approach in our anti-mosquito operations. The first approach is publicity and public education. The expenditure on manpower involved in this aspect may not be significant. I believe the largest spending should be on sustaining efforts in anti-mosquito operations, as intensive manpower must be deployed in carrying the work in a proper manner. The FEHD engages more than 200 staff members in anti-mosquito operations, and money is required to employ these people. As it is hard to calculate the time to deploy them on their day-to-day work and that on anti-mosquito operations, it would be difficult to calculate the expenses involved. Nonetheless, I will give it a try. Thirdly, stringent enforcement actions will be taken in the course of the anti-mosquito campaign and such will also involve manpower. However, we will not deploy a lot of staff to take on the task. Fourthly, on-the-spot mosquito control measures will be improved. We will enlist organizations and community co-operations in this regard. As anti-mosquito measures must be taken on a sustainable basis in the long run, they must be carried on by the community after anti-mosquito operations have been undertaken by staff members of FEHD. In case the index of a particular area rises, the FEHD will review for improvement in the index after one week's time, to see if it is necessary to step up mosquito control measures. Nevertheless, the rate of success hinges very much on the co-operation and participation of the public.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Can the Secretary provide the information in writing?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, we will try to estimate the resources required as far as practicable. (Appendix III)

**MR MICHAEL MAK** (in Cantonese): *Madam President, in his reply to Mr YEUNG Yiu-chung's question, the Secretary has indicated that stringent enforcement actions would be taken. In part (b) of the main reply, it was mentioned that over 120 summonses and 153 warning letters had been issued. I do not see the point of issuing warning letters. If stringent enforcement actions are to be taken, why are summonses not issued? I would like to know the criteria for issuing summonses or warning letters. In the cases of these 153 warning letters, if no improvement measure is taken by the persons concerned, whether the Government will issue summonses, or to impose heavier penalties?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the warning letters have been issued for stagnant water accumulation. For instance, if stagnant water accumulation is found in construction sites or places, we will issue warning letters. According to the existing legislation, only warning letters can be issued at the moment. As for the time for issuing summonses, we will do so only when mosquito ova are found in the stagnant water. The difference between the two cases is: if mosquito ova are detected, a summons will be issued, but for stagnant water accumulation, only a warning letter will be issued. We will of course institute prosecutions, but I do not have the information at hand on the actual amount of fine for these 120 summonses. The maximum fine is \$25,000, but the fine imposed by court would normally range from a few hundred to tens of hundred dollars.

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

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary has misunderstood my question. What I am asking is: among these 153 warning letters, what is the number of cases involving facilities and stagnant water accumulation that has not been improved, thereby necessitating the issuance of summonses or the imposition of other penalties?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I do not have the information at hand. However, I figure that most businessmen would normally take improvement actions once warning

letters are issued. I believe that only very few of them would not do so. Anyway, I will answer Mr Michael MAK in writing. (Appendix IV)

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, I am very much in support of the Anti-mosquito Campaigns conducted in recent years and have found them very effective. The Secretary mentioned in part (b) of his main reply the numbers of summons and warning letter issued in 2003. Comparing to the figures of the previous year, are they of a regressive or progressive nature?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as far as I remember, the difference between the figures is not significant. If Members are interested, I can provide the data in writing for comparison. (Appendix V)

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, apart from the figures, I would like to ask the Secretary if they are of a progressive or regressive nature.*

**PRESIDENT** (in Cantonese): Mr CHEUNG, I do not think the Secretary have the information at hand. He cannot give you the answer at this moment. Will the Secretary answer this question in providing the written reply?

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

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, I am not sure whether you will permit me to raise this supplementary question, for its content is similar to the one raised by Dr LO Wing-lok.*

*The major effort of Anti-mosquito Campaign conducted in the past was to prevent the spread of dengue fever, yet the JE found in Hong Kong today was actually transmitted by culex tritaeniorhynchus, a mosquito vector. As Dr LO wing-lok just said, the infected mosquito vectors would, after biting pigs and wild*

*birds infected with the JE virus, transmit the virus to human. Hence, in the light of the present situation, should the Government's Anti-mosquito Campaign still focus on mosquito control? Should infected pigs and wild birds also be taken into account to prevent the spread of JE, a mosquito-borne disease?*

**PRESIDENT** (in Cantonese): Mr CHEUNG Man-kwong, you are right, I will not ask the Secretary to answer your supplementary question. As the Secretary has replied just now that the issue is still under examination, I believe that when it is completed, he will be prepared to answer Mr CHEUNG's question which is also a public concern. Last supplementary question.

**DR LO WING-LOK** (in Cantonese): *Madam President, this time it is a question related to Dengue fever. Quite a number of locally-contracted Dengue fever cases was found in Macao recently, I would like to ask whether the Secretary is aware of the situation; and, whether measures have been adopted to reduce the risks of a spread of Dengue fever in Hong Kong by the mosquitoes and people in Macao?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, we have definitely paid attention to the Dengue fever cases in Macao as communications between the two places have been very frequent. However, Macao is not the only place where there could be a risk of imported Dengue fever, as Dengue fever has also become an endemic disease in a number of places in Southeast Asia. The majority of the 40 or so imported Dengue fever cases found in Hong Kong recently were transmitted from Indonesia and Thailand. So far, as the number of cases in Macao are comparatively low, no case has been found to have been transmitted from there. The places with the highest rate of outbreak are Indonesia and Thailand. We have of course held discussions with the Macao authorities on the measures taken and the situation on mosquito control. In addition, we have also adopted measures in various ports, such as distribution of leaflets, so as to enhance public awareness on places where Dengue fever cases are found.

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

## WRITTEN ANSWERS TO QUESTIONS

### Underpaying Foreign Domestic Helpers

7. **MR NG LEUNG-SING** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the number of cases of underpaying foreign domestic helpers (FDHs) reported to the authorities in each of the past five years and, among them, the number of those which the authorities successfully prosecuted;*
- (b) *whether it has assessed if cases of underpaying FDHs are rampant; if so, of the assessment results; and*
- (c) *of the measures to enhance the effectiveness of the efforts in investigating and prosecuting cases of underpaying FDHs?*

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

- (a) The number of claims or requests for assistance in respect of underpayment of wages lodged by FDHs with the Labour Department (LD) in the past five years is as follows:

<i>Year</i>	<i>Number of claims</i>
1999	53
2000	54
2001	84
2002	94
2003 (January to September)	113

In the past five years, prosecution action has not been taken for the majority of these cases due to insufficient evidence; or because the FDHs concerned refused to act as prosecution witnesses after their cases had been settled through conciliation or by the Labour



Tribunal. The LD has initiated prosecution in four cases, resulting in two employers being convicted and fined. Separately, arising from prosecution by the Immigration Department (ImmD), an employer was sentenced to four months' imprisonment for conspiracy to defraud and making false representation that he would pay the FDH the minimum allowable wage (MAW).

(b) and (c)

Comparing the number of FDHs and the number of cases received by the LD, underpayment of wages is not very serious. Nevertheless, the Government is very concerned about this problem. We have been assisting FDHs in recovering wages from their employers. The LD will prosecute the employers concerned in accordance with the Employment Ordinance (Cap. 57) provided that there is sufficient evidence and the FDHs concerned are willing to act as prosecution witnesses. The ImmD will also prosecute employers who make false representation on the terms of employment, including wages payable to FDHs.

To reinforce our efforts to combat underpayment of wages, the LD set up an Employment Claims Investigation Unit in late 2002 to step up investigation and prosecution of claims on underpayment of wages.

On publicity and education, we have spared no effort in publicizing the MAW and encouraging FDHs to approach the LD for assistance in case of wage underpayment and to act as prosecution witnesses as necessary. The following outlines our efforts in these two areas:

- (i) the LD has, from time to time, organized briefings for FDHs to educate them on their employment rights. We shall continue with this kind of briefings;
- (ii) Pamphlets on the MAW and employment rights prepared in the native languages of the FDHs are distributed at the ImmD, the LD, consulates, non-government organizations (NGOs), migrant worker groups, the airport as well as locations frequently visited by FDHs;

- (iii) we have been liaising with the consulates, NGOs and migrant worker groups to solicit their assistance in encouraging FDHs to lodge complaint on underpayment of wages with the LD; and
- (iv) in conjunction with the migrant worker groups and NGOs providing support services to FDHs, we put in place an intelligence system in early 2003 to facilitate FDHs to report wage underpayment cases. So far, we have received eight referrals involving 11 FDHs.

Also, a special task force comprising representatives of the LD, the ImmD and the police was set up in January 2003 to map out the strategy in combating underpayment of wages for FDHs and malpractices of employment agencies. The work of the task force is to enhance the exchange of intelligence on suspected cases of underpayment, plan enforcement actions against employment agencies and to remind employers and employment agencies not to breach the law.

### **Prostitution Activities at Internet Cafes**

8. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *how it prevents under-age girls from prostituting themselves at Internet cafes;*
- (b) *of the number of inspections conducted by the authorities at Internet cafes suspected of engaging in prostitution activities and prosecutions instituted in each of the past two years, and the number of such cafes which were prosecuted successfully; and*
- (c) *whether it has assessed the effectiveness of the existing laws in deterring prostitution activities at Internet cafes and in facilitating prosecution and combating such activities; if it has, of the assessment results?*

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

- (a) The police are committed to curbing prostitution in vice establishments. This is no exception in cases where Internet Computer Services Centres (ICSCs) (commonly known as Internet cafes) are involved. Actions taken by the police in preventing, deterring and combating vice activities include:
  - (i) taking proactive measures to arrest and prosecute "pimps";
  - (ii) stepping up intelligence gathering and where appropriate taking joint actions with other departments to arrest and prosecute people who contravene the Crimes Ordinance by committing offences such as "living on the earnings of prostitution" or "keeping a vice establishment";
  - (iii) promoting and encouraging community bodies, such as District Councils, District Fight Crime Committees, schools and non-governmental organizations to assist in publicity efforts and in encouraging the public to join hand with the police in the fight against vice activities; and
  - (iv) taking proactive measures to exercise powers under the Organized and Serious Crimes Ordinance to deter vice syndicates, such as seeking enhanced court sentencing and confiscation of proceeds of crime.

Where prostitution by under-age girls is involved, the police will closely monitor the case and intelligence, and accord priority for enforcement actions so as to prevent at an early stage the occurrence of such illegal activities.

- (b) According to the police's record, the number of known ICSCs now stands at 307. Between 2002 and 2003 (as at 30 September), the police detected 15 cases of prostitution in ICSCs. Of these 15 cases, nine have concluded court proceedings, resulting in 19 people being convicted for vice and prostitution activities.

The police do not keep separate statistics on inspections conducted at ICSCs suspected of engaging in prostitution activities.

- (c) The police review the effectiveness of their operations in terms of enforcement and prosecution from time to time. Irrespective of whether ICSCs are involved, the police can rely on the powers given to police officers under existing laws. For example, under section 16 of the Protection of Children and Juveniles Ordinance, police officers are authorized to enter and demand to see and interrogate any or all the inmates of any place which they have reason to believe is used as a lodging house for prostitution or as a brothel.

As for the general operation of ICSCs, the Home Affairs Bureau issued a Code of Practice (Code) on 1 August 2003 for voluntary compliance by operators of ICSCs. The Code states that operators should ensure that no criminal activities such as vice, gambling or triad related activities are allowed on the premises. The Code also sets out guidelines on desirable practices, including youth protection measures such as operators should permit public officers and registered social workers to enter and inspect the premises to ensure that ICSCs are operating in accordance with the prevailing laws and the Code. It recommends that children under 16 should not remain in the centre from midnight to 8 am from Monday to Friday, and from 2 am to 8 am on Saturdays and public holidays. Although the Code is an administrative measure and is not legally binding, the Administration will closely monitor the operations of ICSCs and take enforcement actions in accordance with the law to bring the offenders to justice.

### **Impact of China's Accession to Treaty of Amity and Co-operation in Southeast Asia and Creation of China-ASEAN Free Trade Area on Hong Kong**

9. **DR ERIC LI** (in Chinese): *Madam President, will the Government inform this Council whether:*

- (a) *it has assessed the positive and negative impacts of the accession of China to the Treaty of Amity and Co-operation (TAC) in Southeast*

*Asia on the economic and trade interactions between Hong Kong and the Association of South-East Asian Nations (ASEAN); if so, of the assessment results;*

- (b) it has studied Hong Kong's status within the China-ASEAN Free Trade Area (FTA) and its functions in and influence on the FTA; if it has, of the findings; and*
- (c) Hong Kong-made products entering the FTA will be entitled to the same rights as those enjoyed by products made in China?*

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

- (a) The TAC in Southeast Asia was signed at the First ASEAN Summit held in 1976. The purpose of this Treaty is to "promote perpetual peace, everlasting amity and co-operation among their peoples which would contribute to their strength, solidarity and closer relationship". In accordance with the TAC, the High Contracting Parties, in their relations with one another, shall be guided by the following fundamental principles:
  - Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
  - The right of every State to lead its national existence free from external interference, subversion or coercion;
  - Non-interference in the internal affairs of one another;
  - Settlement of differences or disputes by peaceful means;
  - Renunciation of the threat or use of force; and
  - Effective co-operation among themselves.

Since the TAC is a framework agreement that promotes regional peace and stability, and not an economic and trade arrangement, we

believe that the accession of China to TAC will not have any direct effect on the economic and trade interactions between the Hong Kong Special Administrative Region (SAR) and ASEAN. Nevertheless, we believe that a peaceful and amicable relationship between China and ASEAN nations will help create and maintain a conducive environment for economic and trade activities in the region.

- (b) As regards the China-ASEAN FTA, the Government understands that the Mainland and ASEAN signed in November 2002 a Framework Agreement on Comprehensive Economic Cooperation, agreeing to establish a China-ASEAN FTA by 2010, and authorizing their officials to commence negotiations on the contents of the FTA. Negotiations are still ongoing.

Under the principle of "one country, two systems", China and the SAR (using the name of "Hong Kong, China"), being two separate customs territories, are separate Members of the World Trade Organization. China and Hong Kong, China each formulates its own external trade policies according to its own interests. As the establishment of the China-ASEAN FTA is a matter concerning the external trade policy of the Central People's Government, the SAR Government is not involved. The agreement that China and ASEAN signed is only a framework agreement and the contents of the FTA have yet to be negotiated and agreed by the two parties. We are unable at this stage to assess in concrete terms Hong Kong's role in the FTA, and its functions and impacts.

Both the Mainland of China and ASEAN are major trading partners of Hong Kong. Geographically, Hong Kong is also located between the two parties, with much of their trade conducted through Hong Kong. In 2002, relevant two way re-export trade amounted to US\$15.6 billion. Our preliminary assessment is that when the trade barriers between the two sides are reduced with the establishment of the China-ASEAN FTA, bilateral trade between China and ASEAN will be further facilitated. There should be positive impacts on Hong Kong's relevant re-export trade.

The Government will closely monitor developments as well as the details of the FTA, and will in due course evaluate the impact of the FTA on Hong Kong's trade and economy.

- (c) Hong Kong, China is not a participant of the China-ASEAN FTA. Therefore, exports of Hong Kong origin to the ASEAN will not be able to enjoy the benefits of this FTA when it is established.

### **Procurement of Intense Pulsed Light Devices by Hospital Authority**

10. **DR LAW CHI-KWONG** (in Chinese): *Madam President, regarding the procurement of medical instruments by the Hospital Authority (HA), will the Government inform this Council whether it knows:*

- (a) *the criteria and procedure adopted by the HA and its hospitals for deciding to procure a particular type of medical instrument or otherwise;*
- (b) *the medical and other uses of the intense pulsed light (IPL) devices, and whether overseas medical institutions use IPL devices for medical purposes;*
- (c) *if HA hospitals have procured IPL devices; if they have, of the names of the hospitals concerned, the uses of the instruments, the costs of procurement and the respective numbers of patients who had received IPL treatment in each of the past three years; and*
- (d) *which HA hospitals have plans to procure IPL devices or additional ones, the estimated costs involved and the estimated average annual numbers of patients who will receive IPL treatment?*

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

- (a) At present, the HA procures medical equipment for existing hospitals using an annual allocation made available under a block vote. Procurement of medical equipment by the HA has to be fully

justified based on operational needs and is planned through a systematic process. The Chiefs of Service and managers concerned in hospitals will advise on the types of medical equipment to be procured, having regard to the service needs. For equipment items of new medical technologies, the Clinical Co-ordinating Committee of the specialty concerned will be consulted on the need for such equipment items. Priorities will then be set with input from the respective Cluster Chief Executives. Procurement of major medical equipment costing \$1 million or above per piece has to be approved by the Chief Executive of the HA.

As for medical equipment procured for new hospital projects funded under the Capital Works Reserve Fund, the HA will critically assess and draw up a list of medical equipment items to be required for each project. The Health, Welfare and Food Bureau will then scrutinize the list of proposed medical equipment items. The cost estimate for furniture and equipment (F&E) and the full list of F&E items costing \$1 million or above per piece will be included in the paper on the new hospital project submitted to the Legislative Council Public Works Subcommittee for Members' endorsement.

- (b) The IPL devices can be used for medical purposes in treating a wide variety of skin lesions including pigmented skin lesions, vascular malformation and scars as well as in skin resurfacing. According to the knowledge of the HA, medical institutions in Japan, Taiwan and the United States also use IPL devices for treatment of the afore-mentioned skin problems.
- (c) The HA purchased a set of laser and IPL system in early 2002 at a cost of \$1.53 million for medical purposes. The system is now installed at the Tuen Mun Hospital and so far, 319 episodes have been performed for treatment of patients with various skin lesions. Two similar machines were also purchased by the University of Hong Kong using their own funds in late 2002 and are sited at the Queen Mary Hospital under the management of the University clinical unit.
- (d) The HA does not have any plan to purchase IPL devices in 2003-04.



**Legislation to Sanction Unruly or Disruptive Passengers on Board Aircrafts**

11. **MR HOWARD YOUNG:** *Madam President, in reply to my question on 2 May 2001, the Administration advised that the Study Group on Unruly Passengers (Study Group) set up by the International Civil Aviation Organization (ICAO) had decided to recommend to the ICAO Council a resolution to request contracting states to incorporate the Draft Model Legislation on Offences Committed on Board Civil Aircrafts by Unruly or Disruptive Passengers into their respective national legislation, the ICAO Council would submit its report on this subject to the ICAO Assembly in September/October 2001, and the Administration was closely monitoring development in respect of the ICAO's efforts. As airlines in general wish to see enactment of such legislation as soon as possible, will the Government inform this Council:*

- (a) of the outcome of the ICAO Council's consideration of the Study Group's recommendation;*
- (b) of the outcome of the ICAO Assembly's consideration of the ICAO Council's report on this subject and whether the Assembly has agreed to request contracting states to proceed with local legislation; and*
- (c) whether the authorities will amend the existing legislation to sanction unruly or disruptive passengers on board aircraft; if so, of the legislative timetable, and the reasons for not including the legislative proposal in the legislative programme for the current Legislative Session?*

**SECRETARY FOR SECURITY:** Madam President,

- (a) The Model Legislation on Certain Offences Committed on Board Civil Aircraft (model legislation on unruly passengers) drawn up by the ICAO Study Group was endorsed by the ICAO Council in June 2001. In addition to specifying the categories of unruly behaviours on board aircraft which constitute an offence, the model legislation also contains provisions setting out the scope of the jurisdiction of a Contracting State over such offences.

- (b) The ICAO Council presented the model legislation to the ICAO Assembly in October 2001. The Assembly adopted a resolution urging all Contracting States to enact national law and regulations to deal effectively with the problem of unruly or disruptive passengers, incorporating as far as practical the ICAO model legislation.
- (c) Effecting the model legislation would help strengthen the control over unruly passenger offences committed on board Hong Kong-registered aircraft, and extend Hong Kong's jurisdiction over unruly passenger offences committed on board foreign aircraft outside Hong Kong while they are coming to land at Hong Kong. Effecting the model legislation in Hong Kong would also demonstrate our commitment to international co-operation in dealing with misconduct on board aircraft and in providing more protection for passengers and crew members.

The Government has carefully considered whether and, if so, how the relevant legislation should be amended to effect the ICAO model legislation in Hong Kong. Following detailed examination and consultation with the Aviation Security Committee, we are of the view that the model legislation should be effected by amending the Aviation Security Ordinance (Cap. 494). Legislative proposals to effect the model legislation are being prepared. Taking into account the progress made and other legislative priorities, we aim to introduce the amendment bill in the 2004-05 Legislative Session.

### Investigation of IT-related Crimes

12. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that there were 454 crimes involving information technology (IT) in the first nine months of this year, representing an increase of 67% over those of the same period last year. Most types of these cases were on the rise whilst the detection rate was only 3%. As for the cases referred to the Technology Crime Division of the Commercial Crime Bureau (TCD) of the police for investigation, 12 out of 15 cases were cracked down. Moreover, the police had requested individual network operators to keep records on the server log of their customers to facilitate investigation and advised that if the record-keeping by network operators was not satisfactory, legislation might need to be introduced to require*

*them to keep such records. In this connection, will the Government inform this Council:*

- (a) of the reasons for the relatively low detection rate of crimes involving IT;*
- (b) why only 15 cases had been referred to the TCD for investigation in the first nine months of this year, representing only 3.3% of related cases during the same period;*
- (c) of the criteria adopted by the police for determining which criminal cases involving IT should be handled by the TCD or other investigation divisions of the police; and*
- (d) of the situations under which the police require network operators to keep records on the server log of their customers; and the number of such requests made by the police over the past three years?*

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

- (a) "Technology crimes" or "computer crimes" generally refer to the following types of crimes:
  - (i) crimes directly targeting computers or computer systems (for example, illegal intrusions into computer systems, commonly known as hacking);
  - (ii) crimes committed through the use of computers (for example, copyright piracy on the Internet); and
  - (iii) crimes where computers were merely incidental to the offences (for example, placing of advertisements on the Internet to attract customers to buy child pornographic articles).

The detection rates of technology crimes handled by the police in the past three years are tabulated below:

<i>Year</i>	<i>Total number of technology crime cases</i>	<i>Overall detection rate</i>
2001	235	20%
2002	272	21%
2003 (from January to September)	451	12%

The overall detection rate of technology crimes remains at double digits. The detection rate of the serious cases (19 cases) handled by the TCD from January to September in 2003 was 73.7% (14 cases).

The circumstances surrounding a particular type of crime would affect to a varying degree the search for leads, gathering of evidence and the progress of investigation; the detection difficulties and rates do vary. As far as technology crimes are concerned, the following circumstances may have a bearing on the difficulties in their detection:

- (i) the police rely on the co-operation of Internet Service Providers (ISPs) to provide relevant technical information in the search for leads. For example, in hacking cases, it is common for perpetrators to make use of victims' Internet accounts for dial-up Internet access. This makes it difficult for the police to follow up;
- (ii) many victims are not aware of the necessity to preserve the evidence in their computers. They often reset or update their computers immediately after their computers have been hacked into, thus destroying evidence useful to investigation; and
- (iii) the cases may involve acts committed or property located outside Hong Kong, and imposed technical difficulties in investigation, gathering of evidence, enforcement and exercise of jurisdiction. For example, for the technology crime cases handled from January to September 2003, the majority (about 200 cases) involved on-line game participants

alleging to be deceived. However, the computer servers concerned were located outside Hong Kong, and Hong Kong may not have jurisdiction over such cases.

The police attach great importance to improving the detection rate of technology crimes. The TCD has issued investigation guidelines to various investigation units. Training of front-line investigators has been strengthened to enhance their professional capability in investigating technology crimes.

(b) and (c)

Investigation of crime cases is handled by the Police Headquarters, Regional Headquarters and District Police Stations, depending on the nature, circumstances and severity of the cases. Clear guidelines on investigation of technology crimes have been drawn up. In general, serious technology crimes are handled by the TCD where:

- (i) there is no precedent;
- (ii) new methods of committing crimes are involved;
- (iii) the criminal acts require relevant professional knowledge, technology or equipment;
- (iv) technical support from local or overseas experts is required;
- (v) large network systems, infrastructure facilities or sensitive information are involved;
- (vi) overseas offenders are involved and their identity has to be affirmed by overseas law enforcement agencies or witnesses;
- (vii) offenders make use of special equipment; or
- (viii) a few jurisdictions are involved.

Other technology crime cases are dealt with by respective Regional Headquarters or District Police Stations.

From January to September in 2003, the TCD handled 19 serious technology crime cases.

- (d) The police have maintained good co-operative relations with ISPs. For cases involving log records, the police will seek assistance from ISPs as may be necessary in the circumstances of the cases. The police do not keep statistics on the number of requests made to ISPs.

### **Removal of Quota System for Textiles and Clothing Imports**

13. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, according to the World Trade Organization (WTO) Agreement on Textiles and Clothing, quota restrictions for textiles and clothing imports will be completely lifted on 1 January 2005. In this connection, will the Government inform this Council:*

- (a) *whether it has estimated and assessed:*
  - (i) *the percentage points by which Hong Kong's textiles and clothing exports will grow annually; and*
  - (ii) *the number of jobs which will be created as a result of manufacturers relocating some of the textiles and clothing manufacturing processes to Hong Kong,*

*following the complete removal of the quota system;*
- (b) *of the measures to encourage redevelopment of old-type factory buildings into fashion design centres so as to increase the added value of Hong Kong's clothing products;*
- (c) *of the measures to enhance training for talents in the textiles and clothing industries; and*
- (d) *of its plans to provide incentives for manufacturers to relocate some of the textiles and clothing manufacturing processes to Hong Kong with a view to creating more employment opportunities?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Chinese): Madam President, according to the WTO Agreement on Textiles and Clothing, quota restrictions imposed by all WTO members on their textiles and clothing imports will be completely lifted on 1 January 2005. As a result, in about a year's time, certain domestic exports of textiles and clothing to the United States, the European Union and Canada will no longer be subject to quota restrictions. According to 2002 figures, the total value of exports involved is close to \$43 billion (amounting to about 90% of the total value of Hong Kong's exports of textiles to the above three countries/regions). The replies to the specific issues raised are as follows:

- (a) The removal of the quota system marks an important milestone in the liberalization of international trade in textiles and clothing. While trade liberalization can broaden the scope for trade and facilitate market expansion by Hong Kong businessmen, this will at the same time intensify market competition. In view of the complex and fast-changing international business environment, we need to observe further as to whether, and how many, manufacturers would relocate their production processes to Hong Kong, and the number of jobs that would be created, as a result of the abolition of the quota system in 2005. We believe that we would have a clearer picture as we approach 2005. The Government will conduct an assessment on the impact of quota abolition on the textiles and clothing industry next year.
- (b) Whether owners will convert their old-type factory buildings for fashion design purpose is a matter for them to decide, based on their assessment of the market demand. The Government will facilitate the process if there is proven market demand for such conversion. The Steering Committee on the Development of the Fashion Industry, established by the Commerce, Industry and Technology Bureau last year, has discussed the proposal of setting up a fashion centre to provide stronger infrastructure support to the fashion industry in Hong Kong. The Committee has yet to reach a consensus on the matter, due to difference of views among members on the location, objective, main functions and mode of operation of the centre. The Government will continue to explore the matter with the industry.

- (c) At present, training for personnel in the textiles and clothing industries is mainly provided by the Clothing Industry Training Authority (CLITA), two organs of the Vocational Training Council (VTC), namely the Department of Fashion and Textiles of the Institute of Vocational Education (Kwai Chung) and the Textile Industry Training Centre, The Hong Kong Polytechnic University (PolyU) and the Skills Upgrading Scheme.
- (i) CLITA: Established by the Government in September 1975 under the Industrial Training (Clothing Industry) Ordinance (Cap. 318), the CLITA is financed by a levy from the industries<sup>Note</sup>. Measures taken to enhance training for the industries include establishing a Centre of Excellence for the textile and clothing industries, stepping up dissemination of expertise and technology on textiles and clothing, offering self-study and Internet courses for in-service personnel of the clothing industry who are unable to attend regular classes, providing and designing integrated training courses for enterprises, organizing seminars on various topics for the industries, and supporting the Employees Retraining Board in offering tailor-made coaching for individual garment factories.
- (ii) VTC: The Department of Fashion and Textiles of the VTC's Institute of Vocational Education (Kwai Chung) offers diploma and higher diploma courses. Another organ of the VTC, the Textile Industry Training Centre also provides all-round courses with due emphasis on both theoretical and practical training. Major manpower training initiatives include increasing places for full-time training courses, providing in-service education opportunities, providing multi-skills training to professionals in a flexible manner, providing evening courses on printing, dyeing and finishing, designing and providing tailor-made training courses on behalf of manufacturers to help upgrade the skills of the employees in the industry and to promote operational

<sup>Note</sup> The CLITA is financed by a levy of 0.03% on the Free on Board value of clothing and footwear items produced in and exported from Hong Kong.



efficiency, and organizing thematic seminars to disseminate updated market information for technological exchange in the industry.

- (iii) PolyU: PolyU currently provides full-time, part-time and evening part-time courses for sub-degree, bachelor's degree, post-graduate and post-graduate research programmes in textile studies with duration ranging from two to six years.
- (iv) Skills Upgrading Scheme: The Government set up the Skills Upgrading Scheme in 2001 to provide focused training to in-service workers of various industries with a view to upgrading their skills. The wearing apparel/textile industry was one of the sectors included in the first phase of the Scheme. Through the Scheme, the Government aims to help workers of the wearing apparel/textile industry to acquire the latest skills so as to enhance their employability and competitiveness to meet the demands arising from technological changes.

Besides, the Government will follow up and implement the proposals of the Steering Committee on the Development of the Fashion Industry to enhance co-operation between the industries and the training institutions mentioned above in manpower training.

- (d) After meeting with the business community and union representatives, the Government has agreed that in view of the new circumstances brought about by the Mainland and Hong Kong Closer Economic Partnership Arrangement, consideration should be given to exploring ways to seize the enormous business opportunities so created. We should try to attract investors or manufacturers to set up factories in Hong Kong, which in turn will promote economic development and increase local employment opportunities. In order to attract more investors or manufacturers including those in the textiles industry to set up factories in Hong Kong, thereby benefiting more local workers, a consensus has been reached among the labour side, the employers' side and the Government that flexible measures may be considered to allow manufacturers to import non-local skilled labour, provided that this

will contribute to enhancing Hong Kong's competitiveness and creating employment opportunities. Specific proposals will be worked out by the Government to facilitate further discussion. The business community and trade unions will be consulted in formulating and implementing relevant plans.

### **Threat Posed by Kites on Broken Strings to Road Safety**

14. **MR LAU KONG-WAH** (in Chinese): *Madam President, I have received complaints that kites on broken strings often drift over the expressways near kite-flying venues, posing a threat to the safety of motorcyclists. In this connection, will the Government inform this Council:*

- (a) *whether it has statistics on the existing number of kite-flying venues situated near expressways;*
- (b) *whether the operators of such venues are required to apply for licences from the authorities concerned; if so, of the details; and*
- (c) *of the number of traffic accidents caused by kites on broken strings in the past three years, and the number of motorcyclists injured as a result; and whether prosecutions have been instituted against the venue operators concerned?*

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

(in Chinese): Madam President, the Administration does not have statistics on the number of kite-flying venues as the operators of kite-flying venues are not required to apply for licences. At present, kite-flying in Hong Kong is governed by the Air Navigation (Hong Kong) Order 1995 (Cap. 448C), in respect of the possible impact on aircrafts, vessels, vehicles and structures. It is an offence under the Order to fly a kite within 60 m of any vehicle. The offender is liable on summary conviction to a maximum fine of \$2,500. No prosecutions have been instituted under the Order during the past three years.

According to police's record, there was no traffic accident caused by broken kite strings in 2001 while there were one traffic accident in 2002 and six in January to September 2003 which were related to injury of motorcyclists by

broken kite strings. The Highways Department will remove broken kite strings on expressways as soon as possible during their routine patrols and upon receipt of reports via their complaints hotlines.

### **Providing Fire Service Officers with Paramedical Training**

15. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that the Fire Services Department (FSD) is now at the preliminary stage of gathering information in order to study the feasibility of recruiting firefighter-paramedics in the future. In this connection, will the Government inform this Council whether:*

- (a) paramedical training is provided for Firemen at present; if so, of the details;*
- (b) it has plans to change the entry requirements for Firemen; if so, of the details; and*
- (c) it has assessed the impact of the amalgamation of the Fireman and Ambulanceman grades on the demand for ambulancemen; if so, of the assessment results?*

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

- (a) Applicants applying for the post of Fireman in the FSD must meet the following entry requirements:
  - A permanent resident of the Hong Kong Special Administrative Region;
  - Good physique and a pass in a Functional Test and a Strength Test;
  - Good vision (without spectacles) and colour perception;
  - Ability to speak fluent Cantonese;

- Academic requirement: successful completion of Form Three; and
- Language proficiency: Grade E or above in Chinese Language and English Language (Syllabus B) in the Hong Kong Certificate of Education Examination (HKCEE), or equivalent.

During the initial training, new recruits are required to undergo basic ambulance aid training, including theory and practice. To ensure that all front-line firefighters maintain a reasonable level of ambulance aid knowledge and skills, serving staff are required to receive relevant training every month in the fire station they are attached to. Such training includes pre-hospital care, cardiopulmonary resuscitation and the use of first-aid equipment on fire engines.

- (b) The FSD is considering raising the minimum academic requirement for firemen from the completion of Form Three to the completion of Form Five to tie in with the requirement implemented in January 2003 that all applicants for civil service posts should attain Grade E or above in Chinese Language and English Language (Syllabus B) in the HKCEE, or equivalent. Apart from this, the FSD has no plans to change the entry requirements concerned.
- (c) At present, the FSD has no intention to merge the Fireman and Ambulanceman grades. In a bid to further improve performance, the FSD launched the "first responder" programme in September this year by utilizing existing resources to enhance its emergency ambulance services.

Front-line firefighters taking part in the "first responder" programme have to attend a four-week ambulance aid training course. They will be turned out to four types of emergency calls, including cardiac arrests, airway obstructions, absence of breathing and severe haemorrhage.

Given the strategic location of fire stations, "first responders" may arrive at the scene of an incident earlier than the ambulance crew,

enabling the delivery of basic emergency medical treatment and pre-hospital care to the casualties or patients in the first instance. Nevertheless, this programme is implemented on a supplementary basis and "first responders" are not meant to replace the ambulance personnel. The FSD will review the programme three months after its implementation.

### **Water Seepage in Residential Premises**

16. **MR ALBERT CHAN** (in Chinese): *Madam President, I have received many complaints from members of the public about the water seepage on the walls or ceilings of their residential premises but, despite repeated complaints made to and assistance requested from the Water Supplies Department (WSD), the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD), the situation has not improved. Such seepage has adversely affected the living environment of the complainants. In this connection, will the Government inform this Council of:*

- (a) *the respective numbers of complaints about seepage on residential premises received by the abovementioned departments over the past three years, and the number of such cases referred to other departments for follow-up action;*
- (b) *the number of cases mentioned in (a) above in which the causes of seepage were found and whether the Administration has assisted the complainants in solving the problems; if not, of the reasons for that; and*
- (c) *the measures the Administration has in place to help residents solve the problems of seepage in residential premises?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, water seepage in buildings is basically an issue of property management and maintenance. Generally speaking, building owners should seek professional assistance in submitting an investigation report to identify the source of seepage and resolve the problem with those who have caused it. Upon receipt of a complaint about water seepage in private buildings, the

relevant authorities will check whether the seepage has led to problems of public hygiene, structural safety of the building and water wastage, and deal with the case in accordance with their statutory powers.

Replies to the three parts of the question are as follows:

- (a) According to existing procedures, a complaint about water seepage in buildings will first be referred to the FEHD, which will conduct an initial investigation and deal with any environmental hygiene nuisance. In the event that the initial investigation cannot ascertain the cause of seepage, the FEHD will refer the case to the WSD or BD as appropriate for further investigation to ascertain if structural safety or water wastage is involved. Follow-up action will be taken where appropriate.

From January 2001 to September 2003, the FEHD received a total of 28 238 complaints on water seepage. According to the above procedures, the FEHD has referred 20 642 cases to the WSD and the BD for follow-up action.

- (b) Technical difficulties are often encountered in seeking to identify the cause of seepage. This is because it usually involves the inspection of pipes concealed in floor slabs or other decorative fixtures inside the units of the building. One method that can be used in such cases is the colour dye test. After receiving a water seepage complaint, the FEHD will try to find out the source of seepage by carrying out a colour dye test. For those 28 238 water seepage complaints received from January 2001 to September 2003, 996 cases were confirmed by colour dye test to have been caused by defective pipes. We do not keep overall statistics on the number of water seepage cases arising from other causes.

If the source of seepage is confirmed, the relevant authorities will follow up according to the circumstances. For example, when the seepage is caused by defective water pipes, the FEHD will issue a notice under the Public Health and Municipal Services Ordinance (Cap. 132) requiring the person causing the seepage to repair the defective water pipes within a specified period of time. Generally speaking, the flat owners concerned should also co-operate with each other to resolve the problem.

- (c) As pointed out above, water seepage in buildings is basically an issue of building management and maintenance. Thus, the Administration will, from time to time, promulgate the importance of building management and maintenance and remind owners of their responsibility for regular maintenance of water pipes, drainage pipes and waterproof membranes to guard against seepage. In addition, if the seepage has building safety or environmental hygiene nuisance implications, the authorities concerned will take appropriate enforcement actions, such as ordering the owners concerned to repair the defective pipes or building parts or ordering those concerned to rectify the environmental hygiene nuisance.

We are considering the setting up of a Joint Office of the FEHD and the BD to better co-ordinate the enforcement actions on seepage problems and expedite the relevant procedures.

### **Freshly Squeezed Fruit Juices Sold by Fruit Juice Shops**

17. **MR WONG YUNG-KAN** (in Chinese): *Madam President, it has been reported that some fruit juice shops use rotten fruits to squeeze juice for sale to people for consumption. In this connection, will the Government inform this Council of:*

- (a) *the total number of fresh fruit juice shops which were inspected by the Food and Environmental Hygiene Department (FEHD) in the past three years and, among them, the number of those which contravened the legislation on food hygiene, as well as the average penalty imposed on those so convicted; and*
- (b) *the measures in place to prevent unscrupulous business operators from selling fruit juice that may be harmful to people's health?*

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

- (a) From January 2001 to October 2003, the FEHD conducted 44 000 inspections to about 928 premises selling fresh fruit juice. The

inspections did not reveal hygiene problems at those premises and prosecution action was therefore not required.

- (b) In addition to regular inspections, the FEHD takes samples of fruit juice at retail outlets for bacteriological examination and chemical analysis. If the test result is found to be unsatisfactory, the FEHD will issue a warning letter to the permit holder. Repeated non-compliance may lead to suspension or cancellation of the permit.

From January 2001 to October 2003, the FEHD took 93 fresh fruit juice samples for testing. Two samples failed to meet our standards and written warnings were issued to the permit holders concerned. Further samples taken from the shops afterwards were tested satisfactory.

#### **Aligning Fee Levels of and Fee-setting Mechanisms for Services Formerly Provided by the Two Municipal Councils**

18. **MR FRED LI** (in Chinese): *Madam President, in 1999, the Government advised the Bills Committee on the Provision of Municipal Services (Reorganization) Bill of its plan to align the fee levels of and fee-setting mechanisms for the services formerly provided by the two Municipal Councils within two years of their dissolution on 1 January 2000. In this connection, will the Government inform this Council of:*

- (a) *the fees and fee-setting mechanisms aligned so far;*
- (b) *the existing fees and fee-setting mechanisms yet to be aligned and the reasons for its failure to complete the exercise within the time limit of two years; and*
- (c) *the expected time of completion of the exercise?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my replies to the Honourable Member's questions are as follows:

- (a) Action has been taken to align the different concessionary arrangements for various leisure facilities in the urban area and the



New Territories. These include concessionary charges for use of public swimming pools, tennis courts, football pitches, squash courts, sports centres and holiday camps. Individual or organization users under the same concessionary category, including children/toddlers, disabled persons, students, schools and subvented organizations are able to enjoy the same concessions at these facilities throughout the territory.

- (b) There are discrepancies between the fee levels for the urban area and the New Territories, such as admission fee for public swimming pools, hire charges for public pleasure grounds (that is, tennis courts, basketball courts, badminton courts, table tennis tables, squash courts and football pitches) and leisure venues/facilities (that is, bowling greens, public swimming pools, tennis courts, sports grounds and sports centres), holiday camp fees, places of amusement (that is, billiard establishment, public bowling alley and public skating rink) licences fees, fees for recreation and sports programmes, fees for water sports centres and fees for some library services (that is, microfilm photocopying and computer CD-ROM database print-out). As regards the fee items under the purview of the Food and Environmental Hygiene Department, there are also discrepancies in the fees and charges pertaining to food and trade licences/permits, hawker licences and hawker fixed pitches, and cemeteries and crematoria services.

A number of reviews have been conducted in the past years. In the course of fees reviews, we have taken into account that any increase in fees for either the urban area or the New Territories to achieve aligning the fee levels would add burden on the general public in the present economic climate. We are also concerned that any reduction in fees as a result of alignment would require a corresponding increase in the Government's subsidies. In view of the current financial climate, the alignment exercise has been put on hold.

- (c) It remains our objective to complete the alignment exercise as soon as practicable. We will take into account the overall economic conditions and the views of the relevant Legislative Council Panels in drawing up a revised timetable for the alignment exercise.

**Providing Internet Express Lines in Public Libraries**

19. **MISS CHOY SO-YUK** (in Chinese): *Madam President, at present, members of the public can access the free Internet service in some public libraries for a two-hour session on advance booking. However, walk-in users can only access the Internet service when those who made advance bookings have failed to turn up or have not used up the entire session booked. In this connection, will the Government inform this Council whether it will consider providing Internet express lines in public libraries which do not require advance booking and are available for shorter sessions (for example, 15 minutes), so that members of the public who have not made advance booking need not wait a long time for undertaking on-line activities that only require a short access time, such as checking electronic mailbox and reading electronic mails, and so on?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): *Madam President, at present, a total of 1 129 computers are provided in the public libraries managed by the Leisure and Cultural Services Department (LCSD) for the public to access to the Internet. All members of the public have a fair chance to use these facilities, and they can make advance booking for the use of computers for one to two hours according to their needs.*

*In order to cater for the various needs of the public, the LCSD has been implementing a trial scheme in the Tsim Sha Tsui Public Library since March this year. Internet terminals are installed for those members of the public who require access to the Internet for a short period, without requiring advance booking. The time limit per session is 20 minutes. The LCSD will review this arrangement early next year and consider extending this service to other libraries by phases.*

**Encouraging Owners of Diesel Public Light Buses to Switch to Vehicles Using LPG or Electricity**

20. **MS EMILY LAU** (in Chinese): *Madam President, in August last year, the Administration launched a scheme under which a grant was offered to encourage owners of diesel public light buses (PLBs) to replace their vehicles early with those which use liquefied petroleum gas (LPG) or electricity. Regarding the reduction of emissions from diesel vehicles, will the executive authorities inform this Council:*

- (a) *of the respective numbers of PLBs whose owners have applied for the grant to replace their vehicles with those which use LPG and electricity since the implementation of the scheme, as well as their percentages in the total number of PLBs in Hong Kong;*
- (b) *whether they have conducted a survey on the difficulties and concerns of PLB owners in replacing their vehicles with those which use LPG or electricity; if so, of the results of the survey and the improvement proposals arising therefrom; if not, whether it will conduct such a survey;*
- (c) *of the plans and supporting measures in place to attract more PLB owners to replace their vehicles with those which use LPG or electricity; and*
- (d) *whether they will reconsider financing PLB owners in replacing their vehicles early with new diesel engine models that meet the Euro III emission standard; if so, of the preliminary thinking; if not, the reasons for that?*

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

(in Chinese): Madam President,

- (a) As at 27 October 2003, there were 600 LPG PLBs in Hong Kong, accounting for 14% of the entire PLB fleet. There was no electric PLB in Hong Kong.

The owners of 598 of the above 600 LPG PLBs have already applied for and received the one-off grant.

- (b) Before implementing the LPG and electric light bus incentive scheme, the Government had carried out jointly with the light bus trade a trial of LPG and electric light buses. According to the report of the trial, both LPG and electric light buses are suitable for use in Hong Kong. However, electric light buses might have to be confined to shorter routes because of battery constraints. Because of public safety and geographical considerations, there is practical difficulty in providing LPG filling facilities close to every PLB route. Therefore, the report has also pointed out that the operating income

of those PLB operators who run routes far away from LPG filling stations may be affected if they switch to LPG light buses. Having considered the above factors, the Government decided not to introduce a compulsory replacement programme but to implement a voluntary scheme to encourage owners to replace early their diesel light buses with the environmentally cleaner light buses that use LPG and electricity. The voluntary nature of the scheme allows owners to decide, on the basis of their operations, whether to join the incentive scheme, and to decide to opt for an LPG light bus, an electric light bus or a diesel light bus.

Under the incentive scheme, to be eligible for the one-off grant, owners of diesel PLBs of 10 years old or above have until end-2004 to replace their vehicles, and owners of diesel PLBs below 10 years old have until end-2005 to replace their vehicles. Since the deadlines for application for the grant are still some time away, some diesel PLB owners may choose to continue to use their existing diesel light buses and to replace their vehicles later. Moreover, some diesel PLB owners may be postponing their vehicle replacement plan given the current economic situation in Hong Kong. We expect that more owners will replace their diesel light buses with LPG or electric ones in the run-up to the deadlines.

- (c) To encourage more owners to replace their diesel light buses with LPG ones, we have worked together with oil companies to expand the LPG filling network. From only four temporary LPG filling stations, the network has now grown to a total of 44 LPG filling stations including 12 large-scale dedicated stations. More LPG stations will come on stream in the coming years and the geographical coverage of the LPG filling network will be further improved.

Moreover, we will continue our close dialogue with the light bus trade and will follow up the technical issues that they may encounter in the use of LPG light buses.

- (d) The incentive scheme seeks to encourage owners of existing diesel light buses to switch to environmentally cleaner LPG or electric models. Even though a Euro III diesel light bus is more advanced than its predecessor that was manufactured before the introduction

of the Euro emission standard, its nitrogen oxide emission is at least twice as much as that of an LPG light bus. Moreover, a Euro III diesel light bus is no comparison with an LPG light bus, as the latter emits almost zero particulate. Overall, an LPG light bus is environmentally cleaner than a Euro III diesel light bus.

At present, the Euro III standard is already the minimum statutory emission standard for all newly registered vehicles. A vehicle owner who wishes to purchase a new vehicle, including a new diesel PLB, to replace his existing vehicle can only choose one that meets at least the Euro III emission standard. Therefore, there is no justification for including in the incentive scheme Euro III diesel PLBs that can only meet the minimum statutory emission standard.

## **BILL**

### **Second Reading of Bill**

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Revenue (No. 3) Bill 2003.

### **REVENUE (NO. 3) BILL 2003**

#### **Resumption of debate on Second Reading which was moved on 9 July 2003**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Revenue (No. 3) Bill 2003 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Revenue (No. 3) Bill 2003.

Council went into Committee.

### **Committee Stage**

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

### **REVENUE (NO. 3) BILL 2003**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Revenue (No. 3) Bill 2003.

**CLERK** (in Cantonese): Clauses 1 to 8.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bill**

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

### **REVENUE (NO. 3) BILL 2003**

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

Revenue (No. 3) Bill 2003

has passed through Committee without amendment. 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 Revenue (No. 3) Bill 2003 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Revenue (No. 3) Bill 2003.

## **MOTION**

**PRESIDENT** (in Cantonese): Motion. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003.

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

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I move that the motion under the Interpretation and General Clauses Ordinance, as printed on the Agenda, be passed. The motion amends section 7(a) of the Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003.

To ensure that its governance and management structures are meeting present-day circumstances, and are enhanced having regard to international good practices and the principles of transparency and accountability, the University of Hong Kong has appointed an independent and international panel to review its governance and management structures. The University of Hong Kong has identified a number of statutory amendments necessary for implementation of the recommendations.

One of these is the amendment to paragraph 2(*l*) of Statute XIX, to enable the Council of the University of Hong Kong to appoint any person or committee to entertain and adjudicate upon complaints and redress grievances on its behalf. This amendment was effected by section 7(a) of the Amendment Statutes.

In the course of examining the Amendment Statutes, the Subcommittee of the House Committee has suggested, and the University of Hong Kong has agreed, to amend section 7(a) of the Amendment Statutes in respect of paragraph 2(*l*) of Statute XIX. I therefore move this amendment to reflect more accurately



the intention of the University of Hong Kong, which is to enable the Council, on a case by case basis, either to delegate the adjudicating power to a person or committee, or to retain its own adjudicating power and exercise it on the recommendation of a person or committee that has entertained the complaints or grievances.

The Subcommittee set up by the House Committee has examined the Statutes carefully and offered valuable opinions. I would like to take this opportunity to thank the Mr Tommy CHEUNG, Chairman, and other members of the Subcommittee, for their support.

Thank you, Madam President.

**The Secretary for the Civil Service moved the following motion:**

"That the Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003, published in the Gazette as Legal Notice No. 186 of 2003 and laid on the table of the Legislative Council on 9 July 2003, be amended in section 7(a) by repealing everything after "repealing" and substituting "everything from "to entertain" to "therein" and substituting "to appoint any person or committee to entertain and, if appropriate, adjudicate upon, on its behalf, complaints from members of the University and persons employed in it and to redress their grievances";". "

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

**MR TOMMY CHEUNG** (in Cantonese): In my capacity as the Chairman of the Subcommittee on Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003, I hereby report the deliberations of the Subcommittee.

The Subcommittee has held two meetings with the representatives of the Administration, the University Grants Committee and the Implementation Working Party for the Reform of the University's Governance and Management Structures of the University of Hong Kong (HKU). The Subcommittee has also met with the representatives of the HKU Academic Staff Association, the HKU Non-Academic Staff Association and the HKU Students' Union.

Just as the Secretary for the Civil Service mentioned in his speech earlier, the amendments proposed by him are recommended by the Subcommittee, which aim to reflect more accurately the intention of the HKU.

During the meeting with the representatives of HKU staff and Student Union, the Subcommittee noted that a recommendation in a report made by an international expert team responsible for reviewing the governance and management structures of HKU states that "no student or staff member shall serve on Council whilst an officer holder of the Students' Union or Staff Associations respectively". This recommendation has aroused the concern of some staff members and students of the University. At present, the HKU is still consulting members of the University on the drafting of the relevant administrative regulations.

The Subcommittee considers that as the internal consultation process on the drafting of the regulations is still in progress, the HKU Council should strive to further consult staff members and students with a view to ironing out their differences on the proposal. Prof TSUI Lap-chee, HKU Vice-Chancellor and Chairman of the Implementation Working Party for the Reform of the University's Governance and Management Structures, has undertaken to convey the comments of the Subcommittee to the HKU Council for further consideration.

With these remarks, I support the motion of the Secretary for the Civil Service on behalf of the Subcommittee.

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

(No Member indicated a wish to wish)

**PRESIDENT** (in Cantonese): Secretary for the Civil Service, do you wish to reply?

(The Secretary for the Civil Service indicated that he did not wish to reply)

**MR JAMES TO** (in Cantonese): I have to declare an interest. I am a member of the Court of the University of Hong Kong.

**PRESIDENT** (in Cantonese): Does any other Member need to declare an interest?

(No Member indicated a need to declare interests)

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' MOTIONS**

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

First motion: Combating the problem of mainlanders engaging in illegal employment and prostitution in Hong Kong.

## **COMBATING THE PROBLEM OF MAINLANDERS ENGAGING IN ILLEGAL EMPLOYMENT AND PROSTITUTION IN HONG KONG**

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

"Living and working in peace and contentment" is the cornerstone of stability and prosperity in a country and society. No matter where we live, "living and working in peace and contentment" is our ultimate, and also fundamental aspiration. However, Hong Kong is now on the verge of a crisis, in which its people are unable to live in peace and have difficulty in finding work.

In recent months, I have received complaints frequently from a large number of members of the public who expressed increasing concern about the law and order and employment situation in society. Even today, I have also received many complaint letters from many members of the public who relayed the increasingly serious problems of prostitution and illegal workers in their districts, in particular in such districts as Yuen Long, Tsuen Wan, Shum Shui Po and Yau Tsim Mong.

Illegal workers have become fierce competitors of grass-roots members of the public in the labour market in Hong Kong. In full awareness of their unusual status, they are often prepared to slash their wages to get a job, thus snatching the means of living from many local workers and aggravating their employment problems. Prostitutes touting for business in the streets is another problem that arouses intense hatred among members of the public. We have conducted a survey in the Shum Shui Po District, which has been swamped by vice activities. The findings reveal that the problem of prostitutes soliciting business in the streets has caused severe mental stress among residents. Most of them feel helpless and are embarrassed by the fact that they live in the district. 40% of the respondents indicated that they had been harassed by prostitutes or whoremongers, and girls as young as 12 years of age had been accosted by whoremongers. It is evident of how rampant vice activities are in Hong Kong. Of even greater concern to the public is that not only does the problem of prostitution impinge on social decorum, it also brings triad activities to a community and promotes undesirable trends in society. This will have a profound influence on young people.

The public's anxiety, concern and grievances are all understandable. It does not require any stretch of imagination to see that at this time of an economic downturn and a soaring unemployment rate, if these issues are not addressed in time, if these sentiments are allowed to fester, and if the cornerstone of living and working in peace and contentment is shaken, another social crisis is bound to be precipitated. I am not raising alarmist talk here.

Madam President, according to statistics, people who came to Hong Kong to work illegally and engage in prostitution were mainly visitors from the Mainland and they accounted for over 85% of the offences. As at the end of September, the number of mainlanders arrested for illegal employment has reached 3 536 and those arrested for prostitution stood at 7 032. The situation is very serious and clamping down on mainlanders who come to Hong Kong to commit offences has become the focus of anti-triad and anti-vice operations in Hong Kong.

Madam President, it must be admitted that the Government of the Hong Kong Special Administrative Region (SAR) has accorded a very high priority to combating illegal employment and vice activities and has made a great deal of effort. In this year, for example, the Immigration Department, Labour Department and the police have conducted thousands of joint anti-triad and anti-vice operations. However, such occasional and sporadic raids merely result in a situation of "one group leaves and is succeeded by another" and the efforts expended on raids simply go down the drain. The Democratic Alliance for Betterment of Hong Kong (DAB) believes that apart from conducting large-scale raids, the Administration should deploy additional manpower to step up inspection at the black spots of these offences, including construction sites, flats under decoration in housing estates, places of entertainment, food establishments, fruit wholesale markets, parks and any unsavoury places, so as to achieve deterrent effect and prevent anybody with criminal intent from employing the same ploys and haunting the same places again.

In fact, the rampant problems of illegal employment and prostitution in Hong Kong are attributed to different backgrounds. Firstly, concerning illegal workers, they are nowadays very different from those of the past. In the past, illegal workers would loiter in the streets looking for work and officers of the disciplined forces had little difficulty in spotting them, who were acting suspiciously, and rounding them up. However, nowadays the problem of illegal employment has become syndicated and the work, food and boarding for the illegal workers are all arranged by intermediaries. This greatly reduces their likelihood of being arrested while loitering in the streets. Moreover, the present system of prosecution in Hong Kong obliges the Court to mete out rather light penalties on employers and illegal workers and the inherent deterrent effects of the law and the penalties are diluted.

At present, the law provides that illegal workers are liable to a maximum fine of \$50,000 and a maximum term of imprisonment of two years; and for

employers, a maximum fine of \$350,000 and three years of imprisonment. However, in the past three years, that is, from 2000 to the first nine months of this year, the fines meted out by the Court on illegal workers ranged from as low as \$60 to a maximum of just \$6,000. During the same period, the penalties imposed on employers were fines ranging from as low as \$1,000 to a maximum of just \$20,000. With regard to terms of imprisonment, the average term was just 113 days. With such light penalties, one can hardly expect the clampdown on illegal employment to achieve any significant effect.

The DAB believes that the authorities should home in on the core the existing problem, actively formulate counter-measures, step up intelligence gathering and focus on intermediaries who profit from illegal employment. In fact, these intermediaries play a key role in the pervasive problem of illegal employment and are particularly odious. However, there is no provision in existing legislation to pinpoint specifically these intermediaries of illegal workers. Therefore, the authorities should consider reviewing existing legislation to put in place provisions that target syndicates of illegal employment and impose heavier penalties to enhance the deterrent effect of and make further improvements to the relevant legislation.

Secondly, the authorities should urge the Court to impose heavier penalties on illegal workers and their employers, as well as seeking judicial reviews of cases in which light penalties were imposed to dampen any hope that one may be able to get away lightly. In fact, the most effective approach in combating illegal employment is to deter employers from employing illegal workers. Once tasted the bitter consequences of employing illegal workers and realized that they have to pay dearly for such actions, employers will naturally desist from breaching the law easily and illegal workers will find that there is no market for them. In the incident involving "Leung Kee Pork Chop Stew" in October, an employer was sentenced to 18 months of imprisonment for hiring illegal workers. I believe this is a good beginning. We believe that only with heavy and effective penalties can the potential deterrent effect be achieved.

Moreover, the DAB considers that the Government should exert greater efforts in promoting co-operation between the police and the public. In combating any crime, co-operation between the police and the public is indispensable. Although it is everyone's duty to fight crime, according to the findings of our survey, about 95% of members of the public indicated that they are reluctant to report illegal workers. This will to some extent dilute the

potency of measures to combat illegal workers. In view of this, the Government should consider setting up a reporting system which offers monetary rewards so as to encourage the public to make reports. As far as I know, the Customs and Excise Department and the pharmaceutical industry have decided to establish a reward system to encourage the public to make reports in order to clamp down on syndicates selling fake medicines. We believe this measure will be conducive to promoting co-operation between the police and the public and boost the efforts in combating illegal employment.

Madam President, the illegal employment and prostitution problems have become serious because prostitution is not illegal in Hong Kong. Even if people engaging in such activities are arrested, they will only be admonished and then repatriated to their places of origin. Moreover, once these people are repatriated, they will simply make an about-turn and apply to come to Hong Kong again to commit offences. According to our information, each year, some people were arrested for coming to Hong Kong to commit offences repeatedly. As at the end of August this year, there were 357 such people. One can easily imagine that if this cycle goes on, not only will we waste public funds and go on a wild goose chase, the problem cannot be really solved either.

It can be seen that in combating illegal employment and prostitution, it is inadequate to rely solely on our unilateral efforts. If people intent on committing offences in Hong Kong are not stemmed at source, illegal employment and vice activities will always be like ill weeds that grow apace and cannot be eradicated.

In view of this, the DAB believes that the authorities should actively conduct an analysis to examine visitors from which provinces show a higher likelihood of committing offences and enhance communication with the Public Security Bureau and border control departments on the Mainland, convey the situation in Hong Kong to them and seek assistance and co-operation. They should also strive to make these departments exercise extra caution and keep a good lookout when approving business endorsements, two-way exit permits or individual travel permits. Moreover, the authorities should establish a comprehensive database on criminals, including identification by fingerprints, and then enhance exchanges in intelligence and information with the Mainland and discuss how information on offenders can be sent to various areas on the Mainland before complete computerization can be achieved on the Mainland. So doing, they can put these people on a blacklist and ban them from coming to Hong Kong again within one to five years.

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

Madam Deputy, we believe that most visitors from the Mainland are law-abiding and they have contributed greatly to stimulating consumption and giving impetus to the economy. However, while we welcome these law-abiding visitors, we should also spare no effort in clamping down on people who engage in illegal activities to ensure prosperity and stability in Hong Kong, as well as safeguarding the status of Hong Kong as an international city in the minds of tourists. Thank you.

**Mr YEUNG Yiu-chung moved the following motion: (Translation)**

"That, as information indicates an upward trend in the number of mainlanders arrested for engaging in illegal employment and prostitution in Hong Kong in recent years, which not only affects the employment of local workers, but also causes serious nuisances to the public, this Council urges the Government to:

- (a) increase manpower and step up inspections to combat such illegal activities;
- (b) review the relevant legislation and introduce heavier penalties; and
- (c) strengthen its communication with the public security and border control authorities of the Mainland and exchange relevant information in a timely manner, in order to enhance the collaborative efforts in combating illegal employment and prostitution."

**DEUPTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr YEUNG Yiu-chung be passed.

**DEUPTY PRESIDENT** (in Cantonese): Mr James TO and Mr Frederick FUNG 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.



I now call upon Mr James TO to speak first, to be followed by Mr Frederick FUNG; but no amendments are to be moved at this stage.

**MR JAMES TO** (in Cantonese): Madam Deputy, the problem of illegal employment has escalated to become a major cause of grievance of the people. Why? As the present economic conditions in Hong Kong are not very good, so if the people feel that their jobs or work are being snatched away by illegal workers, they would have some grievances towards the Government. And I can say that the grievances are quite serious now.

Recently, we have conducted a survey, which shows that about 70% to 80% of the people really feel that the problem is very serious. Of course, we have to be very careful about the issue arousing some special attention just because there is a concern cycle on it. And then the people, having read particularly more press reports on it and come to learn that Members are also concerned, would become particularly concerned as a result.

However, I discover that, just by looking at the objective fact of the figures, the concern for the issue has really escalated. Several weeks ago, I told government officials during the question time that the feeling of the people is an absolute value. In other words, if there is an increase of hundreds of thousands or even over a million visitors, and if there are really more illegal workers, then what the people would have felt is an absolute value, not a marginal percentage after analysis. The marginal percentage may not be too high, but when the people see that the absolute value has risen by more than 100%, then they will become very anxious.

Talking about figures, during the 12 months between October of last year and September of this year, over 60% of illegal workers arrested had come to Hong Kong on business endorsements. This is really shocking to me. As far as we can generally understand, business endorsements are issued with more stringent vetting by mainland organizations. Information required includes the destination of the applicant, the business nature, the address of accommodation, the company he works for, and so on. Everything could be traced. However, among those business endorsement holders, it is really surprising that so many of them have worked as illegal workers. In fact, the Government could do more analysis and collection of intelligence. For applicants who apply for two-way exit permits on family reunion ground, there is very little information with which

we can take follow-up actions. But for those coming to Hong Kong on business endorsements, usually more information would be available. Under the present circumstances, we do not know whether there are some syndicates making such arrangements, or they have formed some shell companies or they are colluding with bad elements in mainland approving authorities to issue such business endorsement in large numbers. I think, after the Government has finished analysing the relevant details, it may then take some appropriate actions, such as making visits to mainland authorities and draw the attention of the mainland authorities to the problem, so as to identify a solution to this problem through discussion.

However, unfortunately, it seems that no reply is forthcoming to us, after we have suggested to the Government that it should conduct some analysis, such as which cities or provinces such people came from, or which approving authorities issued such endorsements, and so on. As far as I understand it, after some illegal workers, who come to Hong Kong on business endorsements, are arrested, we probably have not kept any record regarding which mainland approving authorities had actually issued the endorsements in question. Fine, it was really bad for something like this to have happened in the past. But from now on, can we immediately do some analysis and collect the information whenever an illegal worker on a business endorsement is arrested, so that we can gain a fuller understanding of the situation?

Regarding penalties, Mr YEUNG Yiu-chung has cited the case of the pork-bone hotpot restaurant as an example, in which the offender was sentenced to 18 months' imprisonment. In fact, I think it is most important, most satisfactory if the Appeal Court could issue a sentence guideline. For example, if someone employs an illegal worker, he will probably be given on indictment a sentence of immediate imprisonment. This will become the norm then. However, if the illegal worker employed is not an illegal immigrant, then the "certainty of a sentence of immediate imprisonment for a period of time" may not be a general consensus in different magistracies. Therefore, it is very important that some suitable reviews could be conducted and the higher courts could issue some sentence guidelines. These would be far more important than items mentioned in my amendment such as outsourcing or licensing. This is because if the offenders have to serve a jail term, it would be a far greater loss to them than any other financial losses. However, I think the Government should proceed with the work as soon as possible.

On the other hand, regarding issues of outsourcing and licensing, these are in fact some supplementary tools. In publicly-funded outsourcing projects or the licensing systems, we may introduce something like a point system or some conditions for licensing or cancellation of licenses, so as to deter the employment of illegal workers. Why should these be supplementary in nature? This is because, as we all know, a suspension or non-renewal of licences, or even a suspension of licences for a longer period of time would cause financial losses to the employers. This would be a far heavier punishment than a fine of several tens of thousand dollars, and it will serve as a greater deterrent. Of course, these systems would involve many departments and many situations. And in the end, I hope the Government can expedite the study of issues such as which administrative measures could be adopted, which measures could be implemented faster, and which laws require amendment.

Moreover, according to the Government, the figures relating to individual visits seemed quite good (there are nearly 200 000 visitors in the first batch). Among such a large number of visitors, only less than 20 of them were involved in activities like illegal employment or prostitution. However, I have taken an in-depth look into the situation and realized why the situation was so good. There were some reasons behind it. It was because among the first batch of visitors endorsed by mainland approving authorities to come to Hong Kong on individual visits, most of them or the vast majority of them had come to Hong Kong before (for example, on two-way exit permits or business endorsements) with good track record. This was the situation for the first batch of visitors. They were subject to exceptionally rigid vetting. Can we look ahead to say, if more visitors on individual visits to Hong Kong in future are those who have never visited Hong Kong before, can the same good record be maintained? I hope so, certainly. However, this is exactly where we have to keep a close watch. And we have to act fast as well, especially in areas relating to crimes. For example, the street fraud cases happen very frequently. If a fraud case occurs in the morning in the Mong Kok police district, then a crime prevention warning may have to be released by the evening of the same day. Otherwise, in that evening or in the morning of the following day, many more people will have become victims of such frauds and lost a lot of money. Some people may lose all their savings. Therefore, the authorities must act very fast. Their response has to be fast as well. When some special information has been collected, such information must be analysed as mathematically and statistically reliable intelligence and the authorities must proceed to discuss with the relevant

mainland authorities as soon as possible. Do not wait until the next scheduled visit.

As for preventing the entry of habitual criminals to Hong Kong, the Government now says that it could rely on some special technology in this aspect. However, such assistance may not be available until the distant future. There are some quicker solutions such as some fingerprint or special records that may be used for identification purpose. I hope the Government can make use of them as soon as possible.

On the other hand, we can also see that, although there are a lot of such judgement cases, the sentence-passing officers in the Courts in fact may not be able to realize the serious impact of such incidents on society. I believe the Government, in conducting such suitable reviews, may have to inform the Courts in a comprehensive manner of the problems that may be caused by such incidents in society. In this way, the higher Courts may be able to have a better understanding of the situation in this aspect, so that they could be convinced and be willing to issue sentence guidelines to specify the suitable level of penalty to be imposed.

**MR FREDERICK FUNG** (in Cantonese): Madam Deputy, with the rapid economic integration of Hong Kong and the Mainland, the exchanges and contacts between residents of the two places have become more frequent. In recent years, many Hong Kong residents like to go northwards to the Mainland for entertainment and spending. Earlier on, the Central Government announced the relaxation of travel restrictions on mainland residents, allowing them to visit Hong Kong to meet their relatives and friends and on sightseeing tours. The business endorsement and individual visits have also attracted more visitors to Hong Kong for sightseeing. However, apart from sharing the fruits, the Hong Kong Government has failed to address the social problems arising from the integration of Hong Kong and the Mainland. Certain communities in such districts as Shum Shui Po and Yau Tsim Mong have suffered more losses than gaining any benefits. Both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I think that the problem of illegal employment in recent years is threatening the employment market and social order of Hong Kong. It is imperative for the authorities to take actions to deal with the problem.

As shown by the relevant information, during the period between January and October of last year, altogether more than 9 500 people were arrested for working illegally in Hong Kong. Of these people, more than 7 700 were holders of two-way exit permits and illegal immigrants from the Mainland, who accounted for 81% of the total number of visitors arrested in the year. Most of these people were involved in prostitution. The figure showed an increase of 75% over the corresponding period in 2001. Therefore, both the ADPL and I would, as a general direction, agree with spirit of the original motion — that the Government must adopt a two-pronged approach to curb the further spread of illegal employment in Hong Kong. So on the one hand, the Government should step up its efforts to curb such activities, and on the other, it should strengthen its communication with the public security and border control authorities of the Mainland and enhance the collection of intelligence and exchange of information with them. However, both the ADPL and I think that the wording of the motion could be more specific in putting forward proposals to deal with the problem of illegal employment. So I have proposed an amendment to the original motion, so as to highlight the importance and the strategy of further tackling the problem of illegal employment at source.

It is understood that the Hong Kong Government has two approaches in curbing mainland illegal workers. First, it is to step up inspections, especially targeting the inspections at "hot sites" of illegal workers. Second, it is to strengthen its communication with the relevant mainland authorities, such as building communication channels between the law enforcement departments of the two places, so as to pass the personal particulars of mainland illegal workers to the immigration management department of the Mainland regularly for their reference.

Both the ADPL and I are on the whole satisfied with such initiatives and strategies for curbing illegal employment. However, with the further speeding up of relaxation of restrictions on mainlanders coming to Hong Kong, it will be inevitable to see more and more mainland visitors coming to Hong Kong. After the relaxation of restrictions, it may lead to law and order problems in Hong Kong because illegal workers, prostitutes and even robbers from the Mainland may take this opportunity to come to Hong Kong, thus impacting on the social order of the territory. In fact, both the ADPL and I have received complaints from people living in such affected areas. They say that mainland prostitutes appear to be soliciting customers on the street on a round-the-clock basis,

whereas lady residents are pestered by whoremongers. It is also very common for non-residents coming in and out of such residential buildings. So the law and order situation is becoming a worrying problem. The situation is particular bad in Shum Shui Po and Yau Ma Tei.

I would like to cite some figures again. According to the Report of the Shum Shui Po District Fight Crime Committee, the number of thefts between July and August amounted to 156, which represented an increase of 58% over 90 thefts in the corresponding period of 2002. In the district, there are dozens of women soliciting customers in Apliu Street every day. Residents and shop owners have lodged a lot of complaints about this.

Besides, according to the information provided by the Immigration Department, there have been an increasing number of mainland women coming to Hong Kong on travel documents suspected to have engaged in prostitution. In 2002, the Department arrested a total of 6 826 mainland visitors suspected for engagement in prostitution in Hong Kong, which was an increase of more than 100% over the figure of 3 057 mainland visitors in 2001. Presently, nearly 100 street prostitutes are arrested monthly in the Yau Tsim Mong District. The statistics relating to crimes committed by mainland visitors have also surged drastically. Between January and August 2003, the number of crime cases committed by mainland visitors was 22.5% more than the figures in the corresponding period in 2002. Most of the cases involve prostitution or illegal employment. This shows that the problems are deteriorating. The measures adopted by the Government have been effective to a certain extent. However, as revealed by the relevant figures, the influx of visitors has led to an increase in the number of people involved in illegal employment or prostitution. The work done by the Government has basically been offset.

Besides, illegal workers from the Mainland would also assemble at certain places in the districts to wait for work. We discover that the situation has evolved into a contractor system of illegal workers. As the wages demanded by the illegal workers are usually far lower than those of local workers, the employment opportunities of local workers have been taken away. Therefore, both the ADPL and I think that the Government should adopt some ultimate strategies to solve the problem of illegal employment at source. It should not rely on any piecemeal or temporary measures to deal with the problem.

We would like to make some suggestions in relation to two aspects. First, mainlanders visiting Hong Kong through normal channels and formalities would of course find accommodation in different classes of hotels according to their financial conditions. However, for illegal workers, the unlicensed guesthouses in Hong Kong have obviously become their natural places of accommodation. As such unlicensed guesthouses are not regulated by the law, their standards leave much to be desired in such aspects as building structure, fire prevention and environmental hygiene. For example, a fire in Shum Shui Po, which killed an illegal worker, revealed the problem of inadequate fire prevention facilities in unlicensed guesthouses. In fact, many residents living in these buildings, in which some such guesthouses are situated, feel an absolute sense of insecurity. Madam Deputy, let me quote an example. Such buildings have originally been equipped with a security lock protected by a code. However, such codes are easily available to a lot of people. Apart from the prostitutes, people looking for prostitutes could also get the codes.

In another situation, the locks of the main gates have usually been tempered with. So even the key has become useless because you cannot lock up the gate with it, nor can you unlock the gate with it. So the gates seem non-existent. Residents living in such buildings would see a completely new batch of neighbours every two to three weeks. So they feel a very strong sense of insecurity. The situation is really worrying.

In the short term, both the ADPL and I suggest that the authorities should start tackling the problem by working on the places of dwelling of these illegal workers, that is, they should step up raiding and cracking down on unlicensed guesthouses. Meanwhile, measures should be formulated to motivate operators to install additional facilities that meet specified standards and building structure requirements, which should enable the guesthouses to apply for formal registration. Measures should also be introduced for establishing a reporting mechanism. Only by implementing such measures could we achieve the desired effects of exercising effective supervision over guesthouses and curbing illegal employment at source.

Second, in the long term, as most of the illegal workers come from the Mainland, both the ADPL and I think that it is necessary for the Government to strengthen the present communication mechanism between Hong Kong and the Mainland. We should relinquish the passive approach of intercepting the illegal workers at the border. Instead, we should take the active approach of going to

the Mainland to identify mainlanders who have previously worked illegally in Hong Kong. So when such people come again, we can stop them from entering Hong Kong. In this way, we would be able to achieve the effect of solving the problem at source. As revealed by the relevant information, visitors who had been refused entry amounted to 17 600 persons during the first eight months this year. It was a very large figure. Among these people, most of them have previously worked either as illegal workers or prostitutes in Hong Kong. If we can manage to stop 17 600 persons from entering Hong Kong, there must be an even greater number of people who have crossed the border and entered Hong Kong. Only that we have not been able to locate them. Mainlanders usually have access to many different ways and channels to change their names and get alternative identity cards. The identity cards may be genuine, but the names are fake. So they can return to Hong Kong to make money again. Therefore, we would like to urge the Government to propose with the mainland border control authorities to adopt effective measures to prevent people from altering the particulars on their identity cards and returning to Hong Kong to work again. Maybe the mainland authorities could follow the example of Hong Kong by adding fingerprints onto identity cards for identification purpose.

As for the original motion and the other amendment, both the ADPL and I would like to express our support for them. Although we have different focuses, there is no contradiction. In fact, we all share the ultimate goal of ameliorating the present problems of prostitutes and illegal workers. I hope the original motion and the several amendments can have the support of Members. In conclusion, as we look at the figures, there is no need for the Government to argue anymore. The problems have really deteriorated considerably during the past two years. I hope that the Government can adopt some proactive measures. Apart from solving the problems before us, it should solve the problems at source. Thank you, Madam Deputy.

**MR LAU CHIN-SHEK** (in Cantonese): In recent years, there has been an upward trend in the number of people arrested for engaging in illegal employment. The related figure has increased by 65% from 1 825 people in 2000 to 3 031 people last year. In the first nine months this year, the number of people arrested has even risen over the total number last year, reaching 3 536. The substantial increase in number of mainlanders arrested may be attributed partly to the enhanced inspections and enforcement actions taken by the authorities. Nevertheless, it is undeniable that the problem of mainlanders



engaging in illegal employment in Hong Kong is indeed worsening, and the Government must address it. I believe that to effectively combat the problem of illegal employment, the authorities should start from strengthening immigration control as well as imposing heavier penalties on employers.

Madam Deputy, immigration control can be considered as the first line of defence against illegal workers. After entering the territory, visitors will spread all over the territory. If the law enforcement officers have to track them down afterwards, it would be similar to fishing for a needle in the ocean and half the result could only be got with twice the efforts spent. The original motion and the amendments all urge the Government to strengthen its communication and co-operation with the mainland authorities, such as exchanging information, in order to prevent effectively the influx of illegal workers from the Mainland. I agree that the work in this regard should be strengthened. However, the question that I find equally important is: Has the local immigration control department kept its watch properly? I have raised this question because a front-line staff member of the Immigration Department (ImmD) has reflected to the Hong Kong Confederation of Trade Unions (CTU) that the Government seems to have adopted a relatively lax approach in the immigration check of mainland visitors holding business endorsements. That staff member told us that if the front-line officers seek instruction from their senior officers when they have doubts about the visitors holding mainland business endorsements according to their professional judgement, the usual answer would be "let them pass through". This is obviously different from the yardstick in checking general visitors. As far as I know, the ImmD once tightened up its checking procedures. As a result, in the few days' actions, more than 100 mainland visitors with problematic business endorsements were intercepted. Is the relatively lax immigration checking measure adopted by the authorities towards mainland visitors holding business endorsements a political decision made by the higher echelon of the Government in facilitating businesses between Hong Kong and China? I hope that the Secretary can clearly explain the policies in this respect.

Madam Deputy, I have to emphasize one point and that is, I do not oppose the Government adopting some measures to facilitate business operation. However, if business endorsements provide a special channel for the influx of illegal workers, then the Government has to review it. Indeed, according to the information submitted by the Government, in the past 12 months, 4 745 mainland visitors have been arrested for being suspected of engaging in

employment in Hong Kong. And among them, 2 712 were business endorsement holders who accounted for 57% of the total figure in the same period. This surely reflects the seriousness of this problem.

Madam Deputy, another important measure of combating illegal employment is imposing heavier penalties on the employers. At present, the percentage of successful prosecutions against employers hiring illegal workers is on the low side. Besides, upon conviction, the penalties imposed by the Court are always too lenient, which could not have any deterrent effect. This has also become a significant incentive for employers to break the law and hire illegal workers. The CTU has long been suggesting that the Government should encourage the illegal workers arrested to report against the employers who hire them. For instance, if an illegal worker assists the law enforcement departments to track down and prosecute the employer, he may be exempted from prosecution by the Administration. I believe this arrangement will be more effective than imposing heavier penalties on illegal workers. And according to the principle of cost-effectiveness, the loss of the employers upon conviction is usually greater than that of the illegal workers. If we could avoid sentencing a large number of illegal workers to imprisonment, the pressure of local penal institutions being overcrowded can be relieved, while the expenditure of the authorities concerned can also be reduced.

Madam Deputy, finally, I would like to especially bring out one point and that is, the influx of a large number of illegal workers from the Mainland will definitely affect the employment of Hong Kong workers, but the most important reason leading to a high unemployment rate in Hong Kong is economic restructuring and the continuous sluggish economy. We should not make illegal workers the scapegoats. What I mean is that while the Government and the legislature naturally have the unshirkable responsibility of curbing the influx of illegal workers from the Mainland by all means so as to safeguard the employment opportunities of local workers, we should not exaggerate the impact of illegal workers on the problem of unemployment. On the one hand, this can avoid incorrectly pinpointing the crux of the problem, and on the other, we should also avoid causing any misunderstanding among the community towards mainland visitors, which would unnecessarily foment feelings of estrangement between Hong Kong people and mainland visitors.

Madam Deputy, I so submit.

**DR DAVID CHU** (in Cantonese): Madam Deputy, it has been six years since the reunification of Hong Kong with the Mainland. With the speedy opening of the Mainland in recent years, visits between residents of both places have become more frequent. And with the addition of the individual visit scheme being introduced by the Central Authorities for mainland residents, the number of mainland visitors to Hong Kong has increased substantially. As the saying goes, "there are black sheep in every fold", so a small proportion of mainland residents have come to Hong Kong to secretly engage in illegal employment on the pretext of sightseeing, visiting relatives or doing business. Indeed, the Government must face up to this problem squarely.

In my opinion, the Government should adopt proactive measures to combat activities of illegal employment and prostitution. First of all, the Immigration Department and the Labour Department can increase manpower accordingly to strengthen their inspections and undercover operations in order to seriously combat illegal employment. The police can step up raids on various kinds of vice establishments. The Security Bureau can set up a database on those mainlanders who have committed offences in Hong Kong. This can serve to curb those mainland residents who have previously engaged in illegal employment and other illegal activities in Hong Kong from re-entering the territory to commit offences. The authorities should also encourage the employees and members of the public to report any shops or construction sites where illegal workers are employed.

In fact, in combating illegal employment, we should start from the punishment of employers. In this regard, I have similar views with Mr LAU Chin-shek. I opine that the Court should impose heavier penalties on employers. In dealing with prostitution, the "snake heads" who smuggle women into Hong Kong for prostitution, pimps and middlemen should also be heavily punished.

Madam Deputy, the problem of illegal employment and prostitution affects social stability, so the Government should closely follow up the matter. However, the public need not be over-worried. Since individual visits were introduced by the Central Government at the end of August, more than 250 000 people have already travelled to Hong Kong through this channel. According to the data as at the end of last month, only 17 individual travellers have been arrested for committing an offence in Hong Kong. This figure is rather low,

and it tells us that the problem of illegal employment and prostitution has not worsened as a result of individual visits. Anyway, the majority of mainland residents coming to Hong Kong are civilized and law-abiding. They have brought with them enormous spending power to Hong Kong and contributed to the recovery of the Hong Kong economy. Therefore, we do not need to harbour any fear towards our mainland counterparts simply because of a minority of lawbreakers. And we also need not over-exaggerate the seriousness of this problem.

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

**MR LEUNG FU-WAH** (in Cantonese): Madam Deputy, the problem of mainlanders engaging in illegal employment in Hong Kong has long been existing, only that their channel of coming to Hong Kong for work has changed. In the past, the illegal workers found in Hong Kong were usually illegal immigrants from the Mainland. However, the illegal workers found in Hong Kong in recent years are mostly mainland visitors, and a large proportion of them are holders of business endorsements. It appears that the solution to the problem of mainlanders engaging in illegal employment lies in the Government of the Hong Kong Special Administrative Region (SAR) co-operating with the departments concerned in the Mainland. It should suit the remedy to the case by formulating effective measures as soon as possible to pre-empt those mainlanders snatching the jobs of local workers by actually engaging in illegal employment in Hong Kong after having successfully applied for a permit to travel to Hong Kong under false pretences of sightseeing.

The scope of illegal employment includes working on construction sites, engaging in interior refurbishment work, distributing leaflets in the streets, washing dishes and delivering takeaway for Chinese and Western restaurants, posting of bills in the streets, serving as domestic helpers, planting, pig and fish rearing in the New Territories, and so on. Given the very high unemployment rate in Hong Kong with some 300 000 people being jobless, this situation has been causing much discontent. In fact, the above situation has not included some semi-legal and semi-illegal employment cases, such as mainland chauffeurs serving as chauffeurs in Hong Kong. According to the information provided by the Security Bureau, last year, more than 3 000 mainlanders were arrested for

being suspected of engaging in illegal employment. In the first eight months this year, more than 3 000 mainlanders were already arrested for engaging in illegal employment. Among these 3 000-odd illegal workers from the Mainland, more than half are mainland visitors on business endorsements. Since the figures show that actually a lot of them have come to Hong Kong on business endorsements, the SAR Government should sincerely study why there are more illegal workers coming in through this channel. Is it related to the vetting work of the Mainland? Are the procedures being too lax? When necessary, the SAR Government should discuss this issue with the departments concerned in the Mainland in order to find out a solution that can satisfy both sides.

Besides, in last year and the first eight months of this year, the Immigration Department (ImmD) has respectively arrested 900-odd and 600-odd employers being suspected of hiring illegal workers. Their maximum penalty sentence is only a fine of \$10,000 or imprisonment of 12 months, while the lightest penalty is only a fine of \$1,000 or imprisonment of seven days. Judging from the number of illegal workers arrested and the results of prosecution against employers, it seems that such kind of punishment has failed to achieve any deterrent effect on employers. In the final analysis, that illegal workers can survive in the labour market is because there are employers prepared to bear the risk of hiring them illegally. Therefore, in order to eradicate illegal employment, we must first eradicate those employers who hire illegal workers against the law. If the Government can strictly enforce the legislation while the Court can sentence the employers hiring illegal workers to heavy penalties, I believe there will not be so many employers taking the risk to hire illegal workers. When there is no demand in the market, this problem will naturally vanish. Of course, I also understand that the viewpoint of the Administration is on evidence, that is, the evidence proving the employer-employee relationship, or else it will be difficult to press charges. But in this respect, I would ask the Government to positively think of some measures. I wonder if the Secretary can still recall that in 1995, Mr TAM Yiu-chung and I met him once. At that time, he was the Chief Immigration Officer of the ImmD. We talked about the issue of domestic helpers engaging in non-domestic work illegally in Hong Kong. And he indicated that there were 160 000 domestic helpers scattering around 100 000-odd places in the territory, how could that be managed? However, subsequently, through the reporting hotlines set up by the Government and the complain referrals by trade unions, the problems in this respect could be addressed in some measure.

Madam Deputy, the unemployment problem in Hong Kong is affected by economic development direct. When the economy is in the doldrums, the unemployment rate will naturally rise. Therefore, in order to ameliorate the unemployment problem, it is indeed not possible not to deal with economic development first. Only if the economic condition of Hong Kong has improved, I believe the unemployment situation will improve accordingly. Nevertheless, I would like to emphasize one point, and that is, under the condition of a sluggish economy, it is already not easy for workers to land a job. If, in addition, there are illegal workers competing for employment with them, the living of workers will be even more difficult. Thus, I hope that in the latest policy address, the Chief Executive can map out stringent measures to combat illegal employment. Apart from strengthening law enforcement as mundanely spoken of in the past, the SAR Government should also tackle the problem of illegal employment at source, that is, it should deal with those employers who hire illegal workers. It should work out some concrete measures to crack down on the employment of illegal workers by employers. Besides, in view of the fact that there are more mainland visitors with business endorsements engaging in illegal employment in Hong Kong, the SAR Government and the relevant departments of the Mainland should also address this problem by formulating some measures as soon as possible to prevent the problem from deteriorating.

Madam Deputy, the oldest occupation of mankind, that is, prostitution, which is an international issue, is basically outside the scope of my concern as I am a representative of the labour sector.

The implementation of the individual visit scheme has brought enormous benefits to improving the economy. The Chief Executive has even further requested to extend the scheme to the entire Guangdong Province, to which I give my support. However, as the saying goes, "one cannot have the cake and eat it", so I also hope that the Government can positively think of some measures to tackle the problem of illegal employment and the problem of prostitutes causing nuisances to the residents.

Thank you, Madam Deputy.

**MS LI FUNG-YING** (in Cantonese): Madam Deputy, the problem of illegal employment does not emerge only today, nor does it involve only those mainlanders coming to Hong Kong. However, it is undeniable that the problem

of illegal employment is worsening and becoming rampant in Hong Kong. According to the figures released by the Immigration Department, from January to July this year, the number of illegal workers arrested reached 8 500-odd people and 7 500 of them had entered the territory on two-way exit permits issued by the Mainland. With the implementation of the individual visit scheme and the further relaxation of restrictions on mainlanders coming to Hong Kong, it is believed that the problem of illegal employment will deteriorate further. It is of great urgency that more resources be injected and more effective measures introduced in combating illegal employment.

On the one hand, the unemployment rate in Hong Kong remains at a high level, and on the other, the problem of illegal unemployment is getting more and more serious. From the perspective of safeguarding the employment of local workers, we demand that the Government should adopt more effective measures to combat illegal employment, and the reason is very simple. Nevertheless, today, I would like to discuss this problem of illegal employment from a more fundamental perspective. I am concerned about the employment of local workers. I am sympathetic to the difficult plight of illegal workers in Hong Kong. Yet I am all the more scornful of those employers who, in order to save costs, hire illegal workers regardless of their safety.

There was this illegal worker who worked in a restaurant and only took tips from customers as his wage. He was killed in a traffic accident while riding bicycle on a takeaway delivery errand. One decoration worker got an electric shock in the course of work and died, leaving only a two-way exit permit on the spot. And the person who hired him was nowhere to be seen. All this coverage from the mass media is merely the tip of the iceberg. We can have a good idea of what is forgetting all moral principles at the sight of profits, what is treating human life as no more than grass, simply from the deplorable plight of illegal workers.

Last month, when answering a question in this Council, the Secretary for Security said that in the past 12 months, the number of employers arrested for being suspected of hiring illegal workers was 987, but only 384 of them were successfully convicted eventually. According to the penalties pertaining to employers for hiring illegal workers as provided in the existing Immigration Ordinance, the maximum penalty is imprisonment of three years and a fine of \$350,000. Human lives cannot be bought with money. Employers who

disregard the lives and safety of workers should be heavily punished. So employers who hire illegal workers are even doubly guilty. However, what adds to our indignation is a survey conducted by a political party which finds out that in the first seven months this year, the maximum fine imposed on employers hiring illegal workers is only \$7,000.

According to the figures supplied by the Labour Department, in the first three months of this year, there were 29 deaths in industrial accidents, which were 38% higher than the figure last year. Illegal workers have neither received safety training, nor are they protected by local legislation. In the event of industrial accidents, their situation will be more miserable. However, the penalties as provided in the legislation and the level of fines imposed by the Court have conversely encouraged more employers to hire illegal workers, and this will only cause more tragedies to happen.

Since there is a gap in the standard of living between the Mainland and Hong Kong, the minimal pay in Hong Kong is still rather attractive to illegal workers. For some jobs of long working hour and low-waged occupations, such as cleansing work, there is competition between local workers and illegal workers. And one even has to further suppress the low wage level in order to get a job. This is the real situation of grass-roots wage earners, and is also the genuine market-led situation as always emphasized by the Government.

Madam Deputy, the integration of Hong Kong and the Mainland has already risen to a new pedestal, and new horizons have been opened up in the human and cargo flows. It is not easy to effectively crack down on illegal employment. A remark by a mainland official has been quoted in a newspaper, "There are people engaging in illegal employment in Hong Kong. This proves that some people have hired them to do the work. And I believe this is a responsibility more on the side of the Hong Kong Police Force and the Immigration Department." To rectify the situation, we have to take a thorough overhaul. The first and foremost task is to review the existing legislation, impose heavier penalties and severely punish those employers who hire illegal workers. While we will impose heavy penalties on citizens who litter liberally, I fail to see why we could be lenient to those employers who hire illegal workers.

These are my remarks. Thank you, Madam Deputy.



**MR TOMMY CHEUNG** (in Cantonese): Madam Deputy, the number of mainlanders arrested for engaging in illegal employment and prostitution in Hong Kong has been on a continued rise in recent years. In the first nine months of this year, a total of 12 138 mainlanders were arrested in Hong Kong because of criminal offence, which is more than the 11 700-odd people arrested in the past whole year. Among them, 3 500 or so were arrested for engaging in illegal employment and around 7 000 were charged with prostitution. Compared with the figures in 2000, the increase of the former is close to 100% and the latter a substantial 160%. The situation is a great cause for concern.

In recent months, we have noticed stepped-up efforts by various government departments in communication and co-operation, and the number of large-scale joint operations has increased substantially. Yet, mainlanders engaging in illegal employment and prostitution remain a problem here. In the final analysis, the loopholes in law enforcement, the need for further improvement in co-ordination among government departments, and the lack of closer liaison with the relevant mainland authorities have resulted in the failure of the raids to produce marked effects.

The Liberal Party basically supports the motion and the two amendments proposed today, which all urge the Government to increase manpower and step up inspections. However, I doubt the expansion of establishment and the increase in manpower are musts for stepped up inspections. Should disciplined services responsible for combating these crimes first look into the possibility of internal redeployment so that staff trained for the disciplined services can be redeployed as far as possible to work at the front line? The rash suggestion of increasing manpower should not be made before internal redeployment is conducted because it is not in line with the principles of making good use of resources and effective spending of public money. If internal redeployment cannot satisfy the need, the Liberal Party agrees to an increase of manpower to tackle the increasing workload in enforcement. However, we do not wish to see that it will affect the pace of downsizing the civil service establishment.

The Liberal Party is of the view that stepped up inspections alone sometimes cannot achieve the desired effect in combating the problem. For example, why can prostitution activities continue after so many arrests, and why can the problem even develop into a situation where more arrests lead to more prostitutes? This may be related to the intelligence work, that is, if we pay more effort in pinpointing the ringleaders behind the scene and adopt the strategy of catching the snake by its head, twice as much may be accomplished with half

the effort. Otherwise, the problem is like grass with root that cannot be totally burnt out.

Madam Deputy, insofar as intelligence work is concerned, I think it is inseparable from closer liaison with the law enforcement authorities in the Mainland. With closer exchanges between the Mainland and Hong Kong, if better co-operation between the two places is not promoted to prevent repeated offenders from breaking the law in Hong Kong again, or to arrest the ringleaders behind the scene, satisfactory results are difficult to achieve with Hong Kong stepping up its efforts alone.

For example, Hong Kong has recently discovered that mainlanders who have engaged in prostitution and illegal employment in Hong Kong before have entered Hong Kong under false identities with valid documents issued by the mainland authorities. As a result, staff of the Immigration Department was unable to stop them from entering Hong Kong. We have to approach the relevant mainland authorities to gain an understanding of the situation, or even bring the issue to the Central Authorities level so that a proper solution to the problem can be found.

The Liberal Party basically agrees to the imposition of heavier penalties on illegal employment and prostitution. However, the most important point is whether the penalties meted out by the Court are adequate. For example, in a recent court case, an owner of a food establishment was sentenced to a heavy jail term of 18 months on conviction for employing illegal workers. According to the relevant information, the owner is only 22 years old. If the trial of other cases can make reference to this case, some degree of deterrent effect will certainly be achieved.

Therefore, the Liberal Party has reservations about the suggestion of linking the issue of illegal employment with licensing requirements as proposed by Mr James TO in his amendment. If owners receive heavy penalties, or even a jail sentence because of the employment of illegal workers, should they be doomed to ultimate destruction under the requirements of suspension or cancellation of licences stipulated in another piece of legislation? Should this suggestion be put into practice, other employees who work in the establishment where illegal workers are employed may keep their mouths shut just to retain their jobs because they may be afraid that their employer will be prosecuted and his licence rescinded. As a result, more obstacles will be encountered in the combat of these activities. Moreover, if owners are put out of business as a

punishment for employing illegal workers, it is unfair that other legally-employed workers are punished at the same time. In fact, if workers lose their jobs, the unemployment rate will certainly be pushed further up and this is not beneficial to society as a whole.

In addition, in the process of recruitment, sometimes, due to deliberate cover-up or negligence of staff, owners may not even know that they have employed illegal workers. If their licences are suspended in such a hasty manner, and their investment earned by hard toil goes completely down the drain, who will be willing to invest in business and thus create more job opportunities?

The Liberal Party supports the amendment proposed by Mr Frederick FUNG because we basically share similar viewpoints.

With these remarks, Madam Deputy, I support the original motion and the amendment proposed by Mr Frederick FUNG.

**MR WONG YUNG-KAN** (in Cantonese): Madam Deputy, the owner of a pork bone hot-pot restaurant charged with 22 offences for employing several illegal workers was eventually sentenced to 18 months' imprisonment. It has been considered a heavy penalty by the general public, and some people even believe that the law enforcement authorities and the judiciary are getting serious in combating illegal employment so that we need not worry about the problem thereafter. Yet, is it really so? Illegal employment has been found repeatedly in branches of the same group of food establishments by the Immigration Department (ImmD), resulting in the arrest of 76 illegal workers. Nonetheless, it was only the very first time where prosecution was successfully instituted. Is it an indication that the inspections carried out are not stringent enough to achieve any deterrent effect? The 22 illegal workers employed by that owner have made a record for being the largest number of illegal workers employed by a single employer. Yet the employer was only sentenced to 18 months' imprisonment, is the severity of the crime commensurate with the punishment? Besides, according to the owner, he was advised to go on employing other illegal workers after having done so for the first time. Why can that person giving the advice escape the long arm of the law? Is there any loophole in law so that the person abetting in the commission of an offence is not liable to prosecution? All these problems clearly indicate that our law enforcement authorities, judiciary and legal requirements are not effective in combating the aggravating problem of illegal employment.

Madam Deputy, the Democratic Alliance for Betterment of Hong Kong (DAB) has been aware of the gravity of our illegal employment problem since as early as 2001. A telephone opinion survey conducted by us indicated that two situations in relation to illegal employment had been overlooked by the Government. First, the majority of these illegal workers are mainlanders. It is already a bit late for the Government to address the problem squarely when there has been an upsurge of mainlander arrivals under the individual visit scheme. In our interviews, 63% of the respondents who had encountered illegal workers indicated that the illegal workers they met were all mainlanders. It was the information obtained in 2001. From the ImmD information of 2002, among the illegal workers arrested, the number of holders of permits for travelling to and from Hong Kong and Macao (commonly known as "two-way exit permits") has risen almost 100% compared to the figure in 2001, that is, from 4 858 in 2001 to 8 940 in 2002. This proved that since 2001 or even earlier, mainland visitors have become our major source of illegal workers. Nonetheless, the policy adopted by the Government on combating illegal employment at that time was still focused on preventing domestic helpers from taking up illegal jobs, which obviously lagged far behind the situation.

Secondly, while high mobility and short duration are features of jobs involved in illegal employment, frequent inspections and raids have not been carried out on a major scale. We have, since as early as in 2001, urged the Government to deploy additional manpower to carry out inspections and prosecutions, thereby deterring employers from hiring illegal workers and rendering it more difficult for illegal workers to seek employment. Unfortunately, the frequency of actions taken by the ImmD did not see any significant increase in 2001 and 2002, accounting to some 2 000 times. Obviously, the concerns and views expressed by the DAB and the public have not been taken seriously by the Government. As it is too late for the Government to realize the importance of enhanced inspections and raids, notwithstanding the 4 000 or so actions launched in a period of seven months so far, it has missed the chance to nip the illegal employment problem in the bud and lagged behind the changing employment mode of illegal workers.

From waiting for employment in the streets or at teahouses, the job-seeking mode of these illegal workers has switched to indoors. They now gather at the so-called "dens of illegal workers" and wait for contacts from agents and employers. This safer and more convenient mode has reduced their

risk of being arrested. As the mode adopted by the Government in combating illegal employment has remained at the level of carrying out inspections at job market and workplaces, it also explains why the total number of illegal workers arrested in the first seven months of this year has been lower, despite the number of raids carried out by the ImmD has increased considerably in comparison to those in the last two years. To combat illegal employment effectively, the DAB believes that a direct approach should be adopted, that is, apart from exchanging information with the mainland authorities and refusing to issue entry permits to mainlanders intent on seeking work here, raids on "dens of illegal workers" should be carried out proactively. To strike a heavy blow by rendering them nowhere to go and banning places for job provision and job seeking, illegal workers will be thus discouraged to come to Hong Kong.

Madam Deputy, the DAB conducted another survey on the illegal employment issue in 2003 and found another shortcoming that requires rectification in combating illegal employment. We noted that the penalties imposed on illegal workers and their employers were obviously inadequate. Both the level of fine and imprisonment term are so minimal that it is just like, as the saying goes, scratching an itch through one's boot, and they are utterly useless in deterring employers from hiring illegal workers. As indicated by the information, the fine imposed on employers of illegal workers has dropped from over ten thousand dollars to a couple of thousand dollars this year, and the maximum fine was less than \$6,000. As to the imprisonment term, it has also dropped from the range of 42 days to six months in 2000 to the lowest threshold of seven days this year. Compared to the maximum fine of \$350,000 and imprisonment to three years as stipulated in the law, there is apparently an enormous gap. Therefore, we hope the Government can do better in this aspect. We also hope that the Government can step up efforts in combating illegal employment. In a campaign to collect signatures yesterday, we were informed by kaifongs that even "junk collectors" were illegal workers. Thus, we hope the Government will step up its efforts in combating illegal employment.

I support the motion.

**MR ALBERT HO** (in Cantonese): Madam Deputy, today I will focus on discussing the impact of mainlanders coming to work in Hong Kong on the wage earners of Hong Kong, in particular the construction workers.

The construction industry has a workforce of around 300 000. Its unemployment problem and underemployment problem are worse than those of the other industries. When the overall unemployment rate stands at 8.7%, the unemployment rate of the construction industry reaches 23% and the underemployment rate is 15.8%, which is 4.3% higher than the overall figure. As a result of the outbreak of SARS this year, much works, such as those involving private buildings and decoration, have to come to a halt because of the economic downturn. Thus, the construction industry has become the hardest hit by unemployment. Now, with the economic conditions improving, the chances of getting a job should have increased correspondingly, but the rampant problem of "illegal workers" has again "made life very difficult" for workers in Hong Kong.

According to the information of the Immigration Department (ImmD), over the past three years, the number of illegal mainland workers arrested has been increasing, from 1 971 in the year 2000 to 3 118 last year, representing an increase of 50%. In the first nine months of this year alone, the ImmD has already arrested 3 655 mainland "illegal workers", which are more than the number for the full last year. Among those mainland illegal workers arrested, the most popular industries in which they are engaged are decoration and building maintenance.

Madam Deputy, the number of arrests made can only show that the problem of "illegal employment" is getting increasingly serious, but it cannot reflect the actual number of "illegal workers". It is believed that the number of illegal workers arrested only represents the tip of the iceberg of the problem in general. When the Hong Kong Construction Industry Employees General Union and a group of construction workers recently petitioned the Government, someone in the industry pointed out that "illegal workers" had all along taken up 20% of the job opportunities. Now that their share had again increased by 10%, the job opportunities of local workers were thus seriously affected.

Madam Deputy, as there is a difference in the living standard between Hong Kong and the Mainland, "illegal workers" can afford to demand lower wages. It is said that their daily rate is about \$200. Relative to the living standard on the Mainland, this is indeed a high wage, but it represents only one third of the pay of local workers in general. In terms of wages, Hong Kong workers can hardly compete with the mainland "illegal workers", and they cannot help to have their "rice bowls" being taken away. Since the "illegal

workers" are mostly engaged in jobs requiring low skills and low qualification, and right now, the majority of Hong Kong's unemployed belong to this category, combating "illegal employment" is the key to tackling the problem of unemployment in Hong Kong.

Apart from the problem of snatching "rice bowls", "illegal workers" have also posed other impact on local workers. For example, the pay for "illegal workers" is exceptionally low, therefore, even if local workers manage to land a job, their pay will naturally be lowered. It is said that the daily wage for local construction workers has been cut from \$600-odd to \$500-odd. Worse still, since "illegal workers" from the Mainland in general have not received training in occupational safety, they do not have the knowledge in this respect and are vulnerable to industrial accidents. This year, while there is an increase in the number of "illegal workers" arrested, the number of industrial accidents has also increased. There were 29 cases in the first three quarters. This is eight cases more than last year, and the construction industry alone has accounted for 25 cases. As far as decoration work is involved, since "illegal workers" from the Mainland have received no proper training, mistakes are very often made when fitting out water supply and electrical installations, thus resulting in accidents and jeopardizing the lives and property of the people.

Madam Deputy, "illegal workers" coming to Hong Kong are mostly on exit-entry permits with endorsement for visiting relatives or business visits. I believe not many mainlanders working in Hong Kong as "illegal workers" have come on an individual basis. The main reason is that visitors on individual visits come mostly from the more affluent cities. If in future, Hong Kong successfully extends the relaxation of individual visits to all places in Guangdong Province, or to the relatively poorer regions or provinces, I believe the number of "illegal workers" coming to Hong Kong will also increase then. Therefore, the authorities should take measures as soon as possible to reinforce the deterrent to illegal workers. Apart from conducting more inspections of the black spots for illegal workers, the Government should also examine if amendments should be made to legislation. For example, apart from "illegal workers" and their employees, the Government should also consider punishing those people who arrange for work for the "illegal workers", that is, the middlemen. Moreover, reference can also be made to the bidding for public works projects. Unlawful contractors who employ illegal workers may have their names removed or their licences suspended, or face other disciplinary actions. As regards other projects, the Government can also consider requiring the contractors to directly

assume the legal responsibility of employing "illegal workers", making them to restrain the sub-contractors in the middle and lower levels, thus banning the employment of "illegal workers". In addition, consideration can also be given to the implementation of a demerit points system for food establishments employing "illegal workers". When their points have been deducted to a certain level, they may have to face a suspension of their licences. Similarly, any other premises employing "illegal workers" may also be subject to the same demerit points system so as to achieve a deterrent effect. I believe the Government will consider these options in great depth, but certainly, these options must be both fair and feasible.

With these remarks, I support the amendment.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, according to the statistics provided by the Government last week in reply to a question raised by a Member on the problem of illegal employment, the total number of illegal workers arrested during the first nine months is over 3 500 persons, which is already more than the corresponding figure for the whole year of last year. The situation is worsening, and really makes us worry that it would affect the employment situation of the local workers, that is, it has led to the problem of "snatching away the rice bowls" of local workers. I, together with my organization, the Neighbourhood and Workers Service Centre, have been championing for workers' interest for a long time, and we are absolutely concerned about the "rice bowl" issue of local workers. I can boldly say that the extent of my concern for this issue is definitely no less than the several Members who have proposed the motion or amendments. However, I also understand that we cannot solve the problem just by taking some superficial measures like strengthening the effort to combat such illegal activities. We should analyse the problem of illegal employment in depth, so that, on the one hand, we may try to identify the root causes of the problem, and on the other, we also need to contemplate problems other than the issue of "snatching away the rice bowls" of local workers.

It is an undeniable fact that the proposals of stepping up inspections and introducing heavier penalties against employers of illegal workers are the most urgent measures we should implement. However, such measures at best could only alleviate the situation on a temporary basis — they could only solve the problem in the short term, but would not be the ultimate solutions to the problem.



We would ask one question. The Government all along has been stepping up their combating measures, but there are still employers hiring illegal workers. In fact, the risk they are taking has been escalating, yet they are still hiring illegal workers who have no guarantee of quality. Why should they run the risk of breaching the law? I believe many employers may say, "We have no options. If I take the risk, I still stand a chance of survival. If I do not take the risk, I would not be able to survive for sure." I am not speaking in defence of employers of illegal workers. Instead, I am just highlighting the root causes of the problem of illegal employment. In fact, Madam Deputy, the problem of illegal employment is the outcome of the present mode of "cut-throat price competitions". Under such a mode of competition, we do not care about quality, we do not care about any other issues. Under such a mode of "cut-throat price competition", it would surely lead to the possibility of employing illegal workers. Many small contractors of outsourced projects point out that, the emergence of multi-level subcontracting now has resulted in multi-level exploitation. Such a situation, together with the Government's strongly advocated policy of awarding tenders to the lowest bidder, provides incentives to the employment of illegal workers. Of course, apart from subcontractors of construction projects, some small restaurant owners also point out that, under the present situation of vicious competition, a bowl of wonton noodle originally priced between \$10-odd to \$20 in the past is now sold only at several dollars. Under such circumstances, how could they maintain their operation? So they could only resort to employing illegal workers. Therefore, I think these are the core reasons for such problems.

Therefore, if we want to eradicate the problem of illegal employment, the most fundamental method and approach is to focus on the overall mode of production and try to improve it. By doing so, we should target at breaking the logic of the "cut-throat price competition". We should stress on competition in terms of quality, making it the means of competition. We shall not keep cutting prices, trying to outdo your competitors by offering further lower prices without any due regard to quality. We can solve the problem if only we can promote such an approach. However, in order to achieve this, we should do more than simply introducing a point system for outsourced projects as suggested in one of the amendments to the motion. This is because, even if we apply the point system to employers of illegal workers, actually a lot of loopholes will continue to exist, and such loopholes will continue to be exploited by the employers or the contractors, and they will still be employing illegal workers. Therefore, I think the best approach is the Government stopping promoting strongly the practice of

contracting out projects. Even if the Government has to continue contracting out projects, it must make some improvement to the system. Otherwise, all our efforts would go down the drain.

In fact, the emergence of illegal workers is attributable to the lack of comprehensive consideration on the part of the Government in many different aspects. For example, such situations do occur in the recent introduction of the individual visits and business endorsements of mainland residents. These occur just because the Government has kept mentioning the positive benefits, but failing to assess the negative impact. The authorities have not considered that such policies would inevitably lead to the emergence and the easier inception of the problem of illegal employment, which I have just mentioned. Therefore, I feel that, under the present circumstances, we must monitor these problems closely. Regarding policies, we must not only look at the brighter side. Instead, we should also assess the negative effects as well.

Madam Deputy, I would like to mention in passing that we are not just afraid of the problem that the illegal workers would take away "the rice bowls" of local workers, we also face the problem of the emergence of stronger conflicts in society. This is because recently we can see that some people welcome rich mainlanders coming to Hong Kong to spend a lot of money. But they are hostile to those mainlanders coming here to compete for our rice bowls, and they are most unfriendly to these people. Such behaviour would inevitably bring about a major impact on social harmony, thereby intensifying the conflicts in society.

In September this year, a fire broke out in Shum Shui Po. It was reported that the fire was caused by someone who seemed to be discontented with the situation that many mainlanders were living next door. Of course, I hope this version of the story was not true. If it was true, it should be a warning foreboding some social conflicts. If it was true, the Government must take this issue seriously. Otherwise, it will be pointless to talk about the integration of Hong Kong and China and all kinds of problems of our country all the time. If we consider the issue only from the financial perspective without considering the social conflicts that may arise, the issue will affect the reputation of Hong Kong sooner or later, and even the local economic development. Therefore, Madam Deputy, I feel that we should not just confine our discussion to how to combat the employment of illegal workers, or how to handle the problems, and so on. The most significant issue is how to identify the roots of the social problems.

Otherwise, if we continue to tolerate such an outsourcing system, not only local workers and illegal workers will become the victims, and ultimately it will not be a blessing to the public.

Madam Deputy, I noted one incident recently, and that is, the emergence of the so-called right-wing populist movement in the European political scene. Many people keep on motivating the public to discriminate against new immigrants. I do not hope to see such a situation appear or occur in Hong Kong. Otherwise, it will become a threat to the long-standing social harmony in Hong Kong. We hope that the livelihood of the grassroots can be protected, and their means of living will not be taken away. Meanwhile, I also hope that everyone can live in a reasonable and rational society with protection.

**MR JASPER TSANG** (in Cantonese): Madam Deputy, Mr YEUNG Yiu-chung mentions in his motion some measures for strengthening the effort to combat illegal employment. Such measures include first, increasing manpower and stepping up inspections, and second, reviewing the relevant legislation and introducing heavier penalties. Among the Honourable colleagues who have spoken, many have expressed support for these two suggestions. And I would like to put forward some supplementary opinions.

I would like to start by mentioning an appeal case heard in the Court of First Instance of the High Court. The case was heard in the Court of First Instance in June this year. The appellant was a mainland woman who came to Hong Kong as a visitor. During her stay in Hong Kong, she was found by a labour inspector to be cutting up photos and greeting customers in a photo-finishing shop. She was wearing the same T-shirt as those worn by other shop assistants. So she was accused of having breached the conditions of stay. What actually are the conditions of stay? The conditions of stay stipulate that, during her stay in Hong Kong, she cannot undertake any paid or unpaid employment. When the case was heard in a Magistrate's court, the Magistrate did not accept the testimony of the labour inspector because he had included too much personal opinions in his testimony. So his testimony was not accepted. However, when the incident happened, someone called the police. So a policeman arrived. In the meantime, the shop assistants also gave their testimonies. Therefore, the Magistrate accepted the testimonies of the policeman and the shop assistants. And the woman was convicted of having breached the conditions of stay. However, the woman did not accept the

verdict. She said the owner of that photo-finishing shop was her boyfriend. She was visiting her boyfriend on that day, and she was just waiting for him at the shop. While she was waiting, she assisted in the work of cutting up the photos and greeting the customers. So what she had done did not actually constitute employment. So she applied for an appeal.

When the appeal was heard in the Court of First Instance of the High Court, the original verdict was overturned. It was because the Judge quoted the judgement standards employed by Justice Patrick CHAN in another similar case. Justice Patrick CHAN said that the mere fact of a person working in a place could not support the conclusion that he is undertaking employment. In other words, even if that person was witnessed to be cutting up photos in the photo-finishing shop, this fact alone would not be sufficient for concluding that she was undertaking employment. There must be some other evidence before such a conclusion could be drawn. In this appeal case, the Judge was of the opinion that, in view of the inadequacy of other evidence, it could not be established that the woman was undertaking employment. So, he ruled that the original verdict was overturned, and her conviction was quashed.

Madam Deputy, I would like to examine the two points presented by Mr YEUNG Yiu-chung here. First, we say that we have to increase manpower and step up inspections. Apart from increasing manpower, the quality of law enforcement officers is also very important. We see that when the case was heard in the Magistrate's court, the Magistrate did not accept the testimony of the labour inspector. That labour inspector detected the problem only when he arrived at the scene. In fact, he was responsible for discovering the illegal worker and then providing evidence in the process of prosecution. However, his testimony was not as credible as those made by a policeman and the other shop assistants on the spot. That is, he was not doing well in discharging his own duties, and his testimony was not accepted by the Magistrate. Does this illustrate that the mere initiative of increasing manpower and stepping up inspections does not necessarily lead to effective and successful prosecutions?

On the other hand, let us take a look at the definition of employment. If we examine this appeal case in the way it was heard in the Court, we may not have sufficient evidence to prove that a person is undertaking employment even if he is caught on the spot working and wearing the uniform of a company. From this perspective, do great difficulties actually exist in prosecution? So we say that we have to review the legislation and introduce heavier penalties.

However, even if very heavy penalties are introduced, we cannot possibly arrest someone whom we know certainly is working illegally if it is basically difficult to prosecute him successfully. Or even if we have arrested him, we may not prosecute him successfully, then no matter how heavy the penalties are, they have nothing to do with that person since it cannot be proved that he is guilty. Therefore, if we say we have to review the legislation, shall we also look at the problem in this regard?

When Mr Albert HO delivered his speech, he said that the number of illegal workers who had been arrested was actually just the tip of the iceberg. He meant to say that the number of people actually working illegally was really many times of that figure. However, if we look at the comparison between the numbers of arrest and successful prosecution, we would find that the number of successful prosecutions represents just a small fraction of the number of arrests (that is, the number of alleged illegal workers arrested). For example, on the ratio in the year 2001, the number of arrests was 7 800 or so, but there were only 1 500 or so successful prosecutions. In 2002, there were 11 900 or so arrests, but only 2 300 or so successful prosecutions. In the first seven months of this year, there were only 1 800 or so successful prosecutions. Therefore, it is in fact no easy task for the Government from arrest to prosecution. Given this, even if we have introduced heavier penalties, I suspect the deterrent effect to be achieved might still be rather limited.

Therefore, Madam Deputy, my supplementary opinion is, while we are increasing manpower and stepping up inspections, I suspect we also need to step up the training of our law enforcement officers, so as to enable them to discharge their duties effectively. Besides, in reviewing this legislation, we should not just seek to introduce heavier penalties. Instead, we should also study whether the present legal provisions have struck an appropriate balance between protecting law-abiding people and prosecuting offenders successfully.

Thank you.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam Deputy, many countries are beset by the problem of illegal employment. The problem of illegal employment has existed in Hong Kong for a long time. Every year, the Labour Department and the Immigration Department (ImmD) would successfully arrest

a certain number of illegal workers. The crux of the whole issue is: Many employers of construction sites, restaurants, market stalls and vice establishments like to employ illegal workers because such workers from the Mainland demand low wages, the costs of employing them are low, and they are willing to work under harsh conditions without complaints. So when there is no labour legislation to protect them, the illegal workers are subject to the exploitation of unscrupulous employers.

It is necessary to stop the influx of suspicious visitors if we want to tackle the problem of illegal employment. Between July and September this year, the ImmD refused the entry of more than 4 000 mainland visitors because the purposes of such visitors coming to Hong Kong were suspicious. The Security Bureau did not elaborate on such "suspicious" purposes. However, in view of the prevalence of the illegal employment problem, it is believed that the Government would closely monitor the entry of illegal workers.

During the first three quarters of the year, more than 12 000 illegal workers were arrested. When compared with the corresponding figure of 11 000 or so of last year, this year's figure shows an increase of about 1 000 persons. However, the prosperity of the tourist industry and the large influx of visitors to Hong Kong are not the major reasons for the substantial rise in the number of illegal workers. The main reason is Hong Kong is badly in need of illegal workers, and their number will continue to rise.

Therefore, any action to tackle the problem of illegal employment should not actually pinpoint the illegal workers *per se*. To a certain extent, they are just a group of workers with little bargaining power, who do not have the legal status to work here. We can take actions according to the laws, but basically it is not necessary for us to hate them or have any ill feelings towards them. Instead, the employers who hire the illegal workers are badly in need of such workers, so they are the original driving force of bringing illegal workers to Hong Kong, and they are the real culprits for damaging the employment environment of Hong Kong. The outrageous acts of employers of these illegal workers are really the cause of our fury.

Last month, a pork bone hot pot restaurant was found to have employed illegal workers. The shop owner was convicted and sentenced to one and a half years' imprisonment. This has sounded a warning for all employers of illegal

workers! I hope all employers who are employing or are prepared to employ illegal workers would learn the lesson.

Ultimately, imposing heavier penalties is the direct way of deterring the employment of illegal workers. As such employers hire illegal workers for the purpose of reducing costs, the heavier penalty or imprisonment will greatly increase the costs of the employers. In financial terminology, this has imposed a higher "opportunity cost" which should deter them from breaking the law casually.

No matter how stringent the laws are, we still have to rely on the law enforcement departments to crack down on illegal employment cases to make the employers pay the price for their acts. Only in this way will the laws achieve the desired effect. If all employers of illegal workers are penalized by law, the problem of illegal employment will disappear quietly. Just as the case of the owner of the above pork bone hot pot restaurant, he had to go to the jail, and the reputation of his restaurant was damaged as well. Everyone would sigh and feel sorry for him for having inflicted the double losses. The business built up on toil was ruined overnight just because of employing illegal workers. With such a high price to pay, why are there still so many employers prepared to take the risk?

I would like to take this opportunity to thank officers of the Labour Department and the ImmD for their relentless effort in cracking down on illegal employment. I hope they can continue with their effort in this regard. If they have manpower shortage in performing inspection or taking enforcement action, I hope the Administration can exercise some flexibility in the deployment of additional law enforcement officers, because the Government is duty-bound to safeguard the employment opportunity of local workers. We need to increase the allocation of resources to this area, so as to curb the problem of illegal employment.

Madam Deputy, work is meant to realize the talents of the individuals. It should allow each person to make the best use of his own abilities. And regardless of the ranks and grades of different jobs, everyone should make his contribution to society. But why then some people cannot do their jobs openly and with dignity, and have to hide in the dark while working? Making people illegal workers and hiring them as illegal workers are in fact acts of stamping on

human nature. I hope such acts would no longer exist in this world. Employees should be respected. This is a prerequisite that cannot be abandoned, and I believe Members would agree with me.

Madam Deputy, I so submit.

**MR HENRY WU** (in Cantonese): Madam Deputy, with respect to the problem of mainlanders engaging in illegal employment and prostitution in Hong Kong, I intended to raise it when we debated the motion on "Boundary crossing arrangements for mainlanders visiting Hong Kong individually" some time ago. However, as I did not want to be ruled digressing by the President, so I did not say everything I had in mind. Though I only said a few words on that issue during that debate, the President was so shrewd as to sense that and so I was forced to stop. But today I can say to my heart's content on that. Madam Deputy, apart from illegal employment and prostitution, it is believed that there could be many other serious security problems such as those related to robbery, murder, and so on, and all these should be addressed and seriously tackled by the relevant departments. However, as these problems are not covered by the motion today, I will have to leave them to an appropriate occasion for detailed discussion.

Information from the police shows that though the number of illegal immigrants arrested in 2002 has dropped 36% as compared to that in 2001 and it is the lowest record in 22 years, the number of mainland visitors involved in criminal offences has risen drastically by 47% and the number of mainland women holding valid travel documents and arrested for prostitution in Hong Kong is as many as some 7 300. The figure shows a daily average of 20 persons arrested for prostitution and that is a drastic increase of 132.7% over the year 2001.

(THE PRESIDENT resumed the Chair)

Meanwhile, figures from the Immigration Department show that though the number of illegal immigrants arrested and repatriated in 2002 is lower than that of 2001, the number of mainlanders arrested for illegal employment has registered a great increase of 53%, or a total of about 12 000 persons.



All these figures show that the recent trend is that mainlanders involved in illegal activities in Hong Kong are no longer illegal immigrants but persons who have entered the territory on valid travel documents. I think that this is related to the relaxations on travel restrictions which permits mainlanders to visit the territory on an individual basis. It is also something which I have mentioned many times, that is, though the individual visit scheme has contributed to boosting the economic recovery of Hong Kong, it has also brought along some side-effects in security that must be rigourously dealt with.

Madam President, various signs and figures prove that there is a growing proliferation of the problems of mainlanders engaging in prostitution and illegal employment in Hong Kong. Not only will these problems affect the employment of the local working class, but also cause serious nuisances to the general public. The authorities must take effective measures to curb these problems and prevent them from deteriorating and proliferating.

As I mentioned in a supplementary question raised in the Council meeting on 8 October, there are problems in the police's enforcement efforts to combat prostitution. The police can act on the power of certain laws, such as those on the offence of living on earnings of prostitution of others. But as to another form of prostitution, that is, the problem of "one-woman brothels", as far as I know, the police are powerless to eradicate it under the present circumstances. And that is a major channel whereby mainland women engage in prostitution in Hong Kong.

However, when I asked the Secretary for Security whether laws could be amended to plug the loophole in this respect, the answer given by the Secretary was that these "one-woman brothels" did not fall into the ambit of any offence prescribed by law. It is considered not appropriate to outlaw by way of legislation these "one-woman brothels" under the present circumstances for it may infringe on privacy and the right of these prostitutes to reside in the flats concerned, and so on.

In such circumstances, I would like to know what means the authorities may have to effectively combat such prostitution activities, especially those undertaken by mainland women without resorting to legislation. In fact, residents from many districts, as mentioned by some Members earlier, are

beginning to feel concerned about this problem which is deteriorating. They are asking the authorities to legislate to outlaw these activities so that the law enforcement departments can have a legal basis for their actions. I hope the Secretary can talk about this point when he makes a reply later.

Madam President, in earlier press reports on how to solve the problem of streetwalkers or prostitutes on the streets, it was pointed out that a police spokesman had admitted that as there were loopholes in existing legislation, so the police had to rely on undercover operations to combat such activities. But as the objects of solicitation for these street prostitutes are mainly males of about 50 years of age and as the police do not have many male officers of such an age bracket, it has become difficult for police officers to pose as customers. Some people have therefore suggested that as there are many middle-aged males currently out of work, why can we not hire some of these people to help the police in their undercover operations? The proposal has the merit of killing two birds with one stone, that is, it can help eradicate the problem of streetwalkers while reducing the unemployment rate. The proposal cannot be said to be entirely not workable, so can the authorities consider that or hold discussions with the Economic Development and Labour Bureau seriously?

In order to maintain peace and stability in society, it is a pressing task to crack down on illegal employment and prostitution vigorously. Effective measures must be taken now to enhance enforcement actions in this respect and step up interception work at the boundary so that mainland residents are prevented from entering the territory to engage in illegal activities. Efforts must also be made to prevent those mainland residents who have committed offences here from entering the territory again on altered identities.

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

**MR FRED LI** (in Cantonese): Madam President, with respect to the problem of mainlanders engaging in illegal employment in Hong Kong, the Democratic Party conducted a survey during the period from 25 to 30 October this year. A total of 1 178 people were interviewed and 97% of the interviewees opined that the employment of illegal workers would affect workers in Hong Kong and close to 80% of the interviewees thought that the impact was grave.

The kinds of jobs taken up by these mainland illegal workers in Hong Kong are mostly of an unskilled nature, including workers in the construction and retail trades, as well as waiters and cleaners.

For the construction industry, under the existing legislation, it is an offence for the person in charge of a construction site if persons not legally employed are found on the site and the maximum penalty carries a fine of \$350,000.

Moreover, the Housing Authority (HA) and government departments have laid down rules regulating their contractors. Those contractors found to be hiring illegal workers will have their names removed from the list, their licences suspended or be subject to other disciplinary measures. As the employment of illegal workers may lead to their being barred from bidding for public works, many contractors do not dare to hire illegal workers. Thus a deterrent effect is achieved. Since this measure came into force, cases of illegal workers found on construction sites of the HA or in government projects are minimal.

There are, however, no measures other than fines and imprisonment in the licensing regimes for trades other than the construction industry to combat illegal employment.

In fact, the number of raids carried out by the Immigration Department (ImmD) to combat illegal employment has risen from some 2 000 in the year 2000 to 3 800 during the first nine months of this year. The number of operations taken by the Labour Department (LD) has been maintained at about 150 000 over the past three years.

It seems that despite the enhanced inspections and raids undertaken by the ImmD and the LD, some business operators still hire illegal workers as usual. The Democratic Party therefore suggests that actions should be taken in the licensing regimes and reference should be drawn from the existing practice of the HA and the works departments. That is to say, in businesses requiring a licence, such as licensed hotels, guesthouses, restaurants, food establishments, food manufacturing factories and elderly homes, licensing conditions should be imposed on the operators. They should be prohibited from permitting illegal workers to work on their premises. A points system can be introduced to impose penalties according to the gravity of the offences committed. If the operators are found to have contravened the law and hired illegal workers, points

will be deducted and as the points deducted accumulate, the operators concerned will be imposed various kinds of penalties such as a written warning, suspension of licence for a certain period of time from a few days to a few months or even immediate suspension of their licences.

The Democratic Party hopes that related policies can be devised such as the inclusion of certain licensing terms and conditions like those prohibiting the employment of illegal workers to deter employers from hiring illegal workers and hence protecting the jobs of Hong Kong people. In the same survey conducted by us, it was found that 80% of the interviewees favoured the inclusion of a condition forbidding the employment of illegal workers in the licensing conditions applicable to food establishments, hotels, guesthouses, shops, and so on.

Currently, in many outsourced government services, like those contracts awarded by the Food and Environmental Hygiene Department, the Leisure and Cultural Services Department and the Social Welfare Department, there are conditions specifying that contractors or operators must comply with the provisions of the Immigration Ordinance and illegal workers must not be hired. If the contractors or operators are found to have breached these conditions, their contracts may be terminated in writing or their chances of bidding in future will be affected. The Leisure and Cultural Services Department even stipulates that if a tenderer has contravened the Employment Ordinance or the Immigration Ordinance and has been convicted six times or more during the 12-month period prior to the deadline for tender submission, his tender will not be considered. The Instruction to Tenderers also requires that the contractors should ensure that subcontractors will also comply with the provisions in the above Ordinances.

In assessing tenders, these departments will require the tenderers to furnish conviction records in respect of offences under the Employment Ordinance or the Immigration Ordinance or a declaration of no conviction. The departments will also seek a verification from the authorities concerned with regard to the conviction records of the tenderers.

We are convinced that the inclusion of the condition on prohibiting the employment of illegal workers in the licensing regime and tender mechanism, and in the consideration of licence issue or renewal and in permitting the submission of tenders, will have the effect of making most of the operators think carefully the consequences of hiring illegal workers. It is because apart from

prison terms and fines, their business operations will also be affected. So they will give up the idea of hiring illegal workers and refrain from breaching the law for fear of the penalties.

However, judging from previous figures, it can be seen that the problem of illegal employment is becoming more acute. It has now become a cause of public concern, for those illegal workers are snatching away the rice bowls of the middle-aged and unskilled workers displaced as a result of structural unemployment which our society is presently facing.

I would like to use the last few minutes of my speaking time to respond to the view presented by Mr Tommy CHEUNG of the Liberal Party earlier. Mr CHEUNG opposed the amendment proposed by Mr James TO. I think that the view presented by the Liberal Party is entirely that of the employers and that is problematic. First, Mr CHEUNG said that the employers might not be aware of the fact that their employees were illegal workers. That is totally unacceptable, for the employees must produce their identity cards when they take up the jobs and undergo the registration formalities. They must also make contributions to Mandatory Provident Fund schemes. So how can Mr CHEUNG say that the employers do not know that their employees are illegal workers and that employers will find it troublesome to verify?

Mr CHEUNG also said that if the licence was suspended, other employees would be affected and they would lose their jobs. That will lead to the situation where people will not report illegal workers to the police. Such a situation is similar to the Sally AW case in which she was not prosecuted for fear that the rice bowls of many people would be broken. Even if this is not made a licensing condition and that the employer concerned will not have his licence suspended, he may also stand the chance of being arrested, sentenced to imprisonment or a fine. Let me use a Chinese restaurant as an example. If the employer is sentenced to imprisonment, the restaurant will have to close down and other legal workers will also be affected. In that case, should the owner not be sent to prison? Should he be fined just a couple hundred of dollars? For if not, his restaurant will surely be affected. Such logic is entirely unacceptable. May I advise the Liberal Party to really listen to the voice of the people and not to look at things from the perspective of the employers alone if they are to join in direct elections or undertake district work. For what the people are most worried about is the employment of the unskilled workers. We should exhaust every means to crack down on the employment of illegal workers by

unscrupulous employers, for these illegal workers are robbing the Hong Kong people of their jobs. We hope all Honourable colleagues will support the amendment. I so submit.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, I would like to respond to the view presented by Mr Tommy CHEUNG or the view of the Liberal Party. When I was listening to the debate, the most interested view was perhaps the one presented by Mr LEUNG Yiu-chung. His view is that of the labour sector. However, I do not want to offend anyone, so I will not use words like "violating the doctrines" or "unscrupulous employers", and so on.

In the past and as in now, Mr LEUNG Yiu-chung always highlights that he represents the labour sector. He is of the view that the food establishments and other trades are all competing at cut-throat prices and so employers are forced to hire illegal workers. If this argument holds, then Mr Tommy CHEUNG should support our amendment. Why am I saying this? It is because a minority of employers have hired illegal workers because of their lower wages, thinking that this will reduce costs and make their companies more competitive. But that is only what a minority of employers are doing. They are the black sheep in the fold.

Now if Mr CHEUNG opposes our amendment, is he condoning these black sheep? Most employers do not hire illegal workers and so the number of employers prosecuted is very small. What our amendment is saying is that the Government should introduce some penalties, and these should be outside the judicial system as it is the decision of the Courts to mete out a sentence and make a judgement. The Courts will have discretion on the above. For the Government, the kind of penalties it can impose is such that, if it has a contract with the employer concerned who hires illegal workers, then the chances of that employer being awarded a contract by the Government in future will be very slim. If the employer concerned comes from a trade which is subject to regulation such as one which requires a licence, then the employer concerned should be required to comply with certain terms, like the employment of qualified workers legally, when he wishes to get a licence. Put it simply, employers are forbidden to hire illegal workers.

In my opinion, if this motion is negatived, the room in which the Government can take action would be very narrow indeed. For government actions cannot be taken on reference to cases which have been cited by Members earlier, that is, cases involving prison terms of over 10 months. For these cases are clearly intended to send a caution message to the employers, but it cannot be so with each and every case. If some requirements are set, all employers will know where the responsibilities will lie and these include: First, they will make MPF contributions for their employees; second, check and verify the Hong Kong identity cards of their employees. All of these actions are obligatory.

As a matter of fact, employers will have to undertake a process to determine whether the job-seekers are qualified. So that will prevent employers from being falsely accused. Under the licensing conditions we can lay down some requirements such as when employers are prosecuted and convicted of hiring illegal workers, certain restrictions may be imposed when he applies for a licence or for a renewal. For example, he may be denied a licence after he has contravened the requirements for a certain number of times. That is to say, after a certain number of times of employing illegal workers, his bad record will reduce his chances of getting a licence.

Madam President, in fact that point was raised during the question time of the meeting of this Council two or three weeks ago. The Democratic Party raised the issue for consideration by the Government, and that is the same point mentioned in Mr James TO's amendment. I am quite disappointed today for the officials from the Treasury are not present at this meeting and only officials from the Security Bureau are here. The works system and the licensing regimes of the Government do not just fall into the ambit of the Security Bureau alone as other departments are also duty-bound to discuss with the Security Bureau on how to tackle the problem of illegal employment. For example, we all know that there are many illegal workers in the care and attention homes and other places where the elderly are taken care of and the Social Welfare Department under the Health, Welfare and Food Bureau is charged with the supervision of these care and attention homes. Actually, what should be addressed is not simply the problem of combating illegal employment and that cannot be accomplished with the efforts of the Security Bureau alone. If I am asked whether or not the problem is so acute that all departments should put in their efforts, then my answer would be yes.

A few days ago when the Chief Executive had an audience with the Premier of China, he expressed the wish that the relaxation of the restrictions on mainland residents travelling to Hong Kong should be extended to places other than Guangdong Province. That I agree. At the beginning of the individual visit scheme, only residents from more affluent places like Shanghai, Beijing and some cities in Guangdong Province can benefit from the scheme. But when the scheme is extended to residents from the entire Guangdong Province, we should be aware of the fact that there are many towns and cities in Guangdong Province which are still very poor. The individual visit scheme will enable more people to come to Hong Kong and when there exists a disparity in wealth between these places and Hong Kong, there are greater chances for residents of these places to come here as illegal workers. So as we are making preparations for the individual visit scheme, we should also prepare for combat against the greater influx of illegal workers.

The present efforts in combating illegal employment should not be undertaken by the Security Bureau alone, and they can be and should be also undertaken by other departments. I do not think that our amendment is pinpointing the employers in general. Our targets are only those black sheep among the employers.

With the establishment of this system, it should be favourable to those employers who do not employ illegal workers because employers will not find it workable to hire illegal workers to outcompete their rivals in the market. Put simply, and as Mr LEUNG Yiu-chung has said, if everyone is employing legal workers, then the costs for everyone would be equal. But the present situation is that the costs for certain employers are lower and that makes competition unfair. I hope that the Government can look into this effect, for legislation should be made in some cases, though it may not be necessary in most cases. I so submit.

**MR MICHAEL MAK** (in Cantonese): Madam President, figures from the Census and Statistics Department show that the unemployment rate for the period from July to September this year is as high as 8.3% and that means 297 000 people are jobless. However, it is amazing to note that although so many people are out of work, the number of illegal workers has been on the rise. I think there are many reasons for it. A main reason is that some unscrupulous employers act in blatant disregard of the law and hire illegal workers in the hope of reducing their costs.



Therefore, I think that a multi-pronged approach should be taken to solve this problem. I think that this is not just the concern of one party, for all parties should be involved and more efforts should be put if we want to tackle this problem in a less costly and more effective manner. Workers will need to think what they have done to enhance their value and upgrade their performance, so that local employers will hire them. On the other hand, if mainland authorities allow people to visit Hong Kong individually, have they given any advice or issued any warning, or have they pledged to caution their residents not to engage in any illegal activities, such as taking up illegal employment? In the next few minutes, I would talk more about matters related to prostitution.

I think Members all have received an e-mail today saying that there are prostitution activities in many places such as Kwun Tong, San Po Kong, Tsuen Wan, Sham Shui Po, Mong Kok, Yau Ma Tei, Jordan, Tsim Sha Tsui and North Point. Prostitution is found in almost every district in the 18 districts in Hong Kong. I think Members may have actually come across this real problem themselves. For example, when driving past some districts, we would feel rather embarrassed. The more so we are embarrassed when we get off from our cars. For driving past these places would make people suspect what we are doing there, unless of course, as the Secretary said, we wish to visit the places to see what the situation there is like. Otherwise, if we are taken photographs by the reporters, then the male Members will really find it hard to explain away the matter.

Frankly, I have no idea why the situation in Hong Kong has gone so bad as it now is. Two weeks ago, an oral question on this subject was raised in this Council and Members enthusiastically asked the Secretary many questions. But the Secretary was evading each one of these questions. However, the problem has to be solved in any case. Why do so many people come to Hong Kong to become prostitutes? And why are there so many men in Hong Kong who need such services? An answer should be found to these questions. The problem should be tackled as it appears and right at its roots. If men do not go to these places or want to get this service, then the problem will be solved. No matter how seductive or sexy these women are, they will have no chance to attract the men if the men would not go there. I therefore hope that the gentlemen in Hong Kong should exercise a bit more self-discipline. They may have needs, but there are other ways to meet their needs so that the image of Hong Kong as a metropolis will not suffer as a result.

If prostitution is allowed to continue, my worry is that I do not know what will become of the health situation in Hong Kong. I have once said to the Secretary that there must be some follow-up action in tracking down the figures through the Social Hygiene Service of the Department of Health or private medical practitioners such as dermatologists to examine whether venereal diseases are on the rise. If they are, that would certainly show or probably show that they are attributable to the prostitutes. If venereal diseases and AIDS are always on the rise, that would surely mean a rise in the expenditure of our entire medical system, the funding for it and the costs incurred. Therefore, the Secretary must provide figures in this respect for our information.

The few districts which I have mentioned earlier, that is, the districts referred to in the e-mail, can actually be said to involve all the 18 districts in Hong Kong. As the District Council elections are taking place there, I think the member elects or the candidates of these elections should consider more on what can be done to combat prostitution. More work must be done on the community level and the middle-aged men should be made the focus of such work. That can hopefully solve the problem. I suggest a multi-pronged approach be taken. There should not be just penalties, but also raids to stamp out vice activities. These joint efforts or raids should not be carried out after one or two incidents have happened. I think that these actions should be taken on a continued basis and the related penalties should be made heavier.

I believe prosecution is difficult in this matter. That is why the Government should also target at the men in Hong Kong apart from initiating prosecutions. When cases are reported, the families of those involved should be informed and the authorities should study if some kind of education can be given to those involved. Since prosecution is not made, they should at least be educated. For they should be educated even if the Government decides not to proceed with prosecution. I hope the situation will not grow so badly that it will become a shame for Hong Kong. If the situation worsens, the image of Hong Kong as a metropolis would certainly suffer. I hope to see a healthy image of Hong Kong and that members of the public and the world at large will see that it is so. Thank you, Madam President.

**MRS SELINA CHOW** (in Cantonese): Madam President, I shall only respond briefly to two major points raised by Mr SIN Chung-kai on the remarks of Mr

Tommy CHEUNG. Mr SIN Chung-kai said that the Liberal Party, or Mr Tommy CHEUNG, did not support the proposal on licence revocation because they were not determined to clamp down on illegal employment. I wish to reiterate one point, and actually, Mr Tommy CHEUNG has also made this point very clear, but I simply do not know why Mr SIN Chung-kai should still have such a misunderstanding. Anyway, I must still clarify that the Liberal Party is basically in total support of clamping down on illegal employment. However, we also insist very strongly that he who does the wrong thing must bear the responsibility. Licence revocation will mean the cessation of operation of the entire food establishment. In that case, the penalty is no longer confined to the one who employs illegal workers. This is not right, because the penalty is not directed solely at the person who hires illegal workers. Another undesirable effect of licence revocation is that other employees of the food establishment will be plunged into unemployment. We in the Liberal Party maintain that this is most undesirable, and this is also the main reason for our opposition to the amendment of the Democratic Party.

The Liberal Party thinks that in some cases, the Government may refer to the licensee's past records of employing illegal workers and use them as a reason for refusing to outsource a works project to him. But the Government must never revoke the licence of a food establishment simply because of the mistake or crime committed by one single person. As we all know, even if other employees know that the licensee is employing illegal workers, they will not report to the authorities, because this will victimize all employees. It is most unfair to victimize innocent employees. I wish to state very clearly the real reason for the Liberal Party's opposition. It is not as simple as alleged by Mr SIN Chung-kai. I must state the real reason. We have made it very clear, and I must reiterate that we oppose the Democratic Party's amendment for the reason stated above.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the problem of illegal employment has been vexing local workers for a long time, and it is particularly so recently, as worsening unemployment makes it more and more difficult for our grass-roots people to secure any jobs. Just look at our markets, restaurants, cleaning contractors, construction sites and interior refurbishment businesses, and we will see that illegal workers are everywhere. That is why many local workers are so outraged.

In the case of the construction industry, for example, its two-digit unemployment rate, being higher than those of other industries, has kept on rising. During the period from February to April, 19.3% of all construction workers were unemployed. Many construction workers have no work to do, but lots of mainland residents coming here on two-way exit permits or tourist visas can secure employment every day. The problem of illegal employment is very serious, and over the past year or so, we have even noticed the emergence of "iron dens", that is, the reported addresses of illegal workers. These are in fact dwellings provided by "illegal worker heads". The Council has discussed this problem quite a number of times before, and we have repeatedly asked the Government to clamp down on illegal employment. The problem is that the Government may launch one or two vigorous raids and achieve some effect, but at the same time when raids are underway, more illegal workers are coming to Hong Kong. Many of our affiliated associations have told us of the current situation, saying that those people are constantly keeping an eye on when the Government will conduct raids, and while a raid is being conducted, they will make arrangements for the shipment of another batch of illegal workers. I therefore think that the Government should deal with this problem, and I hope that it can focus on the problems I am going to raise next, so as to assert its governance authority.

I hope that the Government can do this — that is, besides conducting raids, it can also consider several existing problems, or even the complaints lodged by the people. A certain man, for example, once complained to me, saying that when he telephoned the hotline of the Immigration Department (ImmD) on illegal workers, the ImmD replied that unless he could supply details on the location of the workplace, the employer's name and telephone number, and so on, no follow-up action could be taken. But how can an ordinary member of the public know all these details? The most that a member of the public can do is to inform the Government where illegal workers are found, and it should then take actions immediately. The man who complained to me thus wondered whether it was the intention of the Government to ask him to work undercover on a construction site and then report the information collected to it. The man was thus very angry. What is more, some other people also told me that while the ImmD sought to make things difficult for those who made reports on illegal workers, the police also adopted an indifferent attitude towards this problem. The situation as such, members of the public simply wonder how the Government can possibly clamp down on illegal workers.

I once heard the host speaker of a radio programme talking about how illegal workers squatted around in some worker recruitment spots, waiting for bosses. The host speaker asked the police to deal with this problem, but they replied that there was nothing wrong with simply squatting and standing around in a place. But everybody knows that these spots are black labour markets. Why do the police refuse to take actions? Very often, instead of taking any actions, the police will ask members of the public to handle the problem themselves. Therefore, I sometimes do think that the facts are being distorted.

Besides, some ImmD officers have told me that although they know that some frequent visitors have come to Hong Kong not for visiting relatives or on business, they are unable to refuse their entry under the existing system. Very often, even if individual officers want to do a bit more, their supervisors will tell them not to ask too many questions. As a result, ImmD staff trying to balance politeness and inquisitiveness may be rather frustrated. Some people even propose that a list of illegal workers be compiled by the ImmD, so that all on the list should be refused re-entry on the next attempt. I think this will call for enhanced co-operation between the Administration and the Mainland. We are all aware of the situation, but how are we going to improve it? The problems I have mentioned show that government departments have so far failed to solve the problem of illegal workers. I hope that the Government can really think of some solutions.

Our trade union also wishes to make a proposal because we can identify the crux of the problem. We notice that the fines imposed by the Court on illegal workers are often very light. Under the law, the maximum penalty for an illegal worker is a fine of \$50,000 or a prison term of two years. However, in the past three years, the highest fine imposed on illegal workers was just \$6,000, and in most cases, the fine was just several hundred dollars. It can thus be imagined that there has been very little deterrent effect. Besides, the Court also imposes very light penalties on employers hiring illegal workers. This is also one important reason for the persistence of the problem of illegal workers.

According to the records of the ImmD, in the past 12 months, 987 employers were arrested for suspected employment of illegal workers, and only 384 of them, or less than 50%, were eventually convicted. Why? Was that because the light penalties meted out by the Court had induced law-breaking employers to think that they could get away easily? Very often, the ImmD will initiate prosecutions, but the employers concerned are not convicted eventually.

We think that more should be done with the relevant legislation. The new Secretary once said that he intended to make some changes to the relevant legislation and measures to pinpoint the problem of illegal employment. But ever since Secretary Ambrose LEE made the remark (two to three months ago, I think), there has not been any progress. I hope that later on at this meeting, the Secretary can give me a reply, though I may not be in the Chamber by that time. Besides, the maximum fine and prison term for the employment of illegal workers are \$350,000 and three years respectively, but we think that the sentences passed by the Court are much too light, both in terms of imprisonment and the level of fines. I hope that the Government can work out some solutions in this respect.

Madam President, I very much hope that the Government can work out some real solutions to the serious problem of illegal employment. Construction workers are especially angry about this problem. Half a month ago, they held a procession, and I marched with them. I found that many of the protesters came from the construction industry, the internal refurbishment trade and construction sites. They were all very angry. These people often think that they have expressed many opinions to the Government, but the latter has all along failed to work out any solutions. They all understand that there are difficulties in solving the problem. However, Madam President, such a problem can occur in any place, and the problem of illegal employment is especially serious in Hong Kong, particularly in the construction industry, the interior refurbishment trade and the occupation of domestic helpers. I think the Government really needs to work out some solutions.

Thank you, Madam President.

**MR ALBERT CHAN** (in Cantonese): Madam President, I rise to speak in support of Mr James TO's amendment.

The problems of illegal employment and prostitution in the districts have become the most frequent subjects of complaint from local residents, and it can be said that people are seething with both discontent and grievances. I think the Government's handling of these two problems, whether in terms of administrative measures, the systems adopted and even enforcement actions, has along been marked by "concern in words but softness in actions". We also have the impression that its enforcement actions are directed at "small flies instead of the tiger". The tiger is thus let go, leading to serious consequences. This is especially obvious in its handling of illegal workers.

The problem of prostitution in the districts is no longer confined to any particular buildings at night, nor is it limited to street corners. These days, streetwalkers start to show up as early as six or seven in the morning. And, they are found not only inside buildings or on their staircases, but also in parks. Prostitution has thus led to appalling environmental hygiene and poor law and order in the districts, and it has also led to the deterioration of the triad problem. This causes great nuisance to the normal life of all residents, especially women and decent men, not just the type of men mentioned by Mr Michael MAK. A decent man passing by will meet with the overtures of streetwalkers if he casts a glance or two at them. Therefore, when it comes to nuisances, men and women are equally affected, and men with normal needs and those without are both affected. When he has time, the Secretary may well go to Tsuen Wan. I am sure that he will prove immensely popular there.

The problem makes people feel that the situation in Hong Kong now is even worse than that of Taiwan's Ximunting in the 1960s. We must not allow such a situation to continue, for if we do so, it will be pointless for Hong Kong to try to become a "city of so and so"; it may well be reduced to a "city of licentiousness" instead. I hope that Hong Kong will not acquire such a bad name, and that the Secretary can pay real attention to the problem.

On the problem of illegal workers, I have in fact written many letters to the Immigration Department and the Security Bureau to express such a view, and I have also made many reports on the whereabouts of illegal workers to the Government. But very often, it seems so difficult to find them. The problem of illegal workers has been very serious in some cemeteries, but although intelligence and information were once supplied, the authorities still failed to make any arrest after half a year. So, very specific information, almost names, had to be provided, and even with such information, the authorities could only manage to arrest a very small number of illegal workers occasionally. That was why I supplied very detailed information last time, specifying which cemeteries and the hours of work, but not too much effect was achieved. I do not know how they carry out enforcement. Even with such specific and clear intelligence, there has been no result. The Secretary may really have to consider whether it is necessary to make staff training more sophisticated and professional to suit the purpose of arresting illegal workers. There is a need to make the whole thing like a secret service, isn't it?

On the work of arresting illegal workers, as I have just said, to a certain extent, the actions just seem too soft, whether in terms of the system adopted, administrative measures or even the law. The main reason is that frequently, the success of an enforcement action must depend on the arrest of the employer. Actually, if the scope of control can be extended a little bit, or if the scope of liability can be extended a little bit, it will be easier to handle the problem. But then, this is precisely the reason for the Liberal Party's opposition, right? They always maintain that the employee must first be caught.

In the case of a cemetery, for example, the works contractor is responsible for the entire project, so when there are illegal workers in the workplace, it does not stand to reason to exempt the contractor, that is, the person in charge, from any liability. A similar situation is found in restaurants and construction sites. In the case of construction sites, owing to multi-level subcontracting, very often, only the sixth and seventh subcontractors are held liable. The principal contractor and the contractor mainly responsible for the works are not held liable. The contractor in overall charge of a construction site is supposed to keep personnel records on all of its employees and verify their identities; if it does not make any verification, or deliberately refrains from doing so, or feigns oversight, it must be up to something. But then, when things go wrong, it does not have to bear any responsibility, and the victims are the grassroots, the workers, of Hong Kong. The softness and feigned oversight of the authorities have aggravated the problem of illegal employment, and the problem simply keeps on deteriorating, to the extent that those who used to have jobs have become jobless. If these jobless workers want to get a job again, they must slash their wage demands and be prepared to accept the same levels of wages as those of illegal workers. I do not know whether the Government is doing this on purpose. Perhaps, this really gives support to what I have always talked about — the collusion of the Government and the business sector. The control over illegal workers is purposefully loosened to suppress the wages of Hong Kong workers, to let employers make more profits. This is precisely the advocacy of the Chief Executive, who hopes that the wages of Hong Kong workers can be brought in line with those of their counterparts elsewhere in Southeast Asia, so as to increase the competitiveness of Hong Kong. I do not know whether there is any political consideration in this.

Therefore, sometimes, when we see such a situation in the districts, we do feel very angry. While many people are trying in vain to get a job, illegal workers are spotted everywhere. Some illegal workers are even roaming here



and there, asking people to take them on. But the Government is not seen to have achieved any result in handling the problem. I hope that the Secretary can appreciate the plight of the grassroots, especially the suffering of the jobless masses. It is bad enough to be jobless, but it is even more miserable to see that illegal workers can get jobs. The anger — Madam President, I am really a bit angry now — should be felt by you too when you become aware of the situation. When people complains to you in tears, you will realize their suffering.

Madam President, to improve the situation, I think we must take tougher actions. Mr Selina CHOW of the Liberal Party sounded very lofty just now, saying that the interests of workers must be protected. Well, if the Liberal Party is really so concerned about the interests of workers, it must support the formulation of various measures to ensure that all licensees, be they food establishments or works contractors, are forbidden to employ illegal workers. Or, it must support the implementation of a mechanism on banning the employment of illegal workers. This is the only way to really help local workers. If the Liberal Party does not do so, its advocacy will be mere sophistry, mere lip-service to workers. And, practically, it will be harbouring those companies employing illegal workers, giving them a chance to make greater profits and depriving local workers of their jobs.

Madam President, I hope that the Liberal Party can reconsider the spirit and principle behind Mr James TO's amendment instead of trying to distort the seriousness of the problem by advancing such sophistry. Thank you, Madam President.

**MR KENNETH TING** (in Cantonese): Madam President, the remarks of Mr Albert CHAN just now have completely distorted our opinions. We support the cracking down on illegal workers. The Liberal Party supports the cracking down on illegal workers. However, we opine that whoever employs the illegal workers should be held responsible for employing them, he should not get other people into trouble. For example, if a certain general manager of a company tries to get his company into trouble deliberately by employing some illegal workers, should the whole company suffer for what he has done? We think that as long as they are subject to the punishment of law, we should deal with them in accordance with the law. Why should we not do it in that way? Taking good care of the matter is our ultimate responsibility. We look forward to seeing the

prosperity of Hong Kong and we also want to rationalize the licensing system. We would strongly oppose any action that runs counter to that.

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

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, many Members of this Council have presented a lot of views on illegal employment and prostitution. My analysis is that, at present, many illegal workers have entered Hong Kong legally. They usually come to Hong Kong on various types of documents, for example, if they have relatives in Hong Kong, they can come on two-way exit permits for visiting relatives, or on the newly introduced visas under the individual visit scheme or on business endorsements. We recently discovered that many illegal workers have come to Hong Kong on business endorsements. Theoretically speaking, holders of business endorsements come to Hong Kong for business purposes, but they have actually come to Hong Kong to work as illegal workers rather than doing business even though they are holding business endorsements. Therefore, I asked the Secretary for Security this question during the oral question time at a recent meeting. The Secretary admitted that such persons were questioned upon their entry into Hong Kong and if they were found suspicious and that they were here not for business purposes, that is, they do not belong to the business visas category, then they would be intercepted and repatriated. Several hundreds of people were intercepted in this way.

I think if such persons were allowed entry into Hong Kong very often it may not be easy to intercept them again, unless complaints are lodged or intelligence becomes available. It may be easier to do so at construction sites because construction sites can be cordoned off easily. But if the illegal workers are engaged in domestic work or professions that provide personal services, then it will be very difficult to intercept them. As such, we have a plan, and that is, the SAR Government should hold discussions with mainland security authorities, in particular, those of the provincial government, to examine how we can tackle the problem at source. How can the problem be tackled at source? If we find that people from certain municipalities, counties and towns often come to Hong Kong to work as "illegal workers" or engage in prostitution, and our information shows such an obvious phenomena, then I think the SAR Government should hold discussions with the Mainland, in the hope that they can take corresponding measures to curb the source.

Some "kaifongs" have told me that certain rural areas would like to send some people out to work and there are acts of corruption among cadres, who are responsible for the issuance of travel documents, so documents are issued arbitrarily. Those people can come to Hong Kong on such documents, thus resulting in abuses in the issuance of visas, in particular business endorsements. Therefore, I hope the SAR Government can talk to the mainland authorities and ask them to regulate the local issuing authorities, which are found to have abused the issuance of visas. The visa issuance rights can even be taken away from those authorities, or it can be specified that visas can only be issued with the approval of higher authorities. By adopting such measures, it is hoped that the problem can be tackled at source and after all, this is even more effective than making arrests after their entry into Hong Kong.

I think everyone, in particular several DAB Members who are representatives of the labour sector, including myself, are so concerned about this issue because we have heard so much about such views. Many workers would invariably express very strong views about this whenever I convene residents' meetings in the local districts, thinking that their "rice bowls" have been snatched. Though I have asked them to furnish me with information so that I can reflect the situation to the Immigration Department and request the Government to take follow-up actions, they think it will not be very effective for the number of illegal workers will still be very high, despite the number of interceptions made. So how can this issue be solved?

I hope that today the Secretary can come up with a more effective proposal. I believe that, given his past experience in immigration affairs, the Secretary should be more experienced in handling this matter.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now call upon Mr YEUNG Yiu-chung to speak on the two amendments. He has up to five minutes to speak.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, first of all, I have to thank two Honourable colleagues for moving amendments to my motion and for putting forward their suggestions for our deliberation and discussion. Basically, their amendments are not very much in contravention of my original motion. With the exception of the "review of licensing systems" proposed by Mr James TO, I believe other amendments are only textual in nature. As regards Mr Frederick FUNG's claim that "unlicensed guesthouses have encouraged these illegal activities", it is similar to our emphasis on combating "intermediaries"; and as regards "to enhance gathering of intelligence" and "prevent mainlanders from entering the territory with other identities to commit crimes", we have already talked about this in our proposal on enhancing the Police Force as well as communication and co-operation with the Mainland. As regards, "construction sites, food establishments, places of entertainment, guesthouses, fruit wholesale markets, premises under renovation and parks", we have proposed to step up combat actions in all those black spots.

A small battle of words occurred during Members' earlier speeches in relation to Mr James TO's proposal on "reviewing the licensing systems". As regards Mr James TO's proposal on conducting a study on the introduction of such a system, after all, it may be a measure worth considering. According to my understanding, so far, the Government has only adopted a similar demerit system for outsourcing works. If the Government intercepted illegal workers at a construction site, in addition to pressing charges against the contractor, the contractor in question will also be placed lower down the priority list when the next tender is called. However, no arrangements will be made to revoke the licence on the basis of accumulated demerits. Though this will have a certain deterrent effect, it is actually rather limited since a lot of factors have to be considered in the award of tender.

The Hong Kong Government's system for issuing driving licence is actually very similar to the demerit system proposed by Mr James TO earlier. We can introduce the demerit system and the licence revocation system to take prosecution actions against and deduct points from employers who employ illegal workers and organizations that helps or operates prostitution activities in whatever form. And, the licences of operators who have accumulated a certain number of points within a certain number of years will be revoked. We believe that with the administrative support of the Government, the effect of combating "illegal workers" will be greatly enhanced.

Madam President, on the whole, the principles of the two amendments are consistent with my original motion. On this basis, the DAB supports the two amendments. Thank you, Madam President.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the number of in-bound visitors from the Mainland has been rising in recent years. Mainland visitors increased from some 3.7 million in 2000 to some 6.7 million in 2002, representing an average annual increase of almost 40%. The number of visitors in the first nine months of 2003 stood at 5.6 million, representing an increase of about 20% over the corresponding period last year.

Meanwhile, the number of mainland visitors arrested for working illegally in Hong Kong increased from 1 853 in 2000 to 3 031 in 2002, representing an average annual increase of about 32%. The figure for the first nine months this year stood at 3 536, representing an increase of 70% over the corresponding period last year. The number of mainland visitors arrested for prostitution in Hong Kong increased from 2 740 in 2000 to 6 826 in 2002, representing an average annual increase of 75%. The figure for the first nine months in 2003 was 7 033, representing an increase of 52% over the corresponding period last year.

The above figures show that the number of mainland visitors arrested for working illegally in Hong Kong, particularly the number of those arrested for prostitution, has increased at a faster rate than the total number of visitors from the Mainland. We believe that, to some extent, these figures reflect the enhanced efforts by the Government to combat such illegal activities in recent years. For example, the number of operations against illegal employment conducted by the Immigration Department (ImmD) increased from 2 080 in 2000 to 3 580 in 2002, representing an average annual increase of 36%. From January to September 2003, 3 792 operations were launched, showing another 36% increase over the corresponding period last year.

We must, however, point out that the great majority of mainland visitors are law-abiding. Even from the figures for January to September 2003, the number of mainland visitors arrested for working illegally or prostitution in Hong Kong accounted for less than 0.2% of the total number of mainland visitors. As a share of the total number of visitors, the number of mainland visitors arrested for other criminal offences such as theft, fraud, wounding, robbery, and so on, has maintained at a relatively low level of 0.03% in recent years. It is

noteworthy that the number of mainland visitors entering Hong Kong under the individual visit scheme launched near the end of July this year and arrested for working illegally, prostitution or other criminal offences accounted for less than 0.01% of the total number of individual visitors admitted up to the end of September.

In any case, the absolute increase in these illegal activities remains a cause of concern. The community expects the law enforcement departments to take vigorous measures against the problem of mainland visitors working illegally, engaging in prostitution, and so on. In this connection, the Government has spared no effort in drawing up and implementing a host of measures at various levels. They include tackling the problem at source by co-operating and communicating with mainland authorities to minimize the chance of entry of mainlanders intending to engage in illegal activities in Hong Kong. The law enforcement departments have also stepped up operations against unlawful elements who have entered Hong Kong through enhanced efforts in the collection of intelligence and various target-specific actions. Now, I would like to give a brief account of these measures, and in response to the individual suggestions or views put forward by Members earlier in the debate, I would like to focus my reply on several points.

Pursuant to the Basic Law, mainland residents who wish to enter the Hong Kong Special Administrative Region (SAR) for whatever reasons must apply to public security authorities in the Mainland for approval. The ImmD thus maintains close liaison and exchanges intelligence with mainland public security and border control authorities to more effectively curb illegal activities of mainlanders in Hong Kong. The ImmD regularly notifies the relevant authorities of the particulars of mainland visitors who have worked illegally and engaged in prostitution in Hong Kong, so that they can conduct detailed investigations into and follow up the cases, and strengthen the examination of any subsequent applications of these mainlanders to enter Hong Kong. This includes not allowing them to visit Hong Kong again for some time in appropriate cases.

The front-line officers of the ImmD at various control points will, while striving to facilitate immigration clearance for mainland visitors, also keep a watchful eye on suspicious visitors. Close examination will be conducted as and when necessary to prevent any persons with dubious intentions from entering Hong Kong. From January to September 2003, 11 570 mainland visitors were refused entry for doubtful purpose of visit. In particular, to prevent mainland

visitors with criminal records in Hong Kong from seeking to enter Hong Kong again on another identity, the ImmD, while exchanging intelligence with the relevant mainland authorities, has also strengthened the training of front-line officers at various control points to enhance their alertness, interrogating skills and ability to detect forged documents (including those obtained unlawfully).

The ImmD is also studying the possibility of introducing a photo identification system in which the photos of offenders would be stored. If ImmD officers are suspicious of the identity of a visitor, the visitor's picture could be scanned and compared with photos stored in the system. This should help to identify those attempting to enter Hong Kong again under a different identity. It must be emphasized that this is a very preliminary idea and the ImmD still has to thoroughly consider its feasibility, cost-effectiveness and legal implications before putting forward more detailed proposals.

As pointed out by Members earlier, those who were arrested for working illegally or engaging in prostitution in Hong Kong recently had entered Hong Kong on business endorsements. The ImmD is very concerned about this. We have notified our colleagues responsible for the relevant work. The relevant issuing authorities in the Mainland have also been notified, so that they can look into ways to address the problem.

Moreover, on the collection of intelligence, apart from carrying out the relevant work locally, maintaining close communication and exchanging intelligence with mainland authorities is also an area of work to which the police and the ImmD attach great importance. For example, through regular high-level meetings on criminal investigation, the police and mainland public security authorities will specifically look into ways to foster mutual co-operation in combating cross-boundary prostitution activities. Both sides have also agreed that efforts be made to further improve the network for exchange of intelligence on vice activities. These exchanges of intelligence have played a positive role in the joint operations undertaken by the two places.

As regards law enforcement, the Task Force of the ImmD conducts inspections at factories, restaurants, business establishments and black spots of illegal employment from time to time. It also launches frequent inter-departmental operations with the police and the Labour Department, conducting blitz checks at black spots of illegal employment such as shops, public places and construction sites. Of the 3 792 anti-illegal employment operations mounted by

the ImmD from January to September this year, 67 were jointly conducted with other departments.

To curb prostitution by mainland visitors, the police have stepped up enforcement efforts by, for instance, conducting more frequent inspections of suspicious vice establishments, launching operations against on-street prostitutes and planning "undercover" operations as and when necessary. The police would also launch operations jointly with the ImmD from time to time. In the first nine months this year, the police have launched 40 anti-vice operations jointly with the ImmD, including focused operations targetting at the situation of different districts in Hong Kong. For example, between May and July, the police and the ImmD launched a number of joint operations in Yuen Long and Sham Shui Po, in which 260 women from the Mainland were arrested for prostitution and breach of their conditions of stay.

Besides, through co-operation with the relevant departments in Guangdong and Macao, the local law enforcement departments have mounted operations specifically against cross-boundary prostitution syndicates. Following the successful operation code-named "Fire Lily" in May last year, the law enforcement agencies in Guangdong, Hong Kong and Macao jointly launched an operation code-named "Operation Twilight" in September this year, in which 250 female mainlanders suspected of engaging in prostitution in Hong Kong were arrested.

To enhance co-ordination among various departments with a view to taking more effective actions against mainlanders working illegally or engaging in other unlawful activities in Hong Kong, the Government formed an inter-departmental Task Force in April this year. The Task Force is chaired by a Deputy Commissioner of Police and comprises members from the ImmD, Customs and Excise Department, Correctional Services Department, Labour Department, Food and Environmental Hygiene Department (FEHD), Lands Department, and so on. The Task Force facilitates regular exchange of information between the departments and reviews as well as co-ordinates the work of different departments, in order to combat these illegal activities more effectively.

In the debate, some Members mentioned the problem of law-breaking mainlanders staying in unlicensed guesthouses. Due to the theme of this motion and the time constraint, it is difficult for me to give a detailed account of the



many measures adopted by the Home Affairs Department (HAD) against unlicensed guesthouses here. However, with regard to inter-departmental co-operation, the police and the Office of the Licensing Authority under the HAD have enhanced co-operation in launching operations particularly in districts where the problem is serious. The police and the HAD have recently launched a series of joint operations in Tsuen Wan, Sham Shui Po, Yau Tsim Mong District and the Eastern District of Hong Kong Island.

Mr Henry WU has mentioned the problem of "one-woman brothels". As I said on the last occasion, the Government does not consider it appropriate to impose legislative control on "one-woman brothels" at the present stage. However, this does not mean that the Government has attached no importance to this problem. The police will step up inspections and operations in places where these so-called "one-woman brothels" are rampant, in order to curb the activities of these "one-woman brothels".

Some Members mentioned earlier the need for disciplined forces to increase manpower for operations against illegal workers and prostitution. Before an operation against illegal workers is launched, the ImmD, the police and the Labour Department will make manpower deployment based on the need of the operation. For example, for a general large-scale joint operation, 170 to 330 officers will be deployed by the police, 35 to 65 officers from the Task Force of the ImmD, and 20 to 40-odd officers from the Labour Department. For operations targeting at prostitution by female mainlanders in Hong Kong, the police and the ImmD will deploy manpower and adjust the strategies of operation as appropriate in the light of the situation and resources of each police district. Over 100 officers from the police and the ImmD will be mobilized to take part in each large-scale operation. Indeed, the manpower resources of the relevant departments for these actions are rather tight at present, and the management of the Government fully appreciates the pressure of front-line officers. We will regularly review and adjust the manpower resources of each department to ensure that our operations against these unlawful activities are effective.

With regard to prosecution and penalty under the law, section 41 of the Immigration Ordinance provides that any person who contravenes a condition of stay by working illegally in Hong Kong shall be guilty of an offence and liable on conviction to a fine up to \$50,000 and imprisonment up to two years. Any person who aids or abets someone to breach their conditions of stay in Hong Kong is in contravention of section 89 of the Criminal Procedure Ordinance and

section 41 of the Immigration Ordinance. The maximum penalty is also a fine of \$50,000 and imprisonment for two years.

Any employer who employs a person not lawfully employable commits an offence and is liable on conviction to a fine up to \$350,000 and imprisonment up to three years under section 17I of the Immigration Ordinance. The ImmD has always regarded employers of illegal workers as the root of the problem and thus stern measures should be taken against them. So, if there is sufficient evidence, actions will surely be taken against them to achieve the deterrent effect. In the first nine months this year, 783 employers were arrested for suspected hiring of illegal workers.

Miss CHAN Yuen-han asked earlier whether we had reflected to the Court the inadequacy of sentence since we have always been complaining about this. We have reflected this to the Court. In a recent case, the employer was given a substantial sentence of 18 months of imprisonment by the Court for employing illegal workers.

As regards sentencing, the Court will consider various factors such as facts of the case, mitigating circumstances, previous sentencing guidelines, and whether the defendant pleads guilty and has any past criminal record. The ImmD is very concerned about the adequacy of sentence imposed on employers convicted of employing illegal workers. If there are reasons to believe that the sentence in a case is clearly inadequate, the ImmD will seek legal advice from the Department of Justice and consider whether an application for sentence review or an appeal should be lodged, with a view to increasing the deterrent effect against the employment of illegal workers.

On efforts to combat prostitution, the police will, where evidence is sufficient, prosecute any organization or person found to be controlling other people in prostitution activities for "living on earnings of prostitution of others" or "keeping a vice establishment". Under the Crimes Ordinance, the maximum penalty for such offences is imprisonment from 10 to 14 years. More than 80% of the persons convicted of "keeping a vice establishment" will be sentenced to immediate imprisonment.

Mainland visitors engaging in prostitution in Hong Kong are in breach of their conditions of stay. If they are convicted under the Immigration Ordinance, the maximum penalty is a fine of \$50,000 and imprisonment for two years. If

they solicit in public places, they may commit the offence of "soliciting for an immoral purpose", of which the maximum penalty is a fine of \$10,000 and imprisonment for six months. According to our observations, mainland visitors convicted for prostitution will mostly be sentenced to imprisonment for about two months.

As regards whether legislative amendments will be made to increase the maximum statutory penalty for working illegally or prostitution, we hope that a decision will be made as to what should be the next step only after we have gained a clear understanding of the development of the situation out of observation over a period of time.

Members also mentioned earlier that the Government can deter employers from hiring illegal workers through outsourcing services and the licensing system. In fact, in outsourcing services through tenders, all government departments now adopt an assessment scheme under which this factor is duly taken into account. For instance, the FEHD and the Leisure and Cultural Services Department (LCSD), which tender most of the service contracts, adopt a marking scheme for evaluating tenders in the outsourcing process. One of the assessment criteria is whether the tenderer has contravened the Immigration Ordinance. Any conviction record of employing illegal workers will have a bearing on the assessment and may eventually lead to rejection of the tender.

Besides, the FEHD and the LCSD have expressly stipulated in the general conditions of all of their service contracts that if contractors are found to have employed persons not lawfully employable in fulfilling their service contracts and are subsequently convicted for breaching the provisions of the ImmD, the convictions can be construed as a serious breach of contract. The FEHD and the LCSD may immediately terminate the contract in accordance with the relevant conditions.

Regarding the licensing system, suspension or cancellation of licences held by persons with records of employing illegal workers is a fairly serious penalty. It is usually imposed in accordance with the provisions of the relevant legislation. If the relevant legal provisions do not carry any stipulations relating to the employment of illegal workers by licensees, records of employing illegal workers do not constitute sufficient grounds for suspension or revocation of licences. For instance, the Demerit Point System of the FEHD is implemented for protecting food safety and environmental hygiene. Therefore, hiring illegal

workers in itself does not lead to the suspension or cancellation of the licence of a food establishment.

Members also mentioned the extension of the individual visit scheme to the entire Guangdong Province at an earlier time. We are discussing with the mainland authorities the various implementation details of the extension of the scheme and will make announcements in due course. As regards border control points, we will discuss and identify ways to ensure smooth immigration clearance. Our law enforcement departments and the relevant mainland departments will work in concert to enhance monitoring and co-operation, with a view to curbing illegal activities as far as possible.

To conclude, through the implementation of measures at various levels, all front-line departments will continue to spare no effort in curbing all law-breaking activities relating to illegal employment and prostitution, in order to ensure stability and peace in society. Hong Kong is a cosmopolitan. The law and order and crime rate in the territory still fare better than other metropolises in comparison.

An increasing number of mainland visitors has brought many new opportunities to all trades and industries in Hong Kong, and injected new vitality into the Hong Kong economy. While actions are taken against a small number of law-breaking mainland visitors, we should absolutely not ignore the fact that the overwhelming majority of mainland visitors are law-abiding and they have made positive contribution to the economy of Hong Kong. We should not form any discriminatory views on or accord discriminatory treatment to mainland visitors in general because of the acts of a small group of law-breakers from the Mainland. The Government will make ongoing efforts to deal head-on blows to this small group of law-breakers while at the same time attracting and facilitating visits by more mainland visitors to Hong Kong.

Here, I wish to express my deep gratitude to Mr YEUNG Yiu-chung who moved this motion for debate, and to Mr James TO and Mr Frederick FUNG who have proposed amendments to the motion, and also to Members who have spoken today. The Government will carefully consider their valuable views, and will work hard to ensure effectiveness in our endeavours to combat illegal employment and prostitution. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr James TO to move his amendment to the motion.

**MR JAMES TO** (in Cantonese): Madam President, I move that Mr YEUNG Yiu-chung's motion be amended, as printed on the Agenda.

**Mr James TO moved the following amendment: (Translation)**

"To add "; they work in construction sites, licensed food premises, guesthouses and places of public entertainment" after "That, as information indicates an upward trend in the number of mainlanders arrested for engaging in illegal employment and prostitution in Hong Kong in recent years"; to delete "and" after "(a) increase manpower" and substitute with ","; to add ", and gather intelligence" after "step up inspections"; to delete "and" after "(b) review the relevant legislation and introduce heavier penalties;" and substitute with "(c) review the Government's outsourcing and licensing systems, and study the introduction of a point system and more stringent licensing requirements to penalize those employers who employ illegal workers, with a view to deterring them from employing illegal workers; and"; and to delete "(c)" and substitute with "(d)"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr James TO to Mr YEUNG Yiu-chung'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)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Mr IP Kwok-him voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU and Mr Tommy CHEUNG abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 12 were in favour of the amendment and 11 abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present and 19 were in favour of the amendment. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**MS MIRIAM LAU** (in Cantonese): Madam President, I move that in the event of divisions being claimed in respect of the motion on "Combating the problem of mainlanders engaging in illegal employment and prostitution in Hong Kong" and its amendments, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

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

**PRESIDENT** (in Cantonese): Does any 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 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 divisions being claimed in respect of the motion on "Combating the problem of mainlanders engaging in illegal employment and prostitution in Hong Kong" and its amendments, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, as Mr James TO's amendment has been passed, I have given you leave to revise the terms of your amendment, as set out in the paper which has been circularized to Members on 3 November. In accordance with the House Committee's recommendation which I have also accepted, when you move your revised amendment, you have up to three minutes to explain the revised wording in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

**MR FREDERICK FUNG** (in Cantonese): Madam President, as Mr James TO's amendment has been passed, I have to withdraw some of the changes that I have sought to make. However, concerning the drift of my original amendment, I have already stated my views and proposals in the 10-minute speech given by me. As a result of the revised wording, the wording of my amendment will not be the same, but I believe the Government has heard my views. I hope that the Government will consider my views when it considers how to combat the problem of mainlanders engaging in illegal employment and prostitution. Although the wording of the present amendment is different, the original intent is the same as those of the original motion and the other amendment, that is, they all urge the Government to step up the work in this area by adopting various approaches and strategies. Here I hope Honourable colleagues can support my amendment.

**Mr Frederick FUNG moved the following further amendment to the motion as amended by Mr James TO: (Translation)**

"To add "and as the illegal stay of many of these mainlanders in unlicensed guesthouses has indirectly encouraged these illegal activities," after "but also causes serious nuisances to the public,"; and to add ", and suggest to the relevant mainland authorities that effective measures be adopted to prevent those mainlanders who have committed crimes in Hong Kong from re-entering the territory with other identities" after "in order to enhance the collaborative efforts in combating illegal employment and prostitution"."

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Mr Frederick FUNG's amendment to Mr YEUNG Yiu-chung's motion as amended by Mr James TO, 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)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for one minute.

**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 Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Michael MAK and Mr IP Kwok-him voted for the amendment.

Mr Timothy FOK, Mr Abraham SHEK and Mr Henry WU abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 20 were in favour of the amendment and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present and 19 were in favour of the amendment. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**PRESIDENT** (in Cantonese): Mr YEUNG Yiu-chung, you may now reply. You still have four minutes 14 seconds.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, Members have made very enthusiastic response to today's motion debate, with 21 Members having spoken in turn. They are indeed all in support of combating activities involving illegal employment and cross-boundary prostitution. Colleagues of this Council have reached a significant consensus, feeling that the issue is vital to our peaceful living environment. In fact, quite a number of members of the public have expressed their views on this issue outside the Chamber. On my way here today, some members of the public handed me a large pile of signatures and I would pass it on to the Secretary later.

I agree very much with a point raised in a number of Members' speeches. They stressed that we should not cast a discriminatory look at those mainlanders

who come to Hong Kong for the normal purposes of sightseeing and business. This is very important, for only a small number of mainlanders are involved in prostitution and illegal employment activities after all. The issue also involves the relationship between the Mainland and Hong Kong. Most of those mainlanders who come to Hong Kong on the individual visit scheme are law-abiding and contribute a lot to the economy of Hong Kong. I am very grateful to several Members who have spoken on this motion, especially Ms LI Fung-ying, for she has adopted a compassionate approach and apart from showing her concern, she is also sympathetic to those illegal workers in a sorry plight. Some Members have advanced very creative views, especially their opinions on those middle-age gentlemen. I believe the feasibility of the proposals have to be considered by the Government, and the outcome is not yet known.

Nevertheless, from the Secretary's response, we can see the Government's confidence and determination, and the Secretary has provided us with considerable figures on the government effort in this regard. However, notwithstanding the number of raids carried out, why is the problem still deteriorating? The Government must think about this. Has the situation as stated by Mr Jasper TSANG, that is, the restraints in the existing legislation led to difficulties in prosecution, thus resulting in a low success rate? I think the Government must consider this seriously. In fact, the most important task of the Government is to provide the public with a peaceful living environment.

I thank again Members for having spoken in support of my motion. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr YEUNG Yiu-chung, as amended by Mr James TO and Mr Frederick FUNG, 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 as amended passed.

**PRESIDENT** (in Cantonese): Second motion: Regulating health foods.

### **REGULATING HEALTH FOODS**

**MR WONG YUNG-KAN** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, when I was a child, Hong Kong was not at all affluent. "Salted fish and vegetable" and "rice with soy sauce" were no strange dishes to the masses at that time. People at that time did not pay too much attention to the health impacts of the foods they ate, and their primary concern was to fill their stomachs. Nowadays, however, people have become increasingly aware of the importance of healthy diets. For the sake of getting more nutrients, improving their body shapes and generally nursing their physical health, they may even spend huge sums on the purchase of health foods.

Undeniably, the health foods industry offers enormous potentials. The fact that manufacturers are willing to spend huge sums of money on appointing celebrities as speakers for publicity and promotion is cogent proof. Besides, many jargons coined by the industry, such as "detoxification", "slimming", "whitening" and "perfect breasts", are now very popular in society. All this shows that the local health foods industry has developed to a certain scale. Currently, the annual turnover of the global health foods market amounts to US\$75 billion, and it is showing a continuous upward trend, so if Hong Kong manufacturers can build up quality brand names for their products and market them worldwide, Hong Kong will definitely reap considerable economic gains. However, the building up of brand names requires as a must the back-up of appropriate legislative control to ensure product quality and instill confidence among consumers. But just what kind of regulation can enable us to exploit the potentials of the industry while protecting consumer interest?

Many countries or places in the world have already put in place laws on regulating health foods, but the degree of regulation varies from country to country. The regulation imposed in the European Union (EU) and the United States is more lenient. In the EU, only health foods that carry claims of medical effects are subject to the same regulation as that of drugs; others only need to be regulated as ordinary foods. In the United States, the Food and Drug Administration sets down four approved health effects, and claims of these effects can only be made after scientific verification. However, claims of general health effects can be made without verification. In contrast, the regulation in Canada and Australia is more stringent. In Canada, all natural health products will have to be licensed before sale under the Natural Health Products Regulation due to become effective in 2004. If claims of health effects are to be made, clinical evidence must be provided. In Australia, whether approval is to be given to the sale of a health food will depend on the health risks involved.

We may also look at countries or places inhabited mainly by Chinese. In the Mainland, all health foods are required to be registered under the Health Foods Management Method. The advertisements displayed are also subject to regulation and must be supported by scientific proof. In Taiwan, health foods are defined as products endorsed to be satisfying the seven health claims approved by the Health Department, and only such products are allowed to be sold on the market. And, in nearby Macao, there is also a plan to draft a law to provide for a health foods registration system.

In contrast, in Hong Kong, the Government only seeks to regulate health foods either as proprietary Chinese medicine or Western medicine on the basis of whether they contain any ingredients of controlled drugs. And, those which do not are just treated as ordinary foods. The biggest problem with this mode of regulation is that the health foods treated as ordinary foods are not subject to adequate control, not least because the existing legislation focuses only on food safety and ignores the validity of any avowed curative effects. The control over the labelling of health foods and protection for consumers are also obviously inadequate.

Madam President, the DAB knows very well that full-scale regulation of health foods will cause certain inconveniences to the industry, but it must be pointed out that the absence of proper regulation will hinder the development of the local health foods market. In the Mainland, for example, because the

control over health foods is not vigorously enforced, the market there is flooded by illicit products, and consumer confidence in health foods is greatly affected. In 1994, the total turnover of the health foods market in China was RMB 30 billion yuan, but by 2002, it plummeted to RMB 19.3 billion yuan. This shows that the absence of appropriate regulation on health foods will produce the opposite result of reducing consumer confidence in these products and impede the development of the health foods market.

Last month, the Government proposed to amend the Undesirable Medical Advertisements Ordinance, extending its application to nine more claims such as detoxification, slimming and reduction of cholesterol levels, and also pinpointing exaggerating and untruthful health foods advertisements. According to the survey findings released by the DAB yesterday, almost 40% of the respondents learn about health foods products through advertisements, but they do not give much credence to any claims made in advertisements. Therefore, if we can effectively clamp down on exaggerating and untruthful advertisements, we will at least be able to offer one more kind of protection for consumers and increase their confidence in health foods products. But targeting only on claims in advertisement will not offer consumers any comprehensive protection. Traders are after all very shrewd in doing business, so apart from advertisements, they may resort to many other means of publicity. Membership systems and publicity through connections are common ways of promoting the sale of health foods products. Therefore, targeting on advertisements is at best a stopgap solution. The only ultimate solution is to ensure the quality, safety and curative effects of health foods.

As far as food safety is concerned, although the existing Public Health and Municipal Services Ordinance requires that all foods sold must be safe to eat, it does not specify that the manufacture of health foods must comply with quality production standards. But other places in the world have already started to step up their control on a continued basis. Next year, the Food and Drug Administration of the United States will implement tighter control over the production procedures of health foods. The new law will impose stricter requirements on the design and construction of production plants, their production equipment, quality control and product testing of health foods. The DAB is of the view that the Government should compile a code of quality production in conjunction with the industry, so as to impose control over production procedures and upgrade the safety of health foods. This will not only safeguard food safety more effectively, but also help Hong Kong create its own brand name health foods and meet international control requirements.

Besides, the labels of health foods is another major channel through which consumers can obtain information about the health foods. But the existing legislation on the labelling of health foods is just the same as that on regulating ordinary foods. However, since health foods involve claims of health-related curative effects, people are especially concerned about their ingredients, directions of use and side-effects.

The DAB survey reveals that some 10% of the respondents who had consumed health foods confirmed that they had suffered some side-effects, and about 30% of the respondents said that their relatives and friends had also had such experience. Therefore, the potential risks posed by health foods to people must not be overlooked. However, the existing labelling law does not require the attachment of any warning. According to our survey findings, 40% of the respondents say that the health foods they consume do not carry any warning, and this will easily make consumers overlook the possible side-effects of the products. If we look at international regulation standards, we will see that many countries, including the United States, have started to step up their regulation of label contents. The DAB is of the view that the Government must review the requirements under the existing labelling laws and draw up appropriate labelling laws for health foods.

Madam President, finally, I wish to say a few words on whether a health foods approval system should be set up. The DAB opines that this is worth consideration. On the one hand, this can protect the interests of consumers, and on the other, enable the overall quality of health foods to be upgraded, thus increasing our competitiveness in the world market. However, we must also think about what type of system is to be established, so as to avoid impeding the development of the health foods market. In Taiwan, for example, the Health Foods Management Method has been in operation for four years, and so far, only 39 products have been approved as health foods. This has made the industry there very much discontented. It is criticized that the mechanism in Taiwan is much too harsh, to the extent of strangling the development of the health foods market, and there are many demands for relaxation. There are now discussions in Taiwan on a dual regime of "pre-scrutiny and self-management", and people are considering to relax the standards governing the scrutiny of health foods as patent medicine. We hope that if the Government really decides to implement a health foods approval system, it will learn from the experience of other places and maintain close contact with the industry, so as to ensure the sustainable development of the industry while seeking to protect the interests of consumers.

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

**Mr WONG Yung-kan moved the following motion: (Translation)**

"That, whereas it has become increasingly common for the public to purchase health foods, there are still quite a number of loopholes in existing legislation which regulates such foods, this Council urges the Government to devise a comprehensive regulatory mechanism for health foods, so as to safeguard the rights and interests of consumers and facilitate the development of the health food market."

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

**PRESIDENT** (in Cantonese): Mrs Selina CHOW and Mr Fred LI will move amendments to this motion respectively. Mr CHAN Kwok-keung will move an amendment to Mr Fred LI's amendment. Their amendments have been printed on the Agenda. The motion and the amendments will now be debated together in a joint debate.

I will first call upon Mrs Selina CHOW to speak first, to be followed by Mr Fred LI and Mr CHAN Kwok-keung respectively, but no amendments are to be moved at this stage. Members may debate the motion and the amendments. I now call upon Mrs Selina CHOW to speak.

**MRS SELINA CHOW** (in Cantonese): Madam President, with the ever rising standard of living, people have become more and more concerned about health and ways to maintain it, thus leading to the incessant expansion of the health foods market. It is thus only natural that the public have come to attach importance to health foods information. It is admittedly important to protect the health of consumers, but it will certainly do no good to the public and the industry if attempts are made as suggested in original motion to demand the Government to devise a comprehensive regulatory mechanism for health foods in total disregard for consumer choice and vitality of the industry.

The Government has already put in place a number of ordinances to regulate health foods, the scope of which covers the safety of consuming such foods, label contents, the licensing of manufacturers and dealers as well as the



existence of Chinese or Western medicine as ingredients. Under section 231 of the existing Undesirable Medical Advertisements Ordinance (UMAO) of Hong Kong, advertisements are forbidden to make any claim that a product or course of treatment can prevent or cure the diseases specified in the UMAO. The scope of regulation also covers the health claims made in product labels. As for health foods claimed to have curative effects or drug ingredients, the existing Pharmacy and Poisons Ordinance already imposes control over product safety, labelling and the licensing of manufacturers. And, products with ingredients of Chinese medicine are regulated by the Chinese Medicine Ordinance, which started in 2003 to take effect in phases. The consultation document recently published by the Government on the claims made by health foods proposes to impose regulation on two types of claims; the proposal has already aroused the grave concern of food importers, suppliers, wholesalers and retailers, and they have made requests for airing their views to the relevant authorities.

What we are discussing now is not the regulation of "drugs", but the regulation of "foods". To begin with, the various markets have yet to reach a consensus on the definition of health foods. What is more, generally speaking, health foods are not meant for curative purposes, not meant to be taken by a patient to cure his disease. Rather, they are meant to help the user improve his health. For this reason, even if health foods advertisements and publicity are a bit exaggerating, even if the health foods concerned may not be very effective or may not be effective at all, they will do no harm to the health of the user. I think the premise for the Government's intervention in the market should be the protection of consumer safety and health. In this connection, the existing UMAO can basically serve the purpose, so even if there are any practical and strong needs for changes, there is already a basis. Any request for government regulation of all health foods under the pretext of consumer protection is no different from dragging the Government into the market to erect various hurdles for suppliers. If we follow the same logic, should we also regulate the "exaggerating" claims of other types of products, such as cosmetics, skin care products and household goods? Are our consumers really so stupid that they are totally unable to make any judgements of their own? This explains why I propose in the motion to encourage the supply of product information to assist consumers in making informed choices when buying health foods. This is of course a good thing, but we must still adhere to the principle that the burden on consumers must not be increased and their choices must not be reduced. This is the only true way to protect consumer interest.

The greatest problem with the regulation of health foods is that internationally, there is not yet any consensus on how health foods or their health claims should be regulated. As I have pointed out, there is not yet any common definition of "health foods". As such a small market which imports most of its products from the rest of the world, can Hong Kong possibly formulate any scheme that can regulate all the health foods imported from the rest of the world? Regulation of this kind will bring forth unbearable consequences, and society as a whole will also have to pay a high price. But there does not seem to be any advantage at all. According to the information provided by the Retail Management Association, if health foods are really brought under regulation, huge numbers of products in the market will be affected. For example, some products, such as oatmeals, Quaker Oatmeal, which are claimed to be "useful in regulating cholesterol", or those brands of canola oil claimed to be "useful in reducing the chances of contracting cardio-circulatory system diseases", or the British product, Horlick, which is claimed to be "essential to natural bodily resistance", and some pure natural chrysanthemum tea claimed to be able to "detoxify, sharpen up people's vision and help digestion", in brief, products posing no major health hazards, will all be subject to regulation. If all the above claims are brought under regulation, the products' packaging will have to be altered, and their suppliers will also have to produce proof that the claims concerned are not exaggerated. If the products concerned come from countries where there is no such regulation, their supply will gradually shrink and in the end, it may even be possible that no such products can be sold any longer. The industry has told us of its great worry that the regulation of health foods may endanger their survival and add to their costs; in the end, the increased costs will have to be transferred onto consumers. Owing to rising costs, the import of some products may cease, or they may fail to compete in the market. In that case, the variety of products may shrink, and the choices of consumers may be reduced. What is most ironical is that if such supervision or regulation is really imposed, the industry will try to avoid breaking the law, and so they may stop making any claims at all. In that case, consumers will know nothing about the effectiveness of the products offered in the market. Although they can still buy these products, how can they make any informed choices in the absence of any information?

I have learnt from the Chinese medicine profession that the curative effects of many Chinese herbal medicines have been confirmed by various sources. For example, ginseng, Lingzhi and Cordyceps can enhance immunity. Korean ginseng is able to regulate blood pressure; Sanqi can reduce blood lipid, while Bezoar is good for detoxification. If curative claims are prohibited or regulated,

the retail market and the development of the Chinese medicine trade will both be dealt a severe blow. What is more, with the phased implementation of the Chinese Medicine Ordinance in 2003, products with Chinese medicine ingredients are already regulated, thus serving the purpose of protecting consumer health. So, what point is there for the Government to tighten regulation to such an extent that the industry can hardly survive? Some Chinese medicine manufacturers have told me that over the past one year, there have been many drastic market changes, such as the Chinese Medicine Ordinance and the Chinese medicine registration system; if health claims are brought under regulation, it will be difficult for the industry to keep pace with all the changes. Consumers will also find it hard to follow. There will thus be severe negative impacts on consumer interest and the development of the health foods market.

In order that consumers can be better enabled in their choice of products, the Liberal Party maintains that the authorities should, while paying heed to consumers' freedom of choice, actively encourage manufacturers, traders, import/export agents, wholesalers and retailers to voluntarily provide correct product information to assist members of the public in making purchases.

The Liberal Party notices that in recent years, the Government, the Legislative Council and members of the public have all tended to regard enhanced regulation as the best solution to problems. Actually, upon close scrutiny, problems are often the results of inadequate enforcement or insufficient information. Hong Kong people are very wise. In many cases, if they can realize the rationale, they will naturally come up with their own rules. And, one must never underestimate market forces, so any over-emphasis on legislative control will achieve the opposite result of eroding market flexibility and creativity. If we even bring low-fat ice-cream, fat-reducing hawthorn slices and fruit gummy with Vitamin C under regulation, there will be no room for any creative advertisements. Can we imagine what kind of place Hong Kong will become?

Thank you, Madam President.

**MR FRED LI** (in Cantonese): Madam President, I too wish to eat some ice-cream and hawthorn slices that can reduce blood pressure.

Madam President, in Hong Kong now, we do not have any specific legislation or code on the regulation of health foods, and as a matter of fact, there

is not any definition of health foods in the law. With the continuous increase in the supply of these foods, such a situation of near "lawlessness" is most undesirable. We may look at some weekly magazines to see what is going on. I have just read a very popular weekly magazine. There are eight pages of advertisements on eight types of edible health foods, which make all sorts of claims relating to instant fat burning, how much weight can be reduced in a month, and so on. The Democratic Party thus hopes that the Government can further explore the idea of regulating health foods for the protection of public health.

There are thousands of foods and drugs in the market featuring "slimming", "detoxification", "skin beauty", "antiseptic" and "anti-virus" functions to attract people. And, in recent years, there has also been a steady increase in people's expenditure on drugs and the quantities they purchase. Surveys also reveal that the willingness to purchase health foods will increase proportionately with income levels. People just hope that by consuming these foods, they can become healthier, gain more nutrients, prevent incidence of diseases and even improve their looks.

The incessant increase in demand and supply has not, however, led to any corresponding improvements to regulatory measures. The number of complaints about health foods received by the Consumer Council has increased continuously over the past two and a half years; in 2001, it received a total of 69 complaints about health foods; in 2002, there were 94 such complaints, representing a rise of 36%. In the first eight months of this year, the Consumer Council received 57 complaints. Most of these complaints were about the untruthful health claims of these foods, and the products under complaint were mostly slimming foods. The loss of money is not the most important thing; it is most unfortunate that some people have developed health problems after consuming foods claimed to be able to keep them healthy and help them reduce weight. There are innumerable types of health foods in the market, and their quality varies enormously, so the Government really needs to enhance its regulation in the interest of protecting public health.

Like other types of foods, health foods are subject to the Public Health and Municipal Services Ordinance. The Food and Drugs (Composition and Labelling) Regulations under the Ordinance provides that prepackaged foods, whether locally manufactured or imported, shall be marked or labelled with its food name or designation, a list of ingredients, durability indication and a

statement of special conditions for storage or instructions for use; and, must comply with hygiene standards and be suitable for human consumption.

In case the relevant foods contain ingredients of Western medicine, they shall be subject to regulation under the Pharmacy and Poisons Ordinance; if they contain ingredients of Chinese medicine, they shall be regulated under the Chinese Medicine Ordinance.

The Department of Health has recently published a consultation document, in which it is proposed to extend the ambit of the Undesirable Medical Advertisements Ordinance. The new groups of health claims proposed for prohibition include claims relating to slimming or fat reduction of the body; or the promotion of detoxification, or regulation of blood lipid or cholesterol. The Democratic Party welcomes this belated consultation document, but the Democratic Party also thinks that the SAR Government can still do more to protect public health.

At present, the law does not provide for any clear definition of "health foods", much less any requirement that health foods must be registered and proven to be hazard free before they can be sold in the market. However, in Australia, China and Canada, health foods have long since been required to obtain pre-sale approval. Registration approval in these countries is based on product safety, effectiveness and quality. If a manufacturer claims that a product can achieve a certain health effect, it must provide proper scientific proof.

In Australia, a special "code of quality production" has even been adopted to require local manufacturers of medicinal products and health foods to apply for licences, so as to ensure compliance with hygiene standards in the course of production and thus the safety of consumers. As for overseas manufacturers, they are also required to comply with specified production procedures to ensure the quality of the foods offered.

The Democratic Party opines that the introduction of an approval system offers the merit of ensuring that health foods sold in the market can all attain some specified standards. Since health foods are somewhere between ordinary foods and controlled drugs and they all make some kinds of health claims, the Democratic Party hopes that the Government can study the possibility of introducing an approval system to protect public health and interests.

The Democratic Party fully appreciates the worry of the business sector and retail trade that an approval system may hinder their business flow and increase their costs. But the example of Australia shows that it will take just about 20 days for approval and assessment. Will this really produce any significant impact on the sale of health foods? Besides, an approval system will also prevent unscrupulous traders from selling any substandard health foods, thus ensuring that the overall reputation of the industry will not be tarnished. The Democratic Party maintains that an approval system is not such a horrible monster as perceived by traders. Rather, such a system will serve a much more positive purpose.

In addition, the Democratic Party also hopes that the Government can enhance its supervision of health claims in advertisements. Although the Government has proposed to extend the list of prohibited health claims under the Undesirable Medical Advertisements Ordinance, banning references to fat reduction and detoxification, I must still point out that manufacturers are indeed very "smart". The Democratic Party fears that following the legislative amendments, they may still try to find loopholes in the law and choose their rhetoric carefully to attract customers and lead them to make various associations. For this reason, the Democratic Party hopes that the Government can review the legislation on an ongoing basis and step up enforcement, so as to protect the rights and interests of the people.

Madam President, Mr CHAN Kwok-keung proposes to introduce a code of quality production and enhance the regulation of label contents; the Democratic Party will support his amendment for its conviction that continuous improvements must be made. However, the Democratic Party finds it difficult to support Mrs Selina CHOW's amendment.

The Democratic Party appreciates the worry of the business sector and small traders. But can "actively encourage" alone achieve the purpose? The experience in the past few years has told us that this is not enough at all. Therefore, the Democratic Party maintains that the Government must enhance its regulation, in the hope of discarding the dross of the industry. That way, we will be able to protect consumer health and interests as well as law-abiding traders.

I so submit.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, humans have a natural inclination for beauty. As a result, a wide selection of slimming, detoxification, beautification and tonic foods is available everywhere on the market. At the same time, publicity is becoming increasingly appealing as promoters of numerous slimming or health foods are willing to go the extra mile for their advertising campaigns. Slimming has become almost indispensable.

In a survey conducted by the Democratic Alliance for Betterment of Hong Kong (DAB) in 2000, 25% of the interviewees indicated they had purchased health foods. In a similar survey conducted this year, the ratio of those who have purchased health foods has risen to 45%. In other words, there is a growing demand for health foods from people who wish to improve their physique and trim their bodies.

However, it might lead to a terrible situation if members of the public misled by advertisements purchase health foods without quality assurance. The lack of transparency of the production process has made it impossible for consumers to find out the origin and quality of the products, the conditions of the factories, and so on.

The amendment proposed by me today to Mr Fred LI's amendment is targeted at the first issue, that is, production must be regulated in an unambiguous manner. In addition, a code of practice on quality production must be formulated to encourage the industry to pay attention to maintaining factories in good conditions for compliance with such international standards as ISO, GMP, and so on. A germ-free production process is a fundamental requirement for food production. Otherwise, the physical well-being of consumers will be at risk.

Furthermore, consumers can be misled very easily by advertisements and the contents of labels. For this reason, advertisements for health foods must be regulated. However, I think the Government must strike a balance. It has proposed to ban such words as "slimming", "detoxification" and so on, from appearing in health food advertisements. Actually, warnings will be issued to people placing exaggerated and false advertisements. In my opinion, there is even a greater need for us to pinpoint the purported efficacy of health foods and require the production of scientific evidence, in order to tackle the problem at root.

The labels of the products should carry warnings to, for instance, remind consumers of the side-effects of the products or various possible symptoms, such as insomnia, nervousness, diarrhea, and so on. A number of health foods have deliberately concealed their side-effects and, at the same time, failed to give an account of the nutrients provided. In this respect, manufacturers should be required to label the information clearly to enable consumers to know the details.

Members have discussed health foods advertisements and their production processes earlier in the debate. A point which remains extremely important is that it is necessary to implement regulation of proprietary Chinese medicine as soon as possible. As the health foods available at present are mostly extracted from Chinese medicine, it is necessary for the products to state clearly if any of their ingredients might cause side-effects or any impact on the chronically ill.

Actually, the Government's proposal for regulation is generally acceptable. Nevertheless, the control on advertisements is only transient as there are bound to be counter-measures, as the saying goes. Manufacturers will still be able to promote their products through health seminars, free food testing, recruitment of members, and so on. In the end, all efforts of control will be rendered void. Furthermore, a number of employees of the industry might be affected. As such, I hope the Government can put its emphasis on studying measures against fraud.

Madam President, there is an international set of methods for regulating health foods. For instance, all foods are required to be accompanied with scientific evidence on the Mainland. In Australia, the authorities will, based on health risks to human body, determine whether certain health foods should be vetted and approved before sale. All these methods have a reference value, and it is worthwhile for us to make reference to them. We may also borrow them as examples in our examination of ways to introduce a vetting and approval system.

However, once the Government begins to consider introducing a vetting and approval system, it must fully consult the industry and the medical sector to prevent the system from becoming excessively strict and restrictive to stifle the vitality of the health foods market, thus affecting the job opportunities of the employees of the industry. In fact, the Government should strengthen education to enable the public to understand that a balanced diet, appropriate



exercise, sufficient rest, a cheerful mind and attention to personal hygiene are all indispensable to a healthy life.

Madam President, I so submit.

**DR LUI MING-WAH** (in Cantonese): Madam President, there is bound to be a growing concern for physical health in an affluent, modern society. This strong demand has thus provided an increasing momentum for health foods claiming health maintenance properties to become available in the market. It has been reported that more than \$1 billion was spent by the people of Hong Kong annually on purchasing health foods. The market power has prompted health foods to rapidly develop into an important emerging industry.

Owing to the wide variety of health foods on the market, there are both weeds and seedlings in terms of quality. The efficacy of products is often exaggerated, and there are often misleading claims about the products. Therefore, such irregularities and the safety of the products have aroused concerns and even worries in the community. Incessant calls have been heard for the regulation of health foods. As such, this should be the right time for the Government to consider the necessity of regulating health foods and ways of achieving this.

Proprietary Chinese medicine is, as its name implies, patent medicine made from herbs to deal with certain illnesses. Upon the full implementation of the Chinese Medicine Ordinance, proprietary Chinese medicine will be regulated by the Ordinance. Nevertheless, many health foods and food products claiming beneficial health effects also contain herbal substances of varying quantities. They are used mainly for promoting the overall well-being of physical health, not as medicine for curing any illnesses. This represents a typical gray area since there are at present no proper rules and regulations for these products. It is indeed improper and inadequate for health foods and food products claiming beneficial health effects to be regulated by the Public Health and Municipal Services Ordinance and the Undesirable Medical Advertisements Ordinance at present. Before proper laws come into effect to regulate health foods, the Government should formulate relevant codes of practice or guidelines for health foods for compliance by the industry. Nevertheless, the Government must make a clear classification of health foods, food products claiming beneficial health effects and proprietary Chinese medicine before dealing with them

differently. It should ultimately aim at safeguarding the rights and interests of consumers by enabling them to make informed choices with the supply of adequate information in choosing health foods or food products claiming beneficial health effects. Nevertheless, the codes of practice or guidelines to be formulated must also be able to safeguard the commercial and industrial development of the local community. Only through balancing these two sides can the best result be achieved and Hong Kong society enjoy the maximum benefit.

Thank you, Madam President.

**MR JASPER TSANG** (in Cantonese): Madam President, when I was a school teacher, I used to remind my students not to make embarrassingly remarks specific to the particular features of someone's physique and that it is inappropriate to laugh at other people because they are too tall, short, fat or thin.

However, contemporary culture appears to be just the opposite. Members reading newspapers, magazines or strolling on the streets will often notice some humiliating wordings targeted at someone's physique in the advertisements posted in public places. My colleagues have collected a few examples for me. They are, for instance, "elephants' legs", "over-muscular arms", "pork tenderloin" and "footballers' legs". Madam President, there are some more which are not suitable to be read out here because of their excessive vulgarity. In brief, these advertisements are extremely humiliating and offensive. They give us an impression that people allowing a certain part of their bodies to have extra fat should find it even more intolerable than having committed a crime, and they should feel ashamed of their appearance.

On the other hand, women who are slender and beautiful can be seen appearing in some programmes telling their own stories of how they have regained their confidence, career, love lives, and so on, after slimming and trimming. In brief, they are trying to promote health foods and develop the slimming industry by way of a publicity tactic of praising and censuring.

Madam President, I have shed 10 pounds over the past five months. This has absolutely nothing to do with slimming or improving image. This is because I was instructed by my doctor to go on a strict diet because of my exceedingly high levels of cholesterol and hypoglycemia. When it comes to

improving my image, my colleagues have actually invariably suggested me to gain a few more pounds of extra fat for that might enhance my image. However, it seems that the current trend has already set a standard for slimming. People not meeting this standard will apparently find it difficult to gain a foothold in this community.

Mr WONG Yung-kan has earlier on quoted the findings of a survey published yesterday. In a questionnaire survey conducted by the DAB on health foods earlier, it was found that 45% of the interviewees had the experience of consuming health foods and, of these interviewees, 16.4%, or one in every six interviewees, had developed side-effects after taking health foods. Among the interviewees, 40% obtained information on health foods from advertisements; more than half did not or could not obtain additional information; more than 40% found that the health foods they consumed did not carry any warnings on their packages; 80% had not sought advice from doctors, whether Chinese or Western medical practitioners, before taking health foods. These figures illustrate the fact that many people have purchased and consumed these so-called health foods without any knowledge of their side-effects, and that they rely considerably on advertisements.

Madam President, it does not really matter even if these health foods have not proved to be very effective, provided that they are healthy. This is because they might be able to produce a psychological effect that makes the users feel happier by believing that they have made their best efforts in slimming their bodies, and this is not harmful at all. The crux of the issue is we can see that some health foods are not healthy at all. They will cause serious harm to the body and, in some extreme cases, death.

We have some examples here. On 5 October this year, a Singaporean artiste nearly lost her life because of hepatic failure after consuming a health food named "Xianshi". Fortunately, she eventually managed to keep her life after receiving a liver section donated by her fiancé. She was also awarded HK\$4 million in compensation under a court ruling. However, the office of the manufacturer of "Xianshi" was later found to be empty with no occupants. 20 000 bottles of "Xianshi" were sold within four months in Singapore, and at least 16 people had developed serious side-effects and one died after consuming it. Five persons in Japan have also been suspected to be killed by the consumption of "Xianshi". According to some people who have consumed

slimming products, they experienced such side-effects as dizziness, sweating in the palms, fast heart beats, trembling hands, and so on, after consuming the products. According to medical advice, some weight-loss medicines contain thyroid hormone. Arbitrary intakes of such medicines might, in minor cases, result in endocrine disorder, arrhythmia, diarrhoea, dehydration, and even deaths in extreme cases.

Even if the ingredients of health foods are not problematic, improper advertising of health foods will cause serious psychological problems and affect the health of some people. For example, an 11-year-old girl developed anorexia as a result of her slimming and weight-loss attempts. Over four years, she has been going in and out of the psychiatric ward of a hospital and she is literally "half alive". At the age of 11, she is supposed to be in the middle of her growing period. She should eat well to absorb enough nutrients and enjoy her youth. It is unfortunate that she has become a victim of this kind of tragedy. It is no longer news that some people try to lose weight by eating only one apple daily for a couple of days and then indulge in over-eating for several days before resorting to "self-induced vomiting" because of guilty conscience. As a result, they suffer from anorexia and bulimia alternately. It was revealed by the Hong Kong Eating Disorders Association that the number of help-seeking cases recorded this year is two times higher than the number recorded last year. Among the help-seekers, eight adults suffering from anorexic have now become bulimia sufferers. Some help-seekers have even thought of committing suicide because of prolonged depression. This is actually associated with the effects produced by the slimming advertisements mentioned earlier.

Although the industry might be affected by enhanced supervision, the absence of supervision is not necessarily beneficial insofar as the industry is concerned. Let me cite the Mainland as an example. People in the country did not have faith in health foods because the enforcement of control on health foods was excessively lax. As a result, the sale of health foods has, on the contrary, been on the decline, from \$30 billion in 1994 to \$10 billion or so in 2002. For the physical and mental well-being of the public and, at the same time, in consideration of the healthy development of the industry, the DAB urges the Government to consult the industry expeditiously in order to come up with an effective and feasible regulatory mechanism for the purpose of improving the present situation whereby health foods and advertisements are subject to no regulation and there is a lack of public confidence.

**MS AUDREY EU** (in Cantonese): Madam President, I rise to speak in support of Mr WONG Yung-kan's motion and the amendments proposed by Mr Fred LI and Mr CHAN Kwok-keung.

Madam President, owing to the immense popularity of health foods in Hong Kong in recent years, even Mr WONG Yung-kan has found it necessary to talk about whitening, body slimming, bosom building, detoxification and fat elimination. In her speech earlier, Mrs Selina CHOW ruled out the necessity of supervision on the grounds that consumers are not stupid. Madam President, I do not wish to admit that I am stupid. However, when I look at these health foods, I could not help admitting that consumers (including myself) lack the professional knowledge to determine the accuracy of the contents of the advertisements and the health claims listed on the packages of the products. Nevertheless, Madam President, I have to state clearly that I am not among those consumers of health medicine mentioned by Mrs CHOW earlier.

However, the most serious problem remains that some health foods are not only ineffective in maintaining our health, for they might even cause side-effects and adversely impact on the health of users. In fact, in a test conducted by the Consumer Council two years ago, it was found that the effects of those so-called detoxification foods had been exaggerated and diarrhoea might be caused after taking such foods. The Department of Health (DH) has recently issued an order to recall a weight-reduction food item that claims to be able to achieve the dual purposes of detoxification and eliminating fat. As such, in the interest of protecting the rights and interests of consumers or safeguarding public health, it is necessary to subject health foods to enhanced supervision.

At present, health products being offered on the market are exempt from the Pharmacy and Poisons Ordinance and the Chinese Medicine Ordinance, and are not required to be registered, so long as they do not claim to be effective in preventing or treating diseases or containing Chinese medicine ingredients. The Undesirable Medical Advertisements Ordinance (UMAO) seeks only to prohibit advertisements from claiming that the products being advertised are able to prevent or treat a series of illnesses set out in the UMAO. The claimed effectiveness of health foods is at present largely not covered by the UMAO. In a consultation paper published in September this year, the DH proposed to incorporate nine categories of health claims related to detoxification, slimming, regulation of blood lipid and cholesterol, regulation of blood pressure and endocrine systems, and so on, into the UMAO.

With reference to overseas examples, we will find that, as mentioned by some colleagues just now, some countries such as the United States, Canada, Australia and China have imposed no ban on the advertising of health foods. However, manufacturers must ensure the accuracy of the claimed effects and are legally liable if the claims are found to be misleading. Among these countries, Australia and China have even required that health foods must go through a vetting and approval or registration procedure before they can be marketed to ensure the safety of consumers. If Hong Kong is to meet international standards and safeguard public health, it will have to strengthen its supervision of the health foods market.

However, does it mean the advertising of health foods must be banned in a broad-brush manner? Given the extensive impact of this issue, I agree that the industry, the medical profession and the public should be consulted before a decision is made. I personally do not consider it necessary to ban advertisements entirely. Nevertheless, the Government should at least enact legislation to prohibit manufactures and importers of health foods from making untruthful claims, and mandate disclosure of more information, such as whether the ingredients of the products might cause any side-effects, and so on.

Furthermore, merely controlling advertisement and publicity is not going to solve the problem at root. To effectively safeguard public health, the Government should consider introducing a vetting and approval or registration system for health foods. In addition, a safety test should be carried out on foods before they are brought onto the market. The Government's current practice of relying merely on the occasional sample tests carried out by the Consumer Council or other organs is obviously inadequate.

Madam President, in addition to strengthening regulation of health foods, I would also like to say a few words on the occurrence of sequelae or side-effects after the consumption of certain foods. Generally speaking, the existing laws have made it possible for compensations to be claimed under common law. However, under the principles of common law, consumers have to produce sufficient and legitimate evidence if they are to instigate proceedings. Nevertheless, information about the products is very often held by manufacturers. It is absolutely not easy for consumers, given their limited financial resources and ability, to engage experts to carry out tests or collect expert evidence with respect to the products. Moreover, if they are determined to proceed with the court action, they will have to bear enormous risks such as the payment of

exorbitant court costs, and so on. As such, consumers will be facing immense difficulty in instigating proceedings. Madam President, should consumers dare not instigate proceedings as a result of this, businessmen will be indirectly encouraged to continue with their undesirable practices of operation without regard to public health. For these reasons, I hope the Government can reconsider authorizing the Consumer Council to file lawsuits on behalf of consumers in such cases, in order to provide victimized consumers with a more comprehensive remedy or compensation mechanism.

I so submit. Thank you, Madam President.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, with a growing public awareness of physical health and shapely figures, it has become increasingly popular for the public to purchase and consume health foods. A wide selection of health foods available on the market has provided consumers with abundant choices. However, there are both weeds and seedlings in the health foods market at present, with some product advertisements exaggerating their efficacy in order to lure customers. Actually, these products do not only lack quality assurance, they often conceal their adverse side-effects as well as making misleading and false claims about their efficacy. The fact that the Consumer Council has received a lot of relevant complaints must therefore be addressed.

Hong Kong has always resorted to regulating health foods by general enabling legislation in order to regulate manufacturers, importers and exporters, wholesalers, and even advertisement claims. The relevant ordinances include: the Import and Export Ordinance, the Public Health and Municipal Services Ordinance, the Trade Descriptions Ordinance and the Undesirable Medical Advertisements Ordinance (UMAO). The Chinese Medicine Ordinance, passed in July 1999, seeks to strengthen the regulation of health foods containing Chinese herbal medicinal substance for the purpose of safeguarding the health and safety of the public.

In order to promote the healthy development of the health foods market, it is necessary for us to ensure various ordinances can play their roles effectively to eliminate poor-quality products or those making use of advertisements on exaggerated and false claims. As such, I support the proposal of the Department of Health (D of H) to include in the UMAO a schedule setting out the prohibition of nine categories of health claims.

However, it must be noted that regulation is not tantamount to "prohibition". Members must avoid making sweeping generalizations with respect to the market in which health foods with normal medicinal substance are sold, in order not to stifle the development of the industry. The purpose of regulation is to eliminate products and manufacturers that seek to pass off fish eyes as pearls in order to maintain a level playing field. With an impressive turnover at present, health foods involve extensive business volume and job opportunities, cover media, advertisement design and production, printing and packaging, and carry such production links as import/export, wholesale, retail and so on. The amount of money injected into the advertising market by health and slimming products alone has been enormous. In a study made by the Hong Kong Eating Disorders Association on the advertisements placed in 20 magazines between end-June and early-July this year, it is found that the number of advertisements related to slimming alone have accounted for nearly 17% of the combined number of advertisements placed in the magazines, or three times more than other advertisements under such other categories as accessories, entertainment and leisure. It can thus be seen that health products, including slimming food products, have become an important source of clientele for media advertisements today. For this reason, the Government must not overkill in its regulation of health foods. An opposite effect will be achieved if an effort of strengthening protection is turned into a blow.

In my opinion, the Government cannot rely solely on strengthening regulation to enable the health foods market to eliminate the impure and retain the pure. It should actively encourage the industrial and commercial sectors to reach an agreement in providing more comprehensive information on the products, such as information on ingredients, contraindications, product testing and efficacy evidence, possible side-effects, names of companies, places of origin, and so on, in compliance with the relevant registration and approval requirements in order to help consumers to make informed choices. At the same time, the Government should collaborate with the medical profession and experts in such fields as nutriology to consolidate the proper concepts and knowledge of the public in relation to health and nutrition, to promote the flow of information, and to provide updates promptly.

In contrary to the abundant supply of counterfeit and fake medicines on the Mainland, Hong Kong has a more healthy health foods market, and this is particularly precious. In addition to local people, a large number of mainland tourists visiting Hong Kong will purchase a large quantity of health foods as



souvenirs or for self-consumption. Allowing unscrupulous or ineffective health foods to pass off fish eyes as pearls will damage the reputation of Hong Kong's pharmaceutical industry as a whole. At the same time, pharmaceutical products from Hong Kong will, under the Mainland/Hong Kong Closer Economic Partnership Arrangement, be able to enjoy zero-tariff access to the Mainland from 1 January next year onward. As a result of a saving of up to 25% in import tariff, costs will be greatly reduced and productivity enhanced. Nevertheless, whether health foods from Hong Kong can expand its market on the Mainland is entirely dependent on the reputation of the "Made in Hong Kong" brand. The joint participation and efforts of various sectors are required in order to sustain a healthy growth of the local health foods market.

With these remarks, Madam President, I support the original motion and the amendments.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, Mrs Selina CHOW has earlier expressed her views on the original motion and the reasons for proposing her amendment. In the following, I will respond to the specific proposals made in the other two amendments.

Both the amendment proposed by Mr Fred LI and the one proposed by Mr CHAN Kwok-keung to Mr LI's amendment seek to strengthen the regulation of health foods or food products claiming beneficial health effects at the vetting and approval level. Nevertheless, it is feared that these amendments, though well-intentioned, cannot achieve much practical effect and will instead stifle the business environment.

To start with, in the European Union and the United States, always known to be exercising relatively stringent regulation on food markets, health foods are basically not required to undergo any manner of vetting and approval before coming onto the market. In the United States, for instance, local Acts seek mainly to control the food safety of relevant products. Products claiming to be effective in medical treatment will be subject to laws on control of drugs.

The current practice of Hong Kong is similar to those in Europe and the United States. Generally, the regulation of health foods is confined only to their safety, medicinal substance, the prevention of false descriptions, and so on. In addition, with the phased implementation of the Chinese medicine registration

scheme starting this year, health foods that contain Chinese medicine ingredients will be regulated. In other words, the Chinese Medicine Ordinance and the Pharmacy and Poisons Ordinance, acting as twin tools to regulate such products, are already able to further safeguard the health of consumers and safe consumption.

There are thousands of health foods and food products of various types and brands claiming beneficial health effects offered on the market now. If additional regulation in the form of a new system is introduced for the vetting and approval of these products, it is feared that the administrative workload of the authorities will increase substantially. This will in turn increase manufacturing costs and manufacturers will be tempted to relocate their production elsewhere. The local market is not at all big. To avoid increasing costs, manufacturers might not be willing to yield to the requirements prescribed in the Hong Kong market. In the end, they might shun Hong Kong altogether. In that event, the choices of consumers will on the contrary be reduced and, at the same time, the opportunities for the development of these products in Hong Kong will be stifled. In the end, the losses might outweigh the gains, and what started out to be a good act will once again end up being bad.

As for the strengthening of supervision, for instance, the amendment mentioned stepping up control over claims made in health foods advertisements, and this is precisely the direction the authorities are prepared to take in stepping up regulation. In addition, a relevant consultation paper has been released for public consultation. But what criteria were adopted for the inclusion of such proposals as regulating the immune system and promoting detoxification into the proposed nine categories of claims for control? Are the degrees of risks going to be used as a basis for evaluation? If so, are there any specific data available to substantiate the proposals?

Mr CHAN Kwok-keung proposed in his amendment to formulate a code on quality production. I see absolutely no problem with this proposal should it be implemented on a voluntary basis, similar to the proposal made in Mrs Selina CHOW's amendment. However, I would like to highlight the point that manufacturers may now apply for an ISO international certificate of recognition or apply to the Federation of Hong Kong Industries for the use of Q-mark symbols should they consider a certain product meet certain standards. What is the point of drawing up another set of standards such as "Good Manufacturing Practices (GMP)"? Will even more confusion be created and, as a result,

render manufacturers at a loss as to what to do and consumers all the more confused?

The last point I wish to raise concerns labelling. The food labelling law, which is in place at present, requires that the labelling descriptions of food manufactured should be consistent with the ingredients of the products. I fail to appreciate the rationale for introducing additional regulation. This appears to me to be similar to the formulation of a code of practice on quality production as mentioned earlier in the sense that an additional set of standards is proposed on top of an existing one. This is absolutely redundant and unnecessary.

In my opinion, these foods, if harmful to humans, must be controlled. If not, however, why do we not trust the smart consumers and let them make informed choices according to the information available on the market? Why must the Government be required to put a hand in everything? Furthermore, excessive regulation does not necessarily produce any positive impact on improving the business environment and promoting employment. It is even possible for negative impacts to be caused.

With these remarks, Madam President, I support the amendment proposed by Mrs Selina CHOW and oppose the others.

**DR TANG SIU-TONG** (in Cantonese): Madam President, in recent years, a wide selection of health foods is available on the market, and these products are enjoying a booming business. Health foods generally refer to functional foods. They may be called nutritional foods, medicinal foods or food supplements in different places. In terms of ingredient, some of them contain merely ordinary natural foods, while others contain Chinese herbal ingredients. Nevertheless, there are indeed a lot of problems with health foods for they are not subject to statutory regulation. This has often led to wavering public confidence in health foods, as can be seen from the rising trend of complaints related to health foods received by the Consumer Council in recent years. The complaints received mainly involve weight loss, with the majority of consumers being suspicious of the exaggerated claims, sale practices, efficacy and ingredients of the relevant products. According to the information furnished by the Consumer Council, 69 complaints and enquiries were received in 2001, but the number has risen sharply by 36% to 94 in 2002. In the first eight months of this year alone, a

total of 57 complaints and enquiries have been received by the Consumer Council.

One of the major factors contributing to the growing number of complaints is that more and more oral health products are suspected of making exaggerated and misleading claims. These claims might deter the seeking of suitable medical advice and early treatment. People might choose not to consult a doctor even when they are ill. However, these products are not subject to the existing advertisement law because no reference is made to curative or preventive effects. For this reason, in a recently published consultation document, the Department of Health proposed to ban nine health care claims under the Undesirable Medical Advertisements Ordinance (UMAO). They include: exaggerated or misleading claims related to beneficial health effects such as detoxification, slimming, weight reduction, and so on, as well as claims relating to the regulation of blood pressure, cholesterol, the immune system, and so on.

At present, health foods can be sold without going through vetting and approval in the United States and Britain. However, publicity of the products and their claimed efficacy are regulated. For instance, dietary supplements including pills, capsules, tablets and oral preparations made from vitamins, minerals, amino acids and herbal remedies are regulated by the law in the United States. The health enhancement claims of these products must be made in accordance with the contents allowed by the Food and Drug Administration. In the Mainland, Australia and Canada, health foods are regulated at the production level, and these products must be vetted and approved before they can be marketed. The criteria for registration and approval are based on the safety, efficacy and quality of the products. Manufacturers must provide proper scientific evidence to substantiate their claims should the products claim to produce health enhancement effects. The Government is undoubtedly obliged to rectify the adverse atmosphere of the community given that so many untruthful and misleading cases can be found in the market. However, the Government should, at the same time, be mindful of not stifling business opportunities. It must not stifle the channels used by honest businessmen to give publicity by preventing the normal flow of health care information. There is nothing wrong for control to be imposed on advertisements in the short run. In the long term, however, strict screening, laboratory tests and verification should be carried out by the Government before the relevant commodities can be launched in the market. This approach will not stifle the room for publicity carried out by commercial undertakings. At the same time, consumers will be safeguarded.

One of the problems confronting health foods at present is that the information provided by manufacturers or agents is inadequate. As a result, it is fundamentally impossible to evaluate the efficacy of the products. This is particularly important for health foods because, unlike Western medicine, they are not always prescribed by doctors or purchased with the advice of pharmacists. Therefore, it is extremely important for the products themselves to be accompanied by a detailed report on their ingredients and clinical outcomes. However, even the agents themselves are invariably short of information. On the other hand, the people of Hong Kong are not well-informed in this area. Moreover, unlike foreigners, they are not used to surfing on the Internet for information, or consulting doctors or dieticians before taking health foods.

After summarizing these factors, we can easily see that the labelling of health foods is crucial. The Consumer Council has tested a number of detoxification and slimming products and identified a number of labelling problems. For instance, certain products containing herbs that can stimulate diarrhoea do not carry appropriate warnings on their labels. Some of them even claim to be absolutely free from side-effects. The test has also found that such products usually carry obscure labelling that will confuse consumers easily. This problem is partly attributed to the fact that some samples were found to contain dissimilar ingredient labels on their package inserts and boxes, or carrying dissimilarity between the Chinese and English ingredient labels. In some cases, there was disparity in the English and Chinese versions of the suggested dosage even in the same sample. Furthermore, there are no uniform standards for the names of herbs and their translations. As such, the Government should not only regulate advertisements, but also extend the scope of regulation to labelling, package inserts, and so on, to ensure health foods will not make exaggerated, untruthful and misleading claims on their efficacy or deliberately avoid reference to side-effects and contraindication, and so on. At the same time, labels and package inserts of health foods should meet the same standards applied on patent medicine by giving a clear account of such information as ingredients, place of origin, efficacy, side-effects, and so on. Such information should be strictly tested, vetted and approved by professionals to ensure the accuracy of the health claims.

Nevertheless, the biggest problem with the regulation of health foods lies in the absence of a clear and accurate definition of health foods, and it is very difficult to differentiate them from drugs. The existing laws are still flawed. Some health foods can avoid regulation by exploiting loopholes in law. For

instance, it will be a violation of the law if such wordings as "being capable of curing such illnesses as cancer" are used, yet expressions containing such wordings as "enhanced resistance", which are not focused curative effects, will be exempted from the UMAO. However, we might risk going to the extreme if the use of such words as "enhanced resistance" is banned or treated in the same light of patent medicine. Now it is most important for the Government to strengthen education and publicity, and to remind the public that there is no shortcut to pursuing good health and that they should treat health product publicity with scepticism. Even if they really have to buy these products, they should first consult such professionals as doctors, pharmacists or dieticians to gain a full understanding of the efficacy of the products in order to make the right choices for themselves.

Madam President, I so submit.

**MR MICHAEL MAK** (in Cantonese): Madam President, there is a wide variety of health foods available on the market, and while the public's demand for health foods has been increasing, there is little regulation of such foods in law.

If legislation is not enacted promptly to bring health foods under regulation and hence plug the existing loopholes in law, unscrupulous merchants may exploit the situation and exaggerate the efficacy and medicinal effects of their products by, for example, advertising that some health foods can regulate blood lipid or cholesterol and even achieve the detoxification effect in order to attract sales. However, so long as these claims do not mention prevention or treatment of specific diseases, they are not regulated under the Pharmacy and Poisons Ordinance and Undesirable Medical Advertisements Ordinance. So, unscrupulous merchants can often take advantage of this loophole to make profits. If members of the public are misled into believing that these health foods have the claimed effects, they may be exposed to irremediable health hazards.

Although the Government published in September this year the Consultation Document on Regulation of Health Claims in Hong Kong, proposing that nine categories of health claims be incorporated by way of a schedule into the Undesirable Medical Advertisements Ordinance, this is still inadequate as regulation of health foods. In July this year, the Consumer Council tested 28 cereal products and 10 milk products offered on the market, and found that for most of these products, the fibre and calcium contents claimed

on the labels do not tally with the actual contents. Some products that are advertised to be "high in fibre" or "high in calcium" cannot even meet the standards of the United States. Therefore, the Government should implement mandatory nutrition labelling as early as possible to require clear and accurate labelling of prepackaged foods, in order to provide sufficient information for consumers to make their choices.

Presently, a labelling system for genetically modified (GM) foods is still lacking in Hong Kong. We cannot rule out the possibility that health foods containing GM ingredients are not marked to indicate their GM contents. Given that the genes in GM foods have already undergone changes, their effects on human body are still unknown. Consumption of GM foods with problems might cause different sequelae. For example, it might affect the functioning of human organs. GM foods have been introduced to the market only for a short time. In fact, even general medicines are required to undergo clinical experiments for a long time before their efficacy and side-effects can be confirmed. But GM foods have not been subject to long periods of clinical experiment, and as we have yet to ascertain the sequelae at the present stage, we cannot rule out the possible health hazards. So, we must anticipate problems even when problems have not actually arisen, and prevent our medical system from being rendered unable to deal with the pressure of GM foods in the future. To safeguard public health, and the public's right to know and to choose, the Government should expeditiously put in place a labelling system for GM foods.

Madam President, I cannot support Mrs Selina CHOW's amendment. It is because, from commercial considerations, food traders certainly hope to maximize their profits with the lowest cost input. They may seek to boost the sales of their food products by hook or by crook. Without statutory regulation, they may make exaggerated claims on the beneficial health effects of their products and conceal the contents of their products, such as concealing the GM contents or marking on the labels contents that do not reflect the actual food contents. They simply will not accord first priority to the right to know, the right to choose and the health of consumers. If legislative control on health foods is not enhanced, it would be impossible to protect the rights and interests of consumers in this respect.

At present, in many countries, such as China, Australia and Canada, health foods are subject to a vetting and approving process before they can be put on sale. Registration of health foods will be approved on the basis of their

safety, efficacy and quality. For products claiming to have beneficial health effects, manufacturers are required to produce appropriate scientific evidence to substantiate such claims. In such countries as the United States and Britain, the health claims of health foods are also subject to regulation. Hong Kong should keep abreast of the times and expeditiously strengthen statutory regulation on health foods. I so submit.

**DR LO WING-LOK** (in Cantonese): Madam President, health foods have a huge market. Various estimates show that the health foods market is even bigger than the market of traditional pharmaceutical products. Given the enormous size of the health foods market, colossal interests are involved and a great many people are employed in this industry. Therefore, the series of problems that may arise from the consumption of health foods are naturally of great concern to all parts of the world, including Hong Kong. Health foods are different from medicine in that they are regulated not as strictly as medicine is regulated in places all over the world. Therefore, the public or people who take health foods are not given as much protection as they are when taking medicine in terms of safety or in other aspects. Meanwhile, we would hear terrifying stories from time to time. For example, health products for weight-reduction and slimming purposes are found to contain banned Western drugs and as such drugs are potent, they may do permanent damage to human body. More often than not, we also hear that some tonics made of medicinal herbs for the muscular gender also contain potent Western medicine. That is why the calls for regulation of health foods have never ceased in society. To doctors, if the public believe that health foods can cure certain diseases and therefore do not seek proper medical treatment, the delayed treatment may aggravate the disease to become incurable or cause even greater complications in treatment. These are among the many drawbacks of health foods that we have heard lately.

Then, what ordinances are in place for the regulation of health foods? If we take a look at the laws of Hong Kong, we would find that the Pharmacy and Poisons Ordinance regulates Western medicine and so, unregistered health foods containing Western medicine can be outlawed by virtue of this Ordinance. Health foods that claim to have contents very much like Western medicine may also be deemed as Western medicines and hence regulated by the Ordinance. Therefore, legislation is already in place for the regulation of these so-called health foods. On the other hand, the legislative procedures have already been completed for the ordinance and regulations governing Chinese medicine.



Therefore, proprietary medicines and health foods that are very close to proprietary Chinese medicines may eventually be brought under the regulation of the ordinance and regulations governing Chinese medicine.

In fact, regarding health claims and claims relating to medicinal effects, the Government has recently proposed to amend the Undesirable Medical Advertisements Ordinance to the effect that such claims will be incorporated into the scope of regulation. So, it is not the case that no legislation is in place to regulate health foods. The problem is that a grey area exists, and this grey area is very big. For example, if a health product is similar neither to Western medicine nor Chinese medicine, and if it is in the middle of the two, how should this grey area be regulated? Problems often arise with products which fall into this area. It is indeed not easy to bring products in this area under regulation. Just do some counting and we will find that there are over 10 000 such products on the market. If these products are brought under strict regulation and are regulated as if they are medicines by requiring that they must go through a registration system before they can be put on sale, that they must provide safety guarantee, evidence of their medical efficacy and many more scientific evidence, then those 10 000-odd products may have to be wiped off from the market. In fact, tests have been conducted in some places. In Taiwan, for example, very stringent laws have been enacted and in the first year after the enactment of these laws, only dozens of health foods can pass the relevant tests, and the market is immediately paralyzed. Therefore, Taiwan is considering making amendments to the laws to relax the restrictions. This shows that while our intention is good in proposing regulation of health foods, it is not easy to put it into practice. Careful consideration is warranted as to how the definitions should be drawn, and what should be and should not be regulated.

Another example is the practice adopted by the Food and Drug Administration (FDA) of the United States, which is worthy of consideration by Hong Kong. Some colleagues said earlier that there was no regulatory control in the United States, but regulation is not completely non-existent. A declaration system is adopted there. Before a health food product can be put on sale, a declaration must be made to the FDA, and it must be clearly labelled that the product can be sold. Yet, this does not mean that the product has been approved by the FDA. Since the product has yet been approved, if the public found problems with the product after buying it, they should complain to the FDA and draw its attention to the problems, so that the FDA can subsequently take follow-up actions. A reference number is also listed for complaint

purposes. This is an easier way for implementation with less resource implications. When considering the approach of regulation, Hong Kong can go for a middle-of-the-road approach between the United States' approach and that of Taiwan and then draw up on this basis a proposal which is acceptable both to the Hong Kong Government and the local health foods market. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, you may now speak on the amendments. You have up to five minutes to speak.

**MR WONG YUNG-KAN** (in Cantonese): Madam President, in fact, I found it a bit strange as we only talk about the cost of production in a modern and civilized society. Regarding the views of Mrs Selina CHOW, I must say that my views are different from hers. It is because everything should be subject to some sort of regulation. I am utterly puzzled as to why Mrs Selina CHOW has sought to delete everything in my proposal. I only wish to make this point.

In fact, a number of colleagues have talked about many problems in their speeches earlier on, and we can see that if we fail to bring health foods under regulation, some problems are set to arise. If, in a modern and civilized society, regulation is not imposed to address these problems because of costs, I would consider that to be strange. Even in the manufacturing of food, I remember that the production process used to be primitive but things are different now, for employees must put on full uniform and all are subject to safety inspections, and it is only after they have been disinfected that they can enter the production plant to manufacture food.

Now we think that this is not going to work and that is not going to work. We certainly know that the implementation of whatever measure will definitely have certain impact on the operators or manufacturers, and this really gives no cause for criticism. But the question is how things can be done better.

Colleagues have cited many facts, pointing out that if this is not done properly, the entire health foods market may collapse. It is most worrying that there are often newspaper reports about people suffering from anorexia or other symptoms as a result of their consumption of health foods or other kinds of food. Mr Jasper TSANG has also cited many examples in this connection.

There are now many regulatory regimes internationally. In Hong Kong, as I said clearly in moving the motion earlier, we can hold discussions first to see how we can do better, rather than adopting a broad-brush approach as we are doing now. If no action is taken now, what will happen in the future?

Some food products have really affected the entire industry. As we always say, when one type of products run into trouble, it may drag the entire industry into trouble and give rise to many problems. Let us take a look at the situation in the Mainland. A \$30 billion-worth health foods market has diminished significantly to the present value of some \$10 billion. Is this what the industry or operators wish to see? I trust none of the Honourable colleagues here wish to see this happen. Without a good system, what is there to speak of competition? So, regarding Mrs Selina CHOW's views, I do find them very strange. She did talk to me, and she said that I did not seem to have a good understanding of the industry. Well, I think some issues are open to discussion, so as to identify ways to do better. This is the responsibility of the entire society.

As for Mr Fred LI's amendment, I originally intended to make the motion more lenient, but the amended motion has turned out to be more stringent on the contrary. In fact, Mr CHAN Kwok-keung has also brought up this issue, proposing a code of practice on quality production. We all know that to the entire society and to members of the public, we do have the responsibility to ensure proper regulation. So, I hope Honourable colleagues will consider this seriously. Thank you, Madam President.

**SECRETARY FOR HEALTH, WELFARE AND FOOD:** Madam President, I would like to thank Honourable Members for expressing their views on many aspects of the motion debate. Health food is a subject which has generated considerable public discussion in the last few years. The recent proliferation of food products claiming specific beneficial health and sometimes medicinal effects has led to an increasing number of complaints from unsuspecting consumers against misleading or exaggerated claims.

Before I go into the details of our existing regulatory framework, I would like to point out that there is no universally accepted definition of "health food" products. Different terms, such as dietary supplements, nutraceuticals, designed foods, functional foods and natural health products, are used on different occasions to refer to similar products.

Among the different commodities claimed as health foods which are available on the market, some are similar to traditional food items in terms of their appearance and nature; others are available in the form of pills, medicated powder, and so on, with some also containing Western or Chinese medicines. While there is no generally agreed approach to regulate such products, we do have in place a legislative framework which would ensure the safety of all food products, depending on the types and ingredients of the products and the safety and efficacy of drugs.

In fact, all foods, taken in appropriate amounts, promote health and could be described as "health foods". We have a comprehensive, responsive and science-based regulatory regime to ensure the safety of general food items and the so-called health food products. General food items are subject to regulation under the Public Health and Municipal Services Ordinance (Cap. 132) which prohibits the sale, and possession for the purpose of sale, of any food which is unfit for human consumption. The main objective of this regulatory regime is to ensure that foods available on the market for human consumption are wholesome, hygienic, safe and properly labelled.

Section 61 of the Ordinance provides that no person shall give with any food sold by him or display with any food exposed for sale by him, a label, which falsely describes the food. In addition, the Food and Drugs (Composition and Labelling) Regulations require that any prepackaged food for sale shall be marked and labelled in accordance with the provisions of the Regulations. The ingredients, durability, names and addresses of manufacturers or packers, as well as special conditions for storage or instructions for use should be listed.

Samples are taken at the import, wholesale and retail levels under our food surveillance programme for various laboratory testing and compliance checks against prescribed food standards and labelling requirements in order to ensure that they are fit for human consumption. Education programmes are also organized in order to let the public know more about food safety. All these

measures help to protect public health and ensure that foods on the market are safe and fit for human consumption.

If a product contains medicines or claims to have medicinal effects, it is required to be registered as pharmaceutical products under the Pharmacy and Poisons Ordinance (PPO) (Cap. 138). This Ordinance provides for the control of any product carrying a claim for the treatment, or prevention, of a specific disease, or symptom thereof as "pharmaceutical products." The control takes the form of pre-marketing registration of individual products under the criteria of safety, efficacy and quality, labelling requirements, licensing of manufacturers and sellers, and restrictions on retail sale, which means the products can only be sold by pharmacists, or on a doctor's prescription only. The claims have to be substantiated.

The Chinese Medicine Ordinance (CMO) (Cap. 549) which has come into effect recently, controls products containing Chinese medicines as active ingredients. The licensing of manufacturers, importers and wholesalers commenced in May 2003, and the registration of proprietary Chinese medicines will begin by the end of this year. If a product contains Chinese medicines, it will be registered as proprietary Chinese medicines. The product will also have to satisfy the requirements of safety, efficacy and quality. We anticipate that after the commencement of registration of proprietary Chinese medicines, the number of products, properly categorized as health food products which are not controlled as pharmaceutical products or as Chinese proprietary medicines, should be very much reduced.

The Undesirable Medical Advertisements Ordinance (UMAO) (Cap. 231) prohibits the advertising of products or treatments for the prevention or treatment of diseases or conditions specified in the Ordinance. The purpose of the prohibition is to prevent improper self-medication by members of the public, thereby causing harm as a result of either the improper self-medication itself, or the delayed proper treatment they should have received. It is an offence for any person to publish, or cause to be published, any advertisement likely to lead to the use of any medicine, surgical appliance or treatment for treating or preventing any disease or condition specified in the Ordinance.

Madam President, we are aware of the need to constantly review the adequacy or otherwise of our current regulatory regime, in the light of new developments in the food industry, technological advances, rising expectation of

our increasingly health conscious community and international best practices. At the same time, it is only natural that consumers will wish to have more and accurate information on the food products which they purchase, and that they have developed high expectations on the safety of such products.

But as I mentioned earlier, our present regulatory framework is not based on a system of food categorization. We do not have, nor do we consider it appropriate to introduce a separate food category known as "health food" because invariably, all food items, as I said earlier, will have an impact or bearing on health. What we have in Hong Kong is a conceptual framework which provides a comprehensive approach for management of all orally consumed products. Under this framework, everything which is edible is either classified as food or Chinese medicine or pharmaceutical product and there is no in-between. As regards pharmaceutical products, the definition is clearly laid down under the PPO and the CMO. I read from the PPO:

" "pharmaceutical product" and "medicine" mean any substance or mixture of substances manufactured, sold, supplied or offered for sale or supply for use in-

- (a) the diagnosis, treatment, mitigation, alleviation or prevention of disease or any symptom thereof;
- (b) the diagnosis, treatment, mitigation, alleviation of any abnormal physical or physiological state or any symptom thereof;
- (c) altering, modifying, correcting or restoring any organic function, in human beings or in animals;"

Madam President, as you can see from the definition of "pharmaceutical product" and "medicine", the definition is very broad and many of the claims made currently in the markets on a lot of products in fact fall within the category of "pharmaceutical product" and "medicine", and should be then registered as such.

For products carrying medicinal or treatment claims, they are regulated, as I said, under the existing legislations to ensure their safety, quality and efficacy. As regards food, we have in place a food surveillance programme

based on the principle of risk assessment and management along the entire food supply chain, from farm to table, to ensure food safety; and a food labelling system to ensure that consumers have the information they need to be able to choose a safe and healthy diet. In addition, there is a regulatory system under the UMAO to prohibit undesirable advertisements and to regulate claims irrespective of whether a product is regarded as food or drug.

Recently, there has been a surge in advertisements, as Members have said, of products which make claims not caught under the UMAO, such as regulating blood pressure, and so on. In order to better safeguard consumers from undesirable medicinal claims — because these are medicinal claims, we propose to include in the UMAO a new schedule of claims the advertisement of which would be prohibited. Under this proposal, the Director of Health would have the power to amend the new schedule and to extend its coverage to cover other products and services as and when necessary having regard to the latest developments and for the protection of public health.

An expert committee comprising medical professionals, academics, as well as Consumer Council representatives has reviewed many of the claims being made in the market and, by adopting a risk assessment approach, has drawn up a list proposing nine types of prohibited health and medicinal claims. Based on the recommendations of the expert committee, we launched a public consultation exercise on 26 September this year with the release of a consultation document on the proposed prohibition of a list of health and medicinal claims for orally consumed products.

We have also kept a close watch on new developments in food manufacturing methods and sales patterns. We note that there is an increasing demand for information about nutrients contained in food intended for human consumption so that consumers can make important choices which may have a bearing on their health conditions. At the same time, we are aware that there is no uniformity in the way nutrient information is presented on food labels, even when the food products are properly labelled. Hence, consumers may find the information provided on the food labels misleading or difficult to comprehend.

As part of our ongoing efforts to protect and enhance public health, we believe that the time is now right for us to introduce a nutrition labelling scheme in Hong Kong, with the aim of first, facilitating consumers to make healthy food choices; second, encouraging food manufacturers to apply sound nutrition

principles to the formulation of foods which would benefit public health; and third, regulating misleading or deceptive labels and claims on nutrients. We aim to issue a consultation document later this month, setting out our proposals for a labelling scheme for nutrition information on all prepackaged food products.

Madam President, there is no universal approach to the regulation of "health food" or health claims simply because all foods are health foods. Different places have adopted different regulations. In fact, many of these are really mechanisms to regulate health foods which in fact should be classified either as drugs or other products in the health industry, such as Chinese medicines. We believe that our initiative to regulate health and nutrient claims, together with our legislative framework for the regulation of general food items, Western and Chinese medicines, will be adequate in ensuring food safety and protecting the health of the public. We will certainly welcome discussion by Members of this Council to review whether this framework will be adequate to cover all the issues which they have been concerned with. And in fact, I also have gathered from some other Honourable Members that the Legislative Council may in fact consider the overall framework excessive. So, I think we will certainly be very willing to discuss with Members of the Legislative Council as to what the right balance should be. We will continue to review our strategy in order that our system can cope with the new challenges. We will also monitor international developments closely, with a view to enhancing our efforts to protect public health.

As I said, I am very grateful for the views expressed by Members today. Our existing regulatory framework, in particular, the legislative controls on Chinese medicine products, plus the proposed additional measures set out above which I talked about earlier to regulate health and medicinal claims and food labels, should meet many of Members' concerns. We will certainly consider carefully the views from members of the public in response to our consultation document and also from the trade before we make a firm decision on the way forward. Whilst we are mindful of the possible cost implications to the food industry, it must always be remembered that our responsibility to protect public health is of paramount importance and should be the overriding consideration. It would also not be in the public's interests to compromise the integrity of our food and drugs regulatory regime.

Thank you, Madam President.



**PRESIDENT** (in Cantonese): I now call upon Mrs Selina CHOW to move her amendment to the motion.

**MRS SELINA CHOW** (in Cantonese): Madam President, I move that Mr WONG Yung-kan's motion be amended, as printed on the Agenda.

**Mrs Selina CHOW moved the following amendment: (Translation)**

"To delete "whereas" after "That," and substitute with "as"; to delete "there are still quite a number of loopholes in existing legislation which regulates such foods," after "it has become increasingly common for the public to purchase health foods,"; to delete "devise a comprehensive regulatory mechanism for health foods" and substitute with "actively encourage the relevant trades and industries, including the manufacturers, importers, retailers and wholesalers, to provide information on their products, provided that it would not increase the burden on consumers or reduce their choices"; and to delete "safeguard the rights and interests of consumers and facilitate the development of the health food market" after "so as to" and substitute with "facilitate their making informed choices when purchasing health foods". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mrs Selina CHOW to Mr WONG Yung-kan'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.

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW 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 Kenneth TING, Dr LUI Ming-wah, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU and Mr Tommy CHEUNG voted for the amendment.

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted against the amendment.

Mr Timothy FOK abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms Audrey EU and Mr YEUNG Yiu-chung 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, 17 were present, seven were in favour of the amendment, nine against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 15 were present and 14 were against the amendment. 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.

**MS MIRIAM LAU** (in Cantonese): Madam President, I move that in the event of further divisions being claimed at this meeting in respect of the motion "Regulating health foods" or any amendment thereto, this Council shall proceed forthwith to the division after the division bell has been rung for one minute.

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

**PRESIDENT** (in Cantonese): Does any 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 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 the motion "Regulating health foods" or any amendment thereto, this Council shall proceed forthwith to the division after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr Fred LI, you may move your amendment.

**MR FRED LI** (in Cantonese): Madam President, I move that Mr WONG Yung-kan's motion be amended, as set out on the Agenda.

**Mr Fred LI moved the following amendment: (Translation)**

"To add ", including studying the introduction of a vetting and approval system as well as stepping up control over claims made in the advertisements concerned" after "this Council urges the Government to devise a comprehensive regulatory mechanism for health foods".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Fred LI to Mr WONG Yung-kan's motion, be passed.

**PRESIDENT** (in Cantonese): I now call upon Mr CHAN Kwok-keung to move his amendment to Mr Fred LI's amendment.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, I move that Mr Fred LI's amendment be amended, as printed on the Agenda.

**Mr CHAN Kwok-keung moved the following amendment to Mr Fred LI's amendment: (Translation)**

"To add "and formulating a code of practice on quality production," after "including studying the introduction of a vetting and approval system"; and to add "and the contents of the labels" after "as well as stepping up control over claims made in the advertisements".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Kwok-keung to Mr Fred LI's amendment, 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)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Henry WU, Mr Tommy CHEUNG and Dr LO Wing-lok voted against the amendment.

Dr LUI Ming-wah and Mr Timothy FOK abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, eight were in favour of the amendment, eight against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 15 were present and 14 were in favour of the amendment. 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): I now put the question to you and that is: That Mr Fred LI's amendment to Mr WONG Yung-kan's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the amendment.

Mr Kenneth TING, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Henry WU and Mr Tommy CHEUNG voted against the amendment.

Dr LUI Ming-wah and Mr Timothy FOK abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, nine were in favour of the amendment, seven against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 15 were present and 14 were in favour of the amendment. 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 negated.

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, you may now reply and you have three minutes five seconds.

**MR WONG YUNG-KAN** (in Cantonese): Madam President, I thank the 10 Honourable colleagues for their suggestions in their speeches. I also thank the Secretary who has stated the work to be carried out in the future. I wish to say that we certainly care about health and attach importance to health. To maintain health which is so important, I think apart from the inborn factor, a suitable amount of exercise is also essential. Of course, I am by no means a good model to follow and I have often been teased by Mr SIN Chung-kai, and I do not wish to see this happen to anyone else. More importantly, if health foods cannot achieve reasonable development, then I think that would be the biggest problem. So, my motion is very liberal. I hope that in the context of the introduction of a nutrition law or labelling law, the Government can look into how it can be done in a better way. I also hope that Honourable colleagues will consider supporting my motion. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr WONG Yung-kan, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for one minute.

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



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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the motion.

Mr Kenneth TING, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU and Mr Tommy CHEUNG voted against the motion.

Dr LUI Ming-wah, Mr Timothy FOK and Mr Henry WU abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Ms Emily LAU, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, nine were in favour of the motion, six against it and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 15 were present and 14 were in favour of the motion. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 12 November 2003.

*Adjourned accordingly at half-past Nine o'clock.*

**Appendix I****WRITTEN ANSWER****Written answer by the Financial Secretary to Mr Tommy CHEUNG's supplementary question to Question 3**

Regarding the contract with international artists, we understand from the American Chamber of Commerce in Hong Kong that all international acts for the Harbour Fest, including the Rolling Stones, have a clause in their contracts entitling them to approve supporting, opening or any other acts appearing in their shows. There were no specific opening acts in any contract. The opening acts were all handled on a case-by-case basis.

**Appendix II****WRITTEN ANSWER****Written answer by the Financial Secretary to Mr MA Fung-kwok's supplementary question to Question 4**

On the production of the one-hour TV special, we note from the provisional out turn of revenue and expenditure in relation to the Harbour Fest prepared by the American Chamber of Commerce in Hong Kong (AmCham), which was tabled at the meeting of the Legislative Council Panel on Financial Affairs on 15 November 2003, that the revised estimated cost is \$7.4 million. A more up-to-date figure will be provided to the Panel when AmCham has submitted the full audited accounts in accordance with the sponsorship agreement signed between AmCham and the Government.