

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 29 June 2005**

**The Council met at Eleven o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

THE HONOURABLE WONG YUNG-KAN, J.P.

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 LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

THE HONOURABLE MIRIAM LAU KIN-YEE, 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 TIMOTHY FOK TSUN-TING, G.B.S., J.P.

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

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

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, J.P.

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

DR THE HONOURABLE JOSEPH LEE KOK-LONG

THE HONOURABLE DANIEL LAM WAI-KEUNG, B.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE MA LIK, J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

**MEMBERS ABSENT:**

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

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

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.  
SECRETARY FOR SECURITY

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.  
SECRETARY FOR HEALTH, WELFARE AND FOOD

**CLERKS IN ATTENDANCE:**

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

- No. 95 — Report of the Independent Police Complaints Council 2004
- No. 96 — Report by the Commissioner of Correctional Services on the administration of the Prisoners' Welfare Fund for the year ended 31 March 2005
- No. 97 — Airport Authority Hong Kong Annual Report 2004/2005
- No. 98 — Hong Kong Trade Development Council Annual Report 2004/05

Report of the Finance Committee on the examination of the Estimates of Expenditure 2005-06

Report of the Panel on Information Technology and Broadcasting 2004/2005

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2005

Report of the Bills Committee on Companies (Amendment) Bill 2004

Report of the Bills Committee on Transfer of Sentenced Persons (Amendment) (Macau) Bill

Report of the Bills Committee on Aviation Security (Amendment) Bill 2005

Report of the Bills Committee on Child Care Services (Amendment) Bill 2005

Report of the Bills Committee on Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004

**ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Mr Alan LEONG will address the Council on the Report of the Independent Police Complaints Council 2004.

**Report of the Independent Police Complaints Council 2004**

**MR ALAN LEONG:** Madam President, on behalf of the Independent Police Complaints Council (IPCC), may I present the Report of the Independent Police Complaints Council 2004.

The IPCC is an independent body the members of which are appointed by the Chief Executive. Its main duty is to monitor and review the investigation conducted by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force into complaints against the police to ensure impartiality and thoroughness. When examining the investigation reports, the IPCC can ask the CAPO to clarify areas of doubt or request the CAPO to re-investigate into a complaint if it is not satisfied with the investigation result. Where necessary, the IPCC may also interview witnesses including the complainants, complainees and professionals such as forensic pathologists, for further information or expert advice. A case will not be finalized until the IPCC has endorsed the CAPO's investigation results.

In 2004, the IPCC reviewed and endorsed a total of 3 299 complaint cases involving 5 837 allegations, a decrease of 270 cases and 425 allegations when compared with the corresponding figures of 3 569 and 6 262 in 2003. Allegations of "Assault", "Misconduct/Improper Manner/Offensive Language" and "Neglect of Duty" constituted 83.4% of the total allegations, representing a decrease of 0.3% when compared with the figure of 83.7% recorded for 2003. Of the 5 837 allegations endorsed, 108 were classified as "Substantiated", 145 were "Substantiated Other Than Reported", 14 were "Not Fully Substantiated", 1 070 were "Unsubstantiated", 296 were "False", 410 were "No Fault", five were "Curtailed", 1 690 were "Withdrawn", 880 were "Not Pursuable", and the remaining 1 219 allegations, which were of a very minor nature, such as "Impoliteness", were resolved by "Informal Resolution", that is, mediation by a senior police officer who is at least at the Chief Inspector of Police rank in the complainee's division. The substantiation rate in relation to the 2 043 fully investigated allegations in 2004 was 13.1%.

In 2004, the IPCC raised 660 queries on the CAPO's investigation reports, asking for clarifications on ambiguous points or questioning the results of investigations. Subsequently, the results of investigation of 89 allegations were changed. Arising from the investigation results endorsed by the IPCC in 2004, criminal proceedings, disciplinary and other forms of internal actions were taken against 298 police officers. The IPCC also suggested improvements to police procedures where appropriate.

To provide a higher level of service, the IPCC has promulgated a set of performance pledges in terms of standard response time in handling public enquiries and monitoring complaints against the police. The performance of the IPCC in meeting its pledges in 2004 was satisfactory. 99.9% of normal cases were endorsed within the pledged period of three months. In addition, 99.8% of complicated cases and 100% of appeal cases were endorsed within the pledged period of six months. With experience gained from the operation in the past years, the IPCC will strive to maintain a high level of performance in future.

Although the IPCC plays no part in the actual investigation, its members and lay observers, through the IPCC Observers Scheme, can observe the conducting of investigations and interviews by the CAPO on a scheduled or surprise basis. In 2004, 319 observations were arranged under the IPCC Observers Scheme. After each observation, the observers report to the IPCC as to whether the CAPO has conducted the investigation in a thorough and impartial manner. Their feedback has been useful for the IPCC in monitoring the complaint cases.

In 2004, the IPCC continued to organize publicity programmes to publicize its functions and image. As part of its ongoing publicity programme, talks were organized at secondary schools during the year. In addition, the IPCC website was revamped to attract more web surfers to browse the information therein.

Madam President, to sum up, 2004 was a busy and successful year for the IPCC. Details of the activities of the IPCC and some complaint cases of interest are given in the Report of the Independent Police Complaints Council 2004. We shall continue to keep up with the high standard of thoroughness and impartiality in our monitoring and review of investigations into public complaints against the police. We understand that the Administration plans to re-introduce a bill to the Legislative Council to provide a statutory basis for the operation of



the IPCC and we hope that this can further enhance the monitoring function of the IPCC and public confidence in the police complaints system.

Thank you.

**PRESIDENT** (in Cantonese): Ms Emily LAU will address the Council on the Report of the Finance Committee on the examination of the Estimates of Expenditure 2005-2006.

### **Report of the Finance Committee on the examination of the Estimates of Expenditure 2005-06**

**MS EMILY LAU** (in Cantonese): Madam President, under Rule 71(11) of the Rules of Procedure, the President referred the Estimates of Expenditure 2005-06 to the Finance Committee (FC). The FC has completed the examination of the relevant Estimates and I shall now report on behalf of the FC.

As in the past years, regarding the examination of the Estimates of Expenditure, the FC held open meetings to study in detail various items of government expenditure for 2005-06 to ensure that funds applied for by the Administration will not exceed what is needed for implementing various government policies. During the period from 11 April to 15 April this year, we held a total of six special meetings in 19 sessions.

In order that members will have more detailed information on the content of the Estimates of Expenditure before the special meetings, so as to speed up the process of scrutiny, the FC put forward 1 887 written questions this year for the Government to provide us with written replies before the meeting. The hard copies and electronic version of the replies were forwarded to members before the special meetings. Members of the public could also look up such replies on the website of the Legislative Council.

Concerns raised by members at the meetings were recorded in detail in Chapters II to XXI of the Report. This year, members raised in various sessions some conceptual and concrete proposals with a view to increasing the efficiency and reducing the expenditures of different bureaux and departments.

Members are particularly concerned about the effectiveness of the Administration's efforts to outsource services and engage non-civil service contract (NCSC) staff. Members noted that while downsizing the civil service establishment, the Government has either employed additional NCSC staff or used the services provided by staff employed by its contractors to meet operational needs. Since there is a significant discrepancy between the pay of such staff and the conditions of service of civil servants, members have expressed concern that such staffing arrangements might create management difficulties, which would adversely affect the efficiency of services. Therefore, members suggested that while considering proposals on the downsizing of establishment and extension of the duration of short-term jobs, government departments should concurrently review the long-term operational needs of these jobs and make arrangements as appropriate.

Members also urged that controlling officers should be more attentive to the room for improvement in respect of the working relationship among different departments and their performance targets, so as to keep pace with the development of society and meet the changing service needs, with a view to enabling the flexible utilization of limited resources.

Madam President, I am truly grateful that members have participated enthusiastically in this year's special FC meetings and the Administration has also responded positively. I would also like to take this opportunity to express my gratitude to the staff of the Financial Services and the Treasury Bureau and the Legislative Council Secretariat who gave their unreserved support to the work of the FC.

I so submit. Thank you.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai will address the Council on the "Report of the Panel on Information Technology and Broadcasting 2004/2005".

### **Report of the Panel on Information Technology and Broadcasting 2004/2005**

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting (the Panel), I submit the Report to this Council for the current Session and I shall highlight several key areas of work of the Panel.

In regard to telecommunications services, members have exchanged views with the Government and deputations on regulatory issues relating to "Internet Protocol (IP) Telephony" and urged the Administration to balance the interests of service providers and consumers. The Panel would continue to follow up the regulatory proposals on IP Telephony made by the authorities.

The Panel noted that since the spectrum utilization fee (SUF) payable by third generation (3G) mobile service licensees was much higher than the licence fees of Fixed Telecommunications Network Services (FTNS) operators and SUF payable by second generation (2G) licensees in future, some members therefore expressed concern about whether the frequency band concerned would be permitted to be used to provide 3G mobile services, thereby posing unfair competition to 3G licensees in future, when the authorities deal with the licensing framework for the "deployment of broadband wireless access" as well as the licensing of mobile services and assignment of spectrum.

The Panel expressed grave concern about the consultation exercise launched by the authorities on unsolicited electronic messages. Members supported in principle the multi-pronged campaign. In regard to the proposal on introducing anti-spam legislation, members considered that the authorities should be careful not to hamper the freedom of expression and free flow of information. The authorities would brief the Panel shortly on the draft legislative framework before proceeding to draft the bill.

The Panel supported the IT Easy Link Services launched since June 2002. In regard to the Administration's intention to revise the mode of operation of the Services, the Panel urged the authorities to consider extending the transitional period of phasing out government funding to enable the organizers to secure sponsorship and maintain service continuity. Furthermore, the Panel would also receive progress reports on the "E-government" programme periodically submitted by the authorities and discuss the "service clustering approach" in service provision in future.

The Panel had expressed their views on Radio Television Hong Kong (RTHK)'s role as a public service broadcaster. Some members considered that RTHK should provide high-quality programmes to cater for the needs of the community, instead of competing with its private-sector counterparts by producing programmes which were already popular productions among commercial broadcasters. Some members were also concerned that the

independence and production quality of RTHK should not be compromised as a result of reduced provisions. To improve the facilities and efficiency of RTHK, the Panel urged the authorities to expedite the proposed Broadcasting House project and continue to follow up the progress made.

The "Cyberport" project was one of the subjects of prime concern to the Panel. Members have made an overall evaluation of the project and discussed with the Government on its investment return from the project. To make the best use of the Cyberport facilities, a member suggested that the authorities should assist small and medium enterprises to set up businesses in the Cyberport, while recognizing its plan to set up a "Digital Entertainment Incubation cum Training Centre" at the Cyberport. The Panel has convened a special meeting to follow up articles authored by the Secretary for Commerce, Industry and Technology and published in late January, which reiterated members' query about the Government's award of Cyberport's development right years back without going through a tendering process. It also requested the authorities to reveal further information on internal deliberations. Although a motion moved by a Member in this respect was negated in the Council, the Panel would continue to monitor the progress of the Cyberport periodically in future.

Other work of the Panel for the current year is included in the written report. I so submit.

**PRESIDENT** (in Cantonese): Ms Miriam LAU will address the Council on four items of subsidiary legislation concerning Road Traffic Ordinance, which were laid on the table of the Council on 11 May 2005.

As Ms Miriam LAU is not in the Chamber, we will not proceed to this address now.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. A Member can ask only one question in each supplementary question. Will Members please be as concise as possible in asking questions.

First question.

## Reorganization of Executive Council

1. **MR MARTIN LEE** (in Cantonese): *Madam President, in announcing his platform during the election campaign, the new Chief Executive proposed to reorganize the Executive Council. In this connection, will the Government inform this Council:*

- (a) *how and when the Executive Council will be reorganized and of the changes in its functions and roles after reorganization;*
- (b) *whether it will study changing the rules of confidentiality and collective responsibility of the Executive Council, so as to tie in with political openness and the development of party politics; and*
- (c) *how the reorganization of the Executive Council will help the Government improve its governance and to enhance the Government's accountability to the public?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese):  
Madam President, my reply to the three parts of the question is as follows:

- (a) During his election campaign, the new Chief Executive already stated that he would restructure the Executive Council within this year, with a view to strengthening its role. After he was elected, he also said that details of the reform would be set out in the policy address. We expect that the restructuring plan would be in place within 2005. On the whole, the Chief Executive would like to invite more talents from different social background to join the Executive Council to participate in the policy-making process at the highest level. This arrangement will enable the Government to collect widely the views of the community, thus enhancing its quality of governance and ensuring that policies have even wider support of the various sectors of the community.

Overall, the Executive Council will even better perform its functions and role after restructuring. It will remain as an organ for assisting the Chief Executive in policy-making in accordance with Article 54 of the Basic Law.

- (b) Under the two principles of confidentiality and collective responsibility, Executive Council Members are not allowed to disclose any business, agenda or paper to any person, either directly or indirectly. Besides, all Executive Council Members are collectively responsible for the decisions made by the Executive Council. The principles of confidentiality and collective responsibility ensure that Executive Council Members can exchange their views in a free, open and frank manner during discussions. We have no intention to change this established system, which has proven to be effective.
- (c) The Chief Executive will set out details of the reform of the Executive Council in his policy address. In general, by having more talents of the community to serve in the Executive Council, the Executive Council's decisions will be more representative, more compact and more acceptable to the public at large. This will promote effective governance by the Government. The principal officials under the accountability system will continue as before to explain and defend government policies to enlist support among the community and from the Legislative Council.

**MR MARTIN LEE** (in Cantonese): *Madam President, if the Government does not change the confidentiality rule at all, what plans does the Government have to attract political party members with different political views to join the Executive Council? Even when they have joined the Executive Council, but if they cannot hold discussions with other members or the core members of their political party, a situation may arise where they have expressed support to the Government in the Executive Council, while their political parties may oppose the Government in the Legislative Council. How will the Government address this problem?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, as I said earlier, the restructuring of the Executive Council is an important measure in strengthening the Government's governance as in the plan of the Chief Executive. The objective is to further open up the policy-making process to enable more people to participate in it. If the policies of the Government can have wide public support, it would be helpful to us in

enlisting Members' support in the Legislative Council. Certainly, the composition of the Executive Council may not necessarily have to be based on the distribution of political parties in the Legislative Council. We primarily hope that more different opinions can be reflected in the policy-making process.

As regards how to incorporate more different opinions, the Chief Executive has actually mentioned that the advisory bodies will be strengthened. For instance, the Commission on Strategic Development will be restructured. We do have high hopes for this. Before the implementation of this policy, we will absorb different opinions from various sectors here in this Council. So, we can incorporate different opinions by various means. The rule of confidentiality is a well-established system. Over the years, whether before or after the reunification, we have been observing this principle in our work, and this *modus operandi* has proven to be very effective. As I mentioned in the main reply, after consideration, the Chief Executive considers it unnecessary to change this system. Nor does he intend to do so.

**MR MARTIN LEE** (in Cantonese): *The Secretary has given us a long reply, but he has not answered the thrust of the supplementary question. If the Executive Council continues to uphold the confidentiality rule, and when a member of the opposition party, so to speak, has joined the Executive Council, although he shares the views of other Executive Council Members, he does not know whether or not his political party supports these views. So, while the Executive Council may have his support, his political party may voice opposition in the Legislative Council. How will the Government address this situation? The Secretary has said a lot, but he did not answer this point.*

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

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I should explain it more clearly. As I said earlier, the policy-making process will take a long time and involves different stages. The Commission on Strategic Development mentioned by me just now is the initial stage. We hope to incorporate different opinions, we hope that political parties can participate in the process, and we also hope that we can incorporate their

opinions, if any. As Members should know, preliminary discussions are often conducted on various issues in the panels of the Legislative Council. Therefore, we can have plenty of opportunities to exchange our views which may be different, and to incorporate different opinions. So, through this process, we should have digested all the differences when we make a decision ultimately.

**PRESIDENT** (in Cantonese): A total of 13 Members are waiting to ask their supplementary questions. Will Members please be as concise as possible.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, I would like to ask the Government this: What is the problem with the existing Executive Council that makes a reform necessary? Is it because of poor quality of Executive Council Members or insufficient Executive Council Members that a reform is considered necessary?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I have actually said very clearly in the main reply that it is mainly because the Chief Executive would like to invite more talents from different social background to join the Executive Council to participate in the policy-making process, so that the Government can collect widely the views of the community, thus enhancing the quality of governance and ensuring that policies have even wider support of the various sectors of the community. It is not because of any major defect that a reform will be carried out. It is because we hope to constantly improve and perfect the system, and we hope to get this done properly.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, it is said that the Chief Executive would like to invite more people with different background to join the Executive Council. Does it mean that the incumbent Directors of Bureau will not be ex-officio Members of the Executive Council? After the restructuring of the Executive Council, will their collective decision override the decisions of the accountable officials? If the accountable officials do not have independent decision-making power over their policies but are required to assume political accountability, does it mean that the accountability system has changed in nature or failed to live up to its name?*



**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, that is not the case. As Members may know, last Saturday, the Chief Executive convened a special Executive Council meeting after he had returned to Hong Kong after swearing in and reported to the public that he had invited all Executive Council Members to remain in office pending reappointment. So, those who were Executive Council Members before the Chief Executive swore in are still Executive Council Members now. We are Members of the Executive Council, and we sit on the Executive Council not in any other capacity.

As regards the point raised by Mr CHEUNG Man-kwong earlier, we must understand that the Chief Executive is the head of the Government of the Hong Kong Special Administrative Region; he leads the Government, while each policy will be responsible by the Director of the relevant bureau. So, after a conclusion is made by the Executive Council and if the proposal of a Director of Bureau is supported by the Executive Council, the Director of Bureau will implement the policy in the way agreed. But if opinions are diverse at the meeting or if it is considered that the entire conclusion and implementation process require reconsideration or the proposal requires revision, the Director of Bureau will have to consider whether or not to take on board these opinions. Mr CHEUNG Man-kwong was right earlier in saying that as the Director of Bureau has assumed accountability, he should be held responsible, and despite views suggested by the Executive Council, the decision as to whether or not to accept their views should ultimately rest with the Director of Bureau. The Director of Bureau will look into whether such views are agreeable in the light of the circumstances and the merits of these views. If he agrees that changes should be made to the proposal and if everyone agree with the changes, then there will not be any problem. In general, we hope that through this process, improvements can be made to the formulation of policies and public aspirations better answered after introducing different voices into the Executive Council.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the Secretary has not answered my question. If the Executive Council made a collective decision but the Director of Bureau disagreed with it, must the Director of Bureau comply with this collective decision? Or can the Director of Bureau insist on his own views and be responsible for his policies as an accountable official?*

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

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, as we all know, the Executive Council is a body which gives advice to the Chief Executive. We often say that the final decision rests with the Chief Executive in Council and so, the decision still rests with the Chief Executive. What I have explained earlier is that there will not be any problem if it is agreed that changes are necessary. But if the Director of Bureau considers some changes impracticable, I think he will bring the problem back to the Executive Council for further discussion, in the hope of forging a consensus. If a consensus can be reached, the problem can be solved. But if the Director of Bureau does not accept the suggestion for some reasons, then he must be accountable for it. In fact, we all know that under such circumstances, there are procedures allowing this to happen under Article 56 para 3 of the Basic Law. If the Chief Executive accepts the views of the Director of Bureau and ultimately does not accept a majority opinion of the Executive Council, he shall put the specific reasons on record and so, there is a way allowing this to be done. However, we do not expect that this will often be the way to solve problems.

**MR CHEUNG MAN-KWONG** (in Cantonese): *He has not answered my question. He mentioned Article 56 of the Basic Law which provides that if the Chief Executive does not accept the opinion of the Executive Council, he should put the specific reasons on record. But my question now is about the Directors of Bureau. The Secretary intentionally confused the duties of the accountable Directors of Bureau with those of the Chief Executive.*

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

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, let me try to answer the question again. In the Government, there are discussions between the Chief Executive and the Directors of Bureau. So, the Directors of Bureau will have to deal with these conflicts through the Chief Executive.

**MR DANIEL LAM** (in Cantonese): *Madam President, during the election campaign the new Chief Executive, Mr Donald TSANG, repeatedly stressed the strengthening of governance and stated that the Executive Council would be restructured. Can the Government inform this Council that in its plan to restructure the Executive Council, will it consider incorporating more district representatives, such as senior Members who are well-versed in the New Territories affairs, into the Executive Council, so that the Government's policies can keep a close tab on the public pulse?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I think the Chief Executive has not yet decided on the candidates. In the course of consideration, he will consider all suitable candidates whom he considers to be able to help him.

**MR CHIM PUI-CHUNG** (in Cantonese): *Madam President, before the reunification, the Royal Instructions and Letters Patent were implemented in Hong Kong, and the Executive Council then was responsible to the Governor of Hong Kong. Does the new Chief Executive wish to restore the British system without a British flag and does he consider it better than the system that has been adopted over the past six years after the reunification with China?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, Mr CHIM was referring to the rules of confidentiality and collective responsibility mentioned earlier. In fact, as we all know, in the laws of Hong Kong there is an Oaths and Declarations Ordinance which governs how Executive Council Members should perform their duties and requires them to take the Oath of Fidelity and the Executive Council Oath. Under this Ordinance, the oaths to be taken by Executive Council Members include two points: In the oath they will undertake not to disclose the agenda of Executive Council and they will assume collective responsibility ultimately. So, this is not a system handed down to us, but a principle the compliance of which by the Executive Council is provided for in the law after the reunification.

**MR LEE WING-TAT** (in Cantonese): *Madam President, the Chief Executive, Mr Donald TSANG, mentioned during the election that if the proposal of any*

*Director of Bureau fails to obtain the consent of the Executive Council but has the support of Mr TSANG himself, the proposal can still be implemented. My question is: Is the reform now truly intended to expand the representativeness of the Executive Council? Or is it meant to achieve a greater concentration of powers on the new Chief Executive, thus enabling him to arrogate all powers to himself?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, as we all know very clearly, the powers and functions of the Chief Executive are clearly provided for in the Basic Law. In this regard, the functions and roles of the Executive Council and the Chief Executive are very clear. No additional power will be given to the Chief Executive as a result of the restructuring. We guarantee that after the future restructuring of the Executive Council, we will certainly ensure that the relevant proposals are entirely in line with all the provisions of the Basic Law.

**PRESIDENT** (in Cantonese): We have spent over 17 minutes on this question. Last supplementary question now.

**DR LUI MING-WAH** (in Cantonese): *Madam President, obviously, the Chief Executive wishes to absorb more talents into the Executive Council. In part (a) of the main reply, the Government said that it wishes to invite more people from different social background to join the Executive Council, and in part (c), it is mentioned that it wishes to have more talents of the community to serve in the Executive Council. May I ask the Government how many "more" means? It is because while having a larger group of Members has its merits, having a smaller group has its merits too. What does "more" mean?*

**ACTING CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, this is a factor to be considered by the Chief Executive in considering the restructuring of the Executive Council. The opinions given to him by Members today and the views that he has collected outside this Chamber will be important factors of his consideration.

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

## **Automatic Discharge from Bankruptcy**

2. **MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, since the commencement of the Bankruptcy (Amendment) Ordinance 1996 on 1 April 1998, any person who has been adjudged bankrupt for the first time will be automatically discharged from bankruptcy on the expiration of the period of four years after the date of the bankruptcy order, without having to apply to the Court for a discharge. Not less than three months before the end of the relevant period, the trustee (normally the Official Receiver) shall publish a notice in the newspaper to give creditors a chance to raise an objection to the discharge of bankruptcy. Where the Court is satisfied that the trustee or any of the bankrupt's creditors has made a valid objection, the Court may order that the bankruptcy period be extended for a period not exceeding four years. A person who had been adjudged bankrupt for more than nine years at the time the Amendment Ordinance commenced operation has complained to me about the refusal by the Official Receiver's Office (ORO) to allow him to be automatically discharged from bankruptcy in accordance with the new provision. In this connection, will the Government inform this Council of:*

- (a) *the respective numbers of persons who had been adjudged bankrupt for more than four years and eight years when the Amendment Ordinance came into operation on 1 April 1998, and how many of them were respectively automatically discharged from bankruptcy within or after a period of one year since the commencement of the Amendment Ordinance;*
- (b) *the ORO's total expenditure on publishing the above newspaper notices to creditors in respect of bankrupts who had been adjudged bankrupt for more than eight years within the first year of the commencement of the Amendment Ordinance, as well as the amounts of payments the ORO received from such bankrupts for debt repayment purposes during the same period; and*
- (c) *the reasons for the ORO not allowing bankrupts who have been adjudged bankrupt for many years to be expeditiously discharged from bankruptcy pursuant to the spirit of the Amendment Ordinance and the Report on Bankruptcy by the Law Reform Commission (LRC) of Hong Kong, to enable them to lead a new life; and the number of complaints the ORO has received in this respect?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, to begin with, I would like to briefly explain the relevant law.

Prior to the commencement of the Bankruptcy (Amendment) Ordinance 1996, a bankruptcy order could last for a lifetime, unless the bankrupt applied to the Court for discharge and the application was approved.

The main purpose of the Amendment Ordinance 1996 was to respond to the recommendations of the LRC's Report on Bankruptcy, which was published in 1995. One of the recommendations was the introduction of automatic discharge.

In summary, under the amended (existing) Ordinance, a person who is a first-time bankrupt will be automatically discharged from bankruptcy at the end of four years. However, the Court may order that the automatic discharge may be suspended for up to four years (in the case of first-time bankrupts) if it is satisfied that a valid objection has been lodged by the trustee or a creditor, for example, the bankrupt has failed to co-operate with the trustee in the administration of the estate. Therefore, the maximum bankruptcy period is generally eight years.

To cater for bankruptcy cases adjudged before the commencement of the Amendment Ordinance 1996 (on 1 April 1998), the Amendment Ordinance also introduced a transitional arrangement, namely section 30C of the Ordinance. In relation to first-time bankrupts, if their bankruptcy orders were made not less than 42 months before 1 April 1998, the orders would be automatically discharged on 1 April 1999, unless during that 12-month period starting on 1 April 1998, the trustee or a creditor filed an objection, in which case the Court shall deal with it. For example, if a person had been a bankrupt since 1 January 1990, although he had been bankrupt for more than eight years when the Amendment Ordinance commenced on 1 April 1998, under section 30C, he still had to wait for 12 months until 1 April 1999 before he could be automatically discharged from bankruptcy. This transitional arrangement is based on a recommendation of the LRC and its purpose is to allow the ORO, creditors, and so on, to have time to administer the cases concerned and, where necessary, apply to the Court to object to the automatic discharge from bankruptcy.

Now I would like to respond to the three parts of Mr LEUNG's questions as follows:

- (a) (i) As at 1 April 1998, there were 3 252 bankrupts with bankruptcy orders made over four years, of which there were 2 272 bankrupts with bankruptcy orders made over eight years. All these bankrupts were dealt with under section 30C I mentioned above.
- (ii) On 1 April 1999, of the 3 252 bankrupts, 3 168 were automatically discharged. Seventy-five bankrupts could not be automatically discharged from bankruptcy on 1 April 1999 because of reasons such as the trustee or creditors had raised objection.
- (b) In the 12-month period starting on 1 April 1998, the total expense incurred by the ORO in advertising in newspapers the relevant notices to creditors was \$118,908. However, the ORO does not have a breakdown of the expenses in relation to the notices on the relevant persons who had been adjudged bankrupt for over eight years. The ORO also does not keep statistics on the amount paid by those bankrupts to the ORO for the purpose of repaying their debts.
- (c) (i) As I have explained in the fifth paragraph above, the relevant transitional arrangement is based on a recommendation of the LRC. Under section 30C of the Ordinance, in relation to first-time bankrupts, bankruptcy orders that were made not less than 42 months when the Bankruptcy (Amendment) Ordinance 1996 became operative would not be automatically discharged on 1 April 1998. They had to wait for 12 months, that is, 1 April 1999, before they would be automatically discharged.
- (ii) The ORO had received one complaint querying whether section 30C should be applicable to the complainant's case.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, may I ask the Secretary why he says in part (b) of his reply to my main question that there are no relevant statistics?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the ORO has explained to me that since a large number of cases are involved, huge manpower and resources will have to be incurred to collect the relevant statistics. This explains why there are no ready statistics. And, this also explains why we are unable to provide these statistics.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the Secretary said in part (c)(ii) of the sixth paragraph of the main reply that on 1 April 1999, of the 3 252 bankrupts, 3 168 were automatically discharged, and that 75 bankrupts could not be automatically discharged due to reasons such as objection from the trustee or creditors. May I ask what has since happened to these 75 bankrupts? Have they all been discharged from bankruptcy? Furthermore, 3 168 plus 75 is not equal to 3 252. What has happened to the remaining nine bankrupts?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Many thanks to Mr Frederick FUNG for asking this question. I shall submit a written reply on the 75 bankrupts mentioned in the first part of his supplementary question. (Appendix I) Since many technicalities of the ORO are involved, I do not have the relevant information to hand.

**PRESIDENT** (in Cantonese): Secretary, there is also the information about the nine remaining bankrupts.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I shall also submit a written reply. (Appendix II)

**MR ALBERT CHAN** (in Cantonese): *Madam President, the Secretary mentioned in part (a)(i) of the sixth paragraph of the main reply that there were*



*3 252 bankrupts with bankruptcy orders made over four years. But I believe more than 100 000 people should have been adjudged bankrupt since 1998. This can well be included in the Guinness World Records. Madam President, with your indulgence, I would like to ask a question on the fees involved because they are of very great concern to bankrupts. Assuming that the fee per bankruptcy petition is some \$8,000, then the revenue from all the bankruptcy petitions over the past eight or nine years should have amounted to more than \$10 billion. This is already a very big industry in itself. Bankruptcy fees will mean a lot to bankrupts because while they do not have any more money left, they still have to pay some \$8,000 or \$9,000 to petition for bankruptcy. This will exert very heavy pressure on them. Since the ORO has already collected more than \$10 billion over the past eight or nine years, will the Secretary consider the possibility of lowering the fees payable by bankrupts?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I may perhaps provide Members with some statistics on bankruptcy cases. For a period of time after 1989, for example, the number of bankruptcy cases was just about 220 a year. Mr Albert CHAN was right in pointing out that the financial turmoil in 1997 was followed by a drastic increase in such cases. In 1998, the number of bankruptcy petitions soared to 1 362. And, in 2002, the number was still higher, rising further to 26 912. Since the fee charged for each bankruptcy petition is just some \$8,000, I simply cannot see how one can come up with a sum of \$10 billion. In 2003, the number of bankruptcy petitions stood at 20 002. In other words, the number of such petitions used to be in the thousands, and it was not until 2001 that the number of such cases exceeded 10 000, rising to 13 000. Then, in 2004, there started to be a decline to some 12 000. I have heard that a person petitioning for bankruptcy has to pay a fee of some \$8,000. But I must say that this level of fee is set having regard to the expenses we have to incur in handling these cases. That is why the fee is set at \$8,000 or so. However, we may still request the ORO to conduct a review.

**MR JAMES TO** (in Cantonese): *Madam President, as far as I am aware, the complainant mentioned in part (c)(ii) of the sixth paragraph of the main reply actually complained to The Ombudsman and The Ombudsman did request the ORO to make an apology. Was this true? What mistakes did the ORO make in the handling of this particular case?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I really wish to ask whether we should comment on any individual cases here. I hope that the President can make a ruling.

**PRESIDENT** (in Cantonese): We do not have any rules on whether or not we should comment on individual cases. But as far as I am aware, government officials usually will not comment on any individual cases. As for Mr James TO's supplementary question, the Secretary may wish to give a reply of a general nature. The Secretary may himself decide how to answer this supplementary question.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I see, Madam President. Anyone who is not satisfied with a government department may lodge a complaint to the relevant authorities such as The Ombudsman. Sometimes, the Government may not necessarily have made any mistakes; members of the public may just be not satisfied with certain procedures adopted by the Government to handle their cases. In such cases, the government departments concerned will extend an apology. If a complainant is still not satisfied with the ruling of The Ombudsman, he may take the matter to Court to obtain a verdict. And, upholding the spirit of the rule of law, the Government will always appear before the Court to give its defence. This is the usual procedure. Sometimes, the Government may not have made any mistakes in the course of handling any individual cases, but in case it does, it will certainly rectify the situation. If there has been any unsatisfactory handling, the government departments concerned will be prepared to extend an apology to the complainants. I do not wish to mention any specific case, but this is the usual practice.

**MR JAMES TO** (in Cantonese): *Madam President, the Secretary has not told us whether the ORO ever tendered any apology. I do not think that an apology will involve anything confidential. Why did the ORO make an apology? Is it because it made any mistakes? Or, is it simply because of unsatisfactory handling? If the Secretary happens to have any information now, it is nothing confidential.*

**PRESIDENT** (in Cantonese): You are asking the Secretary to comment on the case you mentioned, right?

**MR JAMES TO** (in Cantonese): *Yes, Madam President.*

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, since I am the official in charge of a Policy Bureau, I do not think that I should comment on any individual cases in the legislature. What is more, this is actually a case that happened many years ago and I was not personally involved. Therefore, it may not be so desirable if I cannot answer Mr James TO's question satisfactorily. However, if Mr James TO wishes to know more about the case, I definitely welcome him to write to my Bureau or the ORO. We are more than happy to offer an explanation to Mr James TO under suitable circumstances.

**MR JAMES TO** (in Cantonese): *Madam President, I hope that you can make a ruling. First, may I ask the Secretary to give a written reply? If the only reason is that the Secretary is not prepared to answer this question now, then he should not be talking about the question of principle. Madam President, if, however, the question of principle is really involved, you must make a ruling. The reason is that a specific complaint was cited in the preamble of Mr LEUNG Kwok-hung's main question. If the Secretary really thinks that the details of the complaint must not be disclosed, then he should not have said in his main reply that the complainant had queried whether section 30C of the Ordinance should be applicable to his case. By giving such a reply, the Secretary is in fact talking about the details of the case, right? Therefore, if the Secretary really thinks that individual cases must not be discussed as a matter of general principle, then he should reply that he will not confirm whether any complaint was received. Besides, he should not make any confirmation regarding the content of the complaint, right? If the content of the complaint does not involve anything confidential or the complainant's privacy, I fail to see why the Secretary cannot give a written reply.*

**PRESIDENT** (in Cantonese): Mr James TO, in the preambles of Members' main questions, an allusion is often made to specific cases or incidents. But as a conventional practice, the Government may not necessarily comment on any

individual cases in its main replies. For this reason, I shall accept the Secretary's refusal to give a reply on the ground that he does not wish to disclose the details of individual cases. This is my ruling. I hope you will accept it.

**MR JAMES TO** (in Cantonese): *Madam President, the details of the complainant's query is mentioned in the Secretary's main reply. If this is really an individual case, he simply should not have mentioned it at all, right? But the query was really mentioned in his reply. May I therefore ask whether there are any practical implications?*

**PRESIDENT** (in Cantonese): As I have already made a ruling, I shall not continue to debate with you now.

We have spent more than 18 minutes on this question. Last supplementary question.

**MR ALBERT HO** (in Cantonese): *Madam President, the purpose of amending the Bankruptcy Ordinance is very clear. The aim is to streamline the procedure, so that bankrupts with bankruptcy orders made over four years can be discharged automatically and resume a normal life. However, under section 30C of the Ordinance, that is, the provision mentioned by the Secretary in his main reply, there is a so-called transitional period. From the main reply, we can notice that in 1998, whether a person had been adjudged bankrupt for four years or more by that time, he would still have to wait one more year before he could benefit from the amended Ordinance. May I ask the Secretary whether he thinks that this is very absurd and defeats the purpose of amending the Ordinance? Should the ORO inform the bankrupts concerned in 1998 that instead of waiting one more year, they could apply to the Court for discharge as an alternative? An alternative was actually added at that time, but did the Government ever advise the bankrupts concerned that instead of wasting any more time, they could have the alternative of applying to the Court for discharge?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, as far as I am aware, section 30C was passed

only after the discussions of the relevant Bills Committee. That is why I am not going to comment on whether the transitional arrangement is good or bad. Anyway, we must respect the fact that the relevant Bill was passed with the addition of section 30C as a transitional arrangement.

**MR ALBERT HO** (in Cantonese): *Madam President, the Secretary has not answered whether there was an alternative for persons who had already been adjudged bankrupt for more than four years or even eight years by 1998, that is, whether these bankrupts could choose the old mechanism as an alternative and apply to the Court for discharge instead of relying on the mechanism of automatic discharge? If there was already an alternative, did the Government ever inform them accordingly, so that they did not have to waste one more year on waiting?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, since the amendment ordinance was passed and these bankrupts were thus entitled to automatic discharge — of course, there were in fact two options for them, one being petitioning the Court for discharge and the other being automatic discharge — they should naturally choose the easy way, right? Maybe, these bankrupts might need to apply to the Court for discharge due to one reason or another. There might be some reasons, but I really do not know. However, I still cannot quite follow Mr Albert HO's logic. Since automatic discharge was already available, why should these bankrupts still choose to petition the Court for discharge, for example? Perhaps because I am no lawyer, I cannot quite catch Mr HO's line of argument. I am so sorry.

**MR ALBERT HO** (in Cantonese): *Madam President, the problem lies with the transitional period. Did the Government inform the bankrupts concerned that instead of wasting any more time on further waiting, they could adopt the alternative of applying for discharge? My supplementary question was as simple as this.*

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, on this particular point, may I first make an enquiry with the ORO and submit a written reply to Mr Albert HO's question later. (Appendix III)

**PRESIDENT** (in Cantonese): Yes, you may.

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

### **Handling of a Case of Dead Body Found**

3. **MS EMILY LAU** (in Cantonese): *Madam President, it has been reported that a woman's skeleton was only discovered in a residential flat four-odd years after she had died. After investigations, the police did not bring charge against anyone, and neither did the Coroner hold a death inquest. The younger sister of the deceased has pointed out that there are a lot of questionable points in the case and some crucial exhibits are even missing. She therefore suspects that the police and the Coroner have not handled the case in an impartial manner. In this connection, will the executive authorities inform this Council:*

- (a) of the reasons for the police's terminating investigation into the case and for the Coroner's not holding a death inquest into the case;*
- (b) whether they have assessed the impact of the way the police investigated the case and their findings, as well as the Coroner's not holding a death inquest into the case, on the image of the police and the Judiciary; if so, of the assessment results; and*
- (c) given that the case has aroused public concerns, whether the police will re-open the investigation into the case?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Administration places the utmost importance on respecting the rule of law and judicial independence.

Arising from recent media reports on the case, and approach by family members of the deceased, the police are now reviewing the case. Before the review is completed, it would be inappropriate to draw any conclusion regarding the handling of the case at the time by the police.

The answers to the three parts of the question are as follows:

- (a) Records reveal that upon the request of the Coroner, a police investigation was conducted and a report was submitted to the Coroner in 2001. The Coroner subsequently decided that no death inquest was required.

The answers to parts (b) and (c), the police are now conducting a full review of the case in light of the approach by family members of the deceased. The review is still ongoing.

Given the independence of the Judiciary, the Administration is not in a position to comment on the decision of the Coroner.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary's reply is most disappointing because I am asking a question on facts: What are the reasons for terminating the investigation? Madam President this case is very sensitive. The owner of this residential flat is the elder brother of the former Chief Secretary for Administration. The family members of the deceased said that there were a lot of questionable points in the case and some exhibits were missing. After so many years, the whole case is still a mystery. I would like to ask the authorities this question. In order to handle the case in a really impartial manner and to show that the case is handled with high transparency, will the authorities consider invoking the Commissions of Inquiry Ordinance to conduct a judicial hearing to investigate the case in an open manner, so as to make people from all walks of life in Hong Kong feel comfortable about the institutions of Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I understand the concern of members of the public over this incident. I can make it clear to Ms LAU that the Government is greatly concerned about this case. I can also assure Members that the Government will definitely handle this case impartially. In my opinion, at the moment, we should allow our police officers

a free hand to investigate into the details of the case. On the other hand, as the family members of the deceased have recently provided some new information to the police, so upon completing processing such information, the police will definitely submit a detailed report. I think, at the present stage, it is not appropriate for me to disclose what actions we will take in future.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, as Ms Emily LAU said just now, the person involved in this case is a relative of the former Chief Secretary for Administration. May I ask the Secretary, as far as he understands, whether the former Chief Secretary for Administration was aware of the case at that time, and whether she had mentioned to the Chief Executive then that she was related to the incident, so as to ensure that the entire investigation could be conducted impartially and that the case could be handled fairly?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the information provided to me by the police, they are now reviewing the case. They told me, and assured me that, in handling this case, they had never come under any pressure from anyone.

**MR LEUNG YIU-CHUNG** (in Cantonese): *The Secretary has not answered the supplementary question raised by me just now. My supplementary question is, according to the information obtained by the Secretary, whether the former Chief Secretary for Administration was aware of the case, or whether she had mentioned to her supervisor, that is, the Chief Executive, that the person involved in this case was someone related to her, thereby ensuring that the case could be handled impartially. Does he know the information of the case very well? If not, why not?*

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think I do not have anything to add. Maybe let me to say it in a clearer manner. As shown by the information we can get hold of now, there is no evidence to show that anyone has ever attempted to interfere with the investigation conducted by the police.



**MR JAMES TIEN** (in Cantonese): *Madam President, in his main reply, the Secretary said that the police were conducting a review of the case, so it was not appropriate to provide answers in many different aspects. I can understand this point. However, I would also like to ask a supplementary question. The case happened four years ago. Part (a) of Ms Emily LAU's question asks for "the reasons for the Coroner's not holding a death inquest". The Secretary's reply was "The Coroner subsequently decided that no death inquest was required." The supplementary question I would like to ask is: Can the Coroner's report submitted four years ago when he decided that no death inquest was required be disclosed now? Or are there any special reasons making it unsuitable to disclose this report? This report should be unrelated to the recent investigation as it was an incident that happened four years ago. Therefore, can this report be disclosed to the public?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I think I have already pointed out in my main reply that, given the independence of the Judiciary, I cannot answer the supplementary question raised by Mr James TIEN just now on behalf of the Coroner to say under circumstances the Court can disclose the relevant information, and under what other circumstances the Court cannot.*

**DR JOSEPH LEE** (in Cantonese): *Madam President, may I ask the Secretary, under general circumstances, what are the general rules or criteria which the Coroner would apply in deciding not to explain his reasons for not holding a death inquest?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I would like to reiterate that, insofar as the executive is concerned, I cannot speak here on behalf of the Judiciary because the Judiciary is completely independent of the executive.*

**MR ALBERT CHENG** (in Cantonese): *Madam President, I would like to follow up Mr LEUNG Yiu-chung's supplementary question because the Secretary might not understand what Mr LEUNG's question was about. His supplementary*

*question is, although this case involved a reputable family, with former Chief Secretary for Administration Mrs Anson CHAN being one of its members, the core issue is not whether anyone had ever interfered with the course of justice. In fact, what we want to ask is, when this case took place, as it involved a member of Anson CHAN's family, whether Anson CHAN had mentioned it to Mr TUNG — not saying that she had interfered with it — in order to give a clear account of the incident, and by doing so, to see whether the police and the Government could impress the people as having handled the case in an impartial manner.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police will follow established procedures in handling all the cases, and such procedures will not be different just because the persons involved are celebrities in society. In the investigation of the case, the police have handled it according to established procedures. With regard to the supplementary question raised by Mr Albert CHENG just now, I can tell Mr CHENG — I am just reiterating it — that we do not have any evidence to prove that anyone has ever attempted to interfere with any procedures of investigation of this case by the police.

**MR ALBERT CHENG** (in Cantonese): *Madam President, for the same question raised by two Members, he simply cannot understand it. Let me state it in clearer terms: We are not asking whether anyone had ever interfered. As this case involved the family of the former Chief Secretary for Administration, she should be obligated to make clarification to Mr TUNG. That is, the supplementary question is asking whether she had made the clarification, instead of asking about the part concerning the police. From the information the Secretary can get hold of now, can we find out whether the former Chief Secretary for Administration had made clarification to the Chief Executive then, since her family was involved in an unsolved case at that time?*

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, simply no. I do not have information on this.

**MR ALBERT CHENG** (in Cantonese): *What do you have not or you do not have information in this regard? I cannot hear the answer clearly.*

**PRESIDENT** (in Cantonese): He first said "no", then followed by "do not have information on this".

**MR ALBERT CHENG** (in Cantonese): *Oh, both questions were answered altogether. Thank you. That means such information may exist.*

**MR PATRICK LAU** (in Cantonese): *After listening to the reply, I would like to ask the Secretary a supplementary question. Do the police have a special department to handle such cases, that is, one that makes use of evidence collected four years ago, and that the officers are all very experienced in reviewing old cases? From television programmes, I learnt that the original conclusions of some cases can be overturned even for those that happened many years ago because the officers are very experienced in this aspect and such kinds of dedicated departments have been established. My supplementary question is: Do the police possess experience in this regard?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think the review of the case has not progressed to the stage of overturning its original conclusion. The police have already formed a group to conduct a review of the case, to which three senior police officers have been assigned. These three senior police officers have never been involved in the investigation of the case since the very first beginning. I would like to make it clear to Honourable Members, that I hope they can give the police some time, so as to enable them to conduct a detailed review of the case. We shall give an appropriate account of the case to the public soon after the review is completed.

**MR PATRICK LAU** (in Cantonese): *Madam President, I just want to ask the Secretary whether he knows if the police have a dedicated department specializing in handling some unresolved cases which happened a long time ago. That is, do the police possess this type of experience?*

**SECRETARY FOR SECURITY** (in Cantonese): In reply to Mr Patrick LAU's question, I think this type of cases happens, so to speak, only "once in a blue moon". The police do not have a standing department to handle this type of cases. However, I can tell Members, the police always rely on their professional training and experience to handle all the cases. Therefore, I firmly believe that the police are competent in handling this case.

**MR RONNY TONG** (in Cantonese): *Madam President, I am slightly perplexed. As a matter of fact, as the judicial proceedings of the case have already ended by now, why would the request for provision of information affect the independence of the Judiciary? What I would like to ask is: Can the Secretary furnish us with the police's report for submission to the Coroner, which was mentioned in part (a) of the main reply? If not, why not?*

**SECRETARY FOR SECURITY** (in Cantonese): According to our legislation, section 20 of the Coroners Rules stipulates that, if a properly interested person wants to obtain and inspect a copy of the death report or other information, he may submit an application to the Coroner. If any other persons would like to obtain the relevant information, they must obtain the authorization of the properly interested persons. Generally speaking, properly interested persons refer to the parents, spouse, siblings or the children, registered doctor and estate administrator of the deceased. Besides, according to section 19 of the Coroners Rules, "But a coroner may deliver such a document in connection with an inquest or autopsy to a person who in the opinion of the coroner should have possession of it." So, the power is in the hands of the Coroner.

**MR RONNY TONG** (in Cantonese): *Madam President, may I follow up ?*

*I am not asking for the report of the Coroner or those documents. I am asking for the police's report, which was mentioned in the main reply. I hope we can be enabled to inspect the police's report.*

**SECRETARY FOR SECURITY** (in Cantonese): Soon after the investigation had been completed, the police informed the parties concerned of the findings.

As it involves a lot of personal privacy of the deceased, I think, in the interest of protecting privacy, it is not suitable for us to disclose the report, unless with the consent of the parties concerned.

**MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, I would like to ask the Secretary through you that, under the existing mechanism, whether any guidelines or established practices are in place to specify the kind of circumstances under which the police must pass homicide cases to the Coroner's Court for processing?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the relevant procedures are like this. Chapter 38 of the Hong Kong Police Force Procedures Manual stipulates the responsibilities of the police on discovering a dead body, which include informing the next-of-kin of the deceased as soon as possible and making arrangements to remove any dead bodies discovered anywhere which do not have any known identities or which are unclaimed. The police will handle any dead bodies discovered anywhere which are suspected to have died of unnatural causes, and they will be responsible for investigating into every case with unnatural causes of death or with suspicious circumstances or on instructions from the Coroner, and they are also responsible for the compilation of death reports. If any suspicious circumstances are detected, the police have to conduct investigation according to criminal investigation procedures. In this case, as the investigation of the case was instructed by the Coroner, the police then submitted the report to the Coroner after their investigation had been completed. The Coroner decided that no death inquest was required after vetting and considering the report.

**DR FERNANDO CHEUNG** (in Cantonese): *Madam President, the Secretary has been avoiding a discussion on documents and information from the judicial aspect. However, as regards law enforcement, I know that the authorities are now in the process of planning for the establishment of a mechanism for review of serious casualties. May I ask the Secretary when this mechanism will be established, and whether such a mechanism will review this type of unresolved cases?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not understand what Dr CHEUNG was referring to. Can I ask Dr CHEUNG to further elaborate on what kind of mechanism he was referring to in his supplementary question?

**PRESIDENT** (in Cantonese): Dr Fernando CHEUNG, please repeat your supplementary question.

**DR FERNANDO CHEUNG** (in Cantonese): *It is a mechanism for review of cases involving serious casualties. The mechanism provides that, when some cases involving serious casualties take place, which are suspected to be associated with some special violence offences or family violence offences, then these individual cases will be reviewed. This mechanism is not a kind of judicial procedures. I would like to ask the Secretary whether he would implement this mechanism as soon as possible.*

**PRESIDENT** (in Cantonese): I think your supplementary question is asking whether the situation discussed under the main subject just now will be included in the review mechanism, right?

**DR FERNANDO CHEUNG** (in Cantonese): *Yes. Thank you.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I feel that Dr CHEUNG's supplementary question is unrelated to the subject in question today. However, after hearing his remarks, I shall discuss and find out the situation with the relevant departments. I cannot give any answer right now.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question now.

**DR KWOK KA-KI** (in Cantonese): *Madam President, in the main reply of the Secretary for Security, he said that the incident would depend upon the findings*

*of the review. I would like to know in what ways the Secretary can ensure the independence of the police in doing their work because the review is being conducted by the police. What are the responsibilities of the Secretary as well as the Judiciary? If the police eventually decides again that it is not necessary to overturn the original judgement in respect of the case, shall we accept the decision and close the case?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have replied this just now. The Government is very concerned about this case. We know that the general public are also very concerned about the case. Therefore, the present review is conducted by three senior police officers personally. These three senior police officers did not participate in the investigation of the case then, so this can ensure that they can review the case in a most objective manner. On the question of whether there will be judicial proceedings in future, I cannot rule out such a possibility. This is because according to the Coroners Ordinance (Cap. 504), where the Court of First Instance, upon the application in open court of a properly interested person or the Secretary for Justice, is satisfied (a) that a Coroner has failed to hold an inquest which ought to be held (there may be some other reasons), the Court of First Instance may order an inquest to be held into the death of a person, that is, a death inquest can be held; where an inquest has been already held, may quash the findings of the Coroner or jury at that inquest already held.

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

### **Nuisances Caused to Residents by One-woman Brothels**

4. **MR ALBERT CHAN** (in Cantonese): *Madam President, I have recently received a number of complaints about the nuisances caused to the residents (especially women) by whoremongers visiting female prostitutes in the flats of single private residential buildings (commonly known as "one-woman brothels"), who often ring the wrong doorbells, wait at the staircases or loiter on nearby streets. In this connection, will the Government inform this Council:*

- (a) *whether it has estimated the number of women currently engaged in prostitution in one-woman brothels;*

- (b) *of the respective numbers of complaints received by the authorities about the nuisances relating to one-woman brothels, enforcement actions taken against such establishments, prosecutions instituted as a result and the conviction rate in each of the past three years; and*
- (c) *besides the police action to crack down on prostitutes soliciting in the streets and on criminal syndicates which control prostitution activities, of the measures to tackle the problem of residents being disturbed by such activities?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, prostitution in itself is not an offence. Police action is therefore not targeted at prostitutes or one-woman brothels, but against such offences as organized vice activities and soliciting for immoral purposes. The answers below should be seen in this light.

- (a) The police estimate that there are about 1 000 women engaged in one-woman brothels. It should be stressed that this is only a very rough estimate based on information gathered from police patrolling and operation.
- (b) While the police do not take enforcement action against one-woman brothels *per se*, they do take enforcement action so as to, for example, ensure that the brothels are not part of organized vice activities and to remove vice signs. Joint operations with the Immigration Department (ImmD) are also launched frequently against visitors breaching their condition of stay or illegal immigrants who work as prostitutes.
- (c) Apart from the enforcement action referred to in (b) above, the police have taken measures to protect the public from nuisance caused by prostitution activities by enhancing uniformed patrol in areas suspected to have one-woman brothels to curb the problem of solicitation. The District Offices also assist owners of buildings, including those with prostitution activities, to form owners' corporations, in order to step up the security and management of the buildings. In addition, the Police Community Relations Offices in



the districts advise owners on the security aspects of the buildings. These measures have proved effective in curbing prostitution-related nuisance in the buildings concerned.

Owners of buildings may also seek professional advice on building management issues, including actions that may be taken under the respective Deed of Mutual Covenants against nuisance activities, including those related to prostitution, from the Building Management Resources Centres of the Home Affairs Department. The Centres provide free professional consultation services to owners through arrangements with the relevant professional bodies.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the Secretary stated in the main reply that the Government does not take actions targeting at prostitutes and "one-woman brothels". I think it is precisely for this reason that the problem is worsening, and the measures adopted have proved not effective at all. As prostitution in itself is not an offence, will the Government consider ways to bring this problem under proper supervision to reduce the nuisances thus created? For instance, the Government may consider bringing prostitution under legislative control through licensing or specifying prostitution as an illegal act to prevent it from causing nuisances to the residents. Will the Government consider regulation by way of licensing or specifying prostitution as illegal for the purpose of bringing such nuisances under proper supervision?*

**SECRETARY FOR SECURITY** (in Cantonese): I wonder if Mr CHAN was implying that red-light areas be designated to regulate these vice activities through licensing. With respect to proposals of designating red-light areas or similar ones, consideration cannot be given solely in the light of security. These proposals involve policy issues in various aspects. The most important issues with the most far-reaching impact are public morality and human rights. I will discuss Mr CHAN's suggestion with my colleagues of the relevant Policy Bureaux.

**MR ALBERT CHAN** (in Cantonese): *My question is: Will the Secretary regulate these activities through licensing or specify them as illegal?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, under our existing legal system, prostitution is not an offence. To make prostitution an offence, I think we must go back and give detailed consideration at the policy and law enforcement levels, as well as in the light of human rights. However, prostitution is not an offence in all countries currently practising common law.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary just said that this problem cannot be considered solely in the light of security. But actually, this problem has caused extremely serious nuisances to ordinary residential buildings, ordinary households and decent women. May I ask the Secretary whether the Government will consider taking comprehensive enforcement action against "one-woman brothels" activities carried out in residential buildings and permitting these activities to be conducted in other types of buildings instead?*

**SECRETARY FOR SECURITY** (in Cantonese): Did Mr CHAN imply that activities carried out in "one-woman brothels" should be permitted in non-residential buildings? I wonder if this is what he meant.

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

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, I would like to make a brief elucidation. Actually, my prime concern is that these activities have indeed caused enormous nuisances in residential buildings. The Government should not say that we are considering the problem solely in the light of security. Actually, people's livelihood should be considered as well. Will the Government consider allowing these activities to be conducted in non-residential buildings? Given that the Government has defined that the operation of "one-woman brothels" is not an offence, how can the problem be resolved if these activities are causing nuisances to the residents?*

**SECRETARY FOR SECURITY** (in Cantonese): Given that prostitution is not an offence, the operation of "one-woman brothels" is thus not an offence.

However, does it mean that there is nothing we can do about this problem? At present, under the Summary Offences Ordinance (Cap. 228), certain acts of obstruction without lawful authority or excuses, including ringing the doorbell of a certain residential premises and thus disturbing the people living therein, are specified as an offence. However, it might not constitute an offence if these acts are caused as a result of finding the wrong places. These acts are, to a certain extent, regulated by the Summary Offences Ordinance mentioned by me earlier. I think our priority at present is to mobilize members of the community, such as the owners of owners' corporations, and request them to strengthen the management of their buildings. Why did I say earlier that this is not purely a security or law enforcement problem? Because other departments will also be involved throughout the entire process. For instance, colleagues of the Home Affairs Bureau have to assist the owners in setting up owners' corporations and passing motions to prevent their residential buildings from being used for the purpose of operating "one-woman brothels", and so on. The joint participation of several Policy Bureaux and the public is required before the harm caused by this problem can be minimized.

Regarding the two proposals raised by Mr CHAN Kam-lam to, first, drive "one-woman brothels" to some non-residential areas, that is, allowing no "one-woman brothels" in residential buildings, then "one-woman brothels" will have to be criminalized. Second, if "one-woman brothels" are permitted to be operated in non-residential buildings, the operation of "one-woman brothels" in certain buildings would then be legalized. These two points involve some of the Government's fundamental policies and I am afraid I cannot give Members a definite reply on this today.

**MR WONG KWOK-HING** (in Cantonese): *Madam President, the reply given by the Secretary just now shows that this problem has actually not been resolved. On the one hand, "one-woman brothels" have indeed caused serious nuisances to the residents and, on the other, it is a fact that sex workers have to make a living. Yet, the Government's current approach of dealing with the problem has attracted enormous public grievances because the problem remains unresolved. Therefore, I would like to ask the Secretary through the President whether a study will be conducted on this problem and, through the study, identify solutions before consulting this Council?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, this subject concerns more than the Security Bureau. Neither is it purely a law enforcement issue. Instead, it involves society, morality and ethics. This explains why I undertook to Members in my earlier reply that I would discuss with the relevant colleagues the views put forward by Members today. As regards altering the Government's existing policy, such as legalizing red light areas, prostitution, and so on, we will definitely first consult the Legislative Council should we really move in this direction.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary said earlier that "one-woman brothels" would not be targeted. However, organized activities of a similar nature would be combated seriously. Has the Secretary noticed the existence of organized "one-woman brothels"? We have noticed the existence of "one-woman brothels", and even "women brothels" in some buildings. Is this situation serious, and are relevant figures available?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the information provided to me by the police, we think that "one-woman brothels" are currently not operated in an organized manner or controlled by the triads, or they would not be called "one-woman brothels". In other words, these "one-woman brothels" are not operated on a large scale. The police have mobilized enormous manpower in combating the triads or organized vice activities. I think Members should have noticed from newspaper reports that the police have, from time to time, launched massive operations to combat organized vice activities and frozen the assets of the persons involved. According to my understanding, the police have frozen more than \$900 million worth of assets of the relevant persons in a recent operation.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the problem of "one-woman brothels" has been in existence for years, and the authorities concerned began dealing with it a long time ago. We understand the difficulties confronting the police in ensuring that the tenants are free from nuisances while, within the ambit of the law, allowing the "one-woman brothels" activities to continue. My question is related to the last sentence of part (b) of the Secretary's main reply with respect to "visitors breaching their condition of stay or illegal immigrants who work as prostitutes". It is precisely these people who*

*form the biggest group and the scale of their activities is the largest too. The Secretary has, in reply to other questions this year, also mentioned that he would liaise with the public security authorities or the relevant departments on the Mainland to jointly tackle this problem. May I ask, after such a long period of time, whether the authorities have reviewed the result of these efforts and their effectiveness? Basically, my attitude is that no efforts should be spared in repatriating these people who work as prostitutes back to the Mainland.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police have always been taking vigorous law enforcement actions against prostitution and illegal activities. Joint operations with the operational wing of the ImmD are also launched frequently. In order to combat mainlanders who enter Hong Kong to work as prostitutes, the police have targeted some black spots of prostitution activities and step up enforcement by, for instance, increasing the frequency of inspecting vice establishments, orchestrating "undercover" operations, taking enforcement actions against street prostitutes, and so on. On immigration control, ImmD staff will strictly enforce immigration control at various control points and, while making the best effort to facilitate the entry of travellers, watch out for suspicious travellers and conduct interrogations to prevent people with ulterior motives from entering Hong Kong to work as prostitutes or engage in other illegal activities. In December last year, the ImmD introduced at various control points a facial differentiation system to help identify suspicious persons to prevent them from entering Hong Kong by using another identity. In addition to stepping up law enforcement locally, the police and the ImmD further maintain closer ties with the mainland public security authorities. At regular high-level meetings, the police will, in relation to this issue, examine with the mainland public security authorities ways to step up co-operation between the two places in combating cross-boundary prostitution activities. Earlier, both parties also agreed to further improve their network for exchanging intelligence on vice activities. The initiatives mentioned by me earlier have started to bear fruit this year. According to the information I have at hand, the number of mainland travellers arrested for engaging in vice activities is lower than that of last year. This shows that our law enforcement work is dovetailing with that undertaken by the Mainland, and the mainland authorities have acted more stringently in carrying out their gate-keeping duties in issuing two-way exit permits. Meanwhile, we have strengthened our intelligent efforts, and the police have dialed up their vigour in cracking down on such activities. This year also saw a sharp fall in the number of mainland women entering Hong Kong to work as prostitutes.

**MS EMILY LAU** (in Cantonese): *Madam President, I would like to follow up the last point of the reply given by the Secretary just now, that is, the one relating to combating cross-boundary prostitution activities by targeting mainlanders who enter Hong Kong to engage in illegal prostitution activities. In a recent case, the police put the people arrested inside an iron cage, and the incident was covered extensively by electronic media around the world. May I ask whether the Secretary considers this method the most effective to deal with issues of this kind? Or have the authorities decided, after reviewing the case, that this method should never be used in future to deal with similar cases?*

**PRESIDENT** (in Cantonese): Ms Emily LAU, can you explain how this arrest and detention method is related to "one-woman brothels"?

**MS EMILY LAU** (in Cantonese): *Madam President, they are unrelated. I was merely trying to raise a follow-up to the reply given the Secretary just now. Madam President, the Secretary spent a couple of minutes earlier explaining how to combat cross-boundary prostitution activities and arrest the relevant persons. I wanted to ask him about the method adopted in detaining the relevant persons. I also wish to ask whether the Secretary has conducted a review of this for I feel that the method used has brought Hong Kong into disrepute. Madam President, I hope you can allow me to raise this supplementary question.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police have indeed conducted a review of this incident. In the incident, the police acted according to the law. Nevertheless, can the matter be handled more appropriately? After the review, the police also hope that a better method can be adopted in similar operations in future.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question now.

**MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, under what legislation can enforcement actions be taken against prostitution operated as "one-woman brothels" and does the Government consider such legislation*

*effective in resolving the present problem? Should such legislation be considered inadequate, will the Government consider adding corresponding legislation?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have made it clear in the main reply that, according to existing legislation, prostitution is not an offence. As such, the operation of "one-woman brothels" in itself is not an offence. However, are we going to criminalize prostitution or "one-woman brothels"? Here a major policy change is involved, and the problem has to be considered in many aspects. I have stated earlier that prostitution is not considered an offence in all countries currently practising common law.

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

### **Private Residential Care Homes for the Elderly Participating in Bought Place Scheme**

5. **MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Government is currently buying places from private residential care homes for the elderly (RCHEs) through the Bought Place Scheme and Enhanced Bought Place Scheme (EBPS) for accommodating the elderly in need. In this connection, will the Government inform this Council:*

- (a) *whether it currently regulates the remuneration and working hours of the employees in those RCHEs participating in the above schemes; if so, of the details; if not, the reasons for that;*
- (b) *given that private RCHEs participating in the schemes concerned are required to submit staff employment records, of the statistical figures on these RCHEs compiled on the basis of the relevant records, including the respective numbers of home manager, nurse, health worker, care worker and ancillary worker, and so on, their respective average monthly salaries as well as the median and average daily working hours; and*

- (c) *given that the authorities have imposed requirements in respect of the terms of employment for non-skilled workers employed by contractors of outsourced government services, which include eight hours of work and the requirement that the monthly wages shall not be lower than the average monthly wages for the relevant industries or occupations as published in the Census and Statistics Department's updated Quarterly Report of Wage and Payroll Statistics at the time when the tenders are invited, whether the authorities will consider extending these requirements to cover employees of those private RCHEs participating in the above schemes; if so, of the details; if not, the reasons for that?*

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

- (a) RCHEs provide services and care to elders around the clock. To ensure that elders are adequately taken care of and their well-being is safeguarded, staff have to work in shifts to ensure the 24-hour operation of the homes. In the Code of Practice for Residential Care Homes (Elderly Persons) (CoP) issued by the Social Welfare Department (SWD), it is clearly stipulated that, for all types of RCHEs, there should be a minimum of two shifts of staff serving in the homes.

In addition, in the invitation to private RCHEs to participate in the EBPS issued in April 2003, the SWD has encouraged operators to consider, in consultation with their care workers, having each shift for not longer than 10 hours, with a view to maintaining reasonable salary rates and working hours.

Given that the number of places purchased by the SWD from private RCHEs vary greatly, and the scale, financial position, business strategy of each EBPS home differs, the SWD considers that participating homes should set their employment terms (including remuneration and benefits) based on their individual conditions as well as the supply and demand in the labour market. It would not be appropriate for the SWD to directly regulate such employment terms. Having said that, operators must comply with the relevant



requirement of the CoP regarding a minimum of two shifts, as mentioned above. They must also abide by the relevant provisions in the Employment Ordinance, especially the statutory requirements of rest days.

- (b) The purpose of asking RCHEs to submit "Staff Employment Record" is for the SWD to monitor whether the homes have met the required staff ratios under the EBPS, and is not meant for collection of data on the salary level of individual staff of the homes. The SWD is therefore not in the position to provide the average monthly salaries of different grades of staff employed in homes participating in the EBPS.

Regarding the number of working hours of care staff (including registered nurses, enrolled nurses, health workers, care workers and auxiliary workers) working in the 121 private EBPS homes, it ranges from 9.5 to 12 hours (including meal break) per person per day on average.

- (c) Financial Circular No. 5/2004 regarding the mandatory requirements for service contracts stipulates that for service contracts for which tenders are invited on 6 May 2004 or after, if they rely heavily on the deployment of non-skilled workers, the monthly salary rates of non-skilled workers to be employed under the government service contracts should not be less than the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics at the time when tenders are invited.

RCHEs provide 24 hours of personal care and health care to elders, and nursing and personal care is mainly provided by nurses, health workers and care workers. There are currently about 3 000 nurses, health workers and care workers employed by the 121 EBPS homes, representing about three quarters of the total number of staff employed by these homes. Nurses are professionals. Health workers must undergo recognized training and be registered under the Residential Care Homes (Elderly Persons) Regulation. As for care workers, a majority of them working in more than 90% of

EBPS homes have completed some recognized personal care worker training courses. Obviously, professional nurses, trained health workers and care workers who provide personal and nursing care in RCHEs are not non-skilled workers. Neither do residential care services rely heavily on non-skilled workers. Therefore the provisions in Financial Circular No. 5/2004 regarding the mandatory requirements for service contracts are not applicable to private RCHEs participating in the EBPS.

The last time the SWD launched the EBPS was in April 2003, before the Financial Circular No. 5/2004. The requirements of Financial Circular No. 5/2004 are effective only for service contracts for which tenders are invited on 6 May 2004 or after, they are therefore not applicable to private RCHEs that already joined the SWD's EBPS.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, as I said in my main question, the Government has shown its sympathy for problems such as long working hours and low wages encountered by workers such as security guards or cleaning workers, therefore, it has required contractors of outsourced government services to comply with the requirement of eight hours of work, as well as the minimum wage as set out in the report mentioned just now.*

*May I ask the Secretary if he has any sympathy for the equally long working hours and low wages that care workers of RCHEs have to face? Not only is the income of these people low, more importantly, because of overwork, they are most vulnerable to work injuries. According to a survey report, over 30% of care workers have sustained work injuries once or more than once because of long working hours.*

*In view of this, and since the Government has shown its sympathy for the hardship experienced by security guards or cleaning workers, May I ask the Secretary why, given that work injuries are so common among care workers, the Government still does not find ways to improve their lot? In particular, since such a situation is closely related to the existing scheme to buy places from RCHEs, why does the Government not take measures to improve their wages and the situation in relation to their work injuries?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have said in the main reply given just now that it was before 2004 that we entered into service contracts with the RCHEs participating in the EBPS. However, I can tell Members that in the recent open tender for purpose-built homes, we have taken the initiative to implement the measures mentioned by Mr LEUNG Yiu-chung by clearly specifying that the monthly wages offered by bidders to care workers must be higher than the average monthly wages for the relevant industries under the Supplementary Labour Scheme, that is, about \$6,790. This is higher than the minimum wage prescribed by the Government for non-skilled workers, that is, it is higher than the average monthly wage for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics. The report states that the standard number of working days is 26 days and the number of working hours is eight hours per day excluding lunchtime, and the average monthly salary is about \$5,158. In addition, the number of working hours per day for care workers and non-skilled workers is less than 10 hours. In the future, if we have to enter into any more contracts in this regard, we will include the relevant clauses and conditions in the contracts.

**MR LEUNG YIU-CHUNG** (in Cantonese): *The Secretary has not given a reply as to why the Government would not consider making improvements to their working hours. Since I know that cleaning workers and security guards are working eight hours each day but according to the reply given by the Government, even workers under the EBPS have to work 10 hours per day, so I have to put the part that has not been answered to the Secretary again — why does the Government not take one step further to change the working hours from 10 hours to eight hours?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, for many RCHEs, when they arrange the work of their employees, the priority consideration is the scope of work and they also have to take into account the availability of employees. Some employees may not work for long periods of time but for short periods only, therefore, these RCHEs must have flexibility. Our requirement is that the employees must not work for more than 10 hours. To many organizations, this is an effective way of management, furthermore, it will enable these residential care homes to make flexible arrangements. The busiest time of the day for these homes may be the middle

part of the day rather than the whole day, therefore, it is necessary to have flexibility in deploying manpower. In view of this, we believe that this is an appropriate arrangement.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, in the second half of part (c) of the main reply, the Secretary said that care workers or health workers are not non-skilled workers because according to the criteria mentioned by the Secretary, as long as they have undergone some recognized training and registration, they are not considered non-skilled workers. However, security guards also have to undergo training and they also have to be registered. Sometimes, the conditions of employment of these workers are even worse off than those of security guards, that is, their wages are even lower and their working hours are even longer. Is this reasonable?*

*Furthermore, the Secretary also mentioned in the last part the "last time" that the EBPS had been launched. Does this mean that the conditions of these workers will remain the same forever and will never be changed, that there will never be any deliverance?*

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek, you have put two questions. Which one do you want the Secretary to answer?

**MR LAU CHIN-SHEK** (in Cantonese): *I will let the Secretary choose. (Laughter)*

**PRESIDENT** (in Cantonese): Alright. Secretary, please reply.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): I want to reply to the second supplementary. Of course, we will conduct a review with the homes concerned after the expiry of their contracts to see if such a situation should continue. However, I have said that if we renew contracts with the homes concerned, we hope that the clauses in them will conform with those laid down by the Government for purpose-built homes, as I mentioned earlier.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, can the Secretary first tell us when he will do something for the employees concerned in the review?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): *We will do this when renewing and reviewing the contracts.*

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, just now, when hearing to the Secretary's reply to the question asked by Mr LEUNG Yiu-chung concerning the working hours of workers in residential care homes, I thought that it sounded as though the residential homes were operated by him, so he believes that it is necessary to give the operators some flexibility.*

*However, I believe that there was a contradiction between the reply given by the Secretary and his policy. According to the Secretary's policy, he will request operators to consider setting the working hours in each shift at less than 10 hours, however, in reality, everyone can see that the average working hours of the workers range from 9.5 hours to 12 hours.*

*First, can the Secretary give a clearer reply concerning the working hours, which range from 9.5 hours to 12 hours, and show what the distribution in terms of percentage is? If the actual working hours of the workers are 12 hours, how can the Secretary say that he has requested that workers work no more than 10 hours? At present, the Secretary has not even succeeded in ensuring that they work not more than 10 hours, not to mention eight hours. If the workers are abused in this way, they will of course sustain injuries. I believe the Secretary for Health, Welfare and Food do not wish to see people suffer injuries. Will the authorities really — if the Secretary can keep the working hours to 10 hours, not to mention eight hours, we should already thank our lucky stars. This is really a miserable state of affairs. Madam President, I hope the Secretary.....*

**PRESIDENT** (in Cantonese): *Is this your hope, or are you asking the Secretary if he will do so?*

**MR LEE CHEUK-YAN** (in Cantonese): *No, I am asking the Secretary how he will ensure that the workers will actually work not more than 10 hours. At*

*present, what we find is that they actually work for 12 hours. Moreover, what is the distribution of their working hours?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I can undertake to follow up this issue and enquire with residential care homes about the situation. As far as I know, at present, many homes cannot hire enough people and recruiting people to do this kind of job is not easy. Therefore, some residential homes are so very short of manpower that other workers may have to work longer hours in the short run. I undertake to follow up this area.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. Just now, I asked the Secretary what the distribution of the working hours of these workers is actually like. I hope that the Secretary can provide more information on the distribution. Moreover, since the pay of this kind of work is low and the working hours are long, it will of course be difficult to hire workers. Madam President, this is a vicious circle.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I think I cannot provide any information on the distribution in detail. I have already pointed out in the main reply that we did not carry out any analysis on the working hours of workers. I believe it will take a lot of time and effort to conduct this analysis. Of course, we can see if some general figures can be provided to Members. (Appendix IV)

**DR JOSEPH LEE** (in Cantonese): *Madam President, at present, the quality of many private RHCEs varies greatly. May I ask the Secretary how these private RHCEs had been categorized before places were bought from them? In addition, when categorization was carried out, were there any specific criteria or requirements on manpower ratio or the nurse-to-patient ratio?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, at present, the private RHCEs from which the Government bought places can be categorized into EA1 and EA2, depending on the number of

people in these homes and the working hours for each type of job. If Dr Joseph LEE wants to know the particulars, I can provide a table to him (Appendix V). This is one of the criteria with which we evaluate if a home can provide suitable services. In addition, we have also other requirements on services, for example, these homes must comply with the Residential Care Homes (Elderly Persons) Ordinance, Residential Care Homes (Elderly Persons) Regulation and the CoP. We have also set out the scope of services in the contracts, for example, the space requirement for each elderly person, the manpower requirements that I have mentioned and the proportion of care workers who have completed personal care training courses, and so on. The homes must comply with the guidelines on service quality and operation standards, and, they cannot apply for the importation of new care workers under the Supplementary Labour Scheme. We have prescribed many conditions and I can provide a detailed table to Members.

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

**DR FERNANDO CHEUNG** (in Cantonese): *Madam President, we know that the quality of service of private RHCEs varies widely, however, under the EBPS, it should be the case that the Government have already chosen those private RHCEs of better quality. When the Secretary was fielding questions, he cited many basic requirements on wages, however, they are confined to contracts on outsourced services but not homes that participated in the EBPS. Since the EBPS has been implemented, may I ask the Secretary if it is possible to apply the requirements on contracts for outsourced services, that is, the wage requirements with regard to non-skilled workers, health workers and care workers to private RHCEs participating in the EBPS?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have said just now that the contracts on EBPS were entered into before 2004. If we want to renew the contracts with these private homes, we will of course consider adopting improvement measures. However, it may not be necessary to wait until the renewal of contracts to make improvements. I have already promised Members that I will review the present operation of residential care homes to see if there is any way to improve the employment

conditions of workers and reduce their likelihood of sustaining injuries or being subjected to pressure in other areas.

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

### **Alleviating Traffic Congestion in Northern Part of Hong Kong Island**

6. **MR CHEUNG HOK-MING** (in Cantonese): *Madam President, given the chronic problem of traffic congestion in the northern part of Hong Kong Island, including Causeway Bay, the Government has proposed to build the Central-Wanchai Bypass (CWB) as a long-term solution to the problem. Nevertheless, there is still no timetable for implementing the proposal. Besides, in carrying out works to reconstruct the Causeway Bay Flyover and widen Victoria Park Road, the Government has implemented a number of temporary re-routing measures, which have, however, caused chaos during the initial stage of their implementation and worsened the traffic congestion problem. In this connection, will the Government inform this Council whether:*

- (a) it has looked into the causes of the above chaos and reviewed the effectiveness of the re-routing measures; if so, of the results; and*
- (b) the authorities have a contingency plan to alleviate traffic congestion in the northern part of the Hong Kong Island in the event that the construction of the CWB cannot be implemented?*

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

(in Cantonese): Madam President,

- (a) The temporary traffic arrangements necessitated by the reconstruction of Causeway Bay Flyover have been in place since the morning of 11 June. Apart from installing appropriate road signs before 11 June, new road markings for guiding drivers had to be painted on several traffic lanes. To minimize the duration of road closure and hence the impact on the public as far as practicable, the road marking works were carried out during the few hours after midnight on 10 and 11 June. Therefore, on 11 June, that is, the



first day when the temporary traffic arrangements were put in place, part of the works associated with the temporary traffic arrangements were still pending completion. The departments concerned had to place traffic cones to demarcate traffic lanes where the road marking works had yet to be completed.

Prior to the implementation of the traffic diversion scheme, the departments concerned consulted the Eastern District Council and Wan Chai District Council in January this year. They informed the Hong Kong police, Eastern District Office and Wan Chai District Office of the final traffic diversion schemes and the actual implantation date on 30 May. Then they announced the details of the temporary traffic arrangements, which were subsequently widely covered by the media, on 7 and 8 June. They put up a large countdown sign at the Causeway Bay and North Point exits of the Cross-Harbour Tunnel to inform drivers of the changeover of the exits. Notices were also published in the newspapers on 10 June. Since it would take drivers some time to get used to the new arrangements, some of them reduced speed when driving through that area on 11 June. The traffic flow was affected as a result. Moreover, certain drivers stopped and got out of their vehicles to ask for direction. Some of those who found out that they were in the wrong lane even got out of their vehicles to move the traffic cones or weaved between lanes without regard to the traffic signs. That also affected the traffic flow. All the new road markings were completed in the early morning of 12 June when the traffic cones were removed. As the traffic on that day, which was a Sunday, was not heavy, the traffic flow was generally smooth although there were still occasions of improper weaving between lanes.

On the first working day after the implementation of the temporary traffic arrangements, that is, 13 June, heavy traffic congestion occurred between 9 am and 10.30 am. We consider that the main causes were the heavy rain and drivers who were still not used to the new arrangements. Thereafter, more drivers had become familiarized with the new arrangements. Moreover, the departments concerned had reviewed the arrangements and made certain improvements such as increasing the font size of some road

signs, adding more road signs at appropriate locations and stepping up publicity. Since then, there has not been any particular problem at the location concerned.

We have carried out a review and come to the view that, if in future we need to implement similar traffic diversion scheme on major roads, we would further strengthen the publicity and public consultation. We would also provide drivers with easier to understand traffic advice.

- (b) The Gloucester Road/Harcourt Road corridor (the Corridor) is the only trunk road on the northern shore of Hong Kong Island. The Corridor is usually congested during rush hours when the journey time for the 4 km of road between Rumsey Street and Causeway Bay can be around 15 minutes. Currently, the volume to capacity (v/c) ratio of the key road sections along the Corridor exceeds 1.0. If the CWB were not built by 2011, the v/c ratio would exceed 1.3 and the journey time for the same section of the Corridor would increase to 45 minutes. We will continue to implement traffic management measures, for example, strictly restricting loading/unloading activities along the Corridor, reducing the number of buses using the Corridor and using traffic management measures to relieve the congestion. We will also consider the feasibility of introducing electronic road pricing. However, building the CWB is the only solution for resolving the traffic congestion problem on the northern shore of Hong Kong Island.

**MR CHEUNG HOK-MING** (in Cantonese): *Madam President, the Secretary said in her reply to the question earlier that a lot of preparations had been done by the authorities to minimize the impact on the public. However, it is surprising to learn that a few days after the traffic arrangements had been in place, a serious traffic accident happened with a person injured and another killed. May I ask the Secretary if the Government thinks the traffic accident was directly related to the re-routing measures?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): *Madam President, the traffic accident happened two weeks after*

the implementation of the traffic arrangements. At five o'clock in the morning of 25 June, a man and a passenger were travelling on a motorcycle and when they came near the Victoria Park Road flyover, they lost control of the motorcycle, hit the plastic road divides, then crashed into the metal rails on the flyover and overturned. As the police are presently investigating into the accident, we would not pass any comments on it for the time being.

**DR YEUNG SUM** (in Cantonese): *Madam President, the most important part in the reply given by the Secretary is actually found in the last sentence of part (b) of the main reply, that is, building the CWB is the only solution for resolving the traffic congestion problem on the northern shore of Hong Kong Island.*

*Madam President, I must declare in the first place that I oppose further reclamation in Central and Wan Chai on the ground of building the CWB. What I would like to ask the Government is that, the building of traffic networks can only serve to bring in more vehicles, pollute the environment and cause problems related to reclamation. Can the Government inform this Council of the timetable for the electronic road pricing system? When will studies be undertaken and when can we expect to have the findings?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, the problem of traffic congestion on the northern shore of Hong Kong Island must be resolved. That is a fact. As facilities like the Hong Kong Convention and Exhibition Centre and the main terminal of the Airport Express have been completed and these facilities have brought in heavy vehicular traffic and passenger flow, it would not be desirable from the planning point of view to cancel road links such as the CWB from the plan itself at the present stage. In the plan, we need to have the CWB before other facilities can be in place. The electronic road pricing system which Dr YEUNG Sum has mentioned would also need the CWB. If vehicles travel from the western part of Hong Kong Island to the eastern part, there has to be a bypass for the choice of drivers if it is desired that vehicles should not pass Central and make the busy district congested. A bypass will enable drivers to use other roads. Otherwise, they will have to make a detour by travelling uphill to the Mid-levels and this is not acceptable.

In 2000, we conducted a detailed study on electronic road pricing and it was found that given the technologies available then, the key to its success lay in the availability of certain facilities such as roads. We plan to apply for funding in the next financial year for some concrete studies. There would be no need to conduct technical tests as they were already done in the past. The technical tests on the implementation would be the most expensive part. We want to see how traffic management measures can be put in place and we will consider issues like what types of vehicles should be charged and the impact on members of the public. These are the most crucial issues to consider. Vehicles constituting the traffic flow are mostly those for business and they account for most of the traffic, that is, about 90% of the vehicles. If a road pricing system is to be put into place in any city, consideration must be given to dealing with various kinds of vehicles. The success of the pricing system in the London central business district is attributed to the exemption of many types of commercial vehicles. I think the classification of vehicles and their management is the key to the success of an electronic road pricing system.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that the Government will consider the feasibility of introducing electronic road pricing. A few days ago, the new Commissioner for Transport, Mr Alan WONG, said that the Transport Department would reconsider electronic road pricing. But he made it clear that the CWB would be built in the first place. The Secretary seemed to have mentioned the same point earlier. I hope the Secretary can make it clear whether or not the Government's position is that there must be a replacement road in place before the electronic road pricing system can be launched. In view of the fact that the building of the CWB is something uncertain in the distant future and there is much opposition — Dr YEUNG Sum's remarks earlier could be the view shared by a lot of people — and it is not known when the CWB can be completed, so if money is spent on conducting a study on this electronic road pricing system now, can this really solve the problem of traffic congestion?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): *Madam President, the study done by the Government shows that the CWB must first be built before the electronic road pricing system can be*

adopted. This is a prerequisite. But a two-pronged approach must be taken to solve the problem of traffic congestion. It would take a long time for any study on electronic road pricing to complete. The number of issues which I have just mentioned would require adequate consultation and consideration. Apart from hardware, matching software for this would not be a problem that can easily be solved. We hope that the consultation exercise on this would commence soon.

As for the CWB, I think consultations done at various levels show that most members of the public would accept this road. They hope that the project would commence as soon as possible. However, the debate at present is on whether or not reclamation works would have an overriding public need and whether or not the extent of reclamation can be reduced as much as possible. On top of these, there are people who call for zero reclamation. But would this really work? Our engineers are making a full-scale feasibility study on this. Since the CWB is a road link, there are lots of issues that warrant consideration. For example, in its west-bound section linking up the trunk road in phase III of the project up to the Eastern Corridor in the east, even if a tunnel is built, part of it has to be above the water. That is why in this respect, even for some harbour protection groups — I have forgotten their names — the plans proposed by them would also involve reclamation of a small scale. It is our aim to carry out as little reclamation as possible. As for the zero reclamation idea, many engineers think that this is impossible. Therefore, the term is not used and that is why there are so many disputes. I hope Members can consider the minimal reclamation plan with a calmness of mind. This will enable works on the CWB to commence as soon as possible. Now we are thinking about launching the electronic road pricing system.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, I would like to follow up part (a) of the main reply, that is, on the heavy traffic congestion which occurred on 13 June. Actually, I think this could have been avoided. In the morning of 11 June, I inspected the site together with officials from the departments concerned. At that time, I sensed there would be problems in that area on the following Monday, that is, 13 June because these were typical long-standing problems. Madam President, it was precisely because there were not enough road signs, the font size of road signs was too small and the signs were only put up very late, and so on. Drivers on Mondays were not the same*

*drivers on Saturdays and Sundays. Madam President, I phoned up the departments concerned three times on that day and I circled around the area and observed the traffic situation. I told the officials that the font size of the road signs was too small. I would like to know why changes were made to these road signs only after 13 June. May I ask the Secretary if the Government will undertake any major improvement work on the arrangement of road signs in Hong Kong and with respect to their font size? For if not, the same thing which happened on 13 June may also happen in other places in Hong Kong.*

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

(in Cantonese): I am very grateful to Miss CHOY So-yuk for the advice she has given us. Actually on Saturday, 11 June, after she had gone with our colleagues on a site visit there, we made immediate improvements. As I have mentioned in my main reply, after a review of the situation we found that the font size of some road signs was really too small, so we increased the font size and added more road signs and other road markings at appropriate locations. There are many areas where road signs in Hong Kong can be improved and we believe not everything can be perfect. We will consider all the views put forward and make improvements. As a matter of fact, improvements were made to the road signs concerned immediately.

**DR RAYMOND HO** (in Cantonese): *Madam President, the authorities had in the beginning of the '80s studied the feasibility of electronic road pricing and four or five years ago, the Government also spent about \$100 million on studies of the system. Subsequently, Mr Stephen NG, the then Secretary for Transport said after a study tour to Singapore that as there were no replacement roads in Hong Kong, it would not be appropriate to adopt electronic road pricing in Hong Kong. Why does the Government now want to undertake a study again on what are the software or vehicles that are suitable for the system? Does the Government think the study done last time was a waste of resources?*

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

(in Cantonese): Madam President, I think Dr Raymond HO knows the best on this. The reason why so much money was spent the last time was, as I have

said, different kinds of technology were introduced and devices were actually installed for testing purposes. A lot of money was spent on hardware used to recognize licence plates and count the number of vehicles passing. However, the study at that time did not reach the stage where consideration should be made on the kinds of vehicles to be managed and how such management should take place. In other words, study has yet to be done on concrete traffic management measures and targets of management. It can be said that the software is not yet available. As the matter would affect both the public and the industry, we hope that consultation should take place as soon as possible. Speaking from my experience, quite a lot of time would be required to prepare for such consultation.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, the Secretary has said clearly that if the CWB is not built, there can be no hope of solving the traffic problem. The Secretary also tells us clearly that minimal reclamation works must be undertaken to build this bypass. First, may I ask what minimal reclamation means? Second, has the Government ever considered the zero reclamation idea?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I talked about this when I tried to answer the supplementary question raised by Ms Miriam LAU earlier. Perhaps I can elaborate on that now. About one year ago, we asked the government consultants to undertake a feasibility study on the linkage to the Wan Chai section of the CWB. We asked the consultants to make full-scale considerations and we did not give them any preconceived direction in that matter. We know that reclamation is a subject of vital concern to the people of Hong Kong and nobody wants any more reclamation to take place.

The main trunk road to be built in Wan Chai Development Phase II must on the western side linking up with the main trunk road to be built in Central Reclamation Phase III while on the eastern side linking up with the Eastern

Corridor. If sections of the main trunk road are built as a tunnel, that is, with parts below the sea, there must be small-scale reclamation to enable the parts to link up. The Government has issued a consultation document setting out these three proposals, one of which is the minimal reclamation proposal with a tunnel on each end. In addition, this trunk road must be linked up with the existing road networks in Wan Chai and Causeway Bay in order to attract drivers to the CWB. If there are no entrances to the CWB and if the whole tunnel is sealed, the CWB will not be able to achieve its purpose. If drivers are attracted to use it, this will reduce the traffic flow in Connaught Road Central, Harcourt Road and the Gloucester Road corridor. For these linking roads, reclamation works of a small-scale is also required.

As a matter of fact, up to the present moment, if the standard of zero reclamation is taken as a starting point, I do not think we can ever meet it. None of the proposals we have can enable the building of this trunk road without any reclamation at all. If any experts or professionals can put forth such proposals, the Government will certainly take them into consideration. We have received some rough schematic plans — actually these are conceptual plans, from some consortia for our reference. However, as the findings of our study show, a small-scale reclamation is still required.

**PRESIDENT** (in Cantonese): Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Involvement of Housing Authority Representatives in Management of Tenants Purchase Scheme Estates**

7. **MR JAMES TO** (in Chinese): *Madam President, regarding the involvement of representatives of the Hong Kong Housing Authority (HA) in the management of the Tenants Purchase Scheme (TPS) estates, will the Government inform this Council of:*

- (a) *their duties at the annual general meetings of incorporated owners (IO) and as elected members of the management committees of IO;*  
*and*



- (b) *the criteria on which they base their decisions when voting at the annual general meetings and management committee meetings of IO?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, after sale, flat owners of estates under the TPS will form Owners' Corporations (OCs) to manage their estates in accordance with the Deeds of Mutual Covenant and the Building Management Ordinance (Cap. 344). The unsold flats in TPS estates are still owned by the HA. In its capacity as owner, the HA takes part in the general meetings of the OCs and their management committees.

My reply to the two-part question is as follows:

- (a) Like all other flat owners of a TPS estate, the duties and role of the HA's representative at the annual general meeting of the OC and on the management committee are mainly to assist the OC in the proper and effective management of the estate in accordance with the Deeds of Mutual Covenant and the Building Management Ordinance. Experienced in estate management and having close liaison with government departments, the HA's representative often offers advice to the OC on estate management matters and the provisions of the Deeds of Mutual Covenant and relevant legislation. As owner, the HA through its representative seeks to encourage other owners to act for the overall benefit of the estate so as to safeguard the interests of all owners, including the HA.
- (b) Through the formation of OC in accordance with the Deeds of Mutual Covenant and the Building Management Ordinance, flat owners of a TPS estate manage their own properties. As the unsold flats owned by the HA usually account for a large proportion (normally over 30%) of the title shares of a TPS estate, the HA's direct participation in voting at owners' general meetings will inevitably exert a significant influence on the outcome. Hence, the HA must be prudent in exercising its voting right at owners' meetings.

To encourage owners' participation in estate management and promote their autonomy, the HA's representative usually maintains a neutral position and refrains from voting at owners' annual general meetings and management committee meetings. This is to allow owners to decide among themselves how best to manage their estate. Notwithstanding, the HA will consider exercising its right to vote in exceptional circumstances if a particular resolution might affect the interests of the tenants, the HA and the residents as a whole. Due to the diversity of estate management matters and the differences in the actual operation of individual estates and OCs, the circumstances under which the HA will exercise its voting right vary. It is not possible to set out detailed criteria for casting votes at owners' meetings. In general, in deciding whether and how to cast its vote, the HA will strike a balance between the interests of the parties concerned and the contractual and legal requirements of the relevant Deeds and legislation, with reference to its established approach and arrangements for managing its public rental housing estates.

### **Combating Counterfeit Drugs**

8. **MR BERNARD CHAN:** *Madam President, I learnt that the Food and Drug Administration (FDA) of the United States is asking makers and distributors of drugs to adopt the radio frequency identification technology (RFID) to address the issues of combating counterfeit drugs, establishing a better track record of drugs and facilitating the monitoring of their expiry dates. In this connection, will the Government inform this Council:*

- (a) of the measures currently adopted by the authorities to address the above issues; and*
- (b) whether it will consider adopting the RFID to address these issues?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD:** Madam President, the RFID is the latest technology which uses electronic tags on product packaging to keep track of the movement of products, mainly for the purpose of

combating counterfeit activities. The RFID creates an electronic pedigree, or record of the chain of its custody, from the point of manufacture to the point of sale, which enables wholesalers and retailers to rapidly identify and report suspected counterfeit products.

The FDA of the United States has recently issued a Compliance Policy Guide for implementing the RFID feasibility studies and pilot programmes on pharmaceutical products. The FDA has encouraged pharmaceutical companies to test out the RFID in accordance with the Guide so as to facilitate the setting of standards for applying the RFID. It is understood that a few major pharmaceutical companies have plans to use the RFID on selected products which are more susceptible to counterfeiting.

Application of the RFID in pharmaceutical products is not widely practised around the world, largely because such application is still at an infancy stage.

- (a) The Administration accords priority to combating counterfeit pharmaceutical products in Hong Kong. The Department of Health (DH) regulates the sale and supply of pharmaceutical products through a system of registration and inspection prescribed in the Pharmacy and Poisons Ordinance (Cap. 138) (PPO). The Trade Descriptions Ordinance (Cap. 362) (TDO) provides for criminal sanctions against the manufacture and trading of all types of counterfeit goods, including pharmaceutical products. The Customs and Excise Department (C&ED) is the enforcement department for control against counterfeit goods under the TDO.

For the protection of public health, all pharmaceutical products are required to be registered with the Pharmacy and Poisons Board (PPB), a statutory body established under the PPO, before they can be sold in Hong Kong. Any person who is guilty of selling unregistered pharmaceutical products shall be liable on conviction to a maximum penalty of a fine of \$100,000 and imprisonment for two years. Drug retail outlets are monitored by pharmacist inspectors of the DH who conduct regular and surprise inspection at these premises. In 2004, a total of 6 485 inspections were conducted. Apart from inspections, test purchases are also conducted to detect

any illegal sale of medicines. In 2004, the DH conducted 3 827 test purchases. In 2004, there were 112 prosecutions, including those relating to the sale of unregistered drugs.

As far as the TDO is concerned, it is an offence to import, export, sell or manufacture goods to which a false trade description or forged trade mark is applied. The maximum penalty is \$500,000 and imprisonment for five years on conviction on indictment, and a fine of \$100,000 and imprisonment for two years on summary conviction. The C&ED co-operates closely with the pharmaceutical industry to monitor the market situation. It carries out proactive actions based on intelligence, in addition to acting on complaints made or information provided by members of the public or trade mark owners on suspected cases of counterfeiting activities. Priority enforcement actions are given to counterfeit pharmaceutical products, as they can be hazardous to health.

The C&ED also works closely with the DH and exchanges information and conducts joint enforcement actions against any retailer selling counterfeit pharmaceutical products.

To enhance effective enforcement, the C&ED also launched a reward scheme in co-operation with the Hong Kong Association of the Pharmaceutical Industry in late 2003. Monetary rewards are given to members of the public who provide information leading to the successful seizure of counterfeit pharmaceutical products and prosecution of the related offenders.

In 2004, 15 cases relating to counterfeit pharmaceutical products were prosecuted under the TDO. A total of 14 cases were convicted and the highest penalty imposed was a fine of \$10,000.

As regards the recording of drugs and monitoring of their expiry dates, they are effectively governed by the PPB. For drug recall purposes, the PPO requires manufacturers and wholesalers of all pharmaceutical products to set up and maintain a system of control which will enable the rapid and, so far as practicable, complete recall of any pharmaceutical product from sale to the public in the

event of the product being found to be dangerous or injurious to health. This means that in practice, manufacturers and wholesalers are required to keep full records of sales of any product to any client. The PPB also specifies that the expiry dates of drugs have to appear conspicuously on the drug packaging for customers to see. Compliance of such requirements is monitored through inspections and test purchase conducted by pharmacist inspectors. Any manufacturer or wholesaler found to have failed any of the above requirements will be liable, on conviction, to a maximum penalty of a fine of \$100,000 and two years' imprisonment. Those who are convicted are subject to further sanction by the PPB, which may involve suspension of the relevant licence, or its non-renewal upon expiry.

- (b) Control of counterfeit drugs in Hong Kong has been effective. From operational experience, counterfeit cases in Hong Kong in the past only involved low-level retail activities of a relatively limited scale. The situation has remained relatively stable, and given that the application of the RFID in pharmaceutical products is at an early stage of development, there is no imminent need to adopt the RFID in Hong Kong. The Administration will however keep a close watch on the development of the RFID, having regard to the nature of the local pharmaceutical business in Hong Kong.

### **Making Severance Payments and Long Service Payments from Accrued Benefits of MPF Schemes**

9. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (the Ordinance) provides that certain amounts relating to severance payments and long service payments may be paid from accrued benefits of mandatory provident fund (MPF) schemes. In this connection, will the Government inform this Council of the respective numbers of cases, in each year since the commencement of the MPF schemes, in which payments were made by approved trustees of registered MPF schemes to the relevant employers or employees in accordance with the above provision, as well as the respective total amounts of payments involved, together with a breakdown of these cases by the respective percentages of such payments*

*in the total amount of the employers' contributions to the schemes concerned, and in the aggregate value of the MPF accrued benefits concerned at the time of payments?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): Madam President, base on the information provided by the Mandatory Provident Fund Schemes Authority (MPFA), we reply as follows:

The data currently collected from approved trustees by the MPFA do not include detailed information on severance payments and long service payments. As such, we can answer only part of the question.

Between 2001 and 2004, the total amount of severance payments and long service payments made by approved trustees from the accrued benefits to the employers or employees under section 12A of the Ordinance was about \$2.49 billion<sup>1</sup>. The breakdown of payments in each of these years is shown in the following table:

<i>Year</i>	<i>Payments (\$)</i>
2001*	170 million
2002	600 million
2003	820 million
2004	900 million

\* only figures for the third and fourth quarters are available

The MPFA does not have the other information requested in the question.

<sup>1</sup> The net asset value of MPF schemes as at end May 2005 is over \$128 billion.

### **Licensed Hawkers**

10. **MR WONG KWOK-HING** (in Chinese): *Madam President, regarding the number and distribution of licensed hawkers in Hong Kong, as well as management of hawkers, will the Government inform this Council of the following in each of the past 10 years:*

- (a) *the respective numbers of fixed pitch hawker licences and itinerant hawker licences in Hong Kong, together with a breakdown by the 18 administrative districts, licence type, age of licensees (in groups each covering 10 years), licence period (in groups each covering five years) and location of fixed pitch hawker bazaars;*
- (b) *the respective manning scales of Hawker Control Teams (HCTs), district HCT squads and Hawker Control Task Forces, as well as the funding provisions for expenditure on HCTs;*
- (c) *the number of convictions resulting from the enforcement actions taken by HCTs, together with a breakdown of the convicted persons by sex and age (in groups each covering 10 years), licence type (including unlicensed hawkers), the offences involved and the number of times of repeated convictions for the same offence;*
- (d) *the number of cases involving confrontations between HCT staff taking enforcement actions and members of the public, and the respective numbers of resultant injuries involving the public and HCT staff; and*
- (e) *the respective numbers of hawker licences suspended or cancelled, broken down by licence type, the 18 administrative districts and reasons for suspension, as well as the number of cancelled licences surrendered by licensees voluntarily, together with a breakdown by licence type and the 18 administrative districts?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
Madam President, the Food and Environmental Hygiene Department (FEHD) has difficulty to provide data for the period before its establishment in 2000 and the data given below cover the period thereafter.

- (a) Annual statistics on fixed pitch hawker licences (by licence type and administrative districts) and itinerant hawker licences (by licence

type and urban area/New Territories) in Hong Kong are at Annexes 1(1) to 1(6). Annual statistics on fixed pitch hawkker licences by location of fixed pitch hawkker bazaars are at Annex 2. As the age of the licensees and their licensed period change over time, the FEHD is unable to provide the relevant data.

- (b) The actual number of staff and the actual expenditure of HCT (including district HCT squads and Hawker Control Task Forces) in each year are as follows:

<i>Financial Year</i>	<i>Actual No. of Staff at the Beginning of the Financial Year</i>	<i>Actual Annual Expenditure (\$ Million)</i>
2000-01	3 268	735
2001-02	3 159	733
2002-03	2 969	705
2003-04	2 932	674
2004-05	2 632	596
2005-06	2 585	not yet available

- (c) The number of convictions resulting from HCT enforcement actions by type of offences in each of the past five years is as follows:

<i>Year</i>	<i>Type of offences</i>				<i>Total</i>
	<i>Hawking without a licence</i>	<i>Obstruction of public places</i>	<i>Illegal sale of restricted food</i>	<i>Others</i>	
2000-01	9 145	15 608	539	2 488	27 780
2001-02	7 452	13 165	431	2 346	23 394
2002-03	6 832	12 888	333	2 003	22 056
2003-04	6 127	12 243	323	1 678	20 371
2004-05	6 784	13 300	366	2 112	22 562



The FEHD is unable to provide data on the personal profile of convicted persons, such as sex, age and number of convictions from the information available.

- (d) Statistics on cases involving confrontation with HCT staff taking enforcement actions and staff sustaining injuries in each of the past five years are as follows:

<i>Year</i>	<i>No. of cases involving confrontation</i>	<i>No. of staff sustaining injuries</i>
2000-01	530	98
2001-02	622	128
2002-03	668	122
2003-04	667	107
2004-05	847	154

The FEHD is unable to provide information on the number of injuries involving members of the public.

- (e) Owing to various reasons (including the voluntary surrender of licences by licensees for cancellation, non-renewal of licences upon expiry and cancellation of licences upon the death of licensees), the number of hawker licences has reduced progressively in the past five years. The figures are as follows:

<i>Financial year</i>	<i>No. of fixed pitch hawker licences reduced</i>	<i>No. of itinerant hawker licences reduced</i>
2000-01	203	123
2001-02	272	57
2002-03	237	147
2003-04	154	75
2004-05	173	68

The FEHD is unable to provide breakdown on the above figures from the information available.

## Number of Hawker Licences as at 1 April 2000

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	5	8	4	8	21	1	8	0	30	0	0	0	0	0	0	0	0	0	85
2. Bootblack	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3. Cooked Food/Light Refreshment	23	6	12	57	52	8	4	47	55	1	60	8	0	61	23	62	48	0	527
4. Newspaper	110	72	81	87	62	8	82	35	181	4	28	9	3	4	17	35	17	37	872
5. Tradesman	137	29	17	6	9	0	36	1	80	0	0	0	0	0	0	1	0	1	317
6. Wall Stall	56	25	60	31	100	16	42	5	211	0	0	0	0	0	0	0	0	0	546
7. Other Classes	563	449	57	135	1 103	44	448	0	2 892	0	0	45	0	0	0	132	6	18	5 892
<b>Total</b>	<b>896</b>	<b>589</b>	<b>231</b>	<b>324</b>	<b>1 347</b>	<b>77</b>	<b>620</b>	<b>88</b>	<b>3 449</b>	<b>5</b>	<b>88</b>	<b>62</b>	<b>3</b>	<b>65</b>	<b>40</b>	<b>230</b>	<b>71</b>	<b>56</b>	<b>8 241</b>

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	60	15	75
2. Mobile Van	10	6	16
3. Newspaper	7	0	7
4. Tradesman	1	0	1
5. Other Classes	558	585	1 143
<b>Total</b>	<b>636</b>	<b>606</b>	<b>1 242</b>

## Number of Hawker Licences as at 1 April 2001

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	4	7	4	7	21	1	6	0	28	0	0	0	0	0	0	0	0	0	78
2. Bootblack	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
3. Cooked Food/Light Refreshment	20	6	11	53	47	9	3	49	51	1	59	8	0	61	19	57	47	0	501
4. Newspaper	110	71	77	86	63	8	80	32	178	3	26	9	3	4	17	33	17	35	852
5. Tradesman	125	29	14	5	9	0	31	1	75	0	0	0	0	0	0	1	0	1	291
6. Wall Stall	55	24	58	31	99	16	37	5	204	0	0	0	0	0	0	0	0	0	529
7. Other Classes	534	444	57	133	1 086	42	446	0	2 854	0	0	44	0	0	0	127	5	14	5 786
Total	849	581	221	315	1 325	76	603	87	3 390	4	85	61	3	65	36	218	69	50	8 038

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	58	13	71
2. Mobile Van	10	6	16
3. Newspaper	6	0	6
4. Tradesman	0	0	0
5. Other Classes	502	524	1 026
Total	576	543	1 119

## Number of Hawker Licences as at 1 April 2002

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	4	6	4	7	20	1	6	0	28	0	0	0	0	0	0	0	0	0	76
2. Bootblack	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
3. Cooked Food/Light Refreshment	13	5	10	46	44	7	4	37	52	1	35	7	0	52	13	55	42	0	423
4. Newspaper	105	69	75	82	57	8	77	30	173	2	26	9	3	4	16	33	16	33	818
5. Tradesman	119	29	10	4	9	0	26	1	71	0	0	0	0	0	0	1	0	1	271
6. Wall Stall	54	24	55	30	97	16	32	5	199	0	0	0	0	0	0	0	0	0	512
7. Other Classes	518	436	55	128	1 061	41	431	0	2 813	0	0	44	0	0	0	119	5	14	5 665
Total	814	569	209	297	1 288	73	576	73	3 336	3	61	60	3	56	29	208	63	48	7 766

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	52	13	65
2. Mobile Van	10	6	16
3. Newspaper	7	0	7
4. Tradesman	0	0	0
5. Other Classes	470	504	974
Total	539	523	1 062

## Number of Hawker Licences as at 1 April 2003

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	4	5	4	7	20	1	6	0	24	0	0	0	0	0	0	0	0	0	71
2. Bootblack	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
3. Cooked Food/Light Refreshment	11	5	9	41	43	7	4	36	51	1	33	7	0	50	12	52	42	0	404
4. Newspaper	103	68	69	81	53	8	77	28	172	2	26	9	3	4	16	29	15	32	795
5. Tradesman	111	28	10	4	9	0	23	0	68	0	0	0	0	0	0	0	0	1	254
6. Wall Stall	51	24	53	30	95	15	29	5	194	0	0	0	0	0	0	0	0	0	496
7. Other Classes	492	433	50	128	1 048	40	426	0	2 760	0	0	0	0	0	0	116	5	10	5 508
<b>Total</b>	<b>773</b>	<b>563</b>	<b>195</b>	<b>291</b>	<b>1 268</b>	<b>71</b>	<b>565</b>	<b>69</b>	<b>3 269</b>	<b>3</b>	<b>59</b>	<b>16</b>	<b>3</b>	<b>54</b>	<b>28</b>	<b>197</b>	<b>62</b>	<b>43</b>	<b>7 529</b>

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	49	11	60
2. Mobile Van	10	6	16
3. Newspaper	6	0	6
4. Tradesman	0	0	0
5. Other Classes	435	398	833
<b>Total</b>	<b>500</b>	<b>415</b>	<b>915</b>

## Number of Hawker Licences as at 1 April 2004

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	4	4	4	5	20	1	6	0	22	0	0	0	0	0	0	0	0	0	66
2. Bootblack	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
3. Cooked Food/Light Refreshment	11	5	8	41	42	7	4	36	37	1	31	7	0	50	12	50	41	0	383
4. Newspaper	104	67	58	77	51	8	75	28	169	2	25	9	3	4	15	29	14	31	769
5. Tradesman	104	27	10	4	8	0	21	0	65	0	0	0	0	0	0	0	0	1	240
6. Wall Stall	49	24	52	28	89	15	27	5	185	0	0	0	0	0	0	0	0	0	474
7. Other Classes	481	428	48	127	1 036	39	418	0	2 737	0	0	0	0	0	0	113	5	10	5 442
<b>Total</b>	<b>754</b>	<b>555</b>	<b>180</b>	<b>282</b>	<b>1 246</b>	<b>70</b>	<b>551</b>	<b>69</b>	<b>3 215</b>	<b>3</b>	<b>56</b>	<b>16</b>	<b>3</b>	<b>54</b>	<b>27</b>	<b>192</b>	<b>60</b>	<b>42</b>	<b>7 375</b>

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	42	11	53
2. Mobile Van	10	6	16
3. Newspaper	5	0	5
4. Tradesman	0	0	0
5. Other Classes	423	343	766
<b>Total</b>	<b>480</b>	<b>360</b>	<b>840</b>

## Number of Hawker Licences as at 1 April 2005

### A. Fixed Pitch Hawker Licences

Licence Type	Urban Area									New Territories									Total
	Central and Western	Eastern	Kowloon City	Kwun Tong	Sham Shui Po	Southern	Wan Chai	Wong Tai Sin	Yau Tsim Mong	Islands	Kwai Tsing	North	Sai Kung	Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long	
1. Barber	4	4	3	5	19	1	6	0	23	0	0	0	0	0	0	0	0	0	65
2. Bootblack	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3. Cooked Food/Light Refreshment	11	5	8	40	39	4	4	34	43	1	27	7	0	50	11	43	41	0	368
4. Newspaper	101	66	51	74	49	8	71	26	165	2	25	9	3	4	12	25	12	30	733
5. Tradesman	102	24	8	4	8	0	17	0	65	0	0	0	0	0	0	0	0	1	229
6. Wall Stall	46	22	51	28	80	15	24	5	181	0	0	0	0	0	0	0	0	0	452
7. Other Classes	474	424	49	125	1 019	39	411	0	2 695	0	0	0	0	0	0	109	4	6	5 355
<b>Total</b>	<b>738</b>	<b>545</b>	<b>170</b>	<b>276</b>	<b>1 214</b>	<b>67</b>	<b>533</b>	<b>65</b>	<b>3 172</b>	<b>3</b>	<b>52</b>	<b>16</b>	<b>3</b>	<b>54</b>	<b>23</b>	<b>177</b>	<b>57</b>	<b>37</b>	<b>7 202</b>

### B. Itinerant Hawker Licences

Licence Type	Urban	New Territories	Total
1. Frozen Confectionery	36	9	45
2. Mobile Van	10	6	16
3. Newspaper	5	0	5
4. Tradesman	0	0	0
5. Other Classes	394	312	706
<b>Total</b>	<b>445</b>	<b>327</b>	<b>772</b>

**Number of Hawker Licences in Fixed Pitch Hawker Bazaars  
(including Cooked Food Hawker Bazaars) in Hong Kong**

<i>District</i>	<i>Location</i>	<i>Number of hawker licences as at dates specified</i> <sup>Note 1</sup>					
		<i>1 April 2000</i>	<i>1 April 2001</i>	<i>1 April 2002</i>	<i>1 April 2003</i>	<i>1 April 2004</i>	<i>1 April 2005</i>
Central/ Western	Cat Street Hawker Bazaar <sup>Note 2</sup>	4	4	4	N/A	N/A	N/A
	Centre Street Market cum Hawker Bazaar <sup>Note 2</sup>	3	2	N/A	N/A	N/A	N/A
	Mui Fong Street Cooked Food Bazaar <sup>Note 2</sup>	9	9	6	6	5	N/A
Kwun Tong	Hip Wo Street Hawker Bazaar	33	31	31	28	27	25
	Mut Wah Street Temporary Hawker Bazaar	103	102	100	100	100	100
	Lai Yip Street Cooked Food Hawker Bazaar	7	6	6	6	6	6
Sham Shui Po	Yen Chow Street Hawker Bazaar	57	47	45	43	40	37
	Yu Chau West Street Cooked Food Hawker Bazaar	7	7	7	7	6	6
Southern	Stanley Market Open Space Hawker Bazaar	24	24	23	23	23	23



<i>District</i>	<i>Location</i>	<i>Number of hawker licences as at dates specified</i> <sup>Note 1</sup>					
		<i>1 April 2000</i>	<i>1 April 2001</i>	<i>1 April 2002</i>	<i>1 April 2003</i>	<i>1 April 2004</i>	<i>1 April 2005</i>
Yau Tsim Mong	Kansu Street Temporary Hawker Bazaar	32	29	26	21	21	20
	Yau Ma Tei Jade Hawker Bazaar	424	406	397	385	382	372
	Haiphong Road Temporary Cooked Food Hawker Bazaar	12	12	12	12	12	12
	Reclamation Street Cooked Food Hawker Bazaar	6	3	4	4	4	4
	Woosung Street Temporary Cooked Food Hawker Bazaar	23	23	23	23	20	20
	Canton Road Temporary Cooked Food Hawker Bazaar	3	3	3	2	2	2
	Tai Kok Tsui Temporary Cooked Food Hawker Bazaar	11	10	10	10	9	7
Kwai Tsing	Kwai Wing Road Cooked Food Hawker Bazaar	9	9	9	9	8	7
	Tai Lin Pai Road Cooked Food Hawker Bazaar	11	11	10	9	9	7
North	Luen Wo Hui Temporary Hawker Bazaar <sup>Note 2</sup>	45	44	44	N/A	N/A	N/A

<i>District</i>	<i>Location</i>	<i>Number of hawker licences as at dates specified</i> <sup>Note 1</sup>					
		<i>1 April 2000</i>	<i>1 April 2001</i>	<i>1 April 2002</i>	<i>1 April 2003</i>	<i>1 April 2004</i>	<i>1 April 2005</i>
Tsuen Wan	Hau Tei Square Hawker Bazaar	132	127	119	117	113	109
	Ma Kok Street Cooked Food Hawker Bazaar	21	19	18	16	17	15
	Luen Yan Street Cooked Food Hawker Bazaar	23	20	20	19	17	14
Tuen Mun	Lam Tei Hawker Bazaar	6	5	5	5	5	4
	Lam Tei Cooked Food Hawker Bazaar	1	1	1	1	1	1
Yuen Long	Kam Tin Market cum Hawker Bazaar	15	11	11	7	7	5
Total		1 021	965	934	853	834	796

Note 1: The figures do not include the fixed pitch hawker licences in locations other than fixed pitch hawker bazaars under the FEHD (such as on-street fixed pitches and licensed cooked food kiosks in public housing estates).

Note 2: The fixed pitch hawker bazaars have ceased operation.

**Specialized Teaching Grant**

11. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, regarding the specialized teaching grant to be released by the Education and Manpower Bureau (the Bureau) from the 2005-06 school year, will the Government inform this Council of:*

- (a) *the number of schools eligible for the grant and, among them, the number of those which have applied for it;*
- (b) *the deadline for processing the applications of the grant; and*
- (c) *the present position regarding the processing of such applications, including the respective numbers of schools whose applications have been approved, are being processed or have been rejected, with detailed reasons for their rejection?*

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

- (a) Among the 421 eligible aided primary schools, 414 applied for Specialized Teaching Support Grant for the 2005-06 school year.
- (b) and (c)

The deadline for the application of the Grant for the 2005-06 school year was 5 May 2005. As at 28 June, the Bureau has given approval to 407 schools which have confirmed readiness to implement specialized teaching. The Bureau has also contacted the remaining schools on matters pertaining to this improvement initiative, and will give as much time as it is necessary for them to consider their staff deployment and readiness to join the scheme.

**Additional Income Derived from New and Increased Fees for Medical Services in Public Hospitals**

12. **MR ANDREW CHENG** (in Chinese): *Madam President, regarding the additional income derived from new and increased fees for medical services in public hospitals, will the Government inform this Council:*

- (a) *of the annual additional income the relevant authorities received from new and increased medical fees in public hospitals since 2002, broken down by various charging items, as well as the amount and percentage of such additional income allocated to the Hospital Authority (HA);*
- (b) *of the annual administrative expenses incurred by the HA in charging new fees and processing fee waiver applications; and*
- (c) *whether the authorities have considered allocating to the HA the entire additional income derived from any future increase in medical fees?*

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

- (a) New charges for Accident and Emergency (A&E) service and for drugs at specialist out-patient clinics were introduced in November 2002 and May 2003 respectively. A revision of existing medical charges, including in-patient charges and charges for general and specialist out-patient services, was implemented in April 2003. The additional incomes generated by the HA from new and increased fees since 2002-03 are shown in the table below:

<i>Income Source</i>	<i>2002-03 (\$ Millon)</i>	<i>2003-04 (\$ Millon)</i>	<i>2004-05 (\$ Millon)</i>
Accident and Emergency charge (A&E) services	51.2	119.5	136.8
Drug charge at specialist clinics	0	65.4	73.7
In-patient services	0	37.2	108.8
Specialist out-patient services	0	49.3	65.4
Community services	0	0.3	2.7

In determining the level of annual subvention for the HA, the Government would usually take into account the HA's estimated

requirements less income available. For the above new charges and revision of existing fees, however, we have agreed on an exceptional basis that the following would not be subvention-deductible:

- 50% of the income from the new charges (that is, A&E and drug charges) on a permanent basis; and
- 100% of the income from increases in existing fees for two years, (that is, 2003-04 and 2004-05).

Accordingly, the dollar amounts of net additional income available to the HA are about \$25.6 million for 2002-03, \$271.7 million for 2003-04 and \$387.4 million for 2004-05.

- (b) The expenditure incurred by the HA in collecting the new charges and processing fee waiver applications are subsumed under its general administrative expenses and not routinely collated.
- (c) The Government is conducting a new round of review on public medical fees with a view to targeting government subsidies to patients and services most in need as well as redressing the imbalance between the public and private services. While the review may involve an increase in medical fees having regard to affordability of members of the public, we have not made any decision on the allocation of the additional income that may be generated as a result at this stage.

### **Vesting Ownership of Tenements Whereby Owners Default on Paying Government Rent in Government**

13. **MR ALBERT HO** (in Chinese): *Madam President, under section 7 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) (the Ordinance), if owners of lands or tenements default on paying government rent, the authorized public officer (that is, Director of Lands) may register a vesting notice in the Land Registry, thereby vesting the ownership of the lands or tenements concerned in The Financial Secretary Incorporated (the FSI), free from any mortgage, charge or lien. Given that the FSI will not be responsible*

*for the charges and fees such as the building management fees of which the former owners of tenements have defaulted on payment before the vesting of ownership, the owners' corporations (OCs) or property managers of the buildings in which the tenements concerned are located are unable to recover those defaulted payments following the vesting of the ownership of such tenements and may therefore suffer loss. In this connection, will the Government inform this Council:*

- (a) of the number of times in which the Director of Lands exercised in the past three years the power conferred by the Ordinance mentioned above as a result of owners of tenements defaulting on paying government rent, and the number of such tenements which had entries of encumbrances such as mortgages or charges in their land registration records;*
- (b) given that the practice of the Director of Lands to vest ownership in the authorities may result in a third party who has not done anything wrong incurring loss, whether it has assessed if such a practice has contravened Article 105 of the Basic Law which stipulates that "The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons.....to compensation for lawful deprivation of their property"; and*
- (c) given that OCs or property managers have tried their best to protect their own interests by registering in the Land Registry charges against those flats the owners of which have defaulted on payments, and in order to prevent OCs or property managers from suffering loss, whether the authorities will consider amending the above Ordinance to allow them to apply to the Court for relief against the vesting of ownership?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese):  
Madam President, before replying to the question, I wish to set out the background at the outset. The Ordinance provides for the vesting of the relevant interest, that is, the undivided shares in the lot and the rights and obligations attached, in the FSI, absolutely and free from any mortgage, charge, lien, payment/repayment with it as security, and so on, in the event of a breach of a covenant, condition or stipulation in a government lease or tenancy by the

owner or occupier, or upon failure to pay government rent or premium. Section 8 of the Ordinance provides that, the former owner (including mortgagees, and so on) may petition to the Chief Executive, or the Court of First Instance in its equitable jurisdiction, for relief against the vesting.

My reply to the three-part question is as follows:

- (a) From 1 June 2002 to 30 May 2005, 16 vesting cases were instituted by the Lands Department as a result of default on paying government rent. Of the 16 cases, four had mortgages or legal charges, five were with charges relating to outstanding management fees and two were with Charging Orders by the Department of Justice. Of the 16 cases, nine have been de-vested and the other seven remain vested in the FSI.
- (b) The Government has made an assessment of the relevant practice and sees no sufficient basis for suggesting that the practice of the Director of Lands has contravened Article 105 of the Basic Law having regard to the following:
  - (i) At common law, a forfeiture puts an end to the lease and any interest derived out of the lease.
  - (ii) On the basis that the relevant deed of mutual covenant between the owners provides that the owners have to pay management fees, the other owners would still have a contractual right to recover the outstanding management fees from the former owner of the property under the deed of mutual covenant.
- (c) The Lands Department would exercise the vesting only as a last resort, after all means to recover the outstanding government rent have been exhausted. It is the Lands Department's current practice to inform mortgagees and the Incorporated Owners or the management companies concerned before taking vesting actions against owners.

Outstanding management fees incurred by the former owner prior to the vesting are basically a matter between the former owner and the

other owners, and the Government is not a party to it. These are to be resolved among the private parties themselves, and the FSI does not have obligations to pay such private debts out of public funds. The Incorporated Owners and the management companies could seek independent legal advice as to the ways to recover such outstanding sums from the former owner as appropriate.

There is no plan to amend the law to allow those other than the former owners (including mortgagees, and so on) as defined in section 2 of the Ordinance to apply for petition for relief.

### **Standing Co-operation and Notification Mechanisms Between Hong Kong Government and the Mainland**

14. **MR MA LIK** (in Chinese): *Madam President, will the Government inform this Council of the standing mechanisms for co-operation or notification between the Government of the Hong Kong Special Administrative Region (SAR) and the mainland authorities at present and, for each of these mechanisms, the purposes and date of its establishment, its updated membership list, the number of meetings held in the past two years and the matters discussed?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Chinese): Madam President, the main standing mechanisms for co-operation or notification currently established between the SAR Government and the mainland authorities in accordance with the relevant provisions under the Basic Law and the "one country, two systems" principle are set out in the Annex with the requisite details. The list is not exhaustive as many different types of working groups, technical groups and working level contacts have been established under these mechanisms.

Apart from the standing mechanisms for co-operation or notification, the Policy Bureaux and departments of the SAR Government have, in accordance with operational considerations, established various other types of co-operation and communication channels with relevant mainland authorities for working level contacts and exchanges.



## Standing Mechanisms for Co-operation or Notification between the SAR Government and mainland authorities

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
1	Pan-Pearl River Delta (PPRD) Regional Co-operation Co-ordination Mechanism	To effectively promote PPRD regional co-operation and to explore co-operation channels.	June 2004	The governments of nine PPRD mainland provinces/regions (including Guangdong, Fujian, Jiangxi, Hunan, Guangxi, Guizhou, Yunnan, Sichuan and Hainan), as well as the Governments of Hong Kong and Macao SARs. Under this mechanism, bureaux/departments of PPRD provinces/regions have also established co-operation channels under individual co-operation areas.	One major forum and four meetings among officials at Secretary-General level from the governments of PPRD provinces/regions have been held. Meetings regarding individual co-operation areas have been held as the need arises.	Establishment of and implementation of the framework agreement. Discuss and finalize the operation mechanism under the "Nine plus Two" framework and follow up other relevant issues.
2	Hong Kong Guangdong Co-operation Joint Conference	To provide a high-level forum to explore and co-ordinate major initiatives in co-operation between Hong Kong and Guangdong.	March 1998	The Plenary is co-chaired by the Chief Executive of the HKSAR and the Governor of Guangdong; the Working Meeting under it is chaired by the Chief Secretary for Administration and the Executive Vice Governor of Guangdong; relevant departments of both sides have also set up 17 expert groups to promote co-operation in individual areas, including CEPA, control point operation, cross-boundary infrastructure works, environmental protection, education, intellectual property protection, and so on.	Two Plenaries and five Working Meetings; Expert Group Meetings were convened according to the progress of the co-operation items and operational need.	Major co-operation initiatives between Hong Kong and Guangdong, including CEPA implementation, major cross-boundary infrastructural projects, environmental protection, education, intellectual property protection, and so on.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
3	Mainland/SAR Government Conference on the Co-ordination of Major Infrastructure Project	To discuss how to enhance co-ordination and co-operation between the Mainland and the SAR in transport and major infrastructure projects.	January 2002	The Conference is co-chaired by the Chief Secretary for Administration and the Vice-Chairman of the National Development and Reform Commission. The following departments of both sides participate in the meeting as required by the agenda: SAR Government: Environment, Transport and Works Bureau, Economic Development and Labour Bureau, Housing, Planning and Lands Bureau, Planning Department, Highways Department and the Office of the SAR Government in Beijing; Mainland authorities: Hong Kong and Macao Affairs Office of the State Council, Ministry of Communications, Ministry of Railways, Civil Aviation Administration of China, and government departments of Guangdong Province and its municipalities.	1 (Implementation work followed up separately by relevant mainland authorities and departments/bureaux of the SAR Government.)	Matters relating to progress and the future work of major cross-boundary infrastructural project plans, including the Hong Kong-Shenzhen Western Corridor, the Hong Kong-Zhuhai-Macao Bridge and the Guangdong-Shenzhen-Hong Kong Express Rail Link.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
4	The Joint Steering Committee of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA)	Supervising the implementation of CEPA; interpreting the provisions of CEPA; resolving disputes that may arise during the implementation of CEPA; drafting additions and amendments to the content of CEPA; providing steer on the work of the working groups under the Joint Steering Committee; and dealing with any other business relating to the implementation of CEPA.	June 2003	The conveners of the Joint Steering Committee are the Vice Minister of the Ministry of Commerce and the Financial Secretary. The Committee comprises senior representatives or officials designated by the two sides. A liaison office has been set up in the Commerce, Industry and Technology Bureau under which there are sub-groups and thematic meetings.	4	Matters in relation to the implementation of CEPA and further trade liberalization under its framework.
5	Hong Kong-Beijing Economic and Trade Co-operation Conference	To further enhance exchanges and co-operation between Hong Kong and Beijing, in particular in the trade and economic fields.	September 2004	SAR Government: Chief Executive, Financial Secretary, Secretary for Constitutional Affairs, representatives of Commerce, Industry and Technology Bureau and Beijing Office; Mainland authorities: Beijing Mayor, Beijing Vice-Mayor, Hong Kong and Macao Affairs Office of Beijing Municipality Government	2	1. First meeting: establishment of the co-operation mechanism and the Hong Kong-Beijing Economic and Trade Co-operation Conference. 2. Second meeting: a working level meeting on operation mode of co-operation mechanism and establishment of liaison office.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
6	Hong Kong-Shanghai Economic and Trade Co-operation Conference	To enhance exchanges and co-operation between Hong Kong and Shanghai, particularly on trade and economic matters.	October 2003	SAR Government: The Chief Executive, representatives from the Financial Secretary's Office, Department of Justice, Education and Manpower Bureau, Health, Welfare and Food Bureau, Home Affairs Bureau, Financial Services and the Treasury Bureau, Constitutional Affairs Bureau, Commerce, Industry and Technology Bureau, Economic Development and Labour Bureau, The Office of the Government of the SAR in Beijing, Environment, Transport and Works Bureau, Central Policy Unit and Information Services Department. Mainland authorities: Mayor of Shanghai Municipal Government, representatives from the Shanghai Municipal Development and Reform Commission, Shanghai Municipal Foreign Economic Relation and Trade Commission, Shanghai Municipal Commission of Construction and Administration, Shanghai Municipal Science and Technology Commission, Shanghai Municipal Education Commission, Foreign Affairs Office of the Shanghai Municipal People's Government, Shanghai Municipal Personnel Bureau, Shanghai Harbor Administration.	1 (Implementation work followed up by relevant mainland authorities and departments/bureaux of SAR Government.)	1. To enhance Hong Kong-Shanghai co-operation under the framework of CEPA. 2. To enhance exchanges and co-operation between Hong Kong and Shanghai on airport; port, maritime and logistics; Shanghai Expo 2010; tourism, convention and exhibition industry; investment and trade; education, health and sports; financial services; and professional personnel exchanges.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
7	Shenzhen-Hong Kong Co-operation Meeting	To establish a direct channel under the Hong Kong Guagndong Co-operation Joint Conference to take forward preparatory studies and to exchange views on topics of common interest.	June 2004	Departments of the SAR Government and the Shenzhen Municipal Government which are involved in the co-operation areas.	10	Control point operation, education, environmental protection, cross-boundary transportation, and so on.
8	Mainland and Hong Kong Consultative Meeting on Shipping	To facilitate co-operation and development on shipping between the Mainland and Hong Kong.	February 2001	SAR Government: Economic Development and Labour Bureau and Marine Department; Mainland authorities: Department of Water Transport, Ministry of Communications	1 (Implementation work followed up by relevant mainland authorities and departments/bureaux of the SAR Government.)	Issues relating to the development of maritime industry in Hong Kong and the Mainland.
9	Co-operation Arrangement on Aircraft Accident Investigation and Search and Rescue	To strengthen the co-operation of the General Administration of Civil Aviation of China (CAAC) and the Civil Aviation Department, SAR Government, in carrying out investigation of aircraft accidents, serious incidents and search and rescue operations.	April 2004	SAR Government: Civil Aviation Department; Mainland authorities : CAAC	1 (Implementation work followed up by relevant mainland authorities and departments/bureaux of the SAR Government.)	Co-operation on aircraft accident investigation and search and rescue matters.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
10	Pearl River Delta (PRD) Air Traffic Management Planning and Implementation Working Group	To improve the co-ordination of air traffic management in the PRD to meet the air traffic growth in the region.	February 2004	SAR Government: Civil Aviation Department; Mainland authorities: Air Traffic Management Bureau, CAAC; Macao SAR Government: Civil Aviation Authority	4	Future air routes and airspace management in the PRD.
11	Co-operation Arrangement on Mutual Acceptance of Aircraft Maintenance Organizations	To ensure a common aircraft maintenance standard amongst the Mainland, SAR and Macao SAR to enhance aviation safety and the efficiency of aircraft maintenance.	May 2002	SAR Government: Civil Aviation Department; Mainland authorities: CAAC ; Macao SAR Government: Civil Aviation Authority	5	Feasibility and arrangements for mutual acceptance of aircraft maintenance organizations.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
12	Co-operation Arrangement on Electrical and Mechanical Products Safety	To establish communication channels in respect of relevant regulations and rules, safety standards and enforcement procedures; to establish a reporting system on unsafe products and an investigation feedback mechanism for identifying non-compliance cases; to foster bilateral technological exchange and enhance co-operation in training law enforcement officers of both the Mainland and Hong Kong; and to enhance and expand the scope of co-operation in product certification.	February 2003	SAR Government: Electrical and Mechanical Services Department; Mainland authorities: The General Administration of Quality Supervision, Inspection and Quarantine	13	Review progress of work conducted by various working groups, examine specific issues on product safety and establish work plans.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
13	Arrangement on Long-term Co-operation between China Meteorological Administration and Hong Kong Observatory	To promote the development of meteorology in the Mainland and SAR and to raise the standard of meteorological services.	February 2001	SAR Government: Hong Kong Observatory; Mainland authorities: China Meteorological Administration	6	Co-operation on meteorological monitoring, meteorological telecommunication, weather forecasting and warning, meteorological services, climate change studies and staff training.
14	Arrangement on Co-operation in Seismological Science and Technology between China Earthquake Administration and Hong Kong Observatory	To strengthen co-operation in the work on seismology between the Mainland and SAR.	March 2000	SAR Government: Hong Kong Observatory; Mainland authorities: China Earthquake Administration	4	Co-operation in exchange of earthquake information and technology.
15	Long-term Technical Co-operation in Aviation Meteorological Service between Air Traffic Management Bureau of General Administration of Civil Aviation of China and Hong Kong Observatory	To strengthen co-operation in the work on aviation meteorology between the Mainland and SAR and to jointly promote the development of aviation meteorology.	April 1999	SAR Government: Hong Kong Observatory; Mainland authorities: Air Traffic Management Bureau of CAAC	1 (Contacts and exchanges from time to time)	Co-operation in exchange of aviation meteorological data and technology in aviation meteorological instrumentation.



	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
16	Closer business co-operation between Mainland Post and Hongkong Post	To enhance development of postal services between the Mainland and Hong Kong.	December 2003	SAR Government: Hongkong Post; Mainland authorities: State Post Bureau	4	To discuss co-operation on areas of direct mail, Express Mail Service, parcels, remittance, logistics, mail circulation arrangements and explore further co-operation opportunities in other areas.
17	Co-operation Mechanism on Fishing Vessel Safety between Marine Department, SAR Government, and Register of Fishing Vessel of Guangdong	To enhance communication and co-operation on matters concerning safety standard, inspections and surveys of fishing vessels	August 2000	SAR Government: Marine Department; Mainland authorities: Register of Fishing Vessel of Guangdong	2	Matters relating to fishing vessels including : - technical standards and survey requirements; - recognition of surveys conducted by Mainland authority; and - safety standards.
18	Regional Oil Pollution Contingency Plan	To cope with major oil pollution incidents at the Pearl River Estuary	May 2000	SAR Government: Marine Department; Mainland authorities: Maritime Safety Administration of Guangdong, Shenzhen, Zhuhai and Macao	Contacts and exchanges from time to time	Major oil pollution incidents at the Pearl River Estuary.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
19	Regular meeting on Maritime Safety between Marine Department, SAR Government and State Maritime Safety Administration	To enhance communication and co-operation on matters concerning implementation of international maritime conventions, control of shipping and navigational safety, pollution prevention, search and rescue, seafarers certification, and so on.	May 1999	SAR Government: Marine Department; Mainland authorities: Maritime Safety Administration	5	<ul style="list-style-type: none"> <li>- adoption and implementation of international maritime conventions;</li> <li>- technical standards for coastal shipping;</li> <li>- co-operation in marine accident investigations;</li> <li>- co-operation in port state control inspections; and</li> <li>- recognition of seafarers certification, and so on.</li> </ul>
20	Regular meeting between Marine Department, SAR Government and Guangdong Maritime Safety Administration	To discuss maritime issues relevant to the Pearl River Delta.	November 1998	SAR Government: Marine Department; Mainland authorities: Guangdong Maritime Safety Administration	5	Operational issues concerning marine navigation and ship safety in the Pearl River Delta.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
21	Co-operation Arrangement on Matters Related to the Construction and Related Engineering Services Sectors between Ministry of Construction and Works Bureau of SAR Government	To promote the co-operation and development of the construction and related engineering services sectors of Hong Kong and the Mainland.	May 2002	SAR Government: Environment, Transport and Works Bureau; Mainland authorities: Ministry of Construction	9	<ol style="list-style-type: none"> <li>Promoting the exchange and co-operation between the construction and related engineering services sectors of the two places.</li> <li>Further liberalization of the Mainland market.</li> <li>Promoting mutual recognition of professional qualifications between Hong Kong and the Mainland.</li> </ol>
22	Co-operation Agreement on Construction and Related Engineering Services	To strengthen the connection and promote the co-operation of the construction and related engineering services sectors between Chongqing and Hong Kong.	October 2004	SAR Government: Environment, Transport and Works Bureau; Mainland authorities: Chongqing Municipal Construction Commission	1	Enhancing the co-operation in training of professionals between Chongqing and Hong Kong.
23	Joint Working Group on the Regulation of Shenzhen River	To discuss issues relating to the regulation of Shenzhen River.	1992	SAR Government: Environment, Transport and Works Bureau, Financial Services and the Treasury Bureau, Constitutional Affairs Bureau, Drainage Services Department and Environmental Protection Department; Mainland authorities : Shenzhen Municipal Government and relevant departments	Contacts and exchanges from time to time	Projects/contracts/studies relating to the regulation of Shenzhen River.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
24	Annual Business Meeting on Dongjiang Water and its sub-groups	To discuss the supply of Dongjiang water	1989	SAR Government: Environment, Transport and Works Bureau, Financial Services and the Treasury Bureau, Water Supplies Department; Mainland authorities: Water Resources Bureau of Guangdong Province	5 (including meetings of sub-groups)	Supply quantity, price, operation and management of Dongjiang water.
25	Co-operation on Control of Waste Movements between the Mainland and SAR	To adopt a prior notification and consent procedure for hazardous waste shipments between the Mainland and SAR; to provide a direct communication channel for enforcement control and discussion of transboundary movement of hazardous wastes; and to agree the procedures in handling issues in relation to the Basel Convention.	January 2000	SAR Government: Environmental Protection Department Mainland authorities: State Environmental Protection Administration	5	Sharing of enforcement intelligence and exchange of experience on the control of transboundary movement of hazardous waste.
26	Notification, co-operation and liaison mechanisms for cross-boundary marine dumping	To enhance the co-operation and communication between Hong Kong and the Mainland on the crossboundary dumping of dredged materials and the accommodation of inert construction and demolition materials in mainland waters	March 2004	SAR Government: Environmental Protection Department, Civil Engineering and Development Department Mainland authorities: State Oceanic Administration	2	Management and implementation details of dumping dredged materials and accommodation of inert construction and demolition materials in mainland waters.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
27	Annual Meeting of the Management Authorities of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of the Central Government, Macao SAR and SAR	To co-ordinate the implementation of CITES among the Mainland, SAR and Macao SAR.	2001	SAR Government: Agricultural, Fisheries and Conservation Department Mainland authorities: the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office Macao SAR Government: Macao Economic Services	3	<ol style="list-style-type: none"> <li>1. Updating one another on the implementation of the Convention.</li> <li>2. Co-ordination of the work on the implementation of the Convention among three sides.</li> <li>3. Strategies on different issues of the Convention.</li> <li>4. Existing and future joint work programmes.</li> </ol>
28	Co-operation arrangement on tackling air pollution	To share experience, views and professional knowledge in air pollution control.	May 2005	SAR Government: Environmental Protection Department Mainland authorities: State Environmental Protection Administration	1	Areas of co-operation in air pollution issues.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
29	Collaboration and Exchange Arrangement between the State Bureau of Statistics and the Census and Statistics Department of SAR	To step up co-operation and exchange in statistical work among statistics practitioners of the Central Government, provinces/cities, autonomous regions, municipalities as well as major city governments in the Mainland and those of the SAR Government for further enhancing the mutual development of statistical information	April 2003	SAR Government: Census and Statistics Department Mainland authorities: State Bureau of Statistics	10	Various areas in statistical work.
30	Co-operation Plan between the State Customs General Administration and the Census and Statistics Department of SAR	To facilitate further co-operation on exchange of statistical data (which are releasable to the public), mutual discussions on statistical methodology and operations, and analysis of discrepancy in bilateral trade statistics.	November 2000	SAR Government: Census and Statistics Department Mainland authorities: State Customs General Administration	5	Various areas in statistical work.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
31	Co-operative Agreement between the China Insurance Regulatory Commission and the Insurance Authority of Hong Kong	To enhance co-operation, mutual understanding, exchange of information and assistance between the two insurance supervision authorities.	November 2004	Insurance Authority of Hong Kong and the China Insurance Regulatory Commission	1	Enhancement of regulatory co-operation and promotion of healthy development of the insurance industry.
32	Joint Meeting of the Insurance Regulators of Guangzhou, Hong Kong, Macao and Shenzhen	To enhance co-operation among the insurance supervisors of the four places and to discuss various topics on regulatory functions and framework, market development, latest supervisory work and issues of common interest.	February 2002	SAR Government: Office of the Commissioner of Insurance Mainland authorities: Guangzhou and Shenzhen offices of the China Insurance Regulatory Commission Macao SAR Government: Monetary Authority	Contacts and exchanges from time to time	Enhancement of regulatory co-operation and promotion of healthy development of the insurance industry.
33	Co-operation Arrangement between General Administration of Quality Supervision, Inspection and Quarantine and Health, Welfare and Food Bureau	To collaborate in the prevention of the spread of global infectious diseases, animal and plant diseases and pests between the Mainland and Hong Kong, as well as to ensure the quality and food safety of imported and exported commodities	November 2003	SAR Government: Health, Welfare and Food Bureau Mainland authorities: General Administration of Quality Supervision, Inspection and Quarantine	Contacts and exchanges from time to time	Matters relating to the inspection and quarantine of animals, plants, animal and plant products and food, as well as health and quarantine measures.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
34	Liaison Mechanism for Livestock and Poultry Products Supplied to Hong Kong by the Mainland	To forge closer liaison between the Ministry of Commerce and Health, Welfare and Food Bureau for better communication and co-operation to ensure the stable supply and food safety of livestock and poultry products supplied to Hong Kong	December 2004	SAR Government: Health, Welfare and Food Bureau Mainland authorities: Ministry of Commerce	1	Matters relating to the stable supply of food as well as food safety measures.
35	Direct Liaison Mechanism between Ministry of Agriculture (MoA) and Health, Welfare and Food Bureau	To establish a communication and liaison mechanism between MoA and Health, Welfare and Food Bureau	June 2005	SAR Government: Health, Welfare and Food Bureau, Agriculture, Fisheries and Conservation Department, Food and Environmental Hygiene Department Mainland authorities: MoA	Contacts and exchanges from time to time	1. Confirmation of objective, liaison topics, scope and channel. 2. Fisheries issues.
36	The Joint Meeting of Senior Health Officials of the Mainland, Hong Kong and Macao	Promote reform and development of the health care system and control of infectious diseases in the Mainland, SAR and Macao SAR through timely exchange of information and expertise.	Mid 2002	SAR Government: Department of Health Mainland authorities: Ministry of Health Macao SAR Government: Office of the Secretary for Social Affairs and Culture	2	Healthcare reform, health matters in the community and countryside, control of diseases, surveillance, prevention and control of infectious diseases, public health regulation, food safety and hygiene, the impacts of the Mainland's entry into WTO on the health care sector and development of Chinese medicine.



	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
37	Sports Exchange and Co-operation among the Home Affairs Bureau of the Government of the SAR and the State Sport General Administration	To enhance sports co-operation and exchange between Hong Kong and the Mainland in different sports areas in a regulatory manner.	May 2004	SAR Government: Home Affairs Bureau Mainland authorities: State Sport General Administration	4	To enhance sports exchange and co-operation.
38	Sports Exchange and Co-operation among Shanghai and Hong Kong	To enhance sports exchange and co-operation with a view to promoting interflow of sports personnel and complement the sports resources between the two places.	May 2004	SAR Government: Home Affairs Bureau Mainland authorities: Shanghai Administration of Sports	3	To enhance sports exchange and co-operation.
39	Sports Exchange and Co-operation between Hainan and Hong Kong	To enhance sports exchange and co-operation with a view to promoting interflow of sports personnel and complement the sports resources between the two places.	November 2004	SAR Government: Home Affairs Bureau Mainland authorities: Department of Culture, Radio, Television, Publication and Sports of Hainan Province	1	To enhance sports exchange and co-operation.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
40	Sports Exchange and Co-operation between Yunnan and Hong Kong	To enhance sports exchange and co-operation with a view to promoting interflow of sports personnel and complement the sports resources between the two places.	May 2005	SAR Government: Home Affairs Bureau Mainland authorities: Yunnan Provincial Sports Bureau	2	To enhance sports exchange and co-operation.
41	Mainland Procuratorate and Independent Commission Against Corruption (ICAC) of SAR	To assist each other in taking evidence and interviewing witnesses in each other's jurisdiction in order to facilitate corruption related investigations.	1988	SAR Government: ICAC Mainland authorities: Supreme People's Procuratorate, Guangdong Provincial People's Procuratorate	Contacts and exchanges carried out from time to time	Taking evidence and interviewing witnesses in each other's jurisdiction.
42	Civil Service Staff Exchange between Civil Services Bureau of SAR Government and Individual Municipal Governments in the Mainland	To facilitate cross fertilization of experience and expertise as well as help foster closer partnership and communication between both sides.	Since July 2002	SAR Government: Civil Services Bureau Mainland authorities: Foreign Affairs Office of Shanghai Municipal People's Government, Personnel Bureau of Beijing Municipal People's Government, Hangzhou Municipal People's Government and Personnel Department of Guangdong Provincial People's Government	Six exchange activities	Participants of both sides were attached to their counterparts for one to three months, having chances to acquire professional knowledge and experience of the other side. They also obtain better understanding of the actual operation of and the latest development in respective job areas of the other side, which helps facilitate further co-operation between the Mainland and Hong Kong.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
43	Co-operation between Guangdong and Hong Kong on matters concerning an off-site emergency at Guangdong Nuclear Power Station/Ningao Nuclear Power Station	To discuss and agree on co-operation arrangements during an off-site nuclear emergency at Daya Bay.	October 1993	SAR Government: Security Bureau, Hong Kong Observatory, Constitutional Affairs Bureau, Water Supplies Department, Department of Health, Electrical and Mechanical Services Department, Food, Environment and Health Department, Government Flying Services and Civil Aviation Department; Mainland authorities: Prevention and Emergency Administrative Commission of Guangdong Province for Nuclear Accident of Civil Nuclear Facility and its office	5	Intercomparison of radionological measurements, monthly direct communication test, annual review of progress of co-operation, and so on.
44	Police co-operation arrangement between Hong Kong and the Mainland	To regulate the basis and mode of Police co-operation between the Mainland and Hong Kong based on the Interpol practice.	1998	SAR Government: Hong Kong Police Force; Mainland authorities: Ministry of Public Security	Contacts and exchanges from time to time	Police liaison and co-operation between the two places.
45	Shenzhen-Hong Kong Land Boundary Police Co-operation Scheme	To strengthen police liaison between Shenzhen and Hong Kong at land boundary control points.	2003	SAR Government: Hong Kong Police Force; Mainland authorities : Guangdong Provincial Public Security Bureau, Shenzhen Municipal Public Security Bureau	6	Police co-operation at boundary control points.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
46	Co-operative and Mutual Assistance Arrangement between Hong Kong Customs and Excise Department and the State General Administration of Customs	To strengthen co-operation and administrative assistance in customs matters for the enforcement of customs laws and interdiction of customs offences.	2000	SAR Government: Customs and Excise Department; Mainland authorities: General Administration of Customs	Two Annual Review Meetings Two Chief Liaison Officers' Meetings During the period, other topical meetings were held in which 12 were on CEPA matters.	Co-operation between the two administrations for the past year and co-operation plan for the next year; Further improvements to the co-operation between the two administrations; Enforcement/implementation of CEPA by Customs.
47	Liaison Officers Channel between Hong Kong Customs and the Guangdong Sub-Administration of Customs of the General Administration of Customs	To strengthen co-operation between Hong Kong and Guangdong Customs in anti-smuggling, intelligence exchange, customs clearance, protection of intellectual property rights (IPR) and training exchange.	1983	SAR Government: Customs and Excise Department; Mainland authorities: Guangdong Sub-Administration of Customs of the General Administration of Customs	Three Annual Review Meetings Nine Liaison Officers' Meetings During the period, other topical meetings were held in which 29 were on anti-narcotics, three on diesel oil, 15 on intellectual property rights, three on land boundary customs clearance co-operation and one on New Shenzhen Bay Control Point. (Total: 51)	Co-operation between the two administrations for the past year and co-operation plan for the next year.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
48	Co-operative and Mutual Assistance Arrangement between National Copyright Administration and the Hong Kong Customs and Excise Department on Copyright Protection and Anti-Piracy on Compact Discs	Strengthening of co-operation in the protection of copyright and the suppression of piracy activities, including intelligence exchange and administrative assistance to combat IPR violations.	2002	SAR Government: Customs and Excise Department; Mainland authorities: National Copyright Administration	Three Biannual Meetings	The optical disc licensing situation in Hong Kong and assistance in the verification of copyright authorization documents issued in the Mainland.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
49	Boundary Liaison Review Meeting	To strengthen co-operation between Guangdong and Hong Kong on various cross-boundary matters.	1981	SAR Government: Security Bureau, Environment, Transport and Works Bureau, Constitutional Affairs Bureau, Hong Kong Police Force, Immigration Department, Customs and Excise Department Mainland authorities: Hong Kong and Macao Affairs Office (HKMAO) of the Guangdong Provincial People's Government, Guangdong Provincial Public Security Bureau, Department of Foreign Trade and Economic Co-operation of Guangdong Province, Guangdong Branch of the Customs General Administration, HKMAO of the People's Government of the Shenzhen Municipality, Shenzhen General Station of Exit and Entry Frontier Inspection, Port Affairs Office of the People's Government of the Shenzhen Municipality	Contacts and exchanges from time to time	Co-operation on cross-boundary traffic, boundary management, combating of illegal immigration, smuggling and other cross-boundary matters.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
50	Mainland and Hong Kong Science and Technology Co-operation Committee	To organize and co-ordinate technology exchange and collaboration between Hong Kong and the Mainland.	May 2004	SAR Government: Commerce, Industry and Technology Bureau; Innovation and Technology Commission; Office of the Government Chief Information Officer; Hong Kong Applied Science and Technology Research Institute and Education and Manpower Bureau Mainland authorities: Ministry of Science and Technology; Ministry of Education; Chinese Academy of Sciences; National Natural Science Foundation of China; Science and Technology Commission of Shanghai; and Guangdong Provincial Department of Science and Technology	Contacts and exchanges from time to time	The approach and mechanism for co-operation between the Mainland and Hong Kong, including the establishment of four areas of co-operation, namely "integrated circuit design", "radio frequency identification technologies", "Chinese medicine" and "automotive parts and accessory systems".
51	Frequency Co-ordination Agreement signed between SAR and Guangdong	To ensure that radio frequencies in the SAR and Guangdong could be used efficiently with minimum mutual interference. It will also facilitate the development of broadcasting and telecommunications services on both sides.	The first Frequency Co-ordination Agreement between Hong Kong and Guangdong was signed in 1992. The second Agreement was signed in 2000.	SAR Government: Office of the Telecommunications Authority Mainland authorities: Radio Regulatory Department of the Ministry of Information Industry, the State Administration of Radio, Film and the Television and Chinese Radio Sports Association	Contacts and exchanges from time to time	Mainly on frequency co-ordination related to fixed, mobile and broadcasting service; radio interference and development of telecommunications services.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
52	Technical Working Group and Task Force Meeting on Aeronautical Radio Communications	Strengthen the co-operation and co-ordination between Hong Kong and the Mainland on Aeronautical Radio Communications Interference.	June 1998	SAR Government: Office of the Telecommunications Authority and Civil Aviation Department; Mainland authorities: Guangdong Radio Administrative Office, Civil Aviation of China and relevant Mainland parties on radio administration	7	Analyse the interference on aeronautical radio communications and measures to reduce or eliminate the interference source.
53	Promotion of Legal Service Co-operation between Hong Kong and Mainland	Co-operation in legal services and the holding of the National Judicial Examination in Hong Kong.	December 2004	SAR Government: Department of Justice; Mainland authorities: Ministry of Justice	1	Discussion on the implementation of CEPA.
54	Co-operation of Legal Services between Department of Justice of SAR Government and Mainland Justice Authorities	To strengthen co-operation in legal services.	Since September 2002	SAR Government: Department of Justice Mainland authorities: Qingdao Justice Bureau, Chongqing Justice Bureau, Beijing Justice Bureau, Nanjing Justice Bureau, Shanghai Justice Bureau, Zhejiang Justice Department and Shenzhen Justice Bureau	9	Co-operation in Legal matters.
55	Notification mechanism between Hong Kong Marine Rescue Co-ordination Centre (MRCC) and Guangdong MRCC	To co-ordinate maritime search and rescue.	1992	SAR Government: MRCC; Mainland authorities: Guangdong MRCC	Contacts and exchanges from time to time	Maritime search and rescue.



	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
56	Notification mechanism between the Ministry of Health and the Department of Health of the SAR Government	To establish effective communication channels to enable timely exchange of information about infectious disease incidents and outbreaks.	Mid 2003	SAR Government: Department of Health Mainland authorities: Ministry of Health	Notifications made from time to time	Important information about infectious disease incidents and outbreaks.
57	Notification mechanism between the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) of the Mainland and Department of Health of the SAR Government	To establish effective communication channels to enable timely exchange of important information about infectious disease incidents at the border and emergency public health incidents.	August 2003	SAR Government: Department of Health Mainland authorities: AQSIQ	Notifications made from time to time	Information about infectious disease incidents at the boundary and emergency public health incidents.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
58	The Reciprocal Notification Mechanism between Mainland Security Authorities and Hong Kong Police	(a) Notification Unit in the Mainland should notify the Hong Kong Notification Unit the imposition of criminal compulsory measures on Hong Kong residents by the public security authorities, the customs authorities, the Mainland People's Procuratorates and the Ministry of State Security, and the unnatural deaths of Hong Kong residents in the Mainland; and (b) The Hong Kong notification Unit should notify the Mainland Notification Unit of criminal prosecutions instituted by the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department against mainland residents, and the unnatural deaths of mainland residents in Hong Kong.	October 2000 (Became Operative in January 2001)	SAR Government: Hong Kong Police Force; Mainland authorities: Ministry of Public Security	Notifications made from time to time	Imposition of criminal compulsory measures on Hong Kong residents; unnatural deaths of Hong Kong residents in the Mainland; and criminal prosecutions instituted by the Hong Kong authorities against mainland residents; unnatural deaths of mainland residents in Hong Kong.

	<i>Co-operation and Notification Mechanisms between the SAR Government and mainland authorities</i>	<i>Purpose of Establishment</i>	<i>Date of Establishment</i>	<i>Membership of the Mechanism (Relevant bureaux/departments of the SAR Government and mainland Authorities)</i>	<i>Number of meeting(s) held under the mechanisms in the past two years (January 2003 to June 2005)</i>  <i>(Note: For most of these mechanisms, the implementation work is followed up by relevant working groups thereunder or relevant mainland authorities and bureaux and departments of the SAR Government after their first meetings or establishment.)</i>	<i>Matter(s) covered at the meeting(s)</i>
59	Notification mechanism on emergency at land boundary control points in Hong Kong and Guangdong	To enhance liaison and co-operation between relevant departments in Hong Kong and Guangdong to cope with emergencies at land boundary control points so as to ensure smooth flow and safety of passengers.	January 2004	SAR Government: Security Bureau, Hong Kong Police Force, Immigration Department and Customs and Excise Department (principal members) Mainland authorities: Port Administration Office of Guangdong Province, Shenzhen Port Affairs Office, Shenzhen Customs, Shenzhen Frontier Inspection Station and Shenzhen Entry/Exit Inspection and Quarantine Bureau (principal members)	Notifications made from time to time	Emergencies at land boundary control points.

**Education and Scientific Research Projects Conducted by University of Hong Kong with Private Organizations**

15. **DR KWOK KA-KI** (in Chinese): *Madam President, regarding the education and scientific research projects conducted by the University of Hong Kong (HKU), including those of its Faculty of Medicine, in collaboration with the private organizations, will the Government inform this Council:*

- (a) *whether it knows the names of the private organizations taking part in the above projects;*
- (b) *whether it knows if the HKU has established a mechanism for declaration of interests applicable to the senior management of the HKU and staff of the HKU's Faculty of Medicine who drew up and/or participated in the relevant projects, as well as a mechanism for approving the post-retirement/service employment with the private organizations for such staff; if it has such an approval mechanism, of the list of the former HKU staff who made applications in accordance with the mechanism in the past three years and the collaboration items involved, as well as the posts in the private organizations which they intended to take up and the results of their applications; if it has not established such a mechanism, the reasons for that; and*
- (c) *whether it has monitored the use of public funds provided for the relevant projects, and laid down any regulations and guidelines to ensure the professional autonomy of the HKU and prevent the shift of public funds to activities involving private organizations; if it has, of the relevant details; if not, how the authorities prevent the professional autonomy of the HKU from being affected and the shift of public funds to other usages?*

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

- (a) and (b)

Each of the University Grants Committee (UGC)-funded institutions, including the HKU, is an autonomous body governed by its own

ordinance and governing council. They enjoy unfettered academic freedom and considerable institutional autonomy in areas including the management of its staff and research activities. The institutions can carry out education and scientific research projects in collaboration with private organizations, and establish appropriate mechanisms for staff management, in accordance with their respective governing legislation. The Administration and the UGC fully respect institutional autonomy, and will not seek to interfere with the institutions' internal affairs.

- (c) The UGC has put in place rules and regulations to ensure that public funds allocated to institutions are used to pursue academic and related activities which are in line with public policy objectives, and that there should be no cross-subsidization of public resources for non-UGC-funded activities. These rules are set out in the UGC Notes on Procedures, which are available for public scrutiny on, *inter alia*, the UGC website at < [www.ugc.edu.hk](http://www.ugc.edu.hk) > .

### **Statistics on CSSA Recipients**

16. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, will the Government provide a table setting out the following regarding the Comprehensive Social Security Assistance (CSSA) Scheme in each of the past 10 years: the respective numbers of male and female recipients, their district of residence, education, age, ethnicity, household size, whether they were public housing tenants, whether they had resided in Hong Kong for seven years or more, whether they had any criminal record, the number of times they had received CSSA payments, the period during which they had received CSSA continuously and the CSSA categories involved?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, in response to the question raised by Miss CHAN Yuen-han, the following tables are attached at the Annex for reference:

- (i) Table 1 Number of CSSA Recipients by Sex, 1995 to 2004;

- (ii) Table 2 Number of CSSA Recipients by Geographical District, 2000 to 2004 (figures on geographical districts are available as from 2000)
- (iii) Table 3 Number of CSSA Recipients by Educational Attainment, 2001 to 2004 (figures on educational attainment are available as from 2001)
- (iv) Table 4 Number of CSSA Recipients by Age, 1995 to 2004
- (v) Table 5 Number of CSSA Recipients Reporting Country of Origin Being Places Other Than China by Country of Origin, 2001 to 2004 (figures are available as from 2001)
- (vi) Table 6 Number of CSSA Recipients by Number of Eligible Members, 1995 to 2004
- (vii) Table 7 Number of CSSA Recipients by Type of Housing, 1995 to 2004
- (viii) Table 8 Number of CSSA Recipients Having Resided in Hong Kong for Less Than Seven Years, 1999 to 2004 (statistics on CSSA new arrivals have been regularly collected as from 1999)
- (ix) Table 9 Number of CSSA Recipients by Continuous Duration of Stay on CSSA, 1995 to 2004
- (x) Table 10 Number of CSSA Recipients by Case Category, 1995 to 2004

As regards information on the criminal records of CSSA recipients and the number of times that recipients have received CSSA payments, the Social Welfare Department does not have relevant statistics.

## Annex

Table 1 Number of CSSA Recipients by Sex, 1995 to 2004

<i>Year</i>	<i>Sex</i>		<i>Total</i>
	<i>Male</i>	<i>Female</i>	
1995	87 572	86 583	174 155
1996	113 140	110 244	223 384
1997	137 698	144 925	282 623
1998	180 051	188 572	368 623
1999	182 853	193 654	376 507
2000	175 611	189 574	365 185
2001	190 677	206 791	397 468
2002	225 069	241 799	466 868
2003	251 891	270 565	522 456
2004	259 108	282 909	542 017

Note: Figures refer to end of the year.

Table 2 Number of CSSA Recipients by Geographical District, 2000 to 2004

<i>Geographical District</i>	<i>Year</i>				
	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Central and Western	5 227	5 362	5 875	5 917	5 859
Eastern	18 638	20 081	23 026	25 455	25 817
Islands	3 359	5 822	7 938	9 675	11 770
Kowloon City	21 970	22 394	23 239	23 788	23 588
Kwai Tsing	30 401	34 080	43 328	50 370	53 320
Kwun Tong	41 793	44 715	53 778	60 569	64 789
Mong Kok	11 665	11 399	11 511	12 283	12 323
North	19 810	21 301	24 058	26 452	26 685
Sai Kung	11 756	14 072	17 285	21 696	24 227
Sha Tin	26 914	28 300	32 554	36 798	37 383
Sham Shui Po	29 743	32 652	37 158	39 886	40 813
Southern	12 322	12 787	14 049	14 811	14 706
Tai Po	17 331	17 600	19 798	21 805	21 596
Tsuen Wan	11 048	12 074	13 299	14 452	14 999
Tuen Mun	26 651	30 563	36 416	39 654	41 101
Wan Chai	4 332	4 177	4 043	4 247	4 091
Wong Tai Sin	32 473	35 285	41 605	45 698	46 122

<i>Geographical District</i>	<i>Year</i>				
	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Yau Tsim	6 395	6 427	6 794	6 957	6 550
Yuen Long	31 293	35 942	48 358	59 083	63 375
Others*	2 064	2 435	2 756	2 860	2 903
<b>Total</b>	<b>365 185</b>	<b>397 468</b>	<b>466 868</b>	<b>522 456</b>	<b>542 017</b>

Notes: \* Including recipients of the Portable CSSA Scheme who live in Guangdong.

(1) Figures on geographical districts are available as from 2000.

(2) Figures refer to end of the year.

**Table 3 Number of CSSA Recipients by Educational Attainment, 2001 to 2004**

<i>Educational attainment</i>	<i>Year</i>			
	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
No schooling/kindergarten	170 056	184 876	195 247	199 441
Primary	156 705	190 821	218 061	228 717
Lower secondary	44 333	58 431	70 499	74 487
Other <sup>@</sup>	26 374	32 740	38 649	39 372
<b>Total</b>	<b>397 468</b>	<b>466 868</b>	<b>522 456</b>	<b>542 017</b>

Notes: @ Including upper secondary, technical and commercial institutes.

(1) The above statistics cover all types of CSSA recipients, including elderly, children attending school and infants.

(2) Figures on educational attainment are available as from 2001.

(2) Figures refer to end of the year.

**Table 4 Number of CSSA Recipients by Age, 1995 to 2004**

<i>Year</i>	<i>Age</i>						<i>Total</i>
	<i>Below 15</i>	<i>15 to 24</i>	<i>25 to 34</i>	<i>35 to 44</i>	<i>45 to 59</i>	<i>60 or over</i>	
1995	31 348	8 522	7 048	18 315	16 794	92 128	174 155
1996	44 453	12 788	10 751	24 860	21 520	109 012	223 384
1997	57 694	18 223	13 611	32 605	29 568	130 922	282 623
1998	84 064	27 185	19 638	48 091	41 496	148 149	368 623
1999	84 964	30 170	17 284	47 190	44 097	152 802	376 507
2000	81 014	29 661	14 845	42 767	43 431	153 467	365 185
2001	88 978	34 213	16 732	46 929	50 662	159 954	397 468
2002	106 680	43 857	22 337	57 611	65 931	170 452	466 868
2003	118 864	53 263	26 084	64 667	80 325	179 253	522 456
2004	121 762	58 219	25 781	65 107	86 340	184 808	542 017

Note: Figures refer to end of the year.



Table 5 Number of CSSA Recipients Reporting Country of Origin\* Being Places Other Than China by Country of Origin, 2001 to 2004

Year	Country of Origin*						Total
	India	Indonesia	Pakistan	Philippine	Thailand	Others	
2001	561	839	2 546	341	845	2 571	7 703
2002	786	1 139	3 126	616	1 047	3 151	9 865
2003	971	1 373	3 389	905	1 209	3 557	11 404
2004	1 005	1 543	3 596	997	1 298	3 758	12 197

Notes: \* The above statistics should be interpreted with caution as the data on "country of origin" is compiled based on information reported by CSSA recipients. It should also be noted that country of origin does not necessarily correspond to the place of birth.

(1) Figures on country of origin are available as from 2001.

(2) Figures refer to end of the year.

Table 6 Number of CSSA Recipients by Number of Eligible Members, 1995 to 2004

Year	Number of eligible members						Total
	1	2	3	4	5	6 or above	
1995	93 439	26 392	20 320	17 851	9 278	6 875	174 155
1996	108 547	38 139	29 721	25 602	13 149	8 226	223 384
1997	127 529	49 432	41 156	34 876	18 759	10 871	282 623
1998	148 208	66 759	57 003	53 045	27 757	15 851	368 623
1999	139 384	67 955	59 454	57 996	32 296	19 422	376 507
2000	130 402	67 754	58 335	56 644	31 760	20 290	365 185
2001	134 872	75 058	65 406	63 280	35 360	23 492	397 468
2002	144 472	89 676	81 318	80 400	43 865	27 137	466 868
2003	149 752	104 114	94 614	94 160	50 090	29 726	522 456
2004	150 788	111 710	99 729	98 368	51 140	30 282	542 017

Note: Figures refer to end of the year.

Table 7 Number of CSSA Recipients by Type of Housing, 1995 to 2004

Year	Type of housing		Total
	Public housing	Others	
1995	95 952	78 203	174 155
1996	124 974	98 410	223 384

<i>Year</i>	<i>Type of housing</i>		<i>Total</i>
	<i>Public housing</i>	<i>Others</i>	
1997	156 342	126 281	282 623
1998	204 473	164 150	368 623
1999	212 668	163 839	376 507
2000	208 839	156 346	365 185
2001	241 151	156 317	397 468
2002	304 471	162 397	466 868
2003	351 525	170 931	522 456
2004	372 220	169 797	542 017

Note: Figures refer to end of the year.

**Table 8** Number of CSSA Recipients Having Resided in Hong Kong for Less Than Seven Years, 1999 to 2004

<i>Year</i>	<i>Number of CSSA recipients having resided in Hong Kong for less than seven years</i>
1999	46 198
2000	48 824
2001	58 576
2002	69 345
2003	71 927
2004	72 816

Notes: (1) Statistics on CSSA new arrivals have been regularly collected as from 1999.

(2) Figures refer to end of the year.

**Table 9** Number of CSSA Recipients by Continuous Duration of Stay on CSSA, 1995 to 2004

<i>Year</i>	<i>Continuous duration of stay on CSSA<sup>@</sup></i>				<i>Total</i>
	<i>&lt; 1 year</i>	<i>1-&lt; 3 years</i>	<i>3-&lt; 7 years</i>	<i>7 years or above*</i>	
1995	50 810	50 651	37 646	35 048	174 155
1996	68 905	73 859	45 393	35 227	223 384
1997	76 939	104 701	61 732	39 251	282 623
1998	103 475	132 141	86 724	46 283	368 623
1999	67 979	145 477	116 583	46 468	376 507
2000	53 176	124 087	136 321	51 601	365 185
2001	70 721	95 569	169 656	61 522	397 468

Year	<i>Continuous duration of stay on CSSA<sup>@</sup></i>				<i>Total</i>
	<i>&lt; 1 year</i>	<i>1-&lt; 3 years</i>	<i>3-&lt; 7 years</i>	<i>7 years or above<sup>*</sup></i>	
2002	97 935	114 687	174 766	79 480	466 868
2003	99 076	147 373	171 662	104 345	522 456
2004	75 645	159 739	178 393	128 240	542 017

Notes: @ Statistics on the continuous duration of stay on CSSA should be interpreted with caution since they only refer to the continuous receipt of CSSA by the recipients. In other words, previous period(s) of receiving CSSA (for those re-applied cases) is(are) not covered.

\* Including a few number of recipients without information on their continuous duration of stay on CSSA.

(1) Figures refer to end of the year.

**Table 10 Number of CSSA Recipients by Case Category, 1995 to 2004**

Year	<i>Case category</i>							<i>Total</i>
	<i>Old age</i>	<i>Permanent disability</i>	<i>Ill health</i>	<i>Single parent</i>	<i>Low earnings</i>	<i>Unemployment</i>	<i>Others</i>	
1995	82 742	11 703	25 607	24 606	8 008	12 298	9 191	174 155
1996	96 978	15 862	28 728	36 605	13 041	19 724	12 446	223 384
1997	116 977	18 708	39 825	47 868	18 590	28 117	12 538	282 623
1998	145 049	18 937	43 946	68 155	28 412	58 771	5 353	368 623
1999	159 860	15 906	37 947	68 848	30 737	56 988	6 221	376 507
2000	163 058	16 860	36 958	67 374	31 412	43 500	6 023	365 185
2001	172 644	19 950	38 785	73 764	33 276	53 189	5 860	397 468
2002	184 267	22 624	42 600	86 918	39 688	84 509	6 262	466 868
2003	192 458	24 504	45 199	96 957	50 146	106 348	6 844	522 456
2004	199 085	26 342	47 458	102 623	59 852	98 565	8 092	542 017

Notes: (1) It should be noted that CSSA is assessed on a household basis and cases are categorized according to the principal reason of receiving CSSA. As such, recipients under a specific category could not be entirely treated as having the same characteristics as indicated by the nature of the case. For example, some recipients under the old age category may be non-elderly members in the household.

(2) Figures refer to end of the year.

## **Reduction of Effluent Discharge**

17. **MR LEE WING-TAT** (in Chinese): *Madam President, on the reduction of effluent discharge, will the Government inform this Council:*

- (a) *whether it has set a specific target on the volume of effluent discharge to be reduced;*
- (b) *whether it will encourage the public to reduce effluent discharge; if so, of the relevant policies and measures; and*
- (c) *of the percentage of flushing cisterns installed in public toilets which are capable of operating at different discharge capacities, as well as the measures in place to encourage the installation of more flushing cisterns with such a feature?*

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

- (a) To effectively reduce effluent discharge, one should start with water conservation. In this year's policy address, the Government announces that a Total Water Management policy be implemented to encourage the public to conserve water and protect water resources. The Government also seeks to achieve the policy objective of reducing effluent discharge by levying sewage charges in accordance with the "polluter pays" principle, which can convey to the public the message that the costs of sewage treatment are high.

Before setting specific targets on the volume of effluent discharge to be reduced, we should formulate a long-term strategy for the Total Water Management Programme (the Programme). On the front of reusing treated effluent, the Government will commission a pilot scheme at the Ngong Ping Sewage Treatment Works on Lantau Island at the end of this year and another at the Shek Wu Hui Sewage Treatment Works in North District in the middle of next year. At the same time, we will commence a two-year study in the fourth quarter of this year to explore water conservation measures and options for protecting water resources. The effectiveness of various pilot schemes will also be reviewed under the study to help us devise a long-term strategy for the Programme.

- (b) Wide public support is crucial to the success of water conservation measures. We have been promoting public awareness of the

benefits of water conservation through education and promotional activities, including the production of Announcement of Public Interests, promotional messages, publications, leaflets, posters and stickers.

We have also introduced a tiered charging regime to encourage domestic households to save water. In line with the "polluter pays" principle, we also levy sewage charges on domestic households and the relevant trades as our two-pronged approach to encourage the public to save water and to reduce effluent discharge.

- (c) The flushing cisterns capable of operating at different discharge capacities are mainly those of the valve-type design. In the light of their greater reliability against leakage, the Government has since October 2000 permitted the using of the valve-type flushing devices with dual flush (a choice between "full-flush" or "half-flush") mechanism in parallel with the traditional valveless syphonic cisterns. According to the Waterworks Regulations, flushing cisterns of the valveless syphonic type shall be capable of giving a flush of not more than 15 litres of water. However, upon testing of the valve-type cisterns and considering overseas experience and views from local stakeholders, the Government came to the conclusion that the maximum flushing volume for valve-type cisterns could be reduced to not more than 7.5 litres provided that the water closet matches with the cistern design. In doing so, we could fully exploit the water saving feature of the valve-type cisterns as well as achieving the objective of reducing effluent discharge. At present, there are over 40 designs of valve-type flushing devices suitable for use in the environment of Hong Kong with proven results, details of which have been uploaded to the website of the Water Services Department for reference of the public and professionals.

As there is quite a large number of public toilets all over the territory, the Government does not possess detailed records showing the percentage of toilets installed with such flushing cisterns. However, the Architectural Services Department has already installed flushing cisterns capable of operating at different discharge capacities at around 60% of the new public facilities built in 2004.

Such devices cannot be installed at the rest of the facilities as the water closets are generally of the squatting type. At the same time, the industry estimates that as much as 70% of the newly-built private commercial buildings and shopping centres have installed the valve-type flushing devices. Existing buildings also tend to install such devices when their flushing systems are replaced.

We will continue to promote the use of water-saving flushing system through education and promotional activities.

### **Youth Obesity**

18. **DR JOSEPH LEE** (in Chinese): *Madam President, it has been reported that the obesity rate of children and young people aged between six and 18 rose from 16.1% in 1995-96 to 17.8% in 2002-03, and the age profile of diabetes cases has also become younger. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of children and young people who were diagnosed in each of the past five years with diseases closely related to obesity, such as cardiovascular disease, hypertension, heart disease and diabetes mellitus, with a breakdown by their body mass indexes and the age groups to which they belonged;*
- (b) *whether the authorities will evaluate and rate the lunchboxes provided to children in schools by food suppliers based on the conformity of their nutrition composition to the principle of healthy eating, so as to facilitate schools and students in making appropriate choices when ordering lunchboxes; if they will, of the timing for introducing such evaluation and rating scheme; if not, the reasons for that, and*
- (c) *given that the existing guidelines on healthy menu issued by the Department of Health (DH) for food suppliers' reference are not binding on such suppliers, whether the authorities have conducted any studies on the feasibility of regulating food compositions of school lunchboxes by legislation to ensure that students will have balanced nutrition; if they have, of the results of the studies; if not, the reasons for that?*

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

- (a) Obesity is associated with many chronic diseases such as coronary heart diseases, diabetes, hypertension and stroke, which usually take years to develop. Nonetheless, it should be noted that these diseases may be developed by other causes, therefore not all patients diagnosed with such diseases are obese.

Based on the available information from the Hospital Authority (HA), the number of in-patient discharges and deaths of coronary heart diseases, diabetes and hypertension for children aged five to 19 for the period from 2001 to 2003 is set out at Annex. Detailed breakdown of the above figures by body mass indexes, as well as the corresponding data before 2001 as categorized by different age groups, are not readily available in the HA database.

- (b) The Administration considers the most effective way to tackle obesity is through concerted actions between the Government and the community. It should be recognized that we all have a duty to take good care of our own health. Public education on healthy eating is conducted to promote a better understanding on a wholesome diet and help people to make wiser and healthier choices on food.

Healthy eating starts young. In relation to students, the DH and the Education and Manpower Bureau (the Bureau) have dedicated efforts in promoting healthy eating among students through different programmes targeted at students, parents, schools and lunch box suppliers. These programmes come in the forms of promotional clips on television; guidebooks and pamphlets featuring useful information on healthy eating and menu-planning targeting primary and secondary school students; district-based health talks, surveys on eating patterns of students, and studies on school-based environmental interventions to promote healthy eating, and so on. Some of these activities are organized in collaboration with other departments (such as the Food and Environmental Hygiene Department (FEHD)), District Councils, community groups, non-governmental organizations and tertiary institutions. These

activities aim to promote basic dietary principles (for example, the Food Pyramid, and the importance of fruit and vegetable consumption) and encourage adoption of healthy eating. With contributions from the DH as well as the FEHD, the Bureau has also been disseminating guidelines to schools to facilitate their choice of lunchboxes that meet students' nutritional needs. We do not have any plans to rate and evaluate the contents of the lunchboxes provided by food suppliers.

All students who attend Student Health Service Centres in the DH would have their height and weight measured. Those who are found to be obese would be interviewed by doctors, nurses or dietitians as appropriate, after which they (and their parents if present) will have an opportunity to learn about the importance of proper diet, healthy eating and physical activity. Health education pamphlets, booklets and other materials would also be distributed to the students. Moreover, the outreaching teams from Adolescent Health Programme also deliver specific programmes on diet and nutrition to secondary school students. They include talks covering various topics like healthy eating, balanced diets, weight management, food labels and health food choices in different settings.

The Administration's educational efforts also cover kindergarten students and caretakers, as we consider eating habits are mostly formed during early years in life, and children rely heavily on adults for meal choice and preparation. And according to literature, there is a tendency for obese children to remain obese in adulthood. To this end, teaching kits and educational programmes on healthy eating are produced and distributed to kindergartens and nurseries, with support from the Social Welfare Department and the Bureau, for pre-school childcare workers.

We are also aware that eating habits of school children are often influenced by their parents. It is therefore important for adults to adopt a healthy lifestyle, so that they can influence the dietary choices of their children by example. In this connection, messages on healthy diets are communicated to the general public (for



example, parents, homemakers and teachers inclusive) using different channels, from the traditional pamphlets and guidebooks, to a dedicated health educational website maintained by the DH; and from promotional clips for television and radio, to recipe booklets on balanced diets.

- (c) The Administration has not conducted studies on the feasibility of regulating food composition of school lunchboxes by legislation. As mentioned above, children's dietary habit is very much influenced by the people and the environment they have close interaction with, and healthy eating must start in the home, school and community. Legislation on lunchbox intake alone may not be an effective means to promote healthy eating. Comprehensive public education could be more effective. In this connection, the Administration will conduct study on the nutritional content of lunchboxes consumed by students, the outcome of which will inform the public education strategy. The Administration will continue its efforts in promoting public awareness of and support for nutritionally-balanced diets for children.

Annex

Number of in-patient discharges and deaths of coronary heart diseases, diabetes and hypertension for children aged five to 19 in HA hospitals, 2001 to 2003

#### Coronary heart diseases

<i>Age group</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
5 to 9	3	7	1
10 to 14	3	11	1
15 to 19	5	0	0

#### Diabetes

<i>Age group</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
5 to 9	37	47	31
10 to 14	90	117	80
15 to 19	125	136	108

**Hypertension**

<i>Age group</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
5 to 9	12	13	6
10 to 14	46	48	31
15 to 19	33	50	42

**Disability Allowance**

19. **DR FERNANDO CHEUNG** (in Chinese): *Madam President, according to the Government's reply to my question on 1 June 2005, over half of the recipients of disability allowance (DA) are in the category of "any other conditions resulting in total disablement". In this connection, will the Government inform this Council:*

- (a) *given that earning capacity is the key consideration in approving applications for DA, whether it keeps statistics on the number of DA recipients who are currently employed; if it has, of the number; if not, the reasons for that; and*
- (b) *of a breakdown by the illnesses/disabilities suffered by the recipients on the number of cases, and their respective percentages, in the category of "any other conditions resulting in total disablement"?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): *Madam President, on the question raised by Dr Fernando CHEUNG, my reply is as follows:*

- (a) *As DA is not means-tested, recipients are not required to inform the Social Welfare Department (SWD) of their employment situation. Therefore, the Administration does not have statistics on the number of DA recipients who are currently employed.*
- (b) *The SWD does not have further separate categorization by nature of illness for those recipients grouped under the classification of "any other conditions resulting in total disablement". However, in order to provide some indication on the nature of illness or disability for this group of cases, the SWD has examined a random sample of 500*

such cases. The result is attached at Annex. It should be noted that only the most prominent feature of the illness or disability as indicated in the medical report is listed, as some DA recipients might have multiple illnesses or disabilities that would qualify them for DA.

## Annex

Nature of illness or disability of a random sample of 500 DA recipients in the category of "any other conditions resulting in total disablement"\*

<i>Illness or Disability</i>	<i>Number of Cases</i>
CEREBRAL VASCULAR ACCIDENT/STROKE	121
CHRONIC OBSTRUCTIVE AIRWAY DISEASE	24
ISCHEMIC HEART DISEASE	21
DIABETES MELLITUS	19
HEMIPLEGIA	18
HIP FRACTURE	16
PARKINSONISM	15
CARCINOMA OF BREAST	12
EPILEPSY	12
OSTEOARTHRITIS OF KNEES	12
CARCINOMA OF RECTUM	11
HYPERTENSION	11
CARCINOMA OF COLON	10
CHRONIC OBSTRUCTIVE PULMONARY DISEASE	10
NASOPHARYNGEAL CARCINOMA	10
CARCINOMA OF LUNG	8
RHEUMATOID ARTHRITIS	8
CEREBRAL PALSY	6
POLIOMYELITIS	6
BACK PAIN	5
GLOBAL DEVELOPMENT DELAY	5
HEART DISEASE	5
LOW BACK PAIN	5
CARCINOMA OF STOMACH	4
CHRONIC HEART FAILURE	4
CHRONIC RENAL FAILURE	4

<i>Illness or Disability</i>	<i>Number of Cases</i>
CONGENITAL HEART DISEASE	4
END-STAGE RENAL FAILURE	4
SYSTEMIC LUPUS ERYTHEMATOSUS	4
CONGENITAL HEART FAILURE	3
LYMPHOMA	3
MULTIPLE MYELOMA	3
SPINAL STENOSIS	3
ACUTE LYMPHOBLASTIC LEUKAEMIA	2
BELOW KNEE AMPUTATION	2
BRAIN TUMOR	2
CARCINOMA OF BLADDER	2
CARCINOMA OF OVARY	2
CARCINOMA OF TONGUE	2
DEVELOPMENTAL DELAY	2
DILATED CARDIOMYOPATHY	2
FRACTURE OF FEMUR	2
HEAD INJURY	2
KNEE PAIN	2
LOWER LIMBS WEAKNESS	2
OSTEOARTHRITIS OF HIP	2
SEVERE BURN	2
VASCULAR DEMENTIA	2
ACUTE MYELOID LEUKEMIA	1
ALCOHOL DEPENDENCE SYNDROME	1
AMPUTATION OF MULTIPLE FINGERS AND TOES	1
ANKYLOSING SPONDYLITIS	1
ASTHMA	1
BENIGN PROSTATIC HYPERPLASIA	1
BILATERAL KNEE PAIN	1
BILATERAL LOWER LIMB FRACTURE	1
BRITTLE ASTHMA	1
BRONCHIECTASIS	1
CARCINOMA OF KIDNEY	1
CARCINOMA OF LARYNX	1
CARCINOMA OF RECTOSIGMOID	1
CARCINOMA OF SUBMANDIBULAR GLAND	1
CENTRAL SLEEP APNEA	1

<i>Illness or Disability</i>	<i>Number of Cases</i>
CEREBRAL ANEURYSM	1
CERVICAL SPONDYLOSIS	1
CHRONIC GOUTY ARTHRITIS	1
CHRONIC BACK PAIN	1
CHRONIC RETENTION OF URINE	1
CHRONIC SCHIZOPHRENIA	1
CORONARY HEART DISEASE	1
CRIPPLE OF LEFT LEG	1
DEEP VEIN THROMBOSIS	1
DERMATOMYOSITIS	1
DIABETIC RETINOPATHY	1
DIAMOND-BLACKFAN SYNDROME	1
DUCHENNE MUSCULAR DYSTROPHY	1
FOOT DEFORMITY	1
FRACTURE OF PATELLA	1
GOUT	1
HEART FALIURE	1
HEPATIC CIRRHOSIS	1
IMPERFORATE ANUS	1
LIVER METASASIS	1
LOWER LIMB PARALYSIS	1
LYMPHOEDEMA OF LOWER LIMB	1
MENINGIOMA	1
MULTIPLE SCLEROSIS	1
MYASTHENIA GRAVIS	1
MYOCARDIAL INFARCTION	1
OBESITY HYPOVENTILATION SYNDROME	1
OBSTRUCTIVE SLEEP APNEA SYNDROME	1
OSTEOPOROTIC SPINE	1
PAROXYSMAL ATRIAL FLUTTER	1
PNEUMOCONIOSIS	1
POLYCYSTIC KIDNEYS AND LIVER	1
PRIMARY NOCTURNAL ENURESIS	1
PROSTATISM	1
PSORIATIC ERYTHRODERMA	1
PULMONARY TUBERCULOSIS	1
RENAL FAILURE	1

<i>Illness or Disability</i>	<i>Number of Cases</i>
RESPIRATORY FAILURE	1
SCALD INJURY TO LEGS	1
SEVERE ECZEMA	1
SPASTIC DIPLEGIA	1
SPEECH DELAY	1
SPINAL TUMOUR	1
SQUAMOUS CELL CANCER	1
SUBARACHNOID HEMORRHAGE	1
TERMINAL HEART FAILURE	1
THYROTOXICOSIS	1
UPPER LIMB CONGENITAL DEFORMITY	1
WILLIAM SYNDROME	1
Total	500

\*Note: Some DA recipients might have multiple illnesses or disabilities that would qualify them for DA

### **Monitoring of Guesthouses**

20. **MR HOWARD YOUNG** (in Chinese): *Madam President, with the upturn of the global economy and the implementation of the Individual Visit Scheme in the Mainland, the number of inbound tourists has been increasing. In order to cope with the continuous growth in the number of tourists in future, many commercial and factory buildings have been converted into hotels/guesthouses, whilst some small guesthouses are operating in private buildings and even hourly hotels also receive tourists. In this connection, will the Government inform this Council:*

- (a) *of the measures to monitor these small and medium-sized hotels/guesthouses;*
- (b) *of the number of applications for conversion of commercial and factory buildings into hotels received over the past three years, and the number of hotel rooms involved; and*

- (c) *whether it will consider requiring all hotels to be registered with creditable organizations, such as the Hong Kong Hotels Association, before they can operate, so as to safeguard the rights and benefits of tourists and travel agents?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my reply to the question raised by Mr Howard YOUNG is as follows:

- (a) The Hotel and Guesthouse Accommodation Ordinance (HAGAO) was enacted in 1991 to provide for the control and safety of hotel and guesthouse accommodation and for connected purposes. It mainly seeks to ensure that hotels and guesthouses comply with the prevailing requirements on fire safety, structural safety and sanitation by way of a licensing scheme. For premises, irrespective of their size, that are let for periods of less than 28 consecutive days and fall within the definition of "hotel" and "guesthouse" contained in the HAGAO, an application must be made to the Office of the Licensing Authority (OLA) of the Home Affairs Department for a hotel/guesthouse licence in accordance with the HAGAO.

In addition, according to the interpretation in section 2 of the Buildings Ordinance (Cap. 123), a "domestic building" means a building constructed or intended to be used for habitation and the expression "domestic purposes" should be construed accordingly. Under the HAGAO, hotels/guesthouses mean any premises that provide sleeping accommodation, which fall within the definition of "domestic purposes". Therefore, in processing a licence application, the OLA will advise the applicant to choose, for use as a hotel/guesthouse, premises designated for domestic purposes in the building plans approved by the Building Authority. If the chosen premises have been designated for "non-domestic purposes" in the approved building plans, the applicant must obtain written consent from the Building Authority to change the use of the premises from "non-domestic purposes" to "domestic purposes" under the Buildings Ordinance (Cap. 123) before converting the premises into a hotel/guesthouse. Otherwise, the OLA will refuse the application.

On receipt of an application, the OLA will conduct a site inspection and then issue to the applicant a list of upgrading requirements. Upon completion of the works and submission of a "Report of Completion" form by the applicant, the OLA will arrange another inspection of the premises. The Hotel and Guesthouse Accommodation Authority (the Authority) will issue a licence to the applicant under section 8 of the HAGAO only after it has been confirmed that all the licensing requirements have been met. For the safety of the patrons of hotels and guesthouses as well as other occupants of the buildings, the processing procedures and criteria for granting approval have been drawn up strictly according to the provisions of the HAGAO.

- (b) For safety reasons, no licence will be issued under the HAGAO for hotels/guesthouses in factory buildings. Therefore, there are currently no licensed hotels/guesthouses operating in factory buildings. As for applications involving conversion of commercial buildings into hotels/guesthouses, the OLA has, since July 2003, referred applications which involve changing the use of the premises from "non-domestic purposes" to "domestic purposes" to the Director of Buildings for consideration under section 23A of the Building (Planning) Regulations. The relevant statistics are as follows:

<i>Year</i>	<i>No. of Applications<sup>1</sup></i>	<i>No. of Licences Issued<sup>2</sup> (Approved No. of Rooms)</i>	<i>No. of Applications being Processed</i>
July 2003 to June 2004	79	17 (573)	2
July 2004 to June 2005 (as at 21 June)	19	1 (15)	2

Note 1: Figures only include those applications which involve changing the use of the premises from "non-domestic purposes" to "domestic purposes".

Note 2: The remaining applications were either rejected by the OLA on the advice of the Buildings Department or withdrawn by the applicants.



- (c) As mentioned in (a) above, the main purpose of enacting the HAGAO is to provide for a licensing scheme to ensure that hotels and guesthouses comply with licensing requirements on fire safety, structural safety and sanitation, so as to protect the safety of tourists.

Except for those requirements on fire safety, structural safety and sanitation, the HAGAO does not empower the Authority to impose other requirements, such as registration with any organization. Therefore, the OLA cannot refuse an application for such a reason. Our policy objective is to endeavour to ensure the safety of the patrons of hotels and guesthouses and, at the same time, keep the necessary legislative and regulatory measures to a minimum, so as to lessen the burden of the operators in complying with licensing requirements.

## **BILLS**

### **First Reading of Bills**

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

### **FINANCIAL REPORTING COUNCIL BILL**

**CLERK** (in Cantonese): Financial Reporting Council Bill.

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

### **Second Reading of Bills**

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

### **FINANCIAL REPORTING COUNCIL BILL**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I move the Second Reading of the Financial Reporting Council Bill (the Bill).

In the past few years, scandals involving large corporations such as Enron and Worldcom have aroused public concern about the ethics and integrity of the accountancy profession. In order to rebuild public confidence in the information disclosed in company financial reports, various major international financial centres in the world, such as the United States and the United Kingdom, have actively introduced reforms to strengthen their regulation of the accountancy profession.

In Hong Kong, the Government also quickly initiated discussions with the Hong Kong Institute of Certified Public Accountants (HKICPA) to examine ways to enhance the regulatory regime for the accountancy profession in Hong Kong. In response to the request of the Government, the HKICPA proposed a series of specific proposals, including enhancing the participation of independent lay members in the governing body and the establishment of an independent investigatory council in charge of investigating complaints involving public interest lodged against auditors.

I am grateful to the HKICPA for its active contribution in this regard, so that good progress could be made on the relevant policy measures. The Professional Accountants (Amendment) Bill 2004 passed by the Legislative Council last year has put into practice the proposals on governance put forward by the HKICPA. That was the first step in enhancing the regulatory regime for the accountancy profession. The Government's proposal to establish the Financial Reporting Council (FRC) is the second step. It is tasked with:

- (1) investigating irregularities of auditors of listed corporations and listed collective investment schemes; and
- (2) enquiring into instances of non-compliance involving the financial reports of listed corporations and listed collective investment schemes.

The proposed FRC is an independent statutory body the members of which, including its Chairman, will be mostly independent lay members. Under the FRC, there will be:

- (1) the Audit Investigation Board (AIB); and
- (2) the Financial Reporting Review Committee(s) (FRRC).

A key function of the FRC is, through the AIB, to investigate suspected irregularities of auditors of listed corporations and listed collective investment schemes in relation to the audit of published accounts or financial statements of such entities and the preparation of financial reports for inclusion in prospectuses or other listing documents. The FRC's investigatory work is proposed to be confined to listed corporations and listed collective investment schemes because such cases would likely involve broader public interest. Investigation of irregularities of auditors and accountants outside this scope would continue to be undertaken by the HKICPA under the Professional Accountants Ordinance. To enable the FRC to undertake this function effectively, we propose to give the FRC investigatory powers similar to those given to the Securities and Futures Commission (SFC) under sections 179 and 183 of the Securities and Futures Ordinance, so that the FRC can have greater power to investigate the irregularities of auditors in question more effectively.

The other key function of the FRC is, through a FRRC, to enquire into suspected non-compliance of the financial reports of listed corporations and listed collective investment schemes with relevant accounting requirements under the Companies Ordinance, the relevant SFC Codes, Listing Rules, and Financial Reporting Standards. If the enquiry shows that the relevant financial reports do not comply with the relevant requirements or standards, the FRC would be empowered to request a voluntary rectification of financial reports or seek a court order to mandate such a rectification.

We propose that the function of the FRC should remain purely investigatory. Upon the completion of an investigation/enquiry, the AIB or a FRRC would submit a report to the FRC for consideration of any necessary follow-up actions, such as referring the relevant investigation/enquiry report to a regulatory authority or a professional accountancy body for disciplinary action, further investigation or any other actions.

On 6 May this year, when the Government explained this proposal to the Panel on Financial Affairs of the Legislative Council, some Members suggested that the authorities should consider enhancing the role of the FRC, for example, to allow the FRC to play the role of "prosecution" in the disciplinary proceedings of the HKICPA. Here, I wish to point out that when the Government conducted a public consultation in 2003, most of the views considered that the functions of the FRC should be purely investigatory and disciplinary proceedings should

continue to be undertaken by the professional bodies concerned, for example, by the HKICPA. We are of the view that, insofar as the supervision of the accountancy profession is concerned, a more appropriate arrangement which will have a check-and-balance effect is to assign the roles of investigation, prosecution and disciplinary action to various bodies or units. According to the new arrangements under the Professional Accountants (Amendment) Ordinance 2004, at present, over half of the members in the Disciplinary Committee under the HKICPA are already lay members and disciplinary proceedings are generally conducted openly. This has already enhanced the independence and transparency of the disciplinary proceedings conducted by the HKICPA. Therefore, we believe that the proposed arrangements of the Bill are appropriate. Nevertheless, in response to the suggestion of the Panel, we have again consulted the HKICPA, which has expressed its agreement with the relevant arrangement in the Bill, that is, the FRC need not assume the role of prosecution.

In addition, the Bill also provides for a number of measures intended to exercise checks and balances on the FRC and avoid conflict of interest.

On funding, the Hong Kong Exchanges and Clearing Limited (HKEx), the HKICPA, the SFC and Government have agreed to contribute to the funding of the FRC on an equal share basis. The Companies Registry Trading Fund will provide free accommodation for the FRC.

Madam President, if the Bill is passed, this will represent a major step forward in protecting the investing public and enhancing corporate governance. The establishment of the FRC will:

First, for the investing public, enhance protection for investors;

Second, for the accountancy profession, raise the esteem of the profession;  
and

Third, for Hong Kong as an international finance centre, enhance corporate governance, raise the overall quality of the market and bolster investor confidence.

The Government has conducted two rounds of consultation in 2003 and earlier this year on the proposed ideas and specific arrangements respectively and has received widespread public support. The Government has also consulted

the HKEx, HKICPA and SFC in the course of drafting the Bill. In the meetings of the Panel on Financial Affairs of the Legislative Council in March and May this year, many Members expressed support for the proposal to establish the FRC. I hope Members will support this Bill.

Thank you, Madam President.

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

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

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Statute Law (Miscellaneous Provisions) Bill 2005.

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005**

#### **Resumption of debate on Second Reading which was moved on 9 March 2005**

**PRESIDENT** (in Cantonese): Ms Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MS MARGARET NG:** Madam President, in my capacity as Chairman of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2005 (the Bills Committee), I would like to report on the deliberations of the Bills Committee on a few major proposals in the Statute Law (Miscellaneous Provisions) Bill 2005 (the Bill).

The Bill is an omnibus Bill which seeks to make miscellaneous amendments to various ordinances for the purpose of improving, clarifying and

updating the law and rectifying textual errors and omissions of consequential amendments in previous exercises. The Bills Committee has held six meetings with the Administration, and has considered the views of the two legal professional bodies on certain provisions of the Bill.

Clauses 6 to 7 of the Bill propose to transfer the power to determine appeals under the Medical Clinics Ordinance (MCO) from the Chief Executive in Council to the Administrative Appeals Board (AAB). The appeals dealt with under the MCO are related to decisions made by the Director of Health on matters concerning registration of clinics, such as the refusal of an application for registration or de-registration.

Having noted the composition of the AAB and the respective procedures for appeals by the Chief Executive in Council and AAB, the Bills Committee has no objection to the proposal. However, as the Administration has not conducted any consultation on the proposal, the Bills Committee has requested the Administration to, as a matter of practice, consult the affected parties on any proposals relating to transfer of functions and powers in future.

The Bill proposes to transfer from the Chief Justice to the Chief Judge of the High Court the chairmanship of the High Court Rules Committee, the District Court Rules Committee and the Criminal Procedure Rules Committee. Some members consider that it may not be appropriate to transfer the chairmanship of the Criminal Procedure Rules Committee from the Chief Justice to the Chief Judge, as the rules made by the Committee cover wide-ranging matters in criminal proceedings at different levels of Court, including matters beyond the High Court.

The Judiciary has explained that the Criminal Procedure Ordinance (CPO) makes provisions relating to criminal procedures, evidence and practice. The provisions apply mainly to the High Court, including the Court of First Instance acting in the exercise of its criminal jurisdiction, and the Court of Appeal. Certain parts of the CPO also apply to the District Court and the Magistrates' Courts. As regards the rules made under the CPO, they mainly regulate procedural matters of criminal proceedings in the High Court and the Courts below. In addition, a large proportion (about 96%) of the expenses of legal aid in criminal cases is on cases at the High Court or the Courts below.

Having considered the justifications provided by the Judiciary, most members of the Bills Committee have no objection to the proposed amendments. I shall explain my views when I later speak in my personal capacity.

Another proposal which has been considered by the Bills Committee in detail concerns amendments to the Prevention of Bribery Ordinance (PBO). Under section 17A(1) of the PBO, a magistrate may, on the application *ex parte* of the Commissioner of the Independent Commission Against Corruption (ICAC), by written notice require a person who is the subject of an investigation in respect of an offence reasonably suspected to have been committed by him under the PBO to surrender his travel document from leaving Hong Kong. With the introduction of the "Easy Travel Scheme" in 1987, it is possible for a Hong Kong resident to leave Hong Kong for Macao on production of a Hong Kong identity card at immigration control points. Immigration Officers have no power, by virtue of a notice issued under section 17A(1), to prevent persons holding Hong Kong identity cards from leaving Hong Kong for Macao.

The proposed amendments in the Bill seek to achieve two objectives. First, to prohibit a person who is the subject of a section 17A(1) notice from leaving Hong Kong during its currency. Second, to clarify that police officers and persons appointed by the Commissioner of ICAC have the power to arrest a person who has failed to comply with the notice under section 17A(1) to surrender his travel documents.

The Bills Committee has expressed concern how the law will be enforced after passage of the Bill. The Administration has explained that a person on whom a notice has been served will be placed on the Immigration Watch List. Should he attempt to leave Hong Kong, he will be stopped by Immigration Officers at the immigration control points and his departure from Hong Kong denied. However, he will not be arrested merely for attempting to leave Hong Kong. On the other hand, if the person fails to comply with the notice to surrender all his travel documents, he may be arrested by the police or ICAC officers and taken before the magistrate. The magistrate may commit him to prison to be safely kept until he surrenders all his travel documents.

Members of the Bills Committee consider that a person on whom a notice is served under section 17A(1) should be entitled to know his legal liability under sections 17A and 17B of the PBO. The Administration has provided a sample of the written notice for reference of the Bills Committee, and in response to

members' request, has agreed to consult the Judiciary and obtain its agreement to revise the written notice by:

- (a) specifying the timeframe to surrender the travel documents;
- (b) explaining the recipients' legal liability under sections 17A and 17B of the PBO; and
- (c) attaching to it copies of sections 17A and 17B of the PBO.

As a person who is the subject of a section 17A(1) notice can leave Hong Kong for Macao using his Hong Kong identity card, the Bills Committee has further suggested that additional provisions should be included in the Bill to deal with the situation under which a person, after surrendering his travel document under section 17A, seeks permission to leave Hong Kong without the need to apply for return of his travel document under section 17B. Having considered members' suggestion, the Administration has agreed to add a new provision to allow such a person to apply for permission to leave Hong Kong.

The Bills Committee has also requested the Administration to consider introducing amendments to the Dangerous Drugs Ordinance (DDO) in the context of the Bill, in order to tackle the lack of provisions to effectively prevent a person who is the subject of a similar notice under section 53A(1) of the DDO from leaving Hong Kong.

The Administration has explained that section 53A has rarely, if ever, been invoked, as most drug investigations are of a covert nature to reduce opportunities for destruction of evidence by the subjects under investigation. The application of section 53A would inevitably alert the subject. Nevertheless, in view of the legal anomaly, the Administration agrees to introduce amendments to the DDO to specify the period within which a person who is the subject of a section 53A(1) notice shall not leave Hong Kong, and to enable the person to apply for permission to leave Hong Kong.

Madam President, I shall now turn to the proposed amendments to the Costs in Criminal Cases Ordinance which provide that where the prosecutor or a defendant unsuccessfully applies to the Court of Appeal or the Court of First Instance for a certificate under section 32 of the Hong Kong Court of Final Appeal Ordinance, the Court of Appeal or the Court of First Instance may order that costs be awarded to the prosecutor or the defendant.



The Administration has explained that under section 32 of the Hong Kong Court of Final Appeal Ordinance, no appeal shall be admitted unless leave to appeal has been granted by the Court. Leave to appeal shall not be granted unless it is certified by the Court of Appeal or the Court of First Instance, as the case may be, that a point of law of great and general importance is involved in the decision. Where the Court of Appeal or the Court of First Instance declines to certify, the Court of Final Appeal may so certify and grant leave to appeal. When an appeal is dismissed by the Court of Appeal or the Court of First Instance, the appellant can apply for a certificate under section 32 of the Hong Kong Court of Final Appeal Ordinance immediately. No questions of costs will arise in such cases. The Administration has also explained that, appellants, however, very often do not apply for the certificate at the conclusion of the appeal but make applications later by way of a motion. The respondent would then incur costs. However, there is no provision for an award of costs in those circumstances. In a judgement delivered by the Court of Appeal in June 2001, the Court commented that this lacuna is regrettable and should be addressed.

The Administration has reiterated to the Bills Committee that the purpose of the amendments is to save court time and resources by discouraging wholly unmeritorious appeals. It has also explained that if the Court of Final Appeal eventually allows an appeal, the appellant can apply to that Court to get his costs back. The proposed power of the lower Court to award costs is considered necessary since if the applicant does not proceed to the Appeals Committee the decision of the lower Court will be final.

Some members consider that the proposed amendments do not reflect the policy intention to target unmeritorious applications, and have suggested that a "without merit" criterion should be added. The Administration has agreed to the suggestion and will introduce amendments to the Bill.

Madam President, with these remarks, and subject to the amendments to be moved by the Administration at the Committee stage, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

Madam President, I would like to add a few words in my personal capacity in relation to clause 9 of the Bill which amends section 9 of the CPO. The effect of this amendment is to replace the Chief Justice with the Chief Judge, High Court, as the Chairman of the Criminal Procedure Rules Committee. Like the Bar, I have reservations.

While the Rules Committee of the High Court and the District Court deal almost exclusively with procedural matters before those Courts, the ambit of the Criminal Procedure Rules Committee is wider and more substantive. One important example is the Legal Aid in Criminal Cases Rules. This provides for the granting of legal aid to people accused of crime, the criteria of grant, the assessment of means and eligibility, and also the fees for their legal representatives. Obviously, the scope goes beyond procedure and concerns more fundamental issues of rights of access to justice. The Chief Justice is therefore involved not just on the administrative aspect of court proceedings, but on the policy and resources aspect of criminal justice. It is fitting and proper that the Chief Justice should be personally engaged.

One sees that the Chief Justice has a role, for example, under the Legal Practitioners Ordinance (LPO). The legal profession being self-regulating, the LPO provides for its subsidiary legislation to be made by each of the professional bodies for itself, but subject to the approval of the Chief Justice. This is because the Chief Justice ultimately has responsibility to guard the standard of professional conduct and services. It is the Chief Justice who guards the quality of our justice system as a whole. I am concerned that the amendment may diminish this role.

I have considered whether I should therefore oppose this clause. I have concluded that it is not necessary or meaningful, since most of my colleagues, perhaps all of them, are of the view that the clause can be supported. It is sufficient that I voice my reservation which is sincerely felt.

Finally, I should like to record my thanks to the team for the Administration. This Bill may be poor in providing light entertainment for the media, in that it is dry, technical and "miscellaneous", as the name suggests. Nevertheless, it represents the constant effort to update our legislation, to remove anomalies and improve its textual clarity. It covers many areas and requires meticulous attention to details. Our colleagues on the Administration's side have been well-prepared, helpful, receptive of suggestions and responsive. It is when this happens that a Bills Committee's job is done expeditiously and with pleasure. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Justice to reply.

**SECRETARY FOR JUSTICE:** Madam President, as I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill 2005 (the Bill) into the Council on 9 March 2005, the Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong.

Since the introduction of the Bill, the Bills Committee, chaired by the Honourable Margaret NG, has thoroughly examined the clauses, which relate to a wide variety of issues in different areas of the law. I am most grateful to the Chairman and members of the Bills Committee, namely the Honourable Albert HO, the Honourable Miriam LAU, the Honourable Audrey EU, and the Honourable KWONG Chi-kin, for their hard work and helpful contributions and for producing a very detailed report on the Bill, comprising 14 pages with 58 paragraphs, excluding appendix. It has been succinctly summarized by the Chairman just now and I will not repeat the contents. We have proposed some changes to the Bill which have been agreed by the Bills Committee. As a result, I will be moving a number of Committee stage amendments later this afternoon. I will now give a brief outline of the more important of these amendments.

The first set of Committee stage amendments relates to the amendments in Part 2 Divisions 4 and 5 of the Bill, which transfer the chairmanship of the High Court Rules Committee, the Criminal Procedure Rules Committee and the District Court Rules Committee, as well as certain rule-making and related powers under the Matrimonial Causes Ordinance (Cap. 179) from the Chief Justice to the Chief Judge of the High Court.

The Judiciary has proposed such transfer because the rules made by those Rules Committees and under the Matrimonial Causes Ordinance mainly deal with proceedings in the High Court and the District Court. Proceedings of the District Court follow largely those of the High Court. It is therefore considered more appropriate for the Chief Judge of the High Court, as the court leader of the High Court, to take up these functions.

Since the publication of the Bill, the Judiciary has noted that, notwithstanding the transfer of the chairmanship of the three Rules Committees,

the Chief Justice has residual rule-making powers under the High Court Ordinance (Cap. 4), the Criminal Procedure Ordinance (Cap. 221) and the District Court Ordinance (Cap. 336). The Judiciary has therefore proposed Committee stage amendments to transfer these residual rule-making powers from the Chief Justice to the Chief Judge.

Ms Margaret NG has expressed reservation about the transfer of the chairmanship of the Criminal Procedure Rules Committee from the Chief Justice to the Chief Judge, as this Rules Committee deals with not only procedural matters but also policy matters such as rules involving legal aid fees in criminal cases.

The Chief Justice has asked me to assure Ms Margaret NG and other Members of this Council that, notwithstanding the transfer of the chairmanship of this Rules Committee, the Chief Judge, apart from keeping the Chief Justice generally informed about its work, would consult him on matters of policy arising in the work of the Committee. Through such consultation, the Chief Justice would continue to take a close interest and be involved in any policy matters including reforms of criminal legal aid fees. I shall likewise convey Ms Margaret NG's remarks this afternoon to the Chief Justice.

The second set of amendments relates to a person who is required to surrender his travel documents.

Under section 17A of the existing Prevention of Bribery Ordinance (Cap. 201), a magistrate may, on the application *ex parte* of the Commissioner, ICAC, require a person who is the subject of ICAC investigation of an offence under that Ordinance to surrender any travel document in his possession. After a person has surrendered all his travel documents pursuant to section 17A, he may make application to the Commissioner or a magistrate or both for return of the documents under section 17B.

Members of the Bills Committee pointed out that, once clauses 35 and 36 of the Bill were passed, a person who was required to surrender his travel documents under section 17A would be prohibited from leaving Hong Kong. Although that person might apply for the return of his travel documents under section 17B, there was no provision to enable him to apply for permission to depart from Hong Kong.

The Administration therefore agreed to move Committee stage amendments so as to allow application for permission to leave Hong Kong under the Prevention of Bribery Ordinance (Cap. 201), without the necessity of applying for the temporary return of travel documents.

As pointed out by members of the Bills Committee, a legal loophole similar to section 17A of the Prevention of Bribery Ordinance also exists in the Dangerous Drugs Ordinance (Cap. 134) in that, under the Easy Travel Scheme, whilst a person may have surrendered his travel documents, he is not prohibited by section 53A from leaving Hong Kong and may actually do so using his Hong Kong identity card.

In response to Members' suggestion, Committee stage amendments to the Dangerous Drugs Ordinance are proposed to plug the loophole. The amendments are similar to the relevant provisions being added to the Prevention of Bribery Ordinance. Specifically, the proposed amendments seek to:

- (i) add a new provision to section 53A providing that the subject of a section 53A(1) notice shall not leave Hong Kong for three months from the date of that notice, which is in line with the period for which a surrendered travel document can be detained. This period of three months may be further extended in line with the detention period of the travel document under section 53A; and
- (ii) add a new provision to enable a subject of a section 53A(1) notice to apply for permission to leave Hong Kong.

Madam President, let me now turn to the amendments relating to possession of imitation firearms.

It was proposed that section 20 of the Firearms and Ammunition Ordinance (Cap. 238) be amended. The intention was to make "possession of an imitation firearm" an indictable offence. After the publication of the Bill, leave to appeal to the Court of Final Appeal was granted by the Appeal Committee on the point of law relating to the reverse burden of proof provided under section 20(3). It is anticipated that a date for the hearing will not be fixed before the end of this year. Section 20 may have to be amended in some other way in the light of the decision on final appeal, and we do not want the Bill to be delayed. The Administration therefore proposes to withdraw the proposed amendments to the Firearms and Ammunition Ordinance.

I will also be moving amendments to clauses 37 and 38 of the Bill, which relate to the proposed sections 9B and 13B of the Costs in Criminal Cases Ordinance (Cap. 492). The amendments will make it clear that prosecution and defence costs on unsuccessful applications will only be granted in unmeritorious cases. Other minor and technical issues will also be dealt with in the agreed Committee stage amendments.

The Administration will also follow up the matters set out in paragraph 55 of the report which we have undertaken to do. I am most grateful to Ms Margaret NG's kind remarks on the co-operation between the Bills Committee and the Administration. I am sure that such remarks will encourage colleagues of the Administration to work harder in future in order to have laws passed in this Chamber be promulgated smoothly and efficiently.

Madam President, with these remarks and subject to the Committee stage amendments proposed by the Administration, I commend the Bill to Honourable Members. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 2005 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): Statute Law (Miscellaneous Provisions) Bill 2005.

Council went into Committee.

**Committee Stage**

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

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Statute Law (Miscellaneous Provisions) Bill 2005.

**CLERK** (in Cantonese): Clauses 1 to 14, 16 to 33, 39 to 65, 67 to 197 and 199 to 224 .

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Heading of Division 5 of Part 2, heading and subheading before clause 34, subheading before clause 198, and clauses 15, 34 to 38, 66 and 198.

**SECRETARY FOR JUSTICE**: I move the amendments to the heading of Division 5 of Part 2, clauses 15, 35 to 38 and 66, and the deletion of the heading and subheading before clause 34, subheading before clause 198 and clauses 34 and 198 as set out in the papers circularized to Members. Earlier, I have given

the reasons for the proposed amendments. May I ask that they be treated as having been repeated. Thank you.

*Proposed amendments*

**Heading of Division 5 of Part 2 (see Annex I)**

**Clause 15 (see Annex I)**

**Heading before clause 34 (see Annex I)**

**Subheading before clause 34 (see Annex I)**

**Clause 34 (see Annex I)**

**Clause 35 (see Annex I)**

**Clause 36 (see Annex I)**

**Clause 37 (see Annex I)**

**Clause 38 (see Annex I)**

**Clause 66 (see Annex I)**

**Subheading before clause 198 (see Annex I)**

**Clause 198 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)



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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendments to the heading and subheading before clause 34, subheading before clause 198 and clauses 34 and 198, have been passed, these heading, subheadings and clauses are deleted from the Bill.

**CLERK** (in Cantonese): Heading of Division 5 of Part 2, clauses 15, 35 to 38 and 66 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New subheading before High Court Ordinance  
new clause 10A

New clause 10A

Rules concerning  
deposit, etc. of moneys,  
etc. in High Court

New subheading before new clause 14A	Criminal Procedure Ordinance
New clause 14A	Chief Judge to make rules
New clause 14B	Application for dismissal of charges contained in a notice of transfer
New subheading before new clause 14C	District Court Ordinance
New clause 14C	Suitors' Funds Rules
New subheading before new clause 14D	Evidence (Miscellaneous Amendments) Ordinance 2003
New clause 14D	Part IIIB added
New subheading before new clause 34A	Dangerous Drugs Ordinance
New clause 34A	Surrender of travel document
New clause 34B	Section added
New clause 36A	Section added
New clause 36B	Further provisions relating to security, appearance, etc.

**SECRETARY FOR JUSTICE:** Chairman, I move that the new subheadings and new clauses read out just now be read the Second time. Thank you.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New subheadings before new clauses 10A, 14A, 14C, 14D and 34A and new clauses 10A, 14A, 14B, 14C, 14D, 34A, 34B, 36A and 36B.

**SECRETARY FOR JUSTICE**: Chairman, I move that the new subheadings and new clauses read out just now be added to the Bill. Thank you.

*Proposed additions*

**New subheading before new clause 10A (see Annex I)**

**New clause 10A (see Annex I)**

**New subheading before new clause 14A (see Annex I)**

**New clause 14A (see Annex I)**

**New clause 14B (see Annex I)**

**New subheading before new clause 14C (see Annex I)**

**New clause 14C (see Annex I)**

**New subheading before new clause 14D (see Annex I)**

**New clause 14D (see Annex I)**

**New subheading before new clause 34A (see Annex I)**

**New clause 34A (see Annex I)**

**New clause 34B (see Annex I)**

**New clause 36A (see Annex I)**

**New clause 36B (see Annex I)**

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bills**

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

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005**

**SECRETARY FOR JUSTICE:** President, the

Statute Law (Miscellaneous Provisions) Bill 2005

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 2005 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): Statute Law (Miscellaneous Provisions) Bill 2005.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Supplementary Appropriation (2004-2005) Bill.

### **SUPPLEMENTARY APPROPRIATION (2004-2005) BILL**

#### **Resumption of debate on Second Reading which was moved on 8 June 2005**

**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 Supplementary Appropriation (2004-2005) Bill 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): Supplementary Appropriation (2004-2005) Bill.

Council went into Committee.

**Committee Stage**

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

**SUPPLEMENTARY APPROPRIATION (2004-2005) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2004-2005) Bill.

**CLERK** (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(No hands raised)

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

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

**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 Bills**

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

### **SUPPLEMENTARY APPROPRIATION (2004-2005) BILL**

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

Supplementary Appropriation (2004-2005) Bill

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 Supplementary Appropriation (2004-2005) Bill 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): Supplementary Appropriation (2004-2005) Bill.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Companies (Amendment) Bill 2004.

### **COMPANIES (AMENDMENT) BILL 2004**

#### **Resumption of debate on Second Reading which was moved on 13 October 2004**

**PRESIDENT** (in Cantonese): Ms Audrey EU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MS AUDREY EU:** Madam President, in my capacity as Chairman of the Bills Committee on the Companies (Amendment) Bill 2004 (the Bills Committee), I now address the Council on the major issues deliberated by the Bills Committee.

The Companies (Amendment) Bill 2004 (the Bill) seeks to amend the definition of the term "subsidiary" in the Companies Ordinance (CO) for the purposes of group accounts to make it more closely in alignment with the definition adopted in the International Accounting Standards (IASs), and to introduce the "true and fair view override" provisions. While the Bills Committee supports the objectives of the Bill, it has examined the Bill and the relevant policy issues in detail. I shall focus my speech on three major issues: the definition of the term "subsidiary"; the impact of the broadened scope of the definition of "subsidiary"; and the "true and fair view override" provisions.

On the first issue of the definition of the term "subsidiary", there are two major changes proposed under the Bill which would broaden the scope of the

term. Under the existing CO, only a body corporate subsidiary is subject to consolidation in group accounts. To better reflect the financial position of a group, it is proposed under the Bill that the term "undertaking" be defined to include "body corporate, partnership or other unincorporated body" to the effect that a subsidiary which is a body corporate, partnership or other unincorporated body is subject to consolidation in group accounts. The Bills Committee has no objection to the proposed change. However, given the Administration's advice that the term "unincorporated body" is not intended to cover "an individual", members support the Administration's proposed Committee stage amendment to section 1 of the proposed new 23rd Schedule to the CO to change the term "unincorporated body" in the definition of "undertaking" to "unincorporated association", and to qualify the scope of the definition by amending the word "includes" to "means".

The second major change relates to the determination of "parent-subsidiary" relationship between entities. The Bill introduces a new test, which is the test of the "right to exercise a dominant influence over another undertaking". This test is in addition to the three existing tests provided in section 2(4)(a) of the CO for determining the existence of a "parent-subsidiary" relationship. Under the proposed test, an undertaking is a subsidiary undertaking of another undertaking if the latter undertaking has the right to give directions with respect to the operating and financial policies of that other undertaking which its directors will be obliged to comply with. The rights of an undertaking to exercise a "dominant influence" over its subsidiary undertaking are by virtue of the provisions contained in the subsidiary undertaking's constitutional documents or a control contract. The Bills Committee is concerned whether more than one entity can exercise "dominant influence" over another undertaking in the Hong Kong context, for example, through joint control. As advised by the Administration, the Hong Kong Institute of Certified Public Accountants (HKICPA) points out that only one undertaking can have dominant influence or control over another undertaking under IAS 27 or the Hong Kong Accounting Standard (HKAS) 27. It is a question of fact to determine which undertaking ultimately has a dominant influence over another. If two undertakings concurrently but independently exert influence or control over another undertaking, but each fails to demonstrate that it is a parent undertaking under the test for "parent-subsidiary" relationship under the CO, IAS 27 or HKAS 27, the two undertakings will be regarded under the relevant IAS as having a joint control over what the financial reporting standards call the "jointly controlled entity" (that is, not "subsidiary"). An undertaking having a

joint control together with others over a "jointly controlled entity" does not need to prepare group accounts, as the undertaking cannot satisfy any of the tests (including the "dominant influence" test) which determines "parent-subsidary" relationship.

The Bills Committee has also raised the concern on whether more than one undertaking can satisfy the criteria set out in the existing section 2(4)(a) of the CO or section 2(1) of the proposed new 23rd Schedule and become the parent undertakings of a subsidiary. The Administration advises that the existing section 2(4)(a) of the CO may result in such a hypothetical possibility, but the occurrence of the hypothetical possibility is remote. The Administration has not come across any precedent case whereby two companies claim to be the parent company of a subsidiary under the existing section 2(4)(a) of the CO. Similarly, while it is hypothetically possible under section 2(1) of the proposed new 23rd Schedule that more than one undertaking can satisfy the various criteria under which an undertaking is defined to be a parent undertaking of another undertaking, it is unlikely that an undertaking would, say, hold a majority of voting rights in the subsidiary undertaking but give up its right to appoint a majority of its board of directors or its right to exercise a dominant influence over the subsidiary undertaking. In this connection, the Administration points out that the relevant section of the United Kingdom Companies Act 1985 contains no provision excluding or dealing with the occurrence of the above hypothetical possibilities. The Administration is not aware of any difficulties in the actual operation of the relevant provisions.

On the determination of the "grandparent-parent-subsidary" relationship, the Bills Committee is advised by the Administration that under the existing section 2(4)(b) of the CO, a company shall be deemed to be a subsidiary of another company if the first-mentioned company is a subsidiary of any company which is that other company's subsidiary. Section 2(3) of the proposed new 23rd Schedule preserves the *status quo* whereby "a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings". Given the Administration's confirmation that the intent of section 2(3) is to cater for a "grandparent-parent-subsidary" situation, members suggest that the drafting of the proposed provision be improved to reflect the policy intent. The Administration accepts members' suggestion and proposes a Committee stage amendment to recast the drafting.

As regards the impact of the broadened scope of the term "subsidiary", the Bills Committee has examined the impact on the requirements on companies to prepare group accounts, including the requirement for a parent company to consolidate in its group accounts the accounts of Special Purpose Entities (SPEs) controlled by the company for the purpose of asset-securitization. The requirement has given rise to the grave concern expressed by the asset-securitization industry about the possible negative impact of the proposed amendment on the development of the asset-securitization market in Hong Kong.

The Administration confirms that the Bill will not change the *status quo* that only Hong Kong incorporated companies are required to prepare group accounts in accordance with the requirements of the CO. Unless a parent company is a wholly owned subsidiary of its grandparent company and is thus exempt from preparing group accounts under section 124(2)(a) of the CO, both the parent company and grandparent company are required to prepare group accounts in respect of a subsidiary undertaking under the CO.

As regards subsidiary undertakings, the Administration advises that accounts of all subsidiary undertakings falling within the criteria set out in section 2(1) of the proposed new 23rd Schedule, be they incorporated or registered or formed in Hong Kong or otherwise, are subject to consolidation in the group accounts prepared by the relevant Hong Kong incorporated parent undertaking. On the Administration's proposal to add the new subsection (2A) in section 124 of the CO under section 4 to specify the basis on which a subsidiary may be excluded from the group accounts of a company, the Bills Committee notes that the latest IAS 27 no longer permits exclusion from the group accounts. In the light of the latest changes, the Administration agrees to move a Committee stage amendment to delete section 4.

On the consolidation of subsidiary undertakings' accounts in the parent company's group accounts, the Bills Committee notes that at present, given the "gap" between the definition of "subsidiary" under the CO and that under HKAS 27, an interim arrangement has been set up under HKAS 27 whereby Hong Kong incorporated companies are required to disclose financial information of subsidiary undertakings which fall outside the scope of the CO and are therefore excluded from consolidation but fall within that of HKAS 27, in the "notes to accounts". With the introduction of the new "dominant influence" test under the Bill, a parent company will be required to consolidate the financial information of its subsidiary undertakings in its group accounts as and when it

has the right to give directions with respect to the operating and financial policies of its subsidiary undertakings. The Administration and the HKICPA are of the view that the changes introduced by the Bill lie primarily in the format of presentation, instead of the content or amount of the disclosure in the accounts. However, the Hong Kong Mortgage Corporation Limited (the Mortgage Corporation) and the Hong Kong Capital Markets Association hold different views. They point out that the industry is gravely concerned about the requirement for group accounts to consolidate accounts of SPEs established and controlled dominantly by a company for the purpose of asset-securitization. The industry considers that such consolidation would deprive the asset-securitization market of the off-balance-sheet treatment in the presentation of financial statements. As a result, this would discourage securitization transactions and hamper the development of the asset-securitization market in Hong Kong, thus putting Hong Kong in a disadvantaged position *vis-à-vis* other international financial centres.

The Bills Committee notes the Administration's view that there is no evidence supporting that the Bill would have negative impact on the development of the asset-securitization market in Hong Kong. However, given the grave concerns expressed by the industry, the Bills Committee has examined the relevant issues in detail at five meetings. In this connection, the Administration is urged to reassess the impact of the Bill on the growth of the asset-securitization market and to consider the three alternative options put forward by the Mortgage Corporation.

The Bills Committee is advised that the Administration does not have information on the projection of the future growth of the asset-securitization market. According to the Government Economist, the Bill will have a positive impact on the asset-securitization industry, as it would enhance the quality of corporate governance, and hence the status of Hong Kong as an international financial centre. As regards the three alternative options put forward by the Mortgage Corporation, the Administration considers that the first option, which provides a carve-out under the Bill for securitization SPEs similar to the concept of the Qualifying SPEs (QSPEs) available under the United States accounting rules, would lead to an inconsistent approach in preparation of group accounts thereby derogating from the purpose of the Bill. It also points out that no other jurisdictions following the International Financial Reporting Standards (IFRSs) have adopted a carve-out in relation to the securitization industry. On the second option which seeks to amend HKAS to enable securitization SPEs to use

the United Kingdom's linked-presentation format for their accounts which could disclose the effect of the securitization transaction on the originator's balance sheet, the Bills Committee notes the HKICPA's advice that the linked-presentation method is a concept unique to the United Kingdom, and starting from 2005, all listed companies in the United Kingdom are required to abandon the method when preparing their group accounts. Moreover, the IFRSs have not adopted a similar approach for financial reporting. As regards the third option which seeks to defer the Bill until the International Accounting Standards Board (IASB) has completed its review of IAS 27, the Administration points out that the "control-based" definition of the term "subsidiary" proposed in the Bill has been adopted by the IASB since 1990 and have been adopted by many jurisdictions following IFRSs. The definition has run well in these jurisdictions over these years. The focus of the current review of the IASB is more concerned about the application of the "control-based" approach in practice. The Administration therefore considers it unnecessary to defer the Bill.

The Bills Committee has also studied whether the proposed amendment in the Bill is in line with the practices adopted by other major international financial centres. The Bills Committee notes that New York and Japan have not adopted IAS 27. All European Union members require only listed companies to prepare group accounts on the basis of relevant IAS starting from 1 January 2005. As regards Australia, while it has adopted the "control-based" definition under IAS 27, the Australian Securitization Forum has recently kicked off a global project to develop a revised model for accounting for securitization transactions. In the light of the overseas practices, the Bills Committee is concerned whether it is justified for Hong Kong to achieve full compliance with IAS 27 at this stage ahead of other major international financial centres and the impact of such on the development of the local asset-securitization market. The Bills Committee requests the Administration to consider offering different treatment to listed and non-listed companies in Hong Kong or achieving full compliance with IAS 27 in two phases with the listed companies in Hong Kong covered by the first phase and the non-listed companies by the second phase.

The Administration advises that Hong Kong's company laws and accounting standards have a much closer origin to those in common law jurisdictions, such as the United Kingdom, Australia and Singapore. Hence, the experience of the United States and Japan should be viewed in the proper context. Nevertheless, unlisted companies in the European Union, the United Kingdom, Australia and Singapore are not exempt from the requirements to

prepare group accounts on the basis of the "dominant influence test". The Administration maintains its view that the amendments to the CO as proposed by the Bill should apply to both listed and unlisted companies, and that no carve-out should be introduced for any particular sector. The Administration does not find it justifiable to propose any phased approach with respect to the commencement of the Bill. Nevertheless, the Administration undertakes that it would continue to watch international developments closely, in particular those in relation to IASs. Where necessary and justified, refinements to the legislation will be considered to ensure that Hong Kong's market development and corporate governance needs are adequately catered for and that the disclosure regime is in line with international standards and practices.

The third major issue the Bills Committee has studied is the "true and fair view override" provisions, that is, the proposed new subsections (4) and (4A) of section 123, and proposed new subsections (4) and (5) of section 126 of the CO. The amendments aim to provide that if compliance with the requirements of the CO does not give a true and fair view of the state of affairs and profit or loss of a company or a group, the directors should depart from these requirements to the extent necessary to give a true and fair view. Additional information in order to present a true and fair view should be given in the accounts or in a statement annexed to the accounts. Particulars of any such departure, the reasons for it and its effect should be given in the accounts or statement. The Bills Committee is concerned that the drafting of the existing subsections (1), (2), (3) and the proposed new subsections (4) and (4A) of section 123 does not set out clearly the Administration's policy intent. To address the concern, the Administration simplifies the drafting of section 123 by consolidating the proposed new subsections (4) and (4A) in the revised new subsection (4), and simplifies the drafting of section 126 accordingly.

Madam President, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

Thank you.

**MS MIRIAM LAU:** Madam President, I have lost count of the number of times I have spoken in these chambers on Companies (Amendment) bills. Indeed since the major overhaul of the Companies Ordinance (CO) in 1984, the Administration has been very vigilant in bringing forth amendments after

amendments to further update and refine the CO. This may be necessary by reason of the world trend towards enhanced corporate governance. However, it is a clear indication that our CO, which is substantially based on the outdated United Kingdom 1948 Companies Act, is deficient in meeting modern business needs. Rather than dealing with required changes on a piecemeal basis, it is perhaps time for another major revamp of this very complex and important pieces of legislation.

Madam President, one of the most controversial issues in the Companies (Amendment) Bill 2004 (the Bill) is the definition of the term "subsidiary" in the CO. This is because by broadening the scope of the term "subsidiary" to encompass the "dominant influence" test, under the Hong Kong Accounting Standards (which follow the International Accounting Standards (IAS)), a parent company would be required to consolidate in its group accounts the financial information of subsidiary undertakings such as Special Purpose Entities (SPEs) controlled by the company for the purpose of asset securitization. It would no longer be enough to simply provide for such information in the notes to the accounts. The asset-securitization industry expressed strong concern over the new arrangements proposed, alleging that deprivation of off-balance sheet treatment in presentation of financial statements would result in less favourable financial ratios, thus affecting credit rating and lowering the attractiveness of the securities issued in the eyes of investors. This would discourage securitization transactions and hamper the development of the asset-securitization market in Hong Kong.

The Administration however holds a contrary view, maintaining that by mandating companies to fully comply with the IAS, this would enhance the quality of corporate governance and the status of Hong Kong as an international financial centre, thus having a positive impact on the asset-securitization industry.

The Liberal Party is also concerned about the growth of asset-securitization market in Hong Kong as it is still in a stage of infancy and nurturing of the market is important at this juncture as we try very hard to position ourselves as one of the international financial centres in the world. Unfortunately, although we have been provided with considerable data and there has been considerable discussion, there is simply not enough information or evidence to categorically decide whether the present proposals would have a positive or negative impact on the market. On the one hand, we note that the



proposed changes in the Bill deviate from the practice of some advanced countries, such as the United States and Japan, whose asset-securitization markets are much larger than that of Hong Kong. For example, under the United States accounting rules, there is a concept of Qualifying SPEs which effectively provides a carve-out for the securitization industry. On the other hand, we note that many common law countries, such as Australia, Singapore and England, that have adopted similar international accounting standards as presently proposed, have fared well in asset-securitization. Bearing in mind that Hong Kong's company laws and accounting standards have ties closer to those of common law jurisdictions, it is probably unsafe and unwise to deviate from the practice of other common law international financial centres. In fact, we understand that no jurisdictions that follow International Financial Reporting Standards including the IAS, adopt a carve-out in relation to the securitization industry.

There is a suggestion that, with respect to preparing group accounts based on IAS, there should be separate treatments for listed and unlisted companies, with a less stringent standard being required of unlisted companies. We note that in the United States, although they have adopted a system different to the IAS, there is no separate regime for listed and unlisted companies. As a matter of fact, England and all European Union members require both listed and unlisted companies to comply with IAS requirements either directly or indirectly tracing back to as far as in the 1980s. In other words, the proposals in the Bill have been put in place in these countries for years. The system appears to be effective and does not seem to have any adverse impact on the securitization markets there. This being the case, if we should exempt or give special treatment to unlisted companies in Hong Kong, we would be adopting a system that is not known or tested in other jurisdictions. It goes without saying that to do so would be extremely risky.

On balance, the Liberal Party supports the proposals set forth in the Bill. Although we do so, we are by no means turning a blind eye to the importance of developing Hong Kong's asset-securitization market. In 2004, our market involved only US\$1.27 billion. Compared to other multi-billion dollar markets such as New York, Tokyo or London, we are very small. Whilst the Liberal Party does not believe that the present proposals would stifle our very small asset-securitization market, nonetheless, we would urge the Administration to closely monitor the impact of the new law on the development of the market, and to take timely measures to minimize any negative impact that may arise. In

particular we would ask the Administration to closely watch the workings of the Global Securitization Accounting Convergence Committee which is aiming to develop a global accounting framework for securitization transactions. As much as we would wish to follow international standards to enhance corporate governance in our territory, we should also closely follow international practices that promote our asset-securitization market.

With these words, the Liberal Party supports the Bill.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the Companies (Amendment) Bill 2004 (the Bill) seeks to amend the definition of "subsidiary" in the Companies Ordinance (CO) in order to make it more closely aligned with the definition attached to the term in the International Accounting Standards (IASs) for the purpose of preparing group accounts.

First, I wish to thank all members of the Bills Committee on Companies (Amendment) Bill 2004 (the Bills Committee), in particular, the Chairperson of the Bills Committee, Ms Audrey EU, for scrutinizing the Bill in detail in the past months. The Bill involves a lot of technical amendments and the Bills Committee has indeed offered a lot of valuable views to the Government. I am also grateful to the Hong Kong Institute of Certified Public Accountants (HKICPA) and other people and groups for expressing their views, many of which were very constructive and facilitated the discussions in the Bills Committee.

A good financial reporting system is one of the key factors in enhancing investor confidence. The principle aim of financial reporting is to reflect the performance and state of affairs of a company truly and fairly. As a prime

international financial centre, it is necessary for Hong Kong to keep enhancing its financial reporting system to ensure that it is aligned with recognized international accounting standards, while raising the quality of the accounts of Hong Kong companies is also conducive to corporate governance.

On this premise, the Bill proposes to amend the definition of the term "subsidiary" in the existing CO for the purpose of preparing group accounts so that the group accounts of the parent company can reflect the state of affairs of the entire group more clearly, including all subsidiaries. Under the existing section 2(4)(a) of the Ordinance, in determining whether there is a "parent-subsidiary" relationship between two companies, the main consideration is whether the two meet one of the following tests:

- first, the parent company controls the composition of the board of directors of the subsidiary;
- second, the parent company controls more than half of the voting rights in the subsidiary; or
- third, the parent company holds more than half of the issued share capital of the subsidiary.

To align more closely with the definition of "subsidiary" in IAS 27, it is proposed under the Bill that another test be introduced in addition to the three existing tests, namely, the "right to exercise a dominant influence over another undertaking". According to this new test, if a company has the right to give directions with respect to the operating and financial policies of that other undertaking which its directors will be obliged to comply with, then the two will be regarded as having a parent-subsidiary relationship.

Meanwhile, since the existing CO stipulates that a "subsidiary" is always a "company" (that is, a body corporate), therefore, the group accounts prepared according to the CO does not have to consolidate the accounts of the subsidiaries which are not body corporates. In order to reflect the state of the entire group more fully, the Bill proposes to introduce the concept of "subsidiary undertaking", that is, insofar as a "subsidiary" is concerned, it can refer to a body corporate, a partnership or an unincorporated association and the accounts of such subsidiaries must be consolidated in the group accounts of the parent company.

The Bills Committee has carefully scrutinized the relevant amendments and supports the proposals in the Bill. I am aware that some members of the asset-securitization market are concerned that the amendment of "subsidiary" may have an impact on the development of the asset-securitization market in Hong Kong. The Bills Committee has examined and discussed the worries of the parties concerned time and again and the Government has also presented many arguments to prove that there is no convincing evidence to show that the Bill would have any adverse effect on the development of the asset-securitization market in Hong Kong. I wish to stress the following main points:

Firstly, the Government attaches great importance to the development of the asset-securitization market in Hong Kong. In fact, the Government has all along endeavoured to develop the asset-securitization market, so as to consolidate Hong Kong's position as an international financial centre. Specific measures include the securitization of toll revenue through establishing the Hong Kong Link, simplifying the requirements in respect of prospectuses and promoting the relevant knowledge among investors. We have considered the views of some members of the asset-securitization industry very carefully, but we consider there is no convincing evidence that indicates the Bill will impede the development of the asset-securitization market in Hong Kong. Quite the contrary, as Ms Audrey EU pointed out, the Government Economist had said that the Bill would have a positive effect on the asset-securitization market because the Bill will enhance the quality of corporate governance, thereby consolidating Hong Kong's position as an international financial centre.

Secondly, the amendment in the Bill will serve to align the definition of "subsidiary" in the CO more closely with that in IAS 27. The IASs have been adopted by over 90 jurisdictions throughout the world. From the experience of such places as the European Union, Singapore and Australia where the definition is in operation, we cannot envisage that the proposal in the Bill will have any adverse effect on the asset-securitization market.

Thirdly, I wish to stress that the aim of financial reporting is to give a true and fair account of the state of affairs of a company. Some members of the asset-securitization market believe that the industry should be exempted from compliance with the new definition of "subsidiary" for the purpose of preparing group accounts, so that they can still adopt the "off-balance-sheet" treatment in the presentation of Special Purpose Entities established for the purpose of asset-securitization. The HKICPA and the Government are both of the view

that the present undesirable off-balance sheet treatment is not a key factor in the development of the asset-securitization market. To give a true and fair disclosure of all the financial information concerning all "subsidiaries", including Special Purpose Entities, in the group accounts will enable all users of such financial statements (including investors in general) to gain a better understanding of and make interpretations on the financial state of the company.

For the foregoing reasons, after thorough discussions between the Government and the Bills Committee, the proposal to provide a "carve-out" specifically to the asset-securitization industry was not endorsed. We are also of the view that it is not justifiable to provide for two different definitions of "subsidiary" for listed and unlisted companies.

We are aware that a number of sectors and organizations have expressed support for the Bill. They include the HKICPA, the Securities and Futures Commission, the Hong Kong Exchanges and Clearing Limited, the Standing Committee on Company Law Reform, the Association of International Accountants, the Hong Kong Institute of Company Secretaries, and so on. Furthermore, no business association has raised any objection to the Bill or expressed any negative view. We also agree with the suggestion of the Bills Committee and will continue to monitor international developments closely, in particular, the development of ISAs and will conduct another review of the relevant provisions when necessary.

Another focus of the Bill is to make reference to the United Kingdom Companies Act and introduce the "true and fair view override" provision under sections 123 and 126 of the Ordinance. At present, there is already a provision in the existing CO requiring that the accounts shall give a true and fair view of a company's performance and state of affairs. This is a "general requirement" under the CO. The proposed new provision seeks to require directors to provide additional information to give a true and fair view of the state of affairs of the company if compliance with the requirements of the Tenth Schedule to the CO (that is, specific requirements relating to accounts or statements) and other requirements on company accounts in the CO would not be sufficient to give a true and fair view of the state of affairs of the company.

The Bill further requires that when the requirements in the Tenth Schedule and other requirements on what to include in company accounts are at variance

with the general principle of a "true and fair view of the state of the company", the directors shall depart from the requirements to give a true and fair view, and give the reasons for and particulars and effects of such departure.

We believe the proposed "true and fair view override" provision will be invoked only under very special circumstances. In addition, according to the CO, accounts are subject to audits by auditors, who have a statutory duty to state whether in the auditors' opinion the accounts has been properly prepared and whether a true and fair view is given. This will provide sufficient and necessary checks and balances to avoid any abuse of the proposed provision.

Madam President, in the light of the consensus reached in the meetings of the Bills Committee, we will later on move amendments to some of the clauses in the Bill. They are mainly technical amendments and others are proposed in response to the views of the Bills Committee, the legal advisor and groups that have made representations. The Bill has a bearing on raising the quality of financial reporting in Hong Kong as an international financial centre. I implore Members to support the Bill and the amendments that we will move later on.

Finally, I wish to thank all members of the Bills Committee once again, as well as all relevant groups and people for expressing to us their views during the scrutiny of the Bill. As Ms Miriam LAU said, the CO may have fallen behind the times, so the Government is in fact planning to carry out a comprehensive review and redrafting of the CO. We do feel somehow embarrassed that I have to come to the Legislative Council almost every year to request making amendments to the CO. In order to catch up with the practices of other international financial and commercial centres, we will give a detailed account of the plan to Members in the meeting of the Panel on Financial Affairs next Monday (4 July).

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Companies (Amendment) Bill 2004 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): Companies (Amendment) Bill 2004.

Council went into Committee.

### **Committee Stage**

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

### **COMPANIES (AMENDMENT) BILL 2004**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Companies (Amendment) Bill 2004.

**CLERK** (in Cantonese): Clauses 1, 6, 9, 11 to 17 and 21.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2 to 5, 7, 8, 10, 18, 19 and 20.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 3, 5, 7, 8, 10, 18, 19 and 20 and the deletion of clause 4, as set out in the paper circularized to Members. I will now brief Members on the amendments.

Clause 2 of the Bill adds new section 2B to the Companies Ordinance (CO), which should be read together with Schedule 23 proposed under clause 18. The proposed section 2B(3) specifies the sections in the CO to which the conferred definitions of new terms in the Bill such as "parent company", "parent undertaking" and "subsidiary undertaking" can be applied. In moving the amendments, we have at the same time specified that these definitions are applicable to sections 129, 161B and 161BA, so as to ensure that the interpretation of the new definitions in these three sections can be consistent with that in other relevant sections on preparing accounts and group accounts.

Clauses 3 and 5 introduce "true and fair view override" provisions to sections 123 and 126. In response to the suggestions made by the Bills Committee, we move an amendment to recast the drafting of the proposed sections 123(4) and 126(4), so as to reflect clearly the intention of the "true and fair view override" provisions, as mentioned in my earlier reply. I also move an amendment to add a technical amendment to section 123(3) under clause 3 of the Bill.

Since clause 18 proposes to add the definition of "undertaking" into Schedule 23, clauses 7 and 8 therefore introduce consequential amendments to sections 128 and 129A. Based on the suggestions of The Law Society of Hong Kong, we move an amendment to maintain the *status quo* of the existing practice of disclosing the "countries in which they are incorporated" of incorporated "subsidiary undertakings" and "ultimate parent undertakings". As for unincorporated "subsidiary undertakings" and "ultimate parent undertakings", the amendment proposes to require them to disclose their "addresses of their principal places of business".

Clause 18 introduces the new Schedule 23 to the CO, so as to specify the definitions of such terms as "parent company", "parent undertaking" and "subsidiary undertaking". With regard to the amendment moved in connection



with section 1 of Schedule 23, it is intended for delineating the scope of definition of "undertaking" and "shares". We have also recast the drafting of section 2(3) of Schedule 23, so as to cater more clearly for the situation of a subsidiary undertaking of a subsidiary undertaking of a certain company.

We also propose to delete the entire clause 4 of the Bill because the latest IAS 27 no longer permits the situation described in clause 4 which excludes the consolidation of subsidiaries' accounts in the parent company's group accounts. The Hong Kong Institute of Certified Public Accountants has indicated support for the amendment.

The other amendments are all minor technical amendments. All the amendments have been discussed in the Bills Committee and members have indicated support for them. I hope Members can support the amendments moved by me.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex II)**

**Clause 3 (see Annex II)**

**Clause 4 (see Annex II)**

**Clause 5 (see Annex II)**

**Clause 7 (see Annex II)**

**Clause 8 (see Annex II)**

**Clause 10 (see Annex II)**

**Clause 18 (see Annex II)**

**Clause 19 (see Annex II)**

**Clause 20 (see Annex II)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment to clause 4, which deals with deletion, has been passed, clause 4 is deleted from the Bill.

**CLERK** (in Cantonese): Clauses 2, 3, 5, 7, 8, 10, 18, 19 and 20 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 1A Interpretation.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move that new clause 1A be read the Second time. This clause is a consequential amendment of a technical nature. Since I have, in the amendment moved just now, proposed the deletion of the word "concurrence" in sections 4(c) and 7(c) in the proposed Schedule 23 in clause 18 of the Bill, I have therefore proposed a consequential amendment to the wording of the existing section 2(5). The Bills Committee has discussed this new clause and expressed its support. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 1A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 1A.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move that new clause 1A be added to the Bill.

*Proposed addition*

**New clause 1A (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 1A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

**Third Reading of Bills**

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

**COMPANIES (AMENDMENT) BILL 2004**

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

Companies (Amendment) Bill 2004

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

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

**Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Transfer of Sentenced Persons (Amendment) (Macau) Bill.

**TRANSFER OF SENTENCED PERSONS (AMENDMENT) (MACAU) BILL****Resumption of debate on Second Reading which was moved on 5 January 2005**

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

**MR JAMES TO** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Transfer of Sentenced Persons (Amendment) (Macau) Bill (the Bills Committee), I now report on the main deliberations of the Bills Committee.

The Transfer of Sentenced Persons (Amendment) (Macau) Bill (the Bill) mainly seeks to make the Transfer of Sentenced Persons Ordinance applicable to the arrangements for the transfer of sentenced persons between the Hong Kong Special Administrative Region (HKSAR) and the Macau Special Administrative Region (MSAR).

Members have questioned why the arrangement on the transfer of sentenced persons had not been signed before the Bill was introduced into the Legislative Council. Members have pointed out that in respect of surrender of fugitive offenders, mutual legal assistance in criminal matters and the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR, the relevant bilateral agreements are signed before the relevant legislation for enforcement was tabled at the Legislative Council. Members are of the view that the Administration should adopt a consistent policy.

The Administration has explained that the main consideration is whether there is provision in the relevant existing legislation that requires the signing of

the bilateral agreement before the enactment of legislation for implementation, or *vice versa*. The Administration has no uniform policy on the signing of a bilateral agreement with another jurisdiction before or after the introduction of enabling legislation.

Having considered members' views, the Administration has arranged for the signing of the Transfer of Sentenced Persons Arrangement (the Arrangement) between the HKSAR Government and the MSAR Government, and a copy of the Arrangement has been provided to the Bills Committee.

The Bill seeks to empower the Chief Executive to issue an outward warrant for the transfer to Macau a sentenced person who is a permanent resident of the MSAR or, in the Chief Executive's opinion, has close ties with it. Members have enquired about the meaning of "close ties", as the term is not defined in the Transfer of Sentenced Persons Ordinance or in the Bill, and how determination will be made as to an applicant having close ties with the HKSAR or the MSAR.

The Administration has advised that the term "close ties" is not defined in the statute and will therefore be construed in its ordinary meaning. Whether an applicant has close ties with the HKSAR or the MSAR is to be determined according to the facts of an individual case. While it is a matter for the discretion of the Chief Executive in each case, an example of "close ties" may be strong family connections. In general, when a sentenced person applies for transfer to Macau or return to Hong Kong to serve the remainder of his sentence, he will be asked to provide evidence to prove his status as a permanent resident of that place or his close ties with that place. A decision will be made in the light of all evidence produced by the applicant after verification where necessary.

In view of the close proximity between Hong Kong and Macau and the possible strong connections between residents of the two places, members have expressed concern about the pressure on penal places in Hong Kong, if a large number of sentenced persons serving sentences in Macau apply for transfer. Members consider that guidelines on how "close ties" will be determined should be put in place to provide for possible abuse.

The Administration has agreed to draw up internal guidelines and provide a copy of the guidelines to the Panel on Security.

Madam President, under the Arrangement signed between the HKSAR Government and the MSAR Government, a sentenced person who intends to apply for transfer must have an outstanding sentence of at least six months at the time of the request. Given that the remaining sentence requirement is one year in the agreements signed by the Administration with seven jurisdictions, members have enquired why a remaining sentence of six months is set in the arrangement with the MSAR. Members have also queried the legal basis for dealing with the remaining term of sentence of a sentenced person transferred to Hong Kong, and how the remaining sentence will be enforced.

The Administration has explained that in view of the close proximity between Hong Kong and Macau, the procedures for dealing with a request for transfer should be able to complete within a short period of time. A remaining sentence of six months is therefore deemed to be appropriate. Under the Prisons Ordinance, the term "prisoner" is defined to "include a person who is sentenced in a place outside Hong Kong and is brought into Hong Kong in order to serve the sentence imposed upon (or any part thereof) in that place". Thus, once transferred to Hong Kong, the provisions of the Prisons Ordinance and its subsidiary legislation will be applicable to the prisoner in question. The inward warrant issued by the Chief Executive will specify the term to be served by the transferred sentenced person.

Regarding the provision for adaptation of sentence in the Arrangement signed with the MSAR, the Administration has explained that if two parties have different systems with regard to the division of penalties or the minimum and maximum lengths of sentence, the receiving party may adapt the sanction to the punishment or measure prescribed by its own law for a similar offence accordingly. The receiving party may adapt the remaining sentence to be served by the applicant to the maximum length of sentence under its own law. Adaptation is consistent with international practice in this area.

The Bills Committee noted that one of the conditions for transfer is the agreement of the transferring and receiving parties as well as the sentenced person. However, Hong Kong has no legislative provision for revocation of consent for transfer.

In the course of discussion, I have suggested that the Administration should consider amending the principal legislation to specify that once a sentenced person has consented to transfer, he will be deemed to have been



convicted and sentenced by a Court in Hong Kong and revocation will not be permitted.

In response to members' view, the Administration has undertaken that the HKSAR Government, as the transferring party, will inform an applicant that the rights and benefits enjoyed by him when serving his term in Hong Kong will no longer be applicable to him in the receiving jurisdiction after transfer.

The Bills Committee supports the resumption of the Second Reading debate of the Bill today.

Thank you.

**MR LAU KONG-WAH** (in Cantonese): Madam President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the passage of the Transfer of Sentenced Persons (Amendment) (Macau) Bill (the Bill). By returning sentenced persons to their place of origin to serve their sentences, their friends and relatives may visit them, and they can serve their sentences in places familiar to them and free of language barriers. In respect of helping these sentenced persons to repent and reform, and to reintegrate into society, the transfer arrangement will definitely do all good but no harm. During the course of scrutiny, the authorities have made positive follow-up on most of the issues raised by the Bills Committee. However, the Bills Committee is particularly concerned about the right to know of the sentenced persons being transferred. To avoid any unpleasant incidents arising in the course of transfer or any misunderstanding of the remainder of sentence, the authorities should make it clear to the applicant for transfer that the rights and benefits he enjoys in the transferring jurisdiction will not be applicable in the receiving jurisdiction and *vice versa*. In respect of sentences, I believe the authorities are experienced in handling and enforcing the remainder of sentences of sentenced persons transferred to Hong Kong. However, owing to the geographical proximity of the two places, once the Bill is enacted, transfer cases of this kind may increase significantly in future. In respect of the communication between the authorities and sentenced persons, if clearer information, in particular issues relating to their post-transfer treatment, is made available to the sentenced persons to be transferred, potential misunderstanding can be avoided.

During the course of scrutiny, the authorities did repeatedly explain the term "closer ties". However, we have still requested the authorities to draw up and submit to the Panel on Security a set of internal guidelines for determining "closer ties" with a place when more cases have been accumulated after the implementation of the Bill to provide for possible abuse that may be caused by the extensive coverage of the term, and to perfect the relevant provisions. Finally, I again sincerely urge the authorities to report to the Legislative Council the latest progress of the relevant transfer arrangement a year after enactment to enable us to gain a deeper understanding of the situation. With these remarks, I support the passage of the Bill.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I am very glad that the Hong Kong and Macau Governments have reached an agreement on the transfer of sentenced persons and implemented the arrangement by way of formal legislation. Though some colleagues have highlighted some areas that warrant amendment, in terms of the broad direction, I still consider that this practice should be continued. I also hope that the Government can expedite its work of extending this practice to other places, particularly with the Mainland, as the issue should be addressed as soon as possible. In the past, we have received quite a number of requests from sentenced persons, particularly Hong Kong residents serving sentences in the Mainland. Therefore, I very much hope that the Government, in dealing with this issue, will adopt the same pace and agenda that it has adopted in handling the present agreement with Macau, so that mainlanders serving sentences in Hong Kong can be accorded the same treatment.

Madam President, in fact, since 2000, we have been receiving requests from mainlanders serving sentences in Hong Kong who hope that an agreement between the Hong Kong Government and the Mainland be reached as soon as possible, so that, like persons from Macau serving sentences in Hong Kong, they can return to their places of origin to serve their sentences. But, unfortunately, during the past five years, whenever the Government was requested to respond to this issue, it failed to give a reasonable reply, causing great disappointment to mainlanders serving sentences in Hong Kong. At present, counting Macau in, Hong Kong has already established such a relationship with seven countries or

places, including the United Kingdom, the United States, the Philippines, Thailand, Italy, Portugal and Sri Lanka. Actually, Hong Kong does have a close relationship with Macau. But I really do not understand and cannot figure it out why Hong Kong does not extend the same practice to places with which it has established a close relationship comparable to that with Macau. Therefore, today, I would like to take the opportunity where the Arrangement will be passed to reiterate that the Government should open up more channels to provide opportunities for persons serving sentences in Hong Kong, particularly non-locals, to be transferred back to their places of origin to serve their sentences. The Government should satisfy this aspiration as far as possible.

In fact, we can see the problem that prisons in Hong Kong are now close to saturation. The estimated occupancy rate for the year 2005-06 is 122.2%, exceeding the design capacity. Our prisons are said to be bursting at the seam. Moreover, according to the Correctional Services Department, its estimated expenditure is as much as \$2.5 billion — we do not know whether the calculation is accurate. I believe if the number of inmates can be reduced, it will not only do good to the Correctional Services Department, but will also help the Government greatly in cutting its fiscal deficit. Actually, there are about 13 000 prisoners in Hong Kong now, among whom, 40% are non-locals. If we can cut the expenditure in this respect, a handsome amount of public money can be saved. Madam President, if I have not got it wrong, a prisoner is now costing the public about \$558 daily. If some of the prisoners are allowed to return to their places of origin, our fiscal deficit can be significantly reduced and approximately \$850 million can be saved, provided that the calculation is correct. Given that such a great amount is involved, why do we not expedite the work in this respect so that these prisoners may really return to their places of origin to serve their sentences?

I very much agree with the views expressed by several colleagues earlier, that to allow prisoners to return to their places of origin is not only out of the concern that it is easier for them to adapt to the environment there, but more in keeping with humanitarian ground which is an important factor. We all know that support from families is badly needed by prisoners. If they have the support of their families, the extent of their rehabilitation will be greater and the chances of success higher. If the arrangement can be put in place, it will absolutely help prisoners to integrate into society in future. Putting this long-term impact into perspective, I see no reason why the Government cannot discuss as far as possible with all countries with persons serving sentences in

Hong Kong to solve the problem as soon as possible. If this problem is resolved, all parties will benefit. Prisoners will benefit because they will have the opportunities to meet their families and adapt to the new environment. Hong Kong will be able to save some of its resources. And staff of the Correctional Services Department will also benefit as a result of reduced workload, while our prisons will no longer be over-crowded. Therefore, today, I will support the provisions related to the agreement reached between Hong Kong and Macau, and I hope that the Government will handle the transfer arrangements for prisoners from other countries, in particular the Mainland, as soon as possible.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Security to reply.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, first of all, I would like to thank Mr James TO, Chairman of the Bills Committee on Transfer of Sentenced Persons (Amendment) (Macau) Bill (the Bills Committee), and other members of the Bills Committee for the constructive views they have expressed during the scrutiny of the Transfer of Sentenced Persons (Amendment) (Macau) Bill (the Bill) and the support they have given to the proposals in the Bill.

Transfer of sentenced persons (TSP) to their places of origin, by returning them to an environment free of language and cultural barriers and where their friends and relatives can visit them on a regular basis, is conducive to their rehabilitation. Our policy is to facilitate such transfers between the Hong Kong Special Administrative Region (HKSAR) and other jurisdictions.

To implement this policy, we have signed TSP agreements with the United States, the United Kingdom, Italy, Portugal, Sri Lanka, Thailand and the

Philippines since our reunification with China. We have also worked out a Transfer of Sentenced Persons Arrangement (the TSP Arrangement) with the Government of the Macau Special Administrative Region (MSAR). The terms of the TSP Arrangement are in conformity with the main principles and provisions enshrined in the Transfer of Sentenced Persons Ordinance (the TSP Ordinance) and the existing TSP agreements.

The current TSP Ordinance only enables TSP between Hong Kong and places outside China. We need to extend its application to include the MSAR in order to implement the TSP Arrangement between the two Special Administrative Regions.

As mentioned by Mr James TO in his remarks, in scrutinizing the Bill, the Bills Committee has held thorough and detailed deliberations on the provisions of the Bill and the TSP Arrangement, including the general principles, conditions for transfer, retention of jurisdiction, continued enforcement of sentence and adaptation of sentence relating to TSP. The Bills Committee has also discussed the implementation of the existing TSP Ordinance and the procedures for processing TSP applications.

Madam President, because of the proximity of Hong Kong and Macau to each other and the close and frequent contacts between residents of the two places, some members have expressed concern over how to determine whether an applicant has "close ties" with the receiving jurisdiction. In lodging a transfer application, a sentenced person must prove that he/she is a permanent resident of the receiving jurisdiction or has close ties with it. Whether an applicant has close ties with the receiving jurisdiction is to be considered on the merits of individual cases. Given the views of the Bills Committee, we would, after a certain number of precedents have been established by transfer cases, draw up guidelines for determining whether a sentenced person has "close ties" with a particular place and submit the guidelines to the Panel on Security.

The Bills Committee has also expressed concern about the rights and benefits of the sentenced persons after the transfer. Generally speaking, the transferring party will retain exclusive jurisdiction over the judgement and sentence in respect of the sentenced persons while the laws and procedures of the receiving party will apply to matters such as imprisonment, remission and release after the transfer. To address members' concerns, the HKSAR Government, as a transferring party, will endeavour to inform the applicants of

the rights and benefits that will no longer be applicable to them after transfer. Moreover, at the request of the Bills Committee, we will submit to the Panel on Security a progress report on the TSP Arrangement one year after its implementation.

In his remarks, Mr LEUNG Yiu-chung has asked about the progress of the discussions between the HKSAR Government and other jurisdictions and the mainland authorities on arrangements for TSP. I wish to mention that the HKSAR Government has been discussing such transfer arrangements with the mainland authorities. The topics of discussion include the main principles and provisions of the TSP Ordinance and the TSP agreements we have signed with other jurisdictions. Because of the differences in the legal and judicial systems of the two places and the complexity of the issues involved, the discussion is still going on. We will continue the discussion with a view to reaching an agreement as soon as possible but there is no firm timetable.

When deciding whether a bilateral agreement with another jurisdiction should be signed before or after the enabling legislation is introduced, the Government's main consideration is whether there is any provision in the relevant existing legislation that requires the signing of the bilateral agreement before the enactment of implementing legislation, or *vice versa*. There is no policy that is applicable across the board in this aspect. Taking into account the views of the Bills Committee, we signed the TSP Arrangement with the MSAR Government on May 20 this year.

Madam President, we will complete the preparatory work with the MSAR Government as soon as possible to enable early implementation of the legislation and the TSP Arrangement. With these remarks, I commend the Bill to the Legislative Council.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Transfer of Sentenced Persons (Amendment) (Macau) Bill 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): Transfer of Sentenced Persons (Amendment) (Macau) Bill.

Council went into Committee.

### **Committee Stage**

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

### **TRANSFER OF SENTENCED PERSONS (AMENDMENT) (MACAU) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Transfer of Sentenced Persons (Amendment) (Macau) Bill.

**CLERK** (in Cantonese): Clauses 1 to 6.

**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 Bills**

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

### **TRANSFER OF SENTENCED PERSONS (AMENDMENT) (MACAU) BILL**

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

Transfer of Sentenced Persons (Amendment) (Macau) Bill

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 Transfer of Sentenced Persons (Amendment) (Macau) Bill 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): Transfer of Sentenced Persons (Amendment) (Macau) Bill.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Aviation Security (Amendment) Bill 2005.

### **AVIATION SECURITY (AMENDMENT) BILL 2005**

#### **Resumption of debate on Second Reading which was moved on 9 March 2005**

**PRESIDENT** (in Cantonese): Ms Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MS MARGARET NG:** Madam President, as Chairman of the Bills Committee on Aviation Security (Amendment) Bill 2005 (the Bills Committee), I wish to report on the main deliberations of the Bills Committee.

The main purposes of the Aviation Security (Amendment) Bill 2005 (the Bill) are to impose criminal sanctions against unruly or disruptive behaviour committed by passengers on board civil aircraft, and to extend Hong Kong's jurisdiction over offences regarded as unruly or disruptive passenger behaviour committed outside Hong Kong in connection with non-Hong Kong-controlled civil aircraft which next lands in Hong Kong.

Under the Bill, any person on board an aircraft who behaves in a disorderly manner whereby the good order or discipline on board the aircraft is or is likely to be jeopardized commits an offence. As the Model Legislation on Certain Offences Committed on Board Civil Aircraft developed by the

International Civil Aviation Organization does not provide for the offence of disorderly behaviour on board an aircraft, the Bills Committee has queried why such an offence is included in the Bill. The Bills Committee has also questioned the meaning of "disorderly behaviour", and how the offence of disorderly behaviour is dealt with in other jurisdictions.

The Administration explains that the offence of disorderly behaviour in the Bill is modelled in part on the offence in section 17B(2) of the Public Order Ordinance (POO). The word "disorderly" in section 17B(2) of the POO should be given its ordinary dictionary meaning and it referred to unruly or offensive behaviour or behaviour which violates public order or morality.

In line with the spirit of the Model Legislation, the Administration considers that there is a need to provide a general provision for maintaining good order on an aircraft; hence the provision for the offence of disorderly behaviour in the Bill. In New Zealand, the offence of disorderly behaviour is provided in its Civil Aviation Act. In drawing up the proposal, the Administration has made reference to the Civil Aviation Act of New Zealand.

The Bill Committee notes that the offences relating to intoxication, smoking and disobeying the commands given by the aircraft commander are provided in the Bill, while similar offences are also provided in the Air Navigation (Hong Kong) Order 1995 (the Order). The penalties for these offences in the Bill, however, are heavier than those in the Order. For instance, the maximum penalty for the offence relating to smoking in the Order is a fine not exceeding \$5,000 on summary conviction. Under the Bill, the maximum penalty for the offence relating to smoking on summary conviction is a fine at level 3 (currently \$10,000) and imprisonment for six months; and on conviction on indictment, a fine at level 5 (currently \$50,000) and imprisonment for two years.

The Bills Committee has expressed concern how prosecution is to be instituted for the same criminal conduct which constitutes an offence under both the Bill and the Order, given the different levels of penalty for the same offence under the Bill and the Order. Members are of the view that the Administration should put in place criteria for invoking the provisions in the Bill and those in the Order for the same criminal conduct.

The Administration explains that it is not unusual for there to be more than one offence available in respect of the same criminal conduct. As the penalties

for the offences in the Bill are heavier than those for the offences in the Order, it is likely that a suspected person will be prosecuted for an offence under the Bill if the act is caught by both the proposed new provisions in the Bill and the provision in the Order. However, the decision to prosecute a suspect is the discretion of the prosecution authority. Prosecution for a particular offence will be instituted if it is in the public interest. In determining where the public interest lies, the prosecution will examine all the factors and circumstances.

The Bills Committee also notes that the evidential burden under the Bill is also heavier than for the offences under the Order.

Some members have queried why it is necessary to retain the offences of drunkenness and smoking in the Order, as similar offences are provided in the Bill.

The Administration considers it necessary to retain the said offences in the Order for completeness, as the Order is an important piece of legislation implementing the overall international aviation standards and practices as well as regulating air navigation. The Administration has informed the Bills Committee that the Economic Development and Labour Bureau is reviewing the Order, including the penalty levels which were determined some 20 years ago. The Administration aims to complete the review and formulate necessary amendments, in consultation with the industry, as soon as practicable.

Madam President, another concern of the Bills Committee is the issue of double jeopardy. As different jurisdictions have their own means of dealing with offences in an aircraft, the issue of double jeopardy may arise in respect of prosecution and conviction of the same offence in Hong Kong and in the other jurisdiction.

For instance, if a person committed an offence in a non-Hong Kong-controlled aircraft outside Hong Kong which next lands in Hong Kong and has been convicted of that offence under the law of Hong Kong pursuant to a request made by the aircraft commander under the proposed new section 12C(1)(b)(i) of the Aviation Security Ordinance, there is no provision precluding the same offence from being prosecuted and convicted in the jurisdiction in which the aircraft is registered.

The Administration has responded that the proposed new section 12C(1)(b)(ii) requires the commander to give an undertaking that he, and the operator of the aircraft, has not made and will not make a similar request to the authorities of any place outside Hong Kong. The provision will, to some extent, prevent double jeopardy from arising.

With these remarks, Madam President, the Bills Committee supports the resumption of the Second Reading debate of the Bill today.

**MR HOWARD YOUNG** (in Cantonese): Madam President, first of all, I have to make a declaration of interest. I am the General Manager, Industry and Hong Kong Affairs, of the Cathay Pacific Airways and also a member of the Executive Committee of the Board of Airline Representatives Hong Kong. In my speech, I will mainly convey the views of the latter.

All airline companies have expressed support for the introduction of the Aviation Security (Amendment) Bill 2005 by the Government. In recent years, there has been an upward trend in the number of incidents involving disruptive behaviour of passengers on board aircrafts. The day before yesterday, in a passenger aircraft flying in from Tokyo, a passenger caused a disturbance. As it was feared that the safety of other passengers might be affected, it was necessary to make an emergency landing to resolve the incident. Furthermore, the gravity of such disruptive behaviour is also on the increase. Therefore, airline operators, including local and overseas airline operators, all believe that it is necessary to amend the existing legislation to increase the deterrent effect, and this is also the consensus among members of the International Civil Aviation Organization.

At present, there are about 57 Hong Kong-based airline companies providing civil aviation service and the destinations of their air routes spread across the globe, totalling 136. There are 300 to 400 passenger flights taking off from or landing at the Hong Kong International Airport each day and about 100 000 travellers make use of its services each day. According to the information of the Airports Council International, based on international passenger throughput, the airport in Hong Kong is one of the 10 busiest airports in the world. Hong Kong is an international aviation centre, however, there is a lack of adequate enforcement authority in Hong Kong that targets unruly aircraft passengers and in the past, there were indeed shortcomings in such areas as maintaining order in aircraft and ensuring passenger safety.

In Hong Kong, the Aviation Security Ordinance (ASO) is the principal legislation on aviation security. But the ASO addresses mainly very serious offences such as hijacking and sabotage, and does not impose punishment and sanction on unruly behaviour of passengers, such as disturbing flight attendants or other passengers or the good order on board an aircraft. This will pose a threat to the safety of the attendants and other passengers in an aircraft.

The amendment proposed by the Government is intended to include behaviour formerly not considered an offence, in particular behaviour that endangers or may endanger the crew or passengers on board an aircraft as an offence, irrespective of whether such behaviour occurs on board a Hong Kong-controlled aircraft, as long as the next place of landing of the aircraft is in Hong Kong. The Hong Kong Police Force can bring prosecutions against the offending passenger and such offences will fall within the jurisdiction of Hong Kong. This will be an improvement over the past, when prosecutions could only be pressed against offences that took place on board Hong Kong-controlled aircraft or over the airspace of Hong Kong. In fact, as far as I know, at the most, only one third of the passengers using the airport in Hong Kong take Hong Kong-controlled aircrafts. I believe the amended legislation will serve to impose more effective sanctions on passengers who disregard public safety.

With these remarks, I support the Aviation Security (Amendment) Bill 2005.

**MR LAU KONG-WAH** (in Cantonese): Madam President, the DAB supports the passage of the Aviation Security (Amendment) Bill 2005 (the Bill).

With increasing activities of international commerce and trade, the problem of aviation security must not be ignored. In the case of Hong Kong, a major centre of international aviation in Asia, there is a particular need for us to closely follow the latest international practices. The present legislative amendments aim precisely to enact legislation on "unruly passenger behaviour", with a view to ensuring the safety of all passengers flying to and from Hong Kong.

The scrutiny work of the relevant Bills Committee this time around has been generally smooth, with no major disputes and arguments throughout. The

authorities proposed to incorporate the Model Legislation on Certain Offences Committed on Board Civil Aircraft into the Bill. Following deliberations, we agreed to incorporate the new offences proposed by the Government, that is, the offences of disruptive and irrational behaviour causing harassment to others. Such behaviour should be controlled on board operating aircraft. Under the proposal, it is also an offence for any person to become intoxicated on board an aircraft to such an extent as to jeopardize the order on board the aircraft. The day before yesterday, it so happened that a passenger aircraft scheduled for return to Hong Kong from Tokyo was forced to make an emergency landing in the latter city as one of its passengers became intoxicated and pushed a flight attendant onto the floor. In the end, the flight's return to Hong Kong was delayed until the following day. We can see that in this particular case, the passenger concerned was intoxicated under the effect of alcohol, and his behaviour was obviously disruptive to the extent of jeopardizing the safety of other passengers on board. This shows that we must take precautions against any irrational passenger behaviour on board an aircraft flying at the high altitude of more than 10 000 ft. The present legislative amendments can alert passengers precisely to the importance of this.

I also wish to raise another point, the use of electronic devices on board an aircraft. Actually, most members of the public do understand that the use of electronic devices on board an aircraft is prohibited for a certain period during the flight. However, I also believe most people will admit that it is common to see passengers switching on cell phones to report their "safe arrival" while an aircraft is still taxiing on the apron after landing. Honestly speaking, such behaviour poses the greatest threat to safety contrary to general belief. Many people have the misconception that once an aircraft has landed, there will be no more risks. This is in fact an erroneous idea. Under the present legislative amendment, the use of electronic devices at inappropriate times is formally designated as "unruly passenger behaviour". I agree that it is certainly desirable to tighten the law as a means of control, but at the same time, the authorities should really step up their publicity and education efforts. Passengers should be advised of the latest legislative amendments while embarking on an aircraft or before landing. That way, they can be cautioned beforehand, thus avoiding any unnecessary disputes with cabin crew. The enactment of legislation and education are equally important. If we really wish to ensure aviation security, we must not rely solely on legislative amendments, for the self-discipline and co-operation of passengers are also very important. I so submit. Thank you, Madam President.

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

**MR MARTIN LEE** (in Cantonese): Madam President, I must congratulate the Secretary for Security for being so "far-sighted" as to submit this Bill to the Council for passage today. I do not know whether the intoxicated gentleman on a Dragonair flight the other day actually stirred up the trouble in order to get support for the Secretary for Security, so that the Bill can be passed more easily. Anyway, the Democratic Party will support the Bill.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Security to reply.

**SECRETARY FOR SECURITY**: Madam President, first of all, I would like to thank the Honourable Margaret NG, Chairman, and other members of the Bills Committee for their constructive comments and time spent on the scrutiny of the Aviation Security (Amendment) Bill 2005 (the Bill). Without their efforts, the scrutiny of the Bill would not have been completed so expeditiously.

The aim of the Bill is to enable the Hong Kong authorities to prosecute in appropriate cases criminal acts and offences constituting unruly behaviour on board Hong Kong-controlled and non-Hong Kong-controlled aircraft, the next place of landing of which is in Hong Kong. The Bill has incorporated as far as practicable and with necessary adjustment the provisions of the Model Legislation on Certain Offences Committed on Board Civil Aircraft promulgated by the International Civil Aviation Organization.

The Bill has adopted a two-pronged approach for dealing with unruly passengers on board aircraft. First, it creates seven specific unruly passenger offences. Second, it extends Hong Kong's jurisdiction to non-Hong

Kong-controlled aircraft over 11 existing criminal acts and offences falling under the general description of assault, intimidation, sexual assault and child molestation. As the Honourable Margaret NG has indicated in her speech, the Bills Committee has conducted a comprehensive examination of the Bill. In the process, Members have discussed the policy intent of the Bill, its individual provisions and related legal issues, and a number of implementation issues as well. Members have also studied the approaches adopted by overseas jurisdictions in dealing with unruly passengers, and our consultations with the local aviation industry. I am grateful for the in-depth scrutiny of the Bill by the Bills Committee, and for Members' support for it.

Madam President, with the passage of the Bill, Hong Kong will be able to play our part in the international effort to deal more effectively with the growing problem of unruly passengers. This is befitting of our status as an international aviation centre, and conducive to the security and safety on board aircraft. The local aviation industry fully supports the legislative proposals in the Bill, and we will work to get the preparatory work done as soon as possible so as to enable an early date to be appointed for the Ordinance to come into operation. With these remarks, I commend this Bill to Members of the Legislative Council.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Aviation Security (Amendment) Bill 2005 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): Aviation Security (Amendment) Bill 2005.

Council went into Committee.

### **Committee Stage**

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

### **AVIATION SECURITY (AMENDMENT) BILL 2005**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Aviation Security (Amendment) Bill 2005.

**CLERK** (in Cantonese): Clauses 1 to 10.

**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 Bills**

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

**AVIATION SECURITY (AMENDMENT) BILL 2005**

**SECRETARY FOR SECURITY:** President, the

Aviation Security (Amendment) Bill 2005

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 Aviation Security (Amendment) Bill 2005 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): Aviation Security (Amendment) Bill 2005.

**Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Child Care Services (Amendment) Bill 2005.

**CHILD CARE SERVICES (AMENDMENT) BILL 2005****Resumption of debate on Second Reading which was moved on 27 April 2005**

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

**DR YEUNG SUM** (in Cantonese): Madam President, as Chairman of the Bills Committee on Child Care Services (Amendment) Bill 2005 (the Bills Committee), I will report on the deliberations of the Bills Committee.

The Child Care Services (Amendment) Bill 2005 (the Bill) seeks mainly to propose amendments to the Child Care Services Ordinance (CCSO) and the Child Care Services Regulation (CCSR) for the implementation of the harmonization of pre-primary services.

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

At present, the care and education needs of children up to the age of six are governed by two Ordinances and two regulatory bodies. Kindergartens admitting children aged three to six are registered under the Education Ordinance and regulated by the Education and Manpower Bureau (the Bureau). Child care centres are registered under the CCSO and supervised by the Social Welfare Department (SWD). As child care centres and kindergartens are providing similar services to a similar target group, there are views that they should be subject to similar requirements, registered under the same ordinance and regulated by one single body. The Administration has also agreed to implement the proposed harmonization of pre-primary services.

Members of the Bills Committee generally supported the proposals of the Bill to enable the Government to implement the proposals for the harmonization of pre-primary services in the 2004-05 school year, including allowing operators of the pre-primary services sector to operate kindergarten-cum-child care centres on the same premises, setting up a joint office of the Social Welfare Department (SWD) and the Bureau under the Bureau to handle mainly the registration of kindergarten-cum-child care centres, child care workers and kindergarten teachers, and regulatory issues.

Some members expressed concern that provision of pre-primary services after harmonization would become market-driven, devoid of any long-term planning based on geographical demographic changes. The Administration informed the Bills Committee that that it would review the provision standard of pre-primary services in accordance with the Hong Kong Planning Standards and Guidelines. At the same time, the SWD would continue to subvent and monitor the existing ancillary services, such as occasional child care services, extended hours service, and integrated programme for mildly disabled children.

At present, the staff-to-children ratio of child care centres is different from that of kindergartens. While the former adopt the ratio of 1:14 under the CCSO, the latter have fully implemented the ratio of 1:15 through administrative measures since the 2003-04 school year. The Bill proposes to, in implementing harmonization, adopt the ratio of 1:15 in kindergarten-cum-child care centres providing pre-primary services for children aged two to six as the minimum standard.

Some members held the view that this proposal would produce an adverse impact on the quality of pre-primary services. The Administration eventually agreed that the staff-to-children ratio for non-resident children aged two or above in child care centres would remain at 1:14 upon harmonization, while that for children aged three to six in kindergartens at 1:15. The Administration will later move a Committee stage amendment to this effect.

Members noted that clause 19 of the Bill seeks to amend regulation 38(1) of the CCSR to provide that no person shall smoke in a child care centre during the hours that the centre is being operated. They also considered that smoking should be prohibited in a child care centre including any open space at all times in order to ensure a healthy environment for children in the centre. In view of members' comments, the Administration agreed to further tighten up the no-smoking requirement in child care centres so that smoking is prohibited on the premises of any centre at all hours.

Lastly, Madam Deputy, although changes to the financial assistance schemes to service providers and parents are administrative in nature and outside the ambit of the Bill, members have discussed in detail the financial implications of the proposed changes to the financial assistance schemes on service providers and parents. While members welcomed the Administration's undertaking of applying the "no worse-off" principle to existing recipients of the Child Care Centre Fee Assistance Scheme, a majority of them expressed concern about the financial implications on future applicant families.

The Administration has undertaken to explore any possible measures to support the low-income applicant families which would be affected by the change of financial assistance schemes, and report relevant recommendations to the Panel on Education in due course.

I will now express my personal opinions about the Bill. First of all, we would like to thank the Government and the Secretariat for their great efforts on the Bill. In particular, the Government has listened to the views put forward by colleagues and community groups on the assistance schemes and the ratio between teachers and students. Furthermore, the Government has also undertaken that, should the new assistance scheme has an adverse impact on the recipients, new measures would be proposed to help them. Basically, children who are currently receiving assistance should not be affected by the new assistance scheme. Insofar as these two points are concerned, I hope to put on record my appreciation of the Government's effort.

However, Madam Deputy, there is one more point I wish to make. Actually, a lot of educational studies have demonstrated the great importance of pre-primary education which may be more important than primary, secondary and even university education because pre-primary education lays an important foundation for students in a number of areas such as learning attitude, motives and abilities. In view of this, pre-primary education in many advanced countries is already heavily subsidized. Yet Hong Kong is still unable to do so. For this reason, I hope the Government can seriously consider, where conditions permit, the possibility of incorporating pre-primary education into subsidized education progressively.

I am also particularly concerned about the training of kindergarten teachers. At present, 7 000 teachers have not yet obtained the relevant diplomas and are in urgent need of further training. It is, however, a great pity

that some training programmes are operating on a self-financing basis. Very often, the teachers have to obtain a large loan in order to receive such training, and this will put tremendous pressure on them.

Lastly, I would like to say a few words on a survey conducted by the Hong Kong Professional Teachers' Union in which it is revealed that the average pay for many kindergarten teachers is between \$5,000 and \$8,000. With such a pay level, it is hard to attract better-qualified people to join the pre-primary education profession.

I hope the Government can give further consideration to the points stated above. Thank you, Madam Deputy.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam Deputy, early childhood education (ECE) workers have waited more than two decades for today. The harmonization of pre-primary services is not only the shared aspiration of the ECE sector, but also the result jointly produced by kindergarten and child care centre workers subsequent to extended discussions and the making of constant efforts in running-in on the basis of mutual understanding and accommodation.

In the past, both kindergartens and child care centres could admit small children aged between three and six. However, the two were separately regulated by the Education and Manpower Bureau and the SWD according to two different sets of legislation and managed in an overlapping and confusing manner. Upon the implementation of new legislation, the confusion experienced by child care services as a result of the overlapping management framework will be changed. Moreover, a set of guidelines for harmonizing child care services will be formulated. All these represent a big step forward in administration and management. However, the education sector is more concerned about quality. At the Legislative Council meeting last Wednesday, I proposed a motion on "Enhancing the quality of early childhood education" with the most important spirit of urging the Government to make use of the golden opportunity of harmonizing pre-primary services to upgrade the qualifications of kindergarten teachers and improve the quality of ECE. The passage of this motion by Members on a unanimous vote demonstrates that this Council supports this merger of child care services. Our support will facilitate not only management but also merger of quality education. This will be beneficial to parents and meaningful to education.

At a hearing held in this Council in May, both the kindergarten and child care centre teachers unanimously expressed their full support for the principle of harmonizing child care services. However, despite their common goal, the harmonization process has been extremely strenuous. Let us review history. It has taken six years since the Education Commission (EC) proposed to harmonize pre-primary services in 1999 until the establishment of a Working Party on Harmonization of Pre-primary Services and, with numerous discussions among members of the sector in the interim, the formal tabling of a bill by the Government to this Council in May this year. After all, child care centres and kindergartens are not entirely the same in their history of development, social functions, and even modes of funding, manning ratios and facilities. In the course of running-in, both parties have made tremendous efforts in forging a sincere collaboration on the basis of mutual understanding and accommodation. Although some points of divergence were already resolved a long time ago, the education sector still feels strongly about certain problems, particularly those concerning manpower and facilities. In this connection, the Bills Committee requested the Government to listen to the views of the ECE sector and rationalize the reasonable demands of both parties to pre-empt any adverse impact on the work of harmonization, lest a good intention does a disservice.

Regarding the crucial controversy over the merger of services, the Bills Committee has full respect for the views of the ECE sector. We believe a solution acceptable to all parties can definitely be identified through good communication. In the process, the Steering Group on Harmonization of Pre-primary Services (the Steering Group) has a fairly important role to play because the Steering Group, comprising representatives of the child care centre and kindergarten sectors, is the best harmonization mechanism. As such, we requested that discussion with the Steering Group be continued with a view to seeking a consensus on contentious matters. Subsequent to mediation, the child care sector finally agreed that the manning ratio for child care centres accepting children aged between two and three be maintained at the existing ratio of 1:14. Accepting this consensus, the Government has subsequently withdrawn the relevant amendment. However, in consideration of the actual situation, if kindergartens are to follow the teacher-to-student ratio of 1:14, all kindergartens will have to incur additional expenses and they can hardly cope at the present stage. Although we consider lowering the teacher-to-student ratio a reasonable direction, it is inappropriate to implement it at the time of harmonization and merging. Nor is it appropriate to do so in times of economic hardship. Lest the operation of child care organizations will be made more difficult or a need to raise school fees be induced, thus aggravating the burden on parents. Neither

do we want to delay the passage of legislation, thus impeding the undertaking of harmonizing ECE which started two decades ago. For these reasons, we agree that the teacher-to-student ratio of kindergartens for children aged between three and six be set at 1:15. However, this important agenda item has to be reviewed and followed up in the future.

Besides, there are disputes on kitchen facilities. Although the facilities are not required under existing legislation and within the ambit of the legislative amendment, the aspirations of the child care sector must be respected. Based on the same harmonization principle, this Council has mediated through the Steering Group and both parties have agreed that the requirement for handling meals through a kitchen or catering services be specified in the Operation Manual for Pre-primary Institutions. According to the Administration's undertaking, the Kindergarten Fee Remission Scheme (KGFRS) includes meal charges, and child care organizations are allowed to maintain their kitchen facilities. An interim review can be conducted two years later. We are convinced that the existing result of integration, albeit not being able to satisfy both parties and offering much room for follow-up and improvement, already represents the greatest consensus, in consideration of the reality, achieved by the kindergarten sector after overcoming tremendous difficulties.

Madam Deputy, the merger of child care services also involve harmonizing the modes of subsidization of the school fees charged by kindergartens and child care centres. This is also a matter of concern to the Bills Committee. Although this is not part of the legislative requirement, we are concerned that, upon the replacement of the Child Care Centre Fee Assistance Scheme (CCCFAS) by the KGFRS, families with a monthly income of \$8,000 to \$10,000 and children aged three to six attending full-day nurseries or children attending full-day creches with "social needs" will see their fee assistance slashed by up to several hundred dollars. In our opinion, the fee assistance given to these families, being considered having "social needs", should not be slashed because of the merger to prevent aggravating the fee burden on the affected families. I hereby call upon the Government to relax the income ceiling for this category of families. As the Bills Committee understands that the current recipient families will not be affected by the new scheme, it has agreed that the discussion on this matter be shelved for the time being. However, I must reiterate that, upon the passage of this Bill, this Council must expeditiously commence reviewing the fee remission scheme.



Madam Deputy, the resources for child care services have always been miserably limited. We will not miss any opportunity to improve ECE, and the harmonization exercise has given us a golden opportunity. Last Wednesday, this Council passed a motion on "Enhancing the quality of early childhood education", calling upon the authorities to make use of the harmonization opportunity to upgrade the qualifications of kindergarten teachers and improve the quality of education. The four major points raised by me in the motion include:

- (a) fully upgrade the qualifications of kindergarten teachers to diploma level so as to lay a foundation for upgrading the qualifications of kindergarten teachers to degree level;
- (b) increase subsidized training places for in-service kindergarten teachers;
- (c) formulate a pay scale for teachers with diploma or degree in ECE, and provide rewards and grants to ECE organizations if the number of their diploma or degree teachers reaches a specified proportion, so as to encourage these organizations to upgrade the qualifications of kindergarten teachers; and
- (d) consider, in the long run, incorporating ECE into subsidized education and continuously enhance the quality of ECE.

On the eve of the passage of the Bill, my motion was unanimously supported by the Council. Chief Executive Donald TSANG said that the Government would respect the unanimous resolution of this Council. For this reason, I would like to call upon the Education and Manpower Bureau to, after the implementation of the Bill, besides following up the specific work of harmonization, respect and respond to the four major aspirations resolved by this Council to make use of the opportunity of harmonizing child care services to improve the quality of ECE and turn the harmonization of pre-primary services into a new milestone in upgrading the quality of ECE.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, we very much agree with the Government's proposal to integrate the management frameworks

of nurseries and kindergartens for the purpose of harmonizing the systems. Actually, under the present arrangement whereby the two are separately managed by the SWD and the Education and Manpower Bureau, it is very likely for them to operate on their own without co-ordination. Some administrative confusion has indeed occurred, leading to wastage. I therefore consider the new arrangement worth supporting.

As pointed out by Secretary Prof Arthur LI last week during the motion debate conducted in this Council on "Enhancing the quality of early childhood education", the purpose of amending the relevant ordinance is to "harmonize the resources provided for operators and parents and make the registration qualifications of in-service child care workers and KG teachers mutually recognizable" so that upgrading can be achieved in this area. However, Madam Deputy, I must point out that child care services should be harmonized not for the sake of harmonization; nor should they be integrated for the sake of integration. Instead, integration and harmonization should be carried out in the direction of further upgrading the quality of ECE. Insofar as the Bill is concerned, our expected result is beyond "1+1" equals "2". It is our hope that "1+1" equals "3", "4", or even more. Why am I saying this? It is because our discussion today is not confined merely to administrative convenience or improved management efficiency. We hope that quality can be upgraded as well. Insofar as upgrading quality is concerned, we believe the Government must inject resources.

Last week, Secretary Prof Arthur LI stated that government funding for ECE had, over the past decade, doubled from \$430 million in 1996-97 to \$900 million in 2005-06. The increase in resources is beyond question. Actually, progress has been made in this aspect. However, the question lies in the adequacy of the increase. Let me illustrate my point with an example. When a person is starving, it is of course better to first give him a bowl of thin congee than doing nothing. It will be even better if one more bowl of thin congee is given to him. However, even if with two bowls of congee, is it really enough for him? I think his actual need is still more than that. It is actually our hope today that the authorities can consider injecting resources to upgrade quality while making the legislative amendment.

Madam Deputy, judging from this Amendment Bill, we feel gravely concerned that the Government has never considered upgrading quality. Why would I say this? Let us look at the staff-to-student ratio. At present, the ratio

is 1:15 in kindergartens, but 1:14 in child care centres. In proposing the amendment, the Government even suggested harmonizing the ratios and set them at 1:15. Thanks to the strong call from colleagues and groups, the child care centres were eventually able to maintain the original ratio. This incident does reflect the degree of effort put in by the Government in upgrading quality and the importance it attaches to this cause. I am extremely worried that the Government emphasizes management more than quality. The 1:15 ratio was a standard proposed in the Education Commission Report No. 2 in 1986. Since then, almost two decades have passed and, during this period, we saw constant improvements in upgrading quality in many places, countries and regions. At present, a number of European countries and the United States have switched to the 1:12 standard. The Bill proposed by the Government this time has not brought a major breakthrough in this aspect. I understand that there might be some difficulties in this. However, on encountering difficulties, should we choose to evade and refuse to face them and find solutions? Whether the problem can be resolved depends very much on the Government's mentality, whether it is reluctant to accept new things or determined to reform? If the authorities are really determined to reform, then the Government must not amend the legislation under the prerequisite of "cooking with a limited amount of rice"; instead, more consideration should be given to ways to upgrade quality.

Insofar as upgrading quality is concerned, the qualifications of teachers must be mentioned. We find that teachers have to spend approximately \$58,000 on diploma programmes recognized by the Government, and \$105,000 on degree programmes. If we calculate in terms of the existing income levels of teachers, as pointed out by Mr CHEUNG Man-kwong just now, the tuition fee is almost equal to 10 to 20 months of their income. This is indeed hardly affordable to them. Therefore, in upgrading the quality of education, I believe the problem cannot be resolved by merely implementing administrative and management measures without injecting more resources.

For these reasons, Madam Deputy, we have been calling on the Government to change its mode of funding by, most preferably, integrating ECE into the free education system so that the Government directly subsidizes the teachers' pay and other expenses. Only in doing so can we ensure that the schools and teachers can, with adequate resources, teach with peace of mind and upgrade the teaching quality. Otherwise, it will certainly be difficult to improve the present situation in which the annual wastage rate of kindergarten teachers reaches 13% to 14%. Without improvement in this aspect, the quality

of education will not be improved accordingly. Therefore, we hope that the Government can consider providing more resources. However, Secretary Prof Arthur LI will certainly say that he would also like to do so, only that there is a lack of funding. It is because full subsidy would require an extra provision of \$1.1 billion. Although the sum of money involved is substantial, education is, as pointed out by the former Chief Executive, Mr TUNG Chee-hwa, a long-term investment that has to be considered from a long-term perspective. In the long run, this investment should be borne by the Government; otherwise, without a proper foundation, the future development of ECE will not be satisfactory.

In the Amendment Bill, we find that the Government has made no commitment at all in funding. On the contrary, we notice an unsatisfactory phenomenon, that is, the assistance received by families of an income level between \$8,056 and \$11,000 and using child care centre services will become even less, subsequent to the introduction of the new funding policy upon harmonization. Although the Government is willing to undertake that students currently receiving assistance will not be affected, what is the case in future even though the problem is resolved today, as pointed out in the questions raised by Dr YEUNG Sum and a number of colleagues just now? Does it mean that these families will be free from such problems in future? This problem is still awaiting a solution.

As Members are aware, many parents of these families have to go out to work and they simply do not have much time taking care of their children. If they cannot afford the school fees — although they might not go so far as to make their children discontinue their studies, the former might still ask the latter to switch to half-day schooling. This is not good for the families and the students alike. For these reasons, I think the Government should, while proposing this Amendment Bill today, consider how best mode of funding can be improved, thereby upgrading the quality of education as a whole.

Madam Deputy, I so submit.

**MR JASPER TSANG** (in Cantonese): Madam Deputy, members of the ECE sector and the community have indeed waited for a long time for the unification of child care centre and kindergarten services, previously supervised separately by the SWD and the Education and Manpower Bureau, to achieve harmonization

of pre-primary services. Last week, the Finance Committee of this Council endorsed the Government's motion to provide the fee assistance schemes for kindergartens and child care centres with a more reasonable and unified arrangement. Upon the passage of this Bill today, the harmonization and merger will materialize. The DAB therefore fully supports the Bill.

We are also pleased to see that, in the course of implementing the harmonization, certain issues that have to be dealt with, including the rationalization of the two fee assistance schemes mentioned just now and the staff-to-student ratio mentioned by colleagues earlier, will be integrated. Even the operation and supervision of kitchens will be improved too. On the premise that they share the wish of enabling the Bill to be passed smoothly and implementing the integration as scheduled, both the ECE sector and the Government have adopted a proactive and rational attitude in identifying solutions to these problems without encountering insurmountable obstacles imposed by the wish to achieve integration. We are indeed very pleased to see this phenomenon.

However, we have noticed that the representatives of the ECE sector have taken the opportunity of being invited by the Bills Committee to air their views to, besides expressing their opinions on the harmonization of the ECE sector, pre-primary education and the Bill itself, strongly express their dissatisfaction with the Government for its failure to inject sufficient resources into the ECE services.

Madam Deputy, the Government has originally recognized the importance of ECE. In the education reform reports published by the Education Commission (EC), the Government accepted a long time ago that ECE is an important stage during which a foundation is laid for the lifelong learning and whole-man development of a person. If we look at the world around us, we will find that this concept has been widely adopted in places with an advanced level of development in education. We can also see that, in the early '70s of the last century, the concept of mandating school children to receive free primary education was widely accepted in Hong Kong. Three decades ago, primary secondary education was made part of compulsory education. Subsequently, university and tertiary education developed rapidly. Today, however, the Government still impresses us that it considers ECE not indispensable, a thinking that seems to depart greatly from its theoretical acceptance of the importance of ECE.

In the motion debate proposed by Mr CHEUNG Man-kwong last week on the quality of ECE, Mr MA Lik, Chairman of the DAB, pointed out that our existing education resources allocation policy seemed to continue to give priority to higher education, and then secondary education, primary education, while ECE was considered not indispensable. Conceptually, we do think in the same way. Our requirements on secondary teachers are higher than those on primary teachers, and there is a big gap between our requirements on the qualifications of ECE teachers and those on the qualifications of secondary and primary teachers. Actually, in many places with sophisticated education, the professional requirements on primary and secondary teachers, and the remunerations and social status of these teachers were already unified a long time ago. Primary teachers would not be considered to be less important than secondary teachers. In recent years, the status of ECE teachers and their professional requirements have kept rising in some places. The level of Hong Kong's economic development is evident to all. Compared with many rich regions, we do not pale in any way. On education, however, despite the substantial increase in the amount of resources injected in recent years, the attention given by the Government to ECE is still inadequate.

For these reasons, Madam Deputy, besides speaking on behalf of the DAB in support of this Bill, I also wish to reiterate the position of the DAB and call upon the Government to take ECE seriously, recognize its importance in the entire education system and inject sufficient resources to upgrade the qualifications of our teachers. Thank you, Madam Deputy.

**MR TOMMY CHEUNG** (in Cantonese): Madam Deputy, although existing child care centres and kindergartens are serving a similar target group, they are separately supervised by the SWD and the Education and Manpower Bureau. Moreover, a child care centre and kindergarten situated on the same premises will have to be registered and demarcated separately as the child care centre and kindergarten divisions. After this Bill takes effect, pre-primary services for small children will be jointly co-ordinated by the SWD and the Education and Manpower Bureau and regulated under the CCSO and the Education Ordinance, thus unifying the registration procedures and obviating the need to demarcate two divisions. In doing so, not only can the supervision of pre-primary education be rationalized, confusion can be avoided as well.

Of course, there were still a lot of problems to deal with in the course of scrutinizing the Bill. One of the major points raised was the staff-to-children ratio. According to the Government's original proposal, a minimum staff-to-children ratio of 1:15 has to be maintained at kindergarten-cum-child care centres to be set up in future for children aged two and six.

We hope the Government can, upon the harmonization of pre-primary education, improve the quality of pre-primary services in the long run. As everybody knows, the smaller a child is, the more care it needs. As such, the staff-to-children ratio is one of the important indicators for the quality of pre-primary education. There is thus great concern that the Government's originally proposed ratio of 1:15 may not be able to upgrade the quality of pre-primary education.

We are of the view that the constant decline in the student population of kindergartens, attributed to the lowering birth rate, has even resulted in fierce competition for students in the child care sector. In order to provide the children with more care for the sake of attracting students, the child care sector will naturally lower its staff-to-children ratio. It is therefore more appropriate to allow the sector to decide on its own a suitable staff-to-children ratio in the light of the changing environment.

Upon listening to the views of members, the Administration agreed to introduce an amendment. After the legislation takes effect, child care centres set up for children aged two or above will maintain a staff-to-children ratio of 1:14, whereas kindergartens set up for children aged between three and six will maintain a ratio of 1:15. We welcome the amendment made by the Government in the light of the concern of colleagues and the sector.

Another major point concerns the assistance provided to parents. During the debate conducted last week by this Council on ECE, we in the Liberal Party expressed great concern about the extremely heavy burden of parents, given that ECE is not yet integrated into the scope of assistance. Although the Government has indicated that the "no worse-off" principle will be applied in providing assistance to parents, we are concerned that, upon the harmonization of pre-primary education, the changes in the subsidization measures might possibly affect the recipient families. We therefore hope the Government can ensure that no children will be denied education or care because of financial difficulties.

After hearing several colleagues discuss pre-primary education earlier, I also wish to say a few words on this. Regarding the existing manning ratio of 1 to more than 10 for pre-primary education, Mr LEUNG Yiu-chung asked a moment ago why the ratio of 1:12 was not adopted? Actually, we can also ask why the ratio of 1:8 or 1:7 is not adopted. This is ultimately a problem of resources. Of course, the lower the teacher-to-student ratio the better. However, I find that it is possible for ECE in Hong Kong to develop in another direction. It must be noted that nurseries are seen merely as a service instead of education provider. Only kindergartens are considered as an education provider. As such, there is already a vast difference between the two in terms of their principle and philosophy. While the former provide services to small children, the latter serve the purpose of educating small children. On this basis, I find it necessary for attention to be paid to this in the long run. In my opinion, in addition to the Government's effort in injecting resources and providing assistance to ECE, nurseries should also upgrade the entry qualifications of their teachers and increase the teachers' pay accordingly. I believe ECE will thus be able to make a step forward.

With these remarks, Madam Deputy, the Liberal Party supports the amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam Deputy, obviously, the amendments in the Bill will be supported by a majority of Honourable colleagues. However, there is one thing that I take issue with. I find it strange that although Members have urged the Government to do this and that and Mr CHEUNG Man-kwong has also made four major requests, the Government did not undertake that it would meet any of them. It has merely said that they would be discussed. Basically, Members all agree with the views formed in the meeting of the Panel on Education on that day. I believe that such a situation only reflects the dilemma under an executive-led system. When the Government proposes an idea to this Council or floats a concept, on the surface of it, there may not be any major demerits. For example, if the Government says, "Everyone must be well-fed" but at the same time, it says that it is necessary to cut the CSSA. Since we have agreed that everyone has to be well-fed, then what about cutting the CSSA?

This is the first year of my tenure as a Member of the Legislative Council. It was later on that I found that the system here was very absurd. First, it is not



possible to give the Government more money when approving funds. I think that this would be natural under a colonial system because everything at that time belonged to the British, so there was no justification for Members in Hong Kong to ask for more money from an administration established by the United Kingdom. However, we are now well into the reunification, the money belongs to us. I believe that if we do not change such outdated rules and malpractices, this Council is just like a man without a soul.

I am going to air my views on this Bill now. In fact, anyone who comes from the grassroots will know that the ways of thinking between people at the grass-roots level are different from those of the people above the middle class. Children at the grass-roots level are neglected. Whether they are thrown into places that are called either kindergartens or child care centres, the aim is in fact to place them under some sort of supervision. This kind of so-called supervision is intended to prevent them from being exposed to undesirable influences and from injuring themselves, and to let them have a first taste of group life. Therefore, some well-off families that I know would spend several thousand dollars or even more to let their children receive a good education from a young age.

In fact, this is a very absurd system. This is just like the health care system in Hong Kong. Each year, a great deal of money is allocated to provide curative services and if members of the public develop any physical problem, they will definitely be treated. I have also been to the accident and emergency department to seek treatment, so I know that the services provided are in fact very good. However, no disease prevention is carried out under such a health care system to make members of the public stay even healthier.

Let us now look at the present system. We spent money to carry out reforms in tertiary education and I have no objection to doing so. However, insofar as our ECE and kindergartens are concerned, we are still following a liberal approach. By a liberal approach, I mean that well-off families will send their children to kindergartens for kids from well-off families. In fact, the inequality begins here. This unequal headstart creates a lot of students who will fail or rather, students who will have to get used to failures, such that they cannot give full play to their talents and intellect, choose the training that they deserve or foster their own psychological and intellectual development on an equal footing.

This is an unreasonable system, and the legal intent of the reform to combine child care centres with kindergartens cannot address this issue at all. First, basically the reform has not addressed the issue of ratio. We can argue that at present, there is no money to solve the issue of ratio, so this matter has to be deferred. However, according to what principles is such a decision made? When will the ratio be implemented? We have no idea at all.

Second, concerning the financial assistance for parents, almost all Members are concerned about this. What is their worry? Everyone feels that such a reform is desirable and the goals are high-sounding, however, few people will benefit from it and children of poor parents will not gain the improvements that they deserve after the merger.

Concerning the financial assistance for kindergarten teachers, this is an even greater absurdity. According to the information that I can recall, although the Government claims that it attaches great importance to the training of kindergarten teachers, it has turned some of the continuing education programmes which were originally fully funded by the Government into fee-paying ones through covert means. Just think of it: It is said that no one will teach unless they are poor and this is not something that applies to present-day society only recently. Although the Hong Kong Government frequently says that it wants to carry out reforms, according to the figures on the salaries of kindergarten teachers and the wastage rate of these teachers, it is very true that the people in this sector teach because they have no other means. If no improvement will be made, may I ask how we can embark on such a long-term cause as education? It is said that it takes ten years to grow trees, but a hundred years to cultivate people. No matter what Members say, someone has to plant the trees. I have also worked as a worker digging holes. When planting trees, it is necessary to dig a hole four to five feet deep. These kindergarten teachers are people providing initial education to small children. If they are treated in this way, how can I possibly support the passage of this Bill?

Therefore, I am not inclined to supporting the passage of this Bill. I believe that it is an insult to the Legislative Council to pass Bills which are said to be totally feasible in exposition but on which an ambivalent attitude is adopted when it comes to implementation. I really do not understand why Members do not compel the Government to carry out some substantive reforms but keep saying that nothing can be done, that they can only approve of the Government's

proposal and ask it to do better in future. Are they actually lovelorn women or are they Members? The present state of affairs really makes me feel very much ashamed.

The Government often says to me that if I go on blocking the fund allocation process in such a way, I will have to shoulder responsibility for the outcome. I have heard Arthur LI say this innumerable times. Should this be our responsibility? Since there were shortcomings in the plans introduced by the Government and we had doubts, we asked whether the Government could give us more assurances but it said that the deadline was imminent and if the Bill could not be passed, then we had to assume full responsibility. What sort of logic is this? The rationale adopted by the Government is the same as that of the child gangs and triad gangs that I find in the streets near my home, since they often say, "If you go on behaving like this and we cannot settle this matter, we will both lose out. Just wait and see!" Surely the Government cannot do things in this way.

I am a Member of the Legislative Council, however, I am not a diligent Member. When scrutinizing the Bill, there were a lot of things that I did not understand but some of the things left a deep impression in my mind. In the Finance Committee, Ms Emily LAU often tells me that we cannot ask the Government to increase the funding, however, if we keep discussing matters on which no money can be increased, this is like trying to cover ten earthen pots with nine lids. We will not be able to make ends meet and this will only be a waste of breath. Therefore, I call on colleagues not to be bound by those outdated rules and habits in their way of thinking, so that they often behave like lovelorn women who can only say that nothing can be done but to hope that the Goodman (a metaphor for the Government) can come back whenever he has time to have some soup or do some other things.

In particular, I hope that the Chief Executive, Mr Donald TSANG, will be able to make some achievements. If he can see what the problems with this Bill are, I ask him to allocate more money. It is not necessary to allocate a lot of money. As long as there are enough funds for carrying out reforms on teacher training, maintaining a reasonable ratio and providing financial assistance to parents, it will be fine. It is possible to calculate how much the sum is. After making the calculation, Secretary Dr York CHOW or some other official can submit the papers for him to sign once and for all. If he does not intend to do so,

then I hope Members will not support the passage of this Bill and will not commit themselves to a promise that will make them an accomplice in wrongdoings or a promise that they cannot honour.

Thank you.

**DR FERNANDO CHEUNG** (in Cantonese): Madam Deputy, as Mr LEUNG Kwok-hung said, the avowed aims of this Bill on ECE are very high-sounding and its contents are relatively technical in nature and it covers such requirements as the number of staff members, ventilation and lighting, periodic inspection of premises, roof playground, frequency of fire drills, ban on smoking and spitting, and so on. All these are amendments of a fairly technical nature. In addition, it also covers the harmonization of the operations of child care centres and kindergartens (including teacher qualification and general requirements) and the establishment of a joint office of two government departments and the work in this area will be handed over to the Education and Manpower Bureau. In fact, the sector has lobbied for such integration for a long time, hoping that they can really see an improvement in services and that the diversity of their services can be maintained and better development achieved for the services.

Concerning the technicalities in the Bill, basically we do not take issue with them. Therefore, in the discussions, most Members did not focus on this area, but rather, as a number of Members have said, on what in the opinion of the Government the positioning of child care services and ECE should be and what the overall planning for child care services is.

In the past, the target group of child care centres is children aged from two to six, whereas that of kindergartens is children aged from three to six. However, there are some differences in the services provided by them. Child care centres operate on a full-day basis and they are intended to assist working parents or parents who have difficulty taking care of their children whole day. They may be the parents of single-parent families, parents who are ill, parents requiring medical care or as I have said, working parents. They have to put their children in child care centres for the whole day and let the workers in these centres take care of their children. Therefore, for child care centres, taking care of children is an important element. As regards kindergartens, most of them operate on a bi-sessional basis and the children there attend classes for

about three hours. It can be seen that the difference between child care centres and kindergartens is that the former emphasizes the provision of care whereas the latter aims mainly to provide more opportunities for children to engage in social interactions, receive education and experience group life. After a merger of the two, their respective features and the services provided by each of them should be preserved and even enhanced. However, this has not been dealt with in any particular way in the Bill and initially, perhaps for the sake of convenience, it was even proposed that the manning ratio should be standardized: originally, the staff to children ratio for child care centres was 1:14 and that for kindergartens was 1:15, however, it was in the end proposed that the two should be standardized to 1:15. Fortunately, after listening to the views of Members and various groups, the Government heeded their advice and maintained the two original ratios for the time being. However, it can be seen from this that no improvement is made to the ratios indeed.

Regarding facilities, one major concern for child care centres is the provision of meals because they provide full-day service, or eight hours of service at the least. Some child care centres even provide service for 10 hours or even longer. Since they have to provide two meals, kitchen facilities are very important. On the other hand, since most kindergartens operate on a bi-sessional basis, so less importance is attached to kitchen facilities. In this regard, the Bill does not cover the need to retain these resources to enable child care centres to continue to play their role and even improve their quality of service. As a result, the two may compete with each other after merger. The Government has not given this point careful consideration.

On financial assistance schemes on fees, in the motion debate held last Wednesday, I talked about this in great detail and other Honourable colleagues also took part in the discussion, so I am not going to repeat what I have said. However, after merger, crèches which admit children aged below two are affected due to the alignment of the financial assistance schemes on fees. After the alignment, parents who are originally entitled to financial assistance and who benefit from the Kindergarten Fee Remission Scheme may have more to lose than parents of children in child care centres after the merger. Therefore, more deliberation on this matter is called for. We note that the Government has undertaken to revert to us to discuss what improvements can be made to the financial assistance scheme in respect of schooling fees. I eagerly look forward to beginning the discussion as soon as possible.

The training of teachers for ECE, the manning ratio, the facilities and even the overall long-term planning are all matters of great concern to us, therefore, I will certainly support this Bill on harmonizing ECE. However, the several areas mentioned by me just now have not been addressed in the Bill. I hope that the discussion will continue after the merger. Moreover, I also hope that the Government will not forget to redefine the positioning of ECE and in the long term, incorporate it into formal education, since this is the wish of many members of the public and people concerned about ECE. I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Deputy, the Bill today is mainly about the alignment and harmonization of the two different systems, namely, child care centres and kindergartens, one under the supervision of the SWD and the other the Education and Manpower Bureau. The sector has been waiting for this harmonization for 20 years and it also hopes that the quality of education can be enhanced. However, I believe that apart from carrying out technical harmonization, it is also necessary to examine the quality of ECE overall.

The mode of financing for the nine-year free education in primary and secondary education is very clear, that is, the Government funds schools in their operation, however, this is not the case with kindergartens. Insofar as kindergartens are concerned, the Government provides assistance to parents in need who have passed the means test, however, it does not subsidize kindergartens. Since the financial assistance is not blanket in nature, we believe that there is not enough room for kindergartens to improve the quality of education. In Canada, for example, the teachers in the kindergartens there are all university graduates. I do not know how long it will take before Hong Kong can catch up with Canada.

No importance is attached to ECE in Hong Kong. However, a lot of studies have pointed out that it is important to have a good beginning in education. If a good foundation is laid, the subsequent development will be better. Unfortunately, ECE has been neglected in Hong Kong for a long period of time. Just now, some Members have talked about funding. The Government spends only \$900 million on ECE. If we cite some figures randomly for the purpose of comparison, the amount that the Government spends on vocational training is

close to \$2.2 billion. Why is a mere \$900 million spent on such an important area as ECE?

Since the Government is now very fond of conducting opinion surveys, I wonder if the Central Policy Unit will conduct an opinion survey to ask the public if ECE should be fully funded by the Government, just like primary and secondary education. Can Members guess what the result will be? I believe every member of the Hong Kong public will voice their approval. However, will the Government comply if the results of the opinion survey show that the public approve of it? When the Government rests in inaction, it will say that the opinion survey did not inform the public properly, therefore, when they make their choices, it did not occur to them what price they have to pay if they approve of it, for example, it will be necessary to increase taxes. Therefore, the Government will in the end say that since the public has not been well informed, so it cannot act in accordance with the results of the opinion survey. It can be seen from this that in its governance, the Government sometimes will act according to the results of opinion surveys, at other times, it does not and it will surely be the same in the future. I hope the Government will not be too ready in citing the results of opinion surveys because the coverage of such opinion surveys are sometimes not comprehensive enough. The whole political process calls for in-depth discussion to produce results and it is not proper for the Government to simply ask the Central Policy Unit to conduct opinion surveys and then introduce policies according to the results. I am sure this is not how things should be like.

However, Madam Deputy, the subject of today's discussion is not opinion surveys. I wish to point out that any opinion surveys in Hong Kong will surely support full subsidization of ECE by the Government. Concerning this Bill, having listened to the views expressed by the sector and people who care about ECE, we found what they are most concerned about is that they do not wish to see a regression in the quality of ECE after the passage of the Bill. In which area will a regression perhaps occur? It is none other than the issue of whether the manning ratio should be 1:14 or 1:15. At present, the staff-to-children ratio is 1:14 for child care centres and 1:15 for kindergartens. However, the Bill standardized the manning ratio for taking care of children aged three to six to 1:15 instead of adopting the more desirable ratio of 1:14. This was criticized by many people who queried why the outcome of harmonization is a change for the worse.

Many Members have proposed that the manning ratio should be standardized to 1:14. The fees for kindergartens may have to be raised as a result of this, if not, kindergartens will encounter problems in operation. Madam Deputy, as I said at the beginning of my speech, problems exist in the mode of funding implemented by the Government. Under the present mode of funding, it is of course not possible to set the manning ratio at 1:14, since under the present mode of funding, parents have to contribute more fees in order to change the ratio from 1:15 to 1:14. However, if the Government provides full funding, then this problem will not arise at all. This is because if the Government provides full funding and if the Government says that it wants to achieve a ratio of 1:14, then it must provide adequate resources to make the ratio 1:14. However, the existing system does not work out this way. Therefore, we said that it was the system itself that affected the discussion on whether the manning ratio should be 1:15 or 1:14. In the end, we were disappointed to see that the outcome was a regression to 1:15 instead of moving towards 1:14.

The second issue of concern to us, as some Members have commented, is the kitchen facilities. Although there is not any provision for kitchen facilities in the Bill, after harmonization, the Code of Practice is designed to give full-day kindergartens or child care centres (in fact, they will not be referred to by these two names in future) the options of using kitchens or outside catering services. I believe that should outside catering services be chosen, there will surely be a decline in nutritional value. I want to declare my interest, that is, my daughter attend a child care centre for four years. I found that her menu consists of four meals a day and soup is provided every day. The child care centre also planned for the children's nutritional needs for the whole week and everything was properly calculated. If the provision of meals is contracted out, I wonder if it would still be possible to calculate the nutrition in this way. We only have to look at the lunch boxes provided to primary schools to gain some insight. After my daughter was enrolled into a primary school, I simply frowned on seeing the food that she had to eat, so I decided that she should eat at home or bring her own meal to school. However, everyone knows that if the provision of food is contracted out to suppliers of lunch boxes, the whole situation will change completely. Therefore, we hope that the kitchen facilities can be retained. We have this worry. Since the Code of Practice has not specified that both ways are acceptable, will child care centres or kindergartens originally equipped with kitchen facilities cease to use these kitchens and simply switch to contracting out the service, so as to save manpower? However, I wish to



remind operators that doing so will lead to a decline in overall quality. I hope the Government will pay attention to the problems in this regard, so as to avoid a decline in the nutritional value of the meals after merger.

The third area in which there is a decline is the alignment of the two types of financial assistance schemes for early childhood education. The two financial assistance schemes to be aligned have adopted different modes: for kindergartens, there are three levels of assistance, that is, 50%, 75% and 100%; and for child care centres, a so-called linear scale is adopted. We have compared the two modes in detail in the Bills Committee and found that parents with a monthly salary of \$8,000 to \$10,000 would encounter the greatest problem. In future, if they want to send their children to full-day child care centres, the financial assistance they will receive will be reduced by several hundred dollars. What kind of parents will send their children to full-day child care centres? They are working parents who have to send their children to child care centre because they have to do so. If their monthly salary amounts to only \$8,000 to \$10,000, they belong to the low-income families in Hong Kong. Everyone understands that after harmonization, there will be a drop in the financial assistance that they can get. I found this most disappointing. However, since the order of the day is to seek a consensus, if we insist on this point and a consensus cannot be reached as a result, this may not be an outcome that we wish to see. Therefore, in the end, we can only hope that the Government will review the entire financial assistance scheme for kindergartens comprehensively and after the review is completed, people with the greatest need will not face the worse-off prospect of having to pay several hundred dollars more each month. We also hope that the review can be conducted as soon as possible and that eventually, the outcome will be desirable.

Finally, Madam Deputy, I also want to comment on a point which has been most disappointing, that is, in the course of seeking consensus, some organizations started to tell their employees their pay had to be slashed, and very significantly for that matter. A teacher in a child care centre told me that the salary had to be reduced from \$20,000 to \$11,000. The Government originally promised in the course of seeking a consensus that the financial assistance provided to child care centres would not be less than before. As long as they could enrol enough pupils, they would receive more financial assistance. Unfortunately, the end result is child care centres that can enrol a sufficient number of students will get more financial assistance. However, for child care

centres that cannot enrol enough pupils, which account for 20% to 30% of all child care centres, the financial assistance that they receive will be less. For example, at least 10 child care centres eventually may have to wield their axe at their employees. I find this most disappointing because such instances are very widespread. Originally, they have all along enjoyed job security, however, all of a sudden, their salary have to be reduced. I hope that various organizations will not take this opportunity to target their employees. Since the Government has promised that under most circumstances, greater financial assistance would be provided, there is in fact no need for them to do so, nor should they take the opportunity to do so. However, it is a shame that some organizations have done so. I hope the Government will pay attention to this problem. Thank you, Madam Deputy.

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

(No Member indicated a desire to speak)

**DEPUTY PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Health, Welfare and Food to reply. This debate will come to a close after the Secretary for Health, Welfare and Food has replied.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Deputy, I would like to begin by paying tribute to all those who have contributed to the preparation and deliberation of the Child Care Services (Amendment) Bill 2005 (the Bill). In particular, I would like to thank the Chairman of the Bills Committee on Child Care Services (Amendment) Bill 2005 (the Bill Committee), Dr YEUNG Sum, for his leadership and efforts in the scrutiny of the Bill. My appreciation also goes to members of the Bills Committee who have been co-operative and pragmatic in the discussions so that we can implement the package of measures on the harmonization of pre-primary services in the new school year. It is a feat that we managed to complete the scrutiny of the Bill in four Bills Committee meetings in about a month's time.

(THE PRESIDENT resumed the Chair)

I would also like to thank the pre-primary services sector for their mutual understanding and pragmatic approach in working with us to resolve the outstanding issues in the final stage of the deliberation of the Bill. We are all working towards the common goal to improve the quality of pre-primary services through harmonization. It is important for the sector to appreciate each other's difficulties and the Government is more than happy to facilitate.

The proposal to harmonize pre-primary services has been raised and discussed for more than 20 years. Over the past years, many aspects of day nurseries and kindergartens have been harmonized, including a common pre-primary curriculum, harmonized qualification/training requirements and pay scales for child care workers and kindergarten teachers. However, there are still a few key issues to be resolved, namely the admission age of child care centres and kindergartens, subsidies for service providers and financial assistance to parents, and the alignment of the regulatory regime for child care centres and kindergartens. It is time to implement the remaining measures to fully harmonize pre-primary services.

The aim of the Bill is to implement a scheme of measures to harmonize the pre-primary services for children aged zero to six starting from the 2005-06 school year, ensuring that pre-primary institutions offer appropriate programmes to cater for the different needs of children at different developmental stages, irrespective of the mode of operation or the regulatory body. At the same time, harmonization would improve the quality of services and the effectiveness of the regulatory framework, benefiting both parents and the operators.

During the deliberation in the Bills Committee, key issues raised by members include the staff-to-children ratio, tightening of no-smoking requirement in child care centre premises and the replacement of the Child Care Centre Fee Assistance Scheme (CCCFAS) by the Kindergarten Fee Remission Scheme (KGFRS), and so on. We are most grateful for the suggestions by members as well as the sector to help us refine our proposal.

On the staff-to-children ratio, our original proposal is to align the minimum requirement of day nurseries and kindergartens at 1:15. Though the ratio is only a minimum standard and operators are free to adopt a more generous ratio, both the child care centre and kindergarten sector raised serious concerns on the proposal. Working on the basis of mutual understanding and accommodation, the issue was resolved at the Steering Group on Harmonization

of Pre-primary Services which includes members of both sectors. It has been agreed by the sector that the staff-to-children ratio of day nurseries for children aged two to three should remain at 1:14 while that for kindergarten for children aged three to six at 1:15. It has also been agreed that the change will not carry implication on the Kindergarten Subsidy Scheme for operators. In view of such compromise, we will propose a Committee stage amendment to delete the relevant clauses on alignment of staff-to-children ratio in the Bill.

On the no-smoking requirement in child care centres, we have taken heed of members' suggestion to further tighten the requirement to prohibit smoking in the premises at all hours. The Administration will propose a Committee stage amendment later on.

As regards the concerns on the impact of the replacement of financial assistance schemes, we have explained the importance to have one unified means-tested fee assistance scheme for pre-primary services after harmonization. As over 80% of the relevant age group attend kindergarten and can benefit from the KGFRS, it is more appropriate to align the fee assistance scheme using the KGFRS framework which is well accepted by parents. That said, we are fully aware of the impact in the changeover, and have introduced measures to minimize the impact.

To address the impact of current recipients of the CCCFAS, the Administration has agreed, as a transitional arrangement, to apply the "no worse-off" principle to all existing CCCFAS recipients who joined the scheme in or before the 2004-05 school year. In other words, no current recipient would be affected. If they receive less assistance under the revised scheme, they will be allowed to opt to continue receiving assistance under the existing schemes until the children concerned leave the kindergartens and child care centres. There are also other measures to enhance the existing KGFRS to benefit more parents and minimize the change in fee assistance brought about by the replacement. As regards members' suggestion to support the low-income applicant families affected by the change in the fee assistance scheme, I would like to reiterate that for any fee assistance scheme, it is bound to have groups being affected because of the application of the income benchmark. That said, the Administration would be prepared to consider possible measures to support this group of families. We have promised members at the Bills Committee and the Finance Committee that the issue will be followed up in the Panel on Education.

I wish to highlight that after years of discussion, the harmonization comes at a challenging time against the backdrop of declining birth rate and keen competition in the sector to improve quality of services. Yet, harmonization also presents an opportunity for the sector to expand their scope of service to provide a continuum of quality edu-care services. We do hope that the harmonization will bring about an opportunity for the sector to continue to develop and improve the quality of pre-primary services, benefiting both parents and children.

With members' support, we are grateful that implementation of harmonization can be implemented in the coming new school year on schedule. With this, I will introduce a number of amendments to specify the commencement date of respective provisions in the Bill and other relevant dates concerning the mutual recognition arrangement of serving child care workers and kindergarten teachers.

I appreciate much further work is needed for the successful implementation of harmonization of pre-primary services. There will certainly be teething problems in the course of implementation. As evidenced by the discussion on staff-to-children ratio, the Steering Group, with representatives from both sectors, is an effective channel for the sector to resolve their differences. The Administration will continue to work with the sector in the Steering Group to address the implementation issues.

Finally, Madam President, I would like to thank the Chairman and members of the Bills Committee again for their hard work and perseverance. I hope Members will support the Bill and the Committee stage amendments which I will propose later.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Child Care Services (Amendment) Bill 2005 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): Child Care Services (Amendment) Bill 2005.

Council went into Committee.

### **Committee Stage**

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

### **CHILD CARE SERVICES (AMENDMENT) BILL 2005**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Child Care Services (Amendment) Bill 2005.

**CLERK** (in Cantonese): Clauses 1, 3 to 10, 15, 16, 17 and 21.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 11 to 14, 18, 19, 20, 22 and 23.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 11, 12, 14, 18, 19, 20, 22 and 23 and the deletion of clause 13.

On the staff-to-children ratio in clauses 12(b) and 13, we have taken into account the views of members to further consult the pre-primary services sector. We have agreed with the sector that the staff-to-children ratio of day nurseries for children aged two to three should remain at 1:14 while that for kindergartens for children aged three to six at 1:15. I therefore move to delete clauses 12(b) and 13.

The amendment to clause 19 is about the no smoking requirement in child care centres. We have taken on board members' suggestion to further tighten up the no-smoking requirement to cover the whole premises of the centre at all hours upon commencement of the Bill.

With Members' support, we are grateful that implementation of harmonization can be implemented in the coming new school year on schedule. The amendments to clauses 2, 11, 14, 18, 20, 22 and 23 are to specify the commencement date of respective provisions in the Bill and other relevant dates concerning the mutual recognition arrangement of serving child care workers and kindergarten teachers.

The Bills Committee has scrutinized and agreed to all these amendments. I hope Members will support the passage of the amendments.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex III)**

**Clause 11 (see Annex III)**

**Clause 12 (see Annex III)**

**Clause 13 (see Annex III)**

**Clause 14 (see Annex III)**

**Clause 18 (see Annex III)**

**Clause 19 (see Annex III)**

**Clause 20 (see Annex III)**

**Clause 22 (see Annex III)**

**Clause 23 (see Annex III)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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



**CHAIRMAN** (in Cantonese): As the amendment to clause 13, which deals with deletion, has been passed, clause 13 is deleted from the Bill.

**CLERK** (in Cantonese): Clauses 2, 11, 12, 14, 18, 19, 20, 22 and 23 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bills**

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

### **CHILD CARE SERVICES (AMENDMENT) BILL 2005**

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

Child Care Services (Amendment) Bill 2005

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Child Care Services (Amendment) Bill 2005 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): Child Care Services (Amendment) Bill 2005.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004.

### **UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) (NO. 2) BILL 2004**

### **Resumption of debate on Second Reading which was moved on 13 October 2004**

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MRS SELINA CHOW** (in Cantonese): Madam President, as Chairman of the Bills Committee on Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004 (the Bills Committee), I would first report on the deliberations of the Bills Committee.

The Undesirable Medical Advertisements Ordinance (UMAO) prohibits the advertising of medicines, surgical appliances or treatment for prevention of certain diseases or conditions as specified in Schedules 1 and 2 of the Ordinance in order to prevent the adverse effects of improper self-medication by members of the public.

The Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004 (the Bill) seeks mainly to:

- (a) extend the prohibition/restriction on advertising to the six additional groups of claims specified in a new Schedule 4; and
- (b) apply the prohibition/restriction on advertising of claims specified in the proposed Schedule 4 to all orally consumed products, except those customarily consumed only as food or drink and those customarily consumed to satisfy a desire for taste, texture or flavour.

The six groups of prohibited or restricted claims set out in the proposed Schedule 4 are subject to two levels of restriction based on the risk-based approach.

The first level of restriction applies to the most risky claims, namely the claims relating to the prevention, elimination or treatment of breast lumps; the regulation of the function of the genitourinary system; and the regulation of the endocrine system. The making of such claims will not be allowed under any circumstances.

The second level of restriction applies to the regulation of body sugar or glucose and alteration of the function of the pancreas, regulation of blood pressure and regulation of blood lipids or cholesterol. The Administration proposes to allow the manufacturers and traders to make two claims.

The Bills Committee has held nine meetings with the Administration and met with representatives of 33 organizations.

In the course of deliberation, Members expressed great concern for the definition of "orally consumed product".

Members of the Bills Committee have asked the Administration to review the definition of "orally consumed product" in the Bill and consider making clearer the meaning of "health food" and "customarily consumed food".

The Administration has pointed out that there is no universally accepted legal definition for "conventional food". In coming up with the proposed definition of "orally consumed product", the Administration has made reference to the way "food" is described in the laws in Hong Kong and other jurisdictions. Nonetheless, as the Administration's policy intent is to regulate advertisements of the so-called "health foods" that mostly appear in certain forms, the Administration considers that specifying the form of the product to be regulated will better reflect its policy intent. The Administration has therefore agreed to revise the definition of "orally consumed product" to specify that the regulated products shall appear in the form of pill, capsule, tablet, granule, powder, semi-solid, liquid, or a form similar to any of the forms mentioned above.

The Bills Committee supports the revised definition.

The Bills Committee has also expressed concern about the consumers' right to information on medical and health products.

The pharmaceutical industry has expressed concern about restriction on access to information. In the light of the concerns of the industry, the Bills Committee has requested the Administration to either:

- (i) separate the regulation of health claims of health food products from the regulation of health claims made by registered medicines, having regard to the fact that the latter's safety, quality and efficacy have to be vetted and approved by the relevant authorities before they could be sold in Hong Kong; or

- (ii) consider recasting the allowable claims in the Bill along the lines which would allow manufacturers of registered pharmaceutical products and registered proprietary medicine to advertise the health claims of their products more explicitly.

In the proposed Schedule 4, there are two allowable claims in respect of items 4, 5 and 6 (blood sugar, blood pressure and blood lipids/cholesterol). The allowable claims are:

"Suitable for people concerned about (blood sugar, blood pressure, blood lipids/cholesterol);" and

“適合對（血糖，血壓，血脂/膽固醇）關注的人士服用；” and

"may assist in stabilising (blood sugar, blood pressure, blood lipids/cholesterol)."

“或有助於穩定（血糖，血壓，血脂/膽固醇）。”

To address the pharmaceutical industry's concern, the Administration proposes to extend the type of allowable claims relating to items 4, 5 and 6 of the proposed Schedule 4 to cover:

"This product is intended for people concerned about (blood sugar, blood pressure, blood lipids/cholesterol)"

“此產品以關注（血糖，血壓，血脂/膽固醇）的人士為對象”

"This product is for the consumption by people concerned about (blood sugar, blood pressure, blood lipids/cholesterol)"

“此產品供關注（血糖，血壓，血脂/膽固醇）的人士服用”

These amendments provide more choices to the industry in respect of "allowable claims", and enable the industry to choose the claims for the product it intends to promote based on the characteristics of the product and other related factors.

Apart from the two additional allowable claims, the Administration has also considered whether the law should provide the option for all registered drugs to state their registered status outright. However, the Administration has pointed out that there are legal difficulties in doing so as according to legal advice, Hong Kong is not a place where everything is forbidden except what is expressly permitted. If, as a matter of fact, the drug is a registered drug and

has been evaluated, the pharmaceutical companies concerned are not prohibited from making such a claim in the advertisement. It is therefore unnecessary to provide in the Bill a right already enjoyed by the industry.

For products which are not registered drugs, in addition to the two allowable claims at present, the Administration will allow the two additional claims mentioned above. However, the allowable claims will need to be used together with the mandatory disclaimer worded as follows, in English and Chinese:

"This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease."

“此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”

Mr Fred LI and Dr KWOK Ka-ki share the views of the medical profession and the Consumer Council that orally consumed products making claims relating to the regulation of the immune system, the promotion of detoxification and slimming/fat reduction should also be regulated. I suppose they will present their views on this later.

On enforcement provisions, clause 8 provides that the Director of Health may appoint inspectors to enforce both the existing and the new prohibition and restriction. Under the proposed new section 8, inspectors will have powers of investigation and, on obtaining a magistrate's warrant, will be able to enter and search premises and take possession of property for purposes of a prosecution.

Under the proposed new section 8(5), an inspector may enter and search non-domestic premises and seize and detain anything which appears to him to be or to contain evidence of the commission of an offence, without a warrant having been issued under subsection (3), if it is not reasonably practicable to obtain a warrant in respect of the premises before exercising those powers. Having regard to the fact that the inspectors were not disciplinary personnel and the misleading or exaggerated claims are most likely to have already been published, members have asked the Administration to consider deleting the provision. The

Administration has accepted the views of the Bills Committee and will propose the relevant amendment at the Committee stage.

At the request of the Bills Committee, the Administration has undertaken to state in the speech to be given by the Secretary for Health, Welfare and Food later that in the case where the inspector under clause 8 needs to obtain a product, such as a medicine, an orally consumed product, or a surgical appliance, during the course of inspection, the Administration is prepared to pay for the product concerned.

Members of the Bills Committee have also expressed concern about the commencement date, grace period and guideline for the industry.

Members of the Bills Committee have noted that the Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Health, Welfare and Food. After the enactment of the Bill, a grace period of 18 months will be granted for manufacturers and advertisers to make changes and preparations to comply with the new requirements relating to orally consumed products.

The Administration has also informed the Bills Committee that in response to public expectation of better law enforcement, preparation of a guideline which sets out more details of orally consumed products and the criteria to be adopted by the Department of Health in screening problematic advertisements and examples of similar claim not allowed is underway. The guideline is expected to be completed within six months following the enactment of the Amendment Ordinance. At the request of the Bills Committee, the Administration has agreed to consult the Panel on Health Services on the guideline before the end of 2005 and to give an undertaking that it would do so in the speech to be given by the Secretary for Health, Welfare and Food later.

Next I would like to express my personal views on the Bill.

Actually, it has taken a considerable period of time, more than two years, to discuss the Bill. During the last term of this Council, while I was still a representative of the wholesale and retail functional constituency, arrangements were made for representatives of the industry to meet with the Director of Health, Dr P Y LAM, to express their views. Although the industry was generally of the view that the less the industry was regulated the better, the Administration

also explained to them clearly that the Bill had to restrict claims of health food and drugs purely for the sake of protecting the people and prevent them from thinking that the health food can treat their illnesses, thus resulting in delayed treatment. After lengthy discussions and debates, the original nine types of claims were reduced to six. At the same time, practitioners in the industry apparently accepted the Government's direction of focusing attention on the specific details of the provisions and wordings.

Actually, both the industry and the Government are in agreement as regards the prohibited claims set out in items 1, 2 and 3 of Schedule 4 relating to breast lumps; the regulation of the function of the genitourinary system; and the regulation of the function of the endocrine system. The remaining three items, relating to body sugar and glucose, the function of the pancreas and regulation of blood pressure, blood lipids and cholesterol, are more controversial. While the industry agrees that a certain measure of restriction is proper, I personally think that the Bill has struck a suitable balance by letting consumers know that health food or drugs are intended for certain bodily conditions while preventing consumers from relying on these products to treat their illnesses. In my opinion, the exclusion of the three claims the Administration has originally intended to regulate, namely the claims relating to the immune system, detoxification and slimming, has indeed responded to the industry's concern.

I would like to remind the pharmaceutical industry in particular that although the Bill has not made it clear that claims for registered drugs are allowed, substantiated claims are perfectly lawful and permissible, and advertisements can thus be published to state that those are registered drugs.

Madam President, the Bill has spelt out merely the forms of the regulated foods. However, many ordinary foods available on the market, such as artificial sweeteners in the form of powder and sugar and candies in the form of pill, can arouse unnecessary suspicion or disputes. The industry very much hopes that the Government can expeditiously remove their uncertainties and this should actually be stated in the guideline. I believe it is the earnest hope of all Members that the Government can complete the work expeditiously, rather than waiting for six months and catching up hastily. The Administration should preferably, after the passage of the legislation, immediately commence work in this aspect, the sooner the better. It must under no circumstances make belated efforts to cope with unexpected situations. It is because only in doing so can the



industry get a clear understanding of the content and details of implementation as early as possible and be given ample time to make preparations.

I hope the Government can maintain communication with the industry and keep the communication channel smooth, as well as appreciating the hardship and anxiety of the industry. The Administration should also ensure that a clear enquiry channel is in place to enable the industry to, in case of doubts, get a clear and unambiguous answer beyond any doubt within the shortest period of time. This will not only protect the operation of their business against any delay, but also help them better comply with laws and regulations for the protection of public health.

Lastly, the Government must under no circumstances wash its hands off the matter after the passage of the legislation. During the legislative process, the Administration has maintained good communication with the industry practitioners and widely solicited their views. I hereby call on the Government to continue maintaining this extremely responsible attitude by paying close attention to the enforcement of the Ordinance, whether within the 18-month grace period provided under the Ordinance or thereafter, and help the industry and consumers cope with the new provisions when necessary. In conclusion, I hope the Government will always leave its doors open. Thank you, Madam President.

**DR KWOK KA-KI** (in Cantonese): Madam President, the most important objective of introducing the Undesirable Medical Advertisements (Amendment) Bill is to provide consumers and members of the public with proper protection in law in the face of products claiming to have effects on medicine or health.

Before the introduction of the Amendment Bill, we actually found that the media on the market, including newspapers, television, magazines, and so on, were flooded with unverified and unsubstantiated advertisements focusing merely on promoting or claiming that their advertised products were beneficial, so to speak, to health, without carrying out any studies. The most important objective of the Government in deliberating the Bill is to safeguard the public's legitimate right to information, and to ensure that impartial and honest judgement can be made on the acquisition of information on these products.

Just now, Mrs Selina CHOW raised a lot of concerns relating to my profession, which I can definitely not ignore. As a member of the health care profession, and as a medical practitioner, I have reservations about some of the amendments previously made to the Ordinance. In 2002, an Expert Committee comprising representatives from the Consumer Council, Chinese medicine practitioners, medical practitioners, pharmacists and a nutritionist was set up. The Expert Committee recommended at that time that nine groups of claims should be included under the Undesirable Medical Advertisements Ordinance (UMAO). However, probably owing to pressure, the Government eventually deleted three groups of claims from the final draft of the Bill.

From our angle, many people have been constantly questioning these three groups of claims with respect to their authenticity, effectiveness, and misleading nature of some of the advertising slogans employed. The first group of claims covers claims relating to slimming (or fat reduction of the body), including fat burning, fat eliminating, controlling appetite, fat absorption and eliminating fluid retention. The second group is related to regulation of body immune system against diseases, including cancer, chronic diseases and infection; or alteration of the effects of chemotherapy and radiotherapy. Lastly, the third group covers claims of promotion of detoxification.

During the discussion on removal of these three groups of claims from the UMAO, different professional sectors, including people from the medicine and health care sectors, expressed objection to the removal of these three groups of claims in this manner. Subsequently, the Government adopted two approaches, namely risk bearing and evidence-based approaches, to determine whether these claims should be included under the UMAO. The medical profession has originally requested that these claims be certificated with the evidence-based approach. Regarding the expressions we have discussed, such as slimming, fat reduction of the body, enhanced immunity, and even detoxification, we have looked up all the Chinese and western medical literature and failed to find the definition of "detoxification". We simply cannot help asking this question: Why does the Government still allow the employment of claims or undesirable medical advertisement jargons, such as "detoxification", in promotional advertisements? Why can these claims be exempted? We are really baffled by this.

All health or medical products should be tested by the evidence-based approach so that claims can be made only after they are proved effective to the general public by study, exploration and confirmation. It is not the case that

only a few countries are enforcing such restrictions. During its visit to various parts of the world to inspect the implementation of regulation of undesirable medicine or health food, the Bills Committee found that a number of European countries, the United States, Europe Union states, and even Asian countries requested manufacturers or importers to prove that the relevant products comply with evidence-based tests.

Nevertheless, I do understand that further delay of the Bill, which has been deliberated for a couple of years, will not necessarily benefit the public. Under such circumstances, I cannot but provisionally accept this Bill, which is related to undesirable medical advertisements, tabled by the Government at this stage. However, as stated by Mrs Selina CHOW just now, we hope that the Government would not wash its hands off the matter after the passage of the Bill. We definitely do not wish, and cannot afford, to see this happen.

I still hope that the Government can give serious consideration in further reviewing these three groups of claims, including claims relating to slimming, adjustment to immune system and detoxification. I also hope that the Government can collect more data and overseas examples of regulating similar claims in the next couple of months to prove that regulation is necessary. Actually, even if these three groups of claims are brought under regulation, it does not mean that it is absolutely impossible to make these claims, only that they can be made only on the basis of evidence. Now that all these claims are excluded from the UMAO, there will be no way to find out whether they can pass the evidence tests. Moreover, members of the public might be compelled to accept misleading claims. The Hong Kong Medical Association, dietitians associations, medical specialty colleges and individual medical groups have expressed strong views on this.

The Bill has also failed to put in place a relatively comprehensive system to allow the public to take part in verifying or reporting undesirable medical advertisements. This differs greatly from the approach adopted in some of our Asian neighbours, such as Taiwan. In Taiwan, a committee has been set up whereby members of the public have the right, or are allowed, to take part in searches or reporting undesirable medical advertisements which are obviously misleading. I hope the Government can, under the existing mechanism, put in place or allow a reporting system to make it easier for members of the public or concerned parties to report undesirable medical advertisements or advertisements which have deliberately violated the UMAO.

The current Amendment Bill is definitely far from ideal, for we have seen the loopholes resulting from the deletion of the three groups of claims. Actually, thousands, or even tens of thousands, of people might thus be misled and continue to buy products which are not supported by any scientific evidence, though this is impossible to do so, with claims of enhanced immunity, detoxification, fat burning, and so on.

I hope the Government can further review the legislation in a comprehensive manner within six months after the passage of the Bill and include the three groups of claims deleted as a result of the circumstances stated by me earlier. Originally, the consumers should have the proper and correct right to information. However, the Bill happens to have failed to safeguard their right to information of these products. The only remedy, which is also what I hope the Policy Bureaux can do, is to formulate government policies or inject more resources into education to enable the public to have a thorough understanding and a correct concept of these so-called health products. This might possibly reduce the possibility of people being misled into abusing these products or medicines.

The employment by the Government of the so-called risk-based approach this time to determine which claims should be included or excluded under the UMAO is not necessarily appropriate or completely safe. In the modern medical or health care domain, more and more people are employing the evidence-based approach to determine or accept whether certain products should be regulated. I hope that the Government can, in introducing legislative amendment in the future, consider adopting the evidence-based approach. I believe this approach is more scientific and better able to respond to the prevailing needs of the public.

During the deliberations on the Bill, concern was raised about the Government's powers, including the power to seize the advertisement of a product or the product itself on the premises of the manufacturer or advertising agent without obtaining a court warrant. Concern about this was also expressed in the Bills Committee. I even requested that a clear guideline be drawn up for this. The Government accepted some of the views at that time.

Lastly, I would like to make it clear that accepting the Bill in its present form is a difficult decision for me. If I refuse to accept it, I can see that the discussion of the Bill will possibly be extended indefinitely and, during this period, the public or consumers might possibly be affected or hurt seriously.

However, to accept the Bill is tantamount to accepting unsubstantiated claims without the support of objective evidence. Anyhow, as opined by many colleagues and I, and as proposed by Mrs Selina CHOW (I agree with her), the Government must, after the commencement and implementation of the Amendment Bill, expeditiously review the UMAO again in the hope of making fundamental changes to concepts and claims presently considered by me to be flawed to enable the UMAO to be revised in the future, to truly safeguard the consumers and people. At the same time, I believe the amendments made by the Government in the Bill are unattainable for the time being. Lastly, I think I have been compelled to accept this Amendment Bill introduced by the Government for the sake of expediency.

I so submit. Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, pharmaceutical products for treating or preventing diseases are presently regulated by the Pharmacy and Poisons Ordinance. Furthermore, proprietary products which are composed solely of Chinese medicines as active ingredients are regulated by the Chinese Medicine Ordinance.

However, some orally consumed products, such as "health food", are not classified as medicines and are not subject to these two Ordinances. There have been complaints against advertisements of "health food" products with misleading or exaggerated claims of specific beneficial health effects, which may result in improper self-medication, thereby causing harm to members of the public as a result of the delayed treatment. I feel deeply about this situation because I am still particularly concerned about my health and maintaining my immune system in good shape. Some people would often send me food believed to have beneficial effects and ask me to try it. I have also tried a wide variety of food. Before trying them, I would ask my doctor whether it was advisable for me to do so. He was often rendered at a loss as to what to do because I would often ask him to pass judgement on eight or 10 different types of food presented to him.

I feel deeply in my heart that many people care about me. All my caring friends, including colleagues in this Council and my co-workers, are caring about me out of good intentions. They have even bought me health food to help speed up my recovery. I am actually very grateful to them. However, these

products are not regulated. So, should we trust their exaggerated advertisements? This is where I find problematic.

The Undesirable Medical Advertisements Ordinance prohibits the advertising of medicines, surgical appliances or treatment for prevention of certain diseases in order to prevent members of the public from being misled by false or exaggerated claims, thereby causing harm to their health. I think that it is essential to enact legislation on this. However, as pointed out by the Chairman of the Bills Committee and Dr KWOK Ka-ki in discussing this issue earlier, we can see that there are problems with the last three of the nine groups of products. I will discuss this in detail later.

Despite the rapid changes in technology, advancements in medical science, and the fact that diseases previously difficult to tackle can now be treated, we can also see the emergence of new strains of diseases, such as SARS. During the outbreak of SARS, we were infected by an unknown virus. We are given to know that life is precious, for unknown diseases can hit us, human beings, at any time. For these reasons, not only recovering patients like us have to confirm whether the relevant medical products can really achieve the effect of detoxification and really improve our immune system, and so on, ordinary people, particularly those in Hong Kong, are greatly concerned about health products as well. Hong Kong people are greatly concerned about their dietary habits, and have made a lot of preparations starting from the basics. Over the past decade or so, health has become a matter of concern to the people around me. They would naturally buy health products intended for bodily nursing and boosting health. Given the present demands for these products, similar products have begun mushrooming on the market.

Even "lingzhi" is available in great varieties. Out of ignorance, I ate all kinds of "lingzhi" in the beginning. I only found out later that there were different kinds of "lingzhi", such as white "lingzhi", red "lingzhi", and so on. I realized that there was so much to learn about "lingzhi" after being told by my attending doctor that there was a great variety of "lingzhi". However, many a layman may not necessarily have such knowledge. They just presume that "lingzhi spores" and "lingzhi" are similar substances.

Madam President, as I pointed out before, people in this Council dread two kinds of diseases, heart disease and cancer. Before that, I ate everything. For instance, I tried the five-vegetable soup someone recommended to me

because of its cancer prevention effect; I also ate all kinds of "lingzhi". Yet, I eventually fell sick because I had violated the law of nature. Living in such a quick-tempo environment, Hong Kong people should indeed pay more attention to their health. Moreover, a great variety of these products is available on the market. Many people would buy these products for me because they care about me. Moreover, many people would recommend these products to me. As a result, even I personally require the assistance of the Government in guarding against these products.

We have also seen that the number of complaints received by the Consumer Council in this respect has tended to rise in recent years. There were 69 such complaints in 2001, 98 in 2003, and 94 in 2004. This year — let me take a look first, right — 93 complaints were recorded in the first 10 months of 2004, that is, up to October of last year. In addition to these rising figures of complaints to the Consumer Council, I do not rule out the possibility that some people have chosen not to report even though they have found some products problematic. On seeing this situation and knowing that the Government did too, I have been proposing prohibitions in this respect over the past couple of years.

Just now, Dr KWOK Ka-ki spelt out in detail nine groups of products, with which we agree. However, the Government subsequently pointed out that there was strong resistance from the trade to three of the nine groups of products, namely products with claims of slimming, enhancing immune system and detoxification. We often ask this question: What does detoxification mean? When I asked a Chinese medicine practitioner the definition of detoxification, I was told that it was impossible to explain. I believe both Chinese medicine practitioners and medical practitioners have yet to come up with a definition for the so-called detoxification. I have also looked into products which claim to have the effect of detoxification. I really doubt whether their claim is valid. I remember on the first day of our deliberation, I started by asking government officials the definition of detoxification. I told them that even the Chinese medicine practitioners and medical practitioners who I had asked did not know how to define detoxification. Since it was claimed that the products could achieve the effect of detoxification, the people believed that they had to remove toxins from their body, and so they consumed the products day and night. Given this situation, the Government considered it essential to exercise control and therefore requested the manufacturers to be careful with their claims. This was originally a good idea. However, the Government subsequently met strong resistance from the trade.

Madam President, during the deliberations on the Bill, members of the public were invited to join in our discussion. I have never seen anything like this before: The whole Chamber was full; only the first row of seats was reserved for Members. The resistance of the trade was evidently very strong. In my opinion, all of us were civilized people and so we should be able to get together to discuss and express our views. Actually, there were several schools of thought within the trade. I found that during the meeting attended by the three parties, we were confronted with the hardship experienced by each party, and attention had to be paid to the situation of the trade too. However, I found that other places where these products were regulated were more advanced than Hong Kong. Regrettably, our tools were not entirely the same. I earnestly want to tell the Government that we are confronted with this situation. My colleagues have specially collected detailed figures relating to the three groups of products for me. We can see that in 2003 there were 35 complaints against products claiming to have effects in three aspects, namely slimming, enhancing immune system and detoxification. Let me present the figures in a clearer manner: there were 17 cases in 2001, 23 in 2002, 35 in 2003, and 28 in 2004 (up to September 2004). In other words, even though we see that the Government has struck a balance or made a compromise on similar issues, the number of complaints relating to claims of these three groups of products has kept rising all the same.

As the Secretary is particularly familiar with the state of these products, I very much hope that he can tell the patients or people who are concerned about health, from their angle, whether the Government believes those products are really effective. Surely, they very much hope that the Government can do that. Of course, there would be no problem if the products are really effective. They would naturally worry if those claims are found to be fictitious. I would still worry even though, as the Government said, it is harmless to consume those products even if the claims are fictitious, because I fear that some people will falsely believe their effects.

In any case, given the strong resistance of the trade and various problems, we suggest that more efforts be made in a more meticulous manner. Therefore, the Government has agreed that a review will be conducted in future. Dr KWOK Ka-ki raised a question on timing just now, and the Chairman of the Bills Committee has expressed some views on our behalf. We hope that a timetable can be drawn up to bring these three groups of products back to this Council for discussion, upon the implementation of the amendments, so that the three groups



of claims relating to slimming, enhancing immune system and detoxification can be re-examined again in accordance with the Government's original plan for regulation.

Madam President, as I stated earlier, we as law-makers very often can only disagree with the regulation provided in the Bill (unless we feel very strongly). To do so would mean that we disagree with the six provisions of Parts 1 and 2 too. Of course, the trade has its opinion, though the latter has turned out to be not very strong. However, insofar as the three groups of products are concerned, that is, groups 7, 8 and 9, we may spend more time conducting an evaluation. In any case, I just hope that the Government can honour its promise in this respect.

For these reasons, the Hong Kong Federation of Trade Unions supports the Second Reading of the Bill today. Thank you.

**MR VINCENT FANG** (in Cantonese): Madam President, if we merely look at the literal meaning of the UMAO, on which a debate is to be resumed today on the amendments to it, we will not be able to find out what the Ordinance is really about. The Government has originally sought to prevent the advertisements of some medicines from being exaggerated for fear that the public will be misled and, as a result, refrain from seeking medical consultation and resort to self-medication instead. The Administration is concerned that delayed treatment will affect the health of the people.

This is originally a good idea. However, the Government has already put in place a fairly stringent law for medicine management and started the Chinese medicine registration system, with a well-tested mechanism for management of pharmaceutical products too. Under the existing regulatory legislation, advertisement are not allowed even for registered medicines, including placing advertisements and advertising on their package. Moreover, the mention of the registered status and efficacy of the medicines is prohibited. Even such general wording as "regulate", not to mention "treat", is not allowed.

However, on another level, these provisions have actually limited the consumers', or even the patients', right to information, as there is a complete lack of information introducing the medicines. The consumers often obtain such information either from their doctors, friends or, more often than not,

salespersons. Given that the latter are not professionals, the consumers are actually all the more unprotected.

Next, health foods. Because of the amendments introduced this time, health foods will be regulated as well. Given that health foods are not medicine, why is it necessary to bring them under the regulation of an ordinance for medicine control? This explains why the health food industry has voiced a lot of dissatisfaction with the Government's proposed amendment to the UMAO.

Nevertheless, after listening to some of the views expressed by the industry during the discussions held by the Bills Committee, the Administration decided to relax, to a certain extent, its original proposal, including allowing more scope for products with respect to their "allowable claims" and "disclaimer". The Health, Welfare and Food Bureau has also introduced an amendment to the excessive power of the Director of Health, a provision of greater concern to the industry. On the contrary, the Western medicine industry, formerly stringently regulated, is given more room. It is evident that medicines and health foods should be regulated by different laws. I will raise relevant proposals in future Council meetings in due course.

The UMAO, currently enforced in Hong Kong, was enacted in the '60s, when modern medicine was still in its infancy. During the past four decades, however, medicine developed by leaps and bounds. Today, the origin of many diseases can be traced. Hence, preventive measures can be taken and medicines are made to cure these diseases. There is a popular saying among the Chinese people: Medicine and food come from the same source. Some health foods can really improve health conditions. So, is a law enacted half a century ago still applicable to present-day society and development trend?

Therefore, both the industry and I share the view that it is imperative for the Government to, in the light of the development of present medicines and health-related products, review the UMAO and formulate legislation which can respond to new developments whenever necessary with a view to facilitating the development of the industry and benefiting the patients and consumers.

The Health, Welfare and Food Bureau stated in an earlier report submitted to the Bills Committee that the Secretary would respond to the request of the industry for a comprehensive review of the UMAO. I hope the Secretary will not let us down.

Lastly, according to the Bureau, the Amendment Bill will cover "orally consumed product" only, and the DH will formulate a set of guidelines on "orally consumed product" within six months after the enactment of the legislation. As it had taken the Health, Welfare and Food Bureau more than double the amount of time originally planned to formulate a guideline on allergen labelling for food, the adjustment period of the industry was curtailed by one year for no reason at all. As such, I hope the Secretary can undertake to publish this guideline as scheduled to give the industry ample time for adjustment.

I so submit. Thank you, Madam President.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, the DAB supports the Government suitably regulating health claims for the purpose of safeguarding the interest of consumers and preventing consumers of health food from being influenced by exaggerated or false claims which will lead to health implications. At the same time, we are of the view that no legislative amendment should stifle the industry's scope of development. Instead, the Administration should, through drawing up a regulatory regime compatible with the international standard, assist the development of the local proprietary Chinese medicine and health food industries.

On the regulation of medicine and health food advertisements, it is evidently too stringent to prohibit all their claimed functions in a sweeping manner, as this will produce a profoundly adverse impact on the normal business of the trade. In order to balance the interest of the trade and the requirement on public health, the Government should impose different restrictions according to the level of risks in the light of the possible impact of different claims on bodily health. In the course of amending the Bill, the Government drew on the views collected during the consultation and abolished the sweeping prohibition of advertisements with health claims. Instead, it has adopted a more pragmatic approach by introducing different levels of risks according to the impact on bodily health.

In the course of discussion, the gravest doubt raised by the manufacturers and traders concerned the excessive restriction imposed by the Bill on consumers' access to information. For this reason, we hold the view that, besides protecting the consumers, the Administration can suitably amend the Bill

in relation to the regulation of certain claims. As the safety, quality and efficacy of registered medicines, whether western medicines or proprietary Chinese medicines, have to be vetted and approved by the Government before they could be sold, these registered pharmaceutical products should be allowed to advertise their health efficacy more explicitly. The Government will propose Committee stage amendments in response to our requests in this respect. With more types and ways of allowable claims, I believe some requests of the trade can be met.

The definition of "orally consumed product" in the Bill is relatively ambiguous. Not only has the Bill failed to pinpoint regulated health food, there is a possibility of disturbing the people as well. The DAB proposed at one time pinpointing foods and drinks claiming to have health efficacy instead of pinpointing "orally consumed product", as well as introducing amendment with reference to the definition employed in the Regulations on Health Food Labelling of the People's Republic of China. Although the Government has not fully accepted our views, it has agreed to amend the definition by including a description of the form of the product to define more clearly the subject of law enforcement. We support this Committee stage amendment.

The Bill empowers inspectors, who are not disciplinary personnel, to enter and search non-domestic premises and seize and detain evidence without a court warrant. The DAB opposes this provision. The advertisement of a product will have to be published numerous times before it can achieve the objective of luring consumers to buy the product. Moreover, the advertisements targeted by the Bill are by no means a weapon or poison, and there is no immediate danger. Furthermore, it does not need to take a very long time to obtain a court warrant, so government employees should not be given such an enormous power. Otherwise, the people's political rights will be infringed easily. For these reasons, we request the Government to delete the new section 8(5).

On the enforcement of this Amendment Bill, the DAB would like to urge the Government once again to improve various enforcement procedures. Moreover, we hope that the Secretary can give us a concrete undertaking in his speech to be delivered later. At present, suspected non-compliant advertising practitioners will normally receive a warning from the Inspection & Licensing Section of the Pharmaceutical Service of the Department of Health (DH) 20 to 30 days after the publication of their advertisements. However, the same

advertisements may have been published again and again during that period. Moreover, the newly revised penalties have been raised substantially. Actually, some practitioners have even received penalty summons before receiving any warning. This is unfair and far from transparent. When the suspected non-compliant practitioners received the warning and called the Inspection and Licensing Section of the Pharmaceutical Service to enquire about the violations, a clear reply was often not forthcoming and, as a result, they would make the same mistake again in their subsequent advertisements. Therefore, we would like to urge the Government to step up the efficiency and transparency of law enforcement and formulate a relevant guideline to set out the details of orally consumed products and the criteria the DH will adopt in screening problematic advertisements and examples of similar claim not allowed so as to provide the trade with rules and examples to follow. On the other hand, the Government must strengthen communication with the manufacturers and traders and established a permanent consultative channel for the purpose of seeking a consensus on a number of affairs, including improvement of law enforcement, formulation of a guideline, and so on, so as to effectively enforce the legislation and protect public health.

With these remarks, I support the Second Reading of the Bill.

**MR LI KWOK-YING** (in Cantonese): Madam President, the purpose of amending the UMAO is to ensure that consumers of health products will not be affected by exaggerated or false claims, thereby causing delayed medical treatment. In recent years, health food has become immensely popular among members of the public. In order to protect the interest of consumers, the DAB supports the Government's proper regulation of claims of health food.

Rules and laws for monitoring health food have currently been put in place in many countries and regions. Besides such advanced places as Europe and the United States, the Mainland has also prescribed laws requiring registration of all health food. Some mainland cities and provinces have recently taken a step forward by planning to impose a complete ban on the publication of food advertisements, and this has aroused extensive concern and repercussions in the community. Of course, the SAR Government need not follow the examples of these mainland provinces and cities by completely prohibiting the publication of advertisements on health food. Most importantly, it must be noted that Hong Kong has lagged behind other places in terms of regulation of health food.

Proper regulation can not only protect the interest of consumers, but also facilitate the healthy development of the health food industry, as one of the newly emerged industries, in Hong Kong.

During the deliberations on the Bill, the problem of regulating health food advertisements aroused much controversy. The Bills Committee received a lot of industry proposals for improving current law enforcement, such as improving the existing warning system, the clarity of the warning letters, and so on. As a matter of fact, there are already precedents of the formulation of codes by overseas governments to provide guidelines to the industry. For instance, the authorities jointly in charge of health claims in Britain have formulated a code of practice to provide a clear guideline for advertising agents. Owing to the possible violation of the UMAO by advertising agents as a result of inadequate guidelines, the Government may, on the one hand, consider formulating a code for the industry and, on the other, consider the proposal of the Bills Committee to set up a pre-approval system for advertising regulated claims.

However, the Government must understand that control of advertisements is but a stopgap measure. As the saying goes, when there is a measure, there is always a counter-measure. The interest of consumers cannot be fully protected by solely pinpointing claims in advertisements. Endless marketing techniques, including health seminars, free food sampling, and even street sales/marketing, which have become immensely popular recently, will possibly result in consumers being misled or cheated by unscrupulous businessmen. Therefore, I hope the Government can adopt measures to step up regulation of fraud besides controlling advertisements. Only in doing so can the interest of consumers be protected fundamentally.

On the scope of regulated claims, the first and foremost objective of the Amendment Bill is to protect public health. For this reason, I agree with the Government's risk-based approach in regulating the six claims in Schedule 4. As for the proposal of imposing a total ban on the publication of advertisements for all claimed functions, while I understand the importance of protecting consumers' health, we have to consider the impact of the imposition of a ban by way of legislation on the industry as well. In this connection, the Government has to constantly review the inclusion of claims in Schedule 4 to ensure that legislation can keep abreast of the times to protect the health of the public as well as minimizing the impact on the industry.

In the long run, for the purpose of guaranteeing the interest and health of consumers, the Government should revise the UMAO in a comprehensive manner and avoid the existing piecemeal approach of amendment. A more proactive approach would be for the Government to examine setting up a system specializing in monitoring health food. The issues to be examined may include drawing up a clear definition of health food, setting up a pre-approval mechanism for health food and an advertising advisory system as a channel for provision of government advice to the industry to prevent it from not knowing what to do after the Amendment Bill comes into effect. Lastly, I hope the Government will listen to the views of the public, particularly the industry, or else there will be even more voices of opposition from the industry.

Madam President, I so submit.

**DR YEUNG SUM** (in Cantonese): Madam President, the legislative amendment proposed by the executive authorities to enhance regulation of the health claims of health food merits support in principle. However, the specific details of regulation proposed in the Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004 (the Bill) are still inadequate.

The Bill is most inadequate in that three groups of claims, namely claims relating to the regulation of the immune system, the promotion of detoxification and slimming/fat reduction, are excluded from its scope of regulation.

An Expert Committee comprising representatives from the Consumer Council, Chinese medicine practitioners, medical practitioners, pharmacists and a nutritionist was set up in 2002 to study and recommend health claims to be prohibited in orally consumed products. After studying and evaluating various health claims, the Expert Committee recommended that nine groups of claims, including three groups of claims relating to the regulation of the immune system, the promotion of detoxification and slimming/fat reduction, should be prohibited. However, when the Bill was tabled to this Council in 2004, the Administration bowed to the pressure exerted by the industry and excluded these three groups of claims from the Bill.

With the slimming and trimming fever having emerged in Hong Kong in recent years, the market is flooded with products claiming to have the effect of slimming or detoxification. At present, thousands of food products claiming to

have the effect of detoxification or trimming to lure consumers are available on the market. According to the information provided by the Government, the retail sales figure of health food relating to regulation of the immune system, detoxification and slimming/fat reduction is estimated to be around \$1.4 billion in the past 12 months.

In an opinion survey conducted by the Democratic Party early this year, 20.8% of the respondents indicated that they had consumed health food claiming to have the effect of detoxification, slimming or improving the immune system in the past year. 28.7% of the respondents who had consumed this group of health food believed that its efficacy was exaggerated or misleading.

Quite a number of the advertisements relating to these products which claim to have the effect of detoxification, trimming or regulation of the immune system are irresponsible. People consuming these products might develop serious side-effects, or even health hazards. There is also a possibility of delayed treatment too. During the deliberations on the Bill, experts from both the Chinese medicine practitioner and practitioner professions pointed out that the current claims relating to slimming, trimming or fat reduction, regulation of the immune system, and the safety of health products were highly questionable.

Owing to the enormous amount of money spent by the public on health food claiming to have the effect of detoxification, slimming or improving the immune system, the consumers will suffer pecuniary losses should the food be found to be problematic. Moreover, their health might be affected too. The Democratic Party, the health care profession and the Consumer Council have requested the Government time and again to include these three groups of health claims into the Ordinance, and this is greatly supported by public opinion too. According to the findings of a survey conducted by the Democratic Party in January this year, 88% of the respondents considered it necessary for the Government to regulate advertisements and claims relating to health food claiming to have the effect of slimming, detoxification or improving the immune system. At the same time, 91.9% of them considered it imperative for the Government to require importers or manufacturers to produce scientific evidence before claiming that their products have the abovementioned effect.

Unfortunately, the Administration has eventually failed to accede to these views. The Bill, the Second Reading of which is resumed today, has not made



any proposal to regulate health claims relating to detoxification, slimming or improving the immune system. As we hope that claims relating to the other six groups of health food can be regulated expeditiously, we are going to support the Bill today. However, it is hoped that the Secretary will, after the passage of the Bill, continue to systematically collect statistics on people who have developed health problems because of consumption of health food claiming to have the effect of detoxification, slimming or improving the immune system, as well as proposing a clear timetable to review afresh whether claims relating to slimming, detoxification or improving the immune system should be regulated for the purpose of protecting the health of the public and the rights and interests of consumers.

Madam President, the Democratic Party supports the Second Reading of the Bill. Thank you.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Health, Welfare and Food to reply.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I am grateful to Mrs Selina CHOW, Chairman of the Bills Committee, and members of the Bills Committee, for their efforts in scrutinizing the Bill in the past couple of months. I also have to particularly thank the medical profession, the Chinese and Western medicine trades, and the health foods industry for their valuable input during the deliberation on the Bill. These views are vitally important to us in studying Committee stage amendments and further perfecting the Bill.

Madam President, the Government has sought to amend the UMAO in the hope of protecting the public from, based on the claims of some orally consumed products, self-consumption of these products to treat certain bodily conditions, thereby posing health risks as a result of delaying essential treatment.

The public is generally very supportive of the regulation of the undesirable claims of orally consumed products. The medical profession and some members of the public even consider the scope of our proposed regulation too narrow. On the contrary, the Chinese and Western medicine trades and the health foods industry are gravely concerned whether our proposed regulation will unnecessarily stifle the scope of advertising their products. Regarding these views from the two sides, the Government's basic position is to protect the public from being affected by high-risk claims while suitably taking account of the advertising needs of the industries.

On protecting public health, a risk-based principle is adopted in considering which groups of claims should be regulated. Following public consultation and internal assessment, we agreed to reduce the number of regulated claims from the initially proposed nine groups to the six groups currently proposed in the Bill. It is because these six groups of claims are related to high-risk health conditions. As delayed treatment of these conditions can lead to adverse consequences, these claims must be regulated. Regarding claims related to trimming, detoxification and regulation of the immune system, as we still consider it necessary to study certain definitions, and the impact of delayed treatment of these conditions would be relatively low, we have no intention to regulate these claims for the time being.

Appreciating the concern of the medicine and health foods industries, we have seriously considered in detail a number of options which can allay the industry concerns and have, consequently, come up with several amendments. These amendments seek to make clearer the definition of "orally consumed product", provide more allowable claims with respect to individual proposed prohibited claims, and tighten the enforcement power of inspectors. I will further elaborate in moving the amendments later. I believe a sound and clear regulatory mechanism can help strengthen mutual trust between consumers and the industries, and this will help the long-term development of the health foods industry in a positive manner.

During the deliberations on the Bill, the Bills Committee conducted repeated discussions in three areas. I would like to state our position here.

First, the definition of "orally consumed product". There is no universally accepted legal definition for "conventional food". In coming up with the definition of "orally consumed product" in the Bill, we have made

reference to the definition of "food" in the laws in Hong Kong and other jurisdictions in order that the new provision can reflect our policy intent, that is, to regulate "orally consumed product" only, not claims of ordinary, conventional food. However, owing to the industry concern that a grey area might still exist in the definition in the Bill, we will propose an amendment to make the definition of "orally consumed product" clearer.

Second, the issue of advertising registered medicines. During the deliberations on the Bill, we heard a lot of views from the medicine industries that a medicine having been registered locally under the Pharmacy and Poisons Ordinance (PPO) should be taken to mean that its efficacy has been confirmed, and medicine traders should be allowed to advertise its efficacy.

Over the past decades, registered medicines have actually been subject to the UMAO. In other words, the publication, or arrangements for the publication, of advertisements related to the purposes prohibited in Schedule 1 or Schedule 2 of the Ordinance should be prohibited. For instance, even if a medicine trader can produce clinical evidence to prove that a certain medicine can treat certain cancer, the efficacy of the product can still not be advertised in the mass media.

The underlying spirit of this provision is to prevent the public from taking certain medicines without a doctor's diagnosis, thereby delaying their treatment and affecting their health, purely because they believe the advertisements of these medicines. I have to emphasize that although advertisements purely publicizing efficacy supported by clinical evidence are not considered exaggerated, it is necessary for the Government to regulate their claims to prevent patients from administering self-medication, thus leading to delayed treatment. This is also our fundamental spirit of proposing the Bill this time.

However, I also wish to make this point clear: According to our common law system, medicines or health products may, under the prerequisite of not contravening relevant rules and regulations, make other authentic claims, such as claims relating to their registered status, to appeal to their target customers.

Lastly, the way forward for the regulatory framework of health foods. Some Members have expressed reservations about the Administration's approach of regulating health foods by amending the UMAO instead of formulating a more comprehensive law. I agree that establishing a comprehensive system for

regulation of health products is our long-term policy objective. However, due to the prevailing urgent need to deal with the undesirable claims found in the market, and in order to expeditiously handle this situation to protect the health of the people, amending the UMAO is the most appropriate and practicable solution at this stage.

In my opinion, when the proprietary Chinese medicine registration system is well on track, we shall fully examine the developments of medicines and health foods as well as studying the most appropriate mode of health food regulation. By then, we will also consider further regulating other health claims.

In the course of discussing the Bill, some members expressed concern about the current enforcement situation of the Ordinance and the enforcement of the Ordinance after amendment. In this connection, we have actively responded to their concern.

Regarding the current enforcement situation, some people in the industries consider the existing standard of enforcement not entirely clear. In this connection, the Department of Health (DH) has revised the content of the warning letters issued to suspected offenders to remind them of the legislative provision they might have contravened and the relevant legislative requirement. A contact telephone number of the DH has also been provided for enquiry purposes.

On enforcement, first of all, as we have always undertaken, there will be an adjustment period of at least 18 months to give the industries ample time to make necessary preparations.

Furthermore, the DH will expeditiously draw up a guideline to propose the criteria to be adopted by the DH with respect to matters of the gravest concern to the industries, such as the definition of "orally consumed product", the yardstick for inspecting non-compliant claims, and so on, as well as giving specific examples for compliance. The relevant work progress will be reported to the Panel on Health Services of the Legislative Council by the end of this year.

Furthermore, some members suggested the possibility of considering setting up a system for pre-censoring claims and an appeal mechanism. In this connection, the Government has seriously considered the proposals. However, we consider the setting up of a pre-censorship system by the DH might conflict

with its law enforcement role. As regards the establishment of an appeal mechanism for the DH's warning letter system, as the latter is meant to be an administrative measure only, whether individual claims have contravened the law must ultimately be judged by the Court. Therefore, there is no question of establishing an appeal mechanism. I believe the guideline mentioned earlier will be able to give the industries a clear understanding of the key requirements of enforcement by the DH and remove the misgivings of the industries as far as possible.

We will, as usual, minimize the impact of our surveillance and law enforcement on the industries. For instance, during its routine inspections, the DH will take away only the essential amount if it is required to obtain copies of an advertisement. Should the DH find it necessary to obtain an article other than the advertisement, such as the relevant product, the DH will pay for it in the normal manner.

I believe the Ordinance, coupled with several amendments to be proposed by me later, has taken account of public health and the industries' concern about the content of the Bill. Madam President, I move the Second Reading of the Bill. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004 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): Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004.

Council went into Committee.

### **Committee Stage**

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

### **UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) (NO. 2) BILL 2004**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004.

**CLERK** (in Cantonese): Clauses 1, 2, 3, 6, 7, 9, 11 and 12.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 4, 5, 8 and 10.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now.

The amendments to clause 5, sections 8(2), 8(2)(b) and 8(2)(c) in clause 8, and the Note of the Schedule in clause 10 are all technical in nature.

The amendment to clause 4(b) involves the definition of "orally consumed product", which is amended to cover products presented in seven dosage forms, namely, pills, capsules, tablets, granules, powders, semi-solid and liquid, as specified in the amendment or in a form similar to any of these specified forms. As our policy intent is to regulate the claims of the so-called "health foods" that mostly appear in these forms, we consider that specifying the forms of the product proposed to be regulated will better reflect our policy intent.

We also propose the deletion of section 8(5) in clause 8 of the Bill. Under section 8(5), an inspector appointed by the Director of Health may, under some circumstances, enter and search premises or seize evidence without having to obtain a Magistrate's warrant. In the course of discussion of the Bills Committee, members considered that the powers conferred on the inspectors by this section are too great and other provisions of the Bill have already given the authorities sufficient powers to enforce the law effectively. We agree with this view and have, therefore, proposed this amendment.

The amendments to clause 10 of the Bill involve items 4, 5 and 6 of the new Schedule. They seek to increase the number of allowable claims in each of these items from two as proposed originally to four, in order to provide more choices to the trade and enable the trade to promote their products appropriately based on the characteristics of the products. Minor amendments are also proposed to make the allowable claims precise and easy to understand. Moreover, an amendment is also proposed to the disclaimer which must be made for products that are not registered drugs. The purpose is to indicate more clearly that as the product is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), it has not been subject to evaluation for the purpose of such registration. The amended disclaimer further reminds consumers that the product is not intended to diagnose, treat or prevent any disease.

These proposed amendments have been scrutinized by the Bills Committee and have the support of members. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 4 (see Annex IV)**

**Clause 5 (see Annex IV)**

**Clause 8 (see Annex IV)**

**Clause 10 (see Annex IV)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 4, 5, 8 and 10 as amended.

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

(Members raised their hands)



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

(No hands raised)

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

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

**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 Bills**

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

**UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) (NO. 2)  
BILL 2004**

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

Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004 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): Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004.

**MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Road Traffic (Traffic

Control) (Amendment) Regulation 2005 and the Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005.

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

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

(in Cantonese): Madam President, I move that the motion as set out on the Agenda be passed.

The motion seeks to amend the Road Traffic (Traffic Control) (Amendment) Regulation 2005 and the Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005, which were tabled at the Legislative Council together with the Road Traffic (Safety Equipment) (Amendment) Regulation 2005 and the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2005 on 11 May 2005 for negative vetting. The House Committee had subsequently formed a Subcommittee to scrutinize these four pieces of subsidiary legislation.

The purposes of the aforesaid Amendment Regulations are to update the standards for protective helmets and seat belts; repeal references to the old "keep left" and "no-stopping" signs and substitute them with the new ones; empower the Commissioner for Transport to exempt parade floats from the no standing passenger restriction; and stipulate that unless it is a condition imposed by the Commissioner for Transport, a vehicle operating under a movement permit will not be restricted from carrying loads other than such equipment, spares or fuel as are normally carried on it.

When granting the aforesaid exemption under the new regulation 53A of the Road Traffic (Traffic Control) Regulations, the Commissioner for Transport may impose such other conditions of exemption as he considers necessary after consultation with the Commissioner of Police under the new regulation 53A(6)(b). Similarly, when issuing a movement permit under regulation 53 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, the Commissioner for Transport may, in consultation with the Commissioner of Police and any other authority, impose any other conditions that he considers necessary under the new regulation 53(3A)(b).

At the Subcommittee meetings, Members raised concern about the scope of the conditions that could be imposed by the Commissioner for Transport when granting the aforesaid exemption or permit. There were also queries on the necessity of including references to consultation with the Commissioner of Police and other authorities when imposing such conditions. Members proposed to restrict the scope of the conditions to be imposed and remove the references to those authorities from the Regulations.

Having considered Members' suggestion, we have no objection to amending the new regulation 53A(6)(b) of the Road Traffic (Traffic Control) Regulations and the new regulation 53(3A)(b) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, such that the other conditions to be imposed by the Commissioner for Transport would be relating to the regulation of road traffic, the use of vehicles and the use of roads. In addition, the references to consultation with the Commissioner of Police and other authorities would be deleted.

I would like to take this opportunity to thank Ms Miriam LAU, Chairman of the Subcommittee, and all members of the Subcommittee for giving us their valuable views when scrutinizing the Amendment Regulations. The amendments have been endorsed by the Subcommittee. Subject to Members' approval, the amended provisions will take effect on 30 June 2005.

Madam President, I beg to move.

**The Secretary for the Environment, Transport and Works moved the following motion:**

"RESOLVED that —

- (a) the Road Traffic (Traffic Control) (Amendment) Regulation 2005, published in the Gazette as Legal Notice No. 66 of 2005 and laid on the table of the Legislative Council on 11 May 2005, be amended in section 3 by repealing the new regulation 53A(6)(b) and substituting —

"(b) the Commissioner may impose such other conditions of the exemption relating to —

- (i) the regulation of road traffic;
- (ii) the use of vehicles; or
- (iii) the use of roads,

as he considers necessary.";

- (b) the Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005, published in the Gazette as Legal Notice No. 67 of 2005 and laid on the table of the Legislative Council on 11 May 2005, be amended in section 2(b) by repealing the new regulation 53(3A)(b) and substituting —

"(b) such other conditions relating to —

- (i) the regulation of road traffic;
- (ii) the use of vehicles; or
- (iii) the use of roads,

as the Commissioner considers necessary."."

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

**MS MIRIAM LAU** (in Cantonese): Madam President, the Administration tabled four pieces of subsidiary legislation at the Legislative Council for negative vetting on 11 May 2005. They are the:

- (a) Road Traffic (Safety Equipment) (Amendment) Regulation 2005 (Legal Notice No. 65);
- (b) Road Traffic (Traffic Control) (Amendment) Regulation 2005 (Legal Notice No. 66);

- (c) Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005 (Legal Notice No. 67); and
- (d) Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2005 (Legal Notice No. 68).

After these four pieces of subsidiary legislation were tabled at this Council, a Subcommittee was formed for their scrutiny. The resolution moved by the Secretary for the Environment, Transport and Works just now seeks to address the concerns raised by the Subcommittee over two pieces of the subsidiary legislation, namely Legal Notice No. 66 and Legal Notice No. 67.

The Amendment Regulations mainly seek to provide for the Disneyland float parades by empowering the Commissioner for Transport to exempt parade floats from the no standing passenger restriction stipulated under regulation 53(2) of the Road Traffic (Traffic Control) Regulations (the Traffic Control Regulations).

During the scrutiny, the Subcommittee deliberated over whether the exemption would apply to vehicles used in a general procession. The Administration advised that when considering whether an exemption shall be granted under the proposed regulation 53A of the Traffic Control Regulations, the paramount consideration is the safety of the passengers standing on the float. The provision would be applicable to parades for all purposes, including floats that are decorated for the purpose of a parade held for procession purpose.

With respect to matters relating to the granting of an application for exemption by the Commissioner for Transport, the Subcommittee is concerned that when parades only cover one direction or some of the lanes of the road, the Commissioner for Transport may refuse to grant an application for exemption under the proposed regulation 53A(4) of the Traffic Control Regulations on the ground that there would be other road users using the roads covered by the route of the parade, and thus such roads do not satisfy the requirement stipulated under the proposed regulation that "those roads will be designated to be used exclusively for the purpose of the parade".

The Administration clarifies that the references to "those roads" in the proposed regulations 53A(4)(b) and (6)(a)(ii) of the Traffic Control Regulations

refer to "the roads along the route" of the parade as mentioned in regulations 53A(4)(a) and (6)(a)(i) respectively. The Administration's major concern is that the road in question is the road along the route of the parade, irrespective of whether it covers the whole stretch or one direction or some of the lanes of the road. Nonetheless, whether an exemption would be granted or not would depend on the circumstances of each case.

On the other hand, the Subcommittee considers that the proposed Amendment Regulations should aim at facilitating not only the float parades to be held at the Hong Kong Disneyland but also canvassing activities during elections. They point out that standing up in moving vehicles for canvassing activities during elections has existed for a long time and the Administration should not evade the long-standing issue of the need to enact legislation to provide for exemption from regulation 53(2) of the Traffic Control Regulations for vehicles used for canvassing activities. If necessary, the Administration could consider imposing certain conditions or safety requirements for compliance by candidates.

The Administration points out that under the proposed regulation 53A of the Traffic Control Regulations, exemption from regulation 53(2) of the Traffic Control Regulations may only be granted to floats travelling at a specified speed at a specific time on a specific route, and the roads along such route would be used exclusively for the purpose of the parade. Given that the vehicles used for election-related activities do not operate under the same conditions, the safety requirements for standing passengers on such vehicles go beyond the ambit of the present legislative amendments. The Administration undertakes to separately examine this proposal in detail.

The proposed regulation 53A(6)(b) of the Traffic Control Regulations provides that the Commissioner for Transport may impose such other conditions of the exemption as he considers necessary in consultation with the Commissioner of Police. The proposed regulation 53(3A) of the Road Traffic (Registration and Licensing of Vehicles) Regulations also provides that the Commissioner for Transport may impose on a movement permit any other conditions the Commissioner of Transport, in consultation with the Commissioner of Police and any other authority, considers necessary. The Subcommittee considers that whilst it is reasonable for the Commissioner for Transport to impose conditions that are related to road safety and/or traffic control under the Traffic Control Regulations and the Road Traffic (Registration

and Licensing of Vehicles) Regulations, the scope and nature of the conditions that the Commissioner for Transport may impose under the said regulations are not restricted and are too wide. This may give rise to disputes, particularly when the Commissioner of Police may also propose other conditions for compliance by applicants.

Having considered the Subcommittee's views, the Administration agrees to amend the two said regulations such that the "other conditions" to be imposed by the Commissioner for Transport would be those "relating to the regulation of road traffic, the use of vehicles and the use of roads". In addition, the references to consultation with the Commissioner of Police and other authorities would be deleted from the regulations. The Subcommittee welcomes the amendments made by the Administration. The resolution moved by the Secretary just now is to implement these two Amendment Regulations. I thus urge Members to support the resolution moved by the Secretary.

Madam President, the Subcommittee supports the Legal Notices issued by the Administration to reflect the changes made to the "Keep Left" and "No-stopping" traffic signs and to update the standards for protective helmets and seat belts.

Madam President, I so submit.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, this time the Government seeks to amend the Road Traffic (Traffic Control) (Amendment) Regulation 2005 and the Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005. Madam President, when I was examining the Amendment Regulations, I did have some strong mixed feelings.

Being social activists, we often have to organize activities such as demonstrations and processions to stage protests. However, when we file applications for organizing such activities, we often have to go through some very complicated formalities and seek approval from many different government departments. What is the present situation now? Thanks to the Disneyland, we can now have the right conditions for amending certain provisions in law. Were it not for the Disneyland's need to stage float parades, the present amendments would not have been made to these regulations, I believe.



Viewing the issue from this perspective, I would like to tell our Secretary — of course the Secretary has nothing to do with this situation as she has been in the office for several years only — that I have engaged in labour movements for over three decades and I often have to apply for permissions for staging demonstrations and protests, and every time I have to enter into extremely fierce arguments with officers in the Police Force. I still recall that, the Police Force once forbade our demonstration to proceed along the Hennessy Road. I was really very angry about it.

I would like to tell the Secretary the kind of predicament we have encountered. The predicament also reflects the conservative nature of the Government (that includes the present SAR Government and the colonial government as well). When such demonstrations and protests have become very common in overseas countries, the respective local governments would naturally amend the legislation in order to keep abreast of the developments in society. If the Hong Kong Disneyland is not going to stage a float parade in its opening in September, I think the Government may not even care about how these regulations are being enforced — I can see Mr LAU Chin-shek looking at us; probably he is feeling we labour unionists feel. Therefore, when I first examined this Amendment Regulations, I did have some very strong mixed feelings. Secretary, although you are not responsible for the situation, I still hope that you can learn the lessons from this amendment exercise, so that you can really keep abreast of the development of society in formulating policies in future.

Today, I learned from the newspapers that the new Chief Secretary for Administration might want to take down the metal protective fencing around the Government Headquarters. I was absolutely overjoyed on hearing it. I really want to ask, why should the Government build them in the first place? Every time when we go to hold some kind of discussion with the Government, the authorities invariably stop our entire group of people from entering the premises. Instead, only two representatives are allowed entry. The fencing around the Government Headquarters makes it look like a bird cage, which is really an ugly setup for a free metropolis like Hong Kong. Therefore, though I am not sure whether what I have read from the newspapers is true, I always feel that the policies of the Government should keep abreast of the developments in society, instead of moving backwards.

Madam President, the Chairman of the Subcommittee had been very tolerant with us, members who had been making a lot of noise. She allowed us to express our feelings in the meetings. Therefore, when we mentioned that sometimes we had to seek approvals from many different departments, I said that I had a strong aversion to such a requirement. So the Chairman of the Subcommittee had repeatedly put up with us and allowed us to hold thorough discussions on this. Sometimes, the Chairman would even remind us that we had to attend other meetings after the meeting of the Subcommittee. She would remind us of it. In handling this amendment exercise, all the members have been working in a most co-operative manner. The officials who joined our meetings for deliberation on the Amendment Regulations had once said that the Transport Department needed to consult other departments. I then told them, instead of consulting other departments, why could they not assume the responsibilities on their own? Why should they pass their responsibilities to other departments, such as the Police Force, instead of handling the issue on their own? So, the Transport Department eventually agreed that it would not be necessary to consult other departments.

I would also like to tell the Secretary that, in the course of deliberating the Amendment Regulations, I mentioned some unhappy happenings. Madam President, one issue is still outstanding. It is related to electioneering activities in which the President has also participated. Mr LAU Chin-shek has sustained an injury in his lower back. It happened because the Government up till now still refuses to acknowledge our need to use vehicles to parade through the streets in our election campaigns. The Government simply says no. So, what could we do then? So we had to do it secretly and discreetly. I met Mr LAU Chin-shek once in Chai Wan. He sustained the injury, whereas I nearly hurt my head on bumping into something. The Government obviously had seen that more and more members of political parties were running on the roads (not just our group of people). In addition, as more and more political parties are taking part in direct elections, even the party of our Subcommittee Chairman had also participated in direct elections. And this explains why we need to make use of some vehicles for transport purpose.

The Government is obviously aware of such problems. But why does it not amend the legislation? We have argued about it for a long time, but the

Government still refuses to make any changes. However, in spite of all these, society is developing. Even if we want to revert to the past situation, it will not be possible. Society has already moved forward. Just like our new Chief Executive who held a Question and Answer Session here some time ago. When he presented the future direction of his governance, he also mentioned that he had formulated his plans on the basis of public opinions. Now, we shall have more frequent electioneering activities. A major election is held every two to three years. Not only the seats in the Legislative Council are keenly contested, the competition in District Council elections is also extremely fierce. So all the parties concerned have to put in a lot of resources and manpower in the electioneering activities, and it is also necessary for vehicles employed for the campaigns to travel through the streets. Therefore, I strongly hope that the Government can face these problems squarely and address them properly.

Madam President, anyway, I am still very grateful to the Government for having accepted our opinions eventually. But still I cannot help sighing with mixed feelings because, were it not for the Disneyland, these regulations would never be amended even though they have been criticized by us repeatedly. However, when the Government requests us to support and accept these Amendment Regulations, I very much hope that, in the face of a society with mature civic awareness, the Government can adopt a more open attitude in future. Regarding this point, I do hope the Government can really introduce some changes.

Madam President, we support the relevant amendments to the Regulations. Thank you.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary for the Environment, Transport and Works, do you wish to reply?

(The Secretary for the Environment, Transport and Works shook her head to indicate that she did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2005 and the Poisons List (Amendment) (No. 2) Regulation 2005.

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

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, to approve the Poisons List (Amendment) (No. 2) Regulation 2005 and the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2005 be passed.

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

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

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

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

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

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

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

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

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 4 June 2005, be approved:

- (a) the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2005; and
- (b) the Poisons List (Amendment) (No. 2) Regulation 2005."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' BILLS**

### **Second Reading of Members' Bills**

#### **Resumption of Second Reading Debate on Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: Second Reading. We will resume the Second Reading debate on the Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005.

## **THE METHODIST CHURCH, HONG KONG, INCORPORATION (AMENDMENT) BILL 2005**

### **Resumption of debate on Second Reading which was moved on 1 June 2005**

**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 Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005 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 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, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005.

Council went into Committee.

### **Committee Stage**

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

### **THE METHODIST CHURCH, HONG KONG, INCORPORATION (AMENDMENT) BILL 2005**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005.

**CLERK** (in Cantonese): Clauses 1 to 4.

**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 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, who are present. I declare the motion passed.

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

Council then resumed.

### **Third Reading of Members' Bills**

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

### **THE METHODIST CHURCH, HONG KONG, INCORPORATION (AMENDMENT) BILL 2005**

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, the

Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005

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 Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005 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 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, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee on the speaking time of each Member. As Members are very familiar with these time limits, I am not going to repeat them.

First motion: Enhancing the regulation of commercial marketing practices.

## **ENHANCING THE REGULATION OF COMMERCIAL MARKETING PRACTICES**

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

In tandem with prosperous economic development, business competition has become increasingly fierce. This has given rise to multifarious marketing practices, and direct marketing is the most popular marketing practice in recent years. Today, we call for the regulation of commercial marketing practices not to create barriers for normal commercial activities, but because there is indeed abuse of marketing practices in recent years. These marketing activities, whether in the form of telephone calls or on-street promotion, have caused nuisance to the public. Worse still, some have even resorted to misleading or deceptive marketing practices, thus putting consumer interest in jeopardy. Enhancing the regulation of these commercial marketing practices to prevent the worsening of unscrupulous marketing practices and pre-empt a situation where consumers become resistant to commercial promotional activities because of a few black sheep in the industry will, in fact, create an environment more conducive to business.

The nuisance caused by spam promotional calls has already aroused discontent and concern in the community. In order to understand the gravity of the problem, the DAB has recently interviewed over 1 000 mobile telephone users. It is found that over 90% of the interviewees have received promotional telephone calls and over 80% have received promotional short messages in the past six months. The survey also found that 42% of the interviewees had received as many as five or more promotional calls on average monthly. It means that nine out of 10 Hong Kong people are subject to the nuisance of promotional mobile telephone calls, and at least four people are subject to such nuisance for five times or more monthly. This shows that the proliferation of promotional mobile telephone calls is very serious.

If members of the public are happy to receive such calls continuously and be made targets of these promotional activities, the problem may not exist, and it would be unnecessary to discuss this issue today. But in the survey, we found that over 80% of mobile telephone users considered the problem of spam promotional calls serious. Over 85% of the people even considered that promotional mobile phone calls had caused nuisance to them, and over 90% of the interviewees considered that the Government should take actions. This evidently shows that not only does the problem exist, there are signs of it going out of control. Under such circumstances, we cannot look on with our arms folded. Enhancing regulation is a way to answer public aspirations positively.

In fact, the problem of spam calls and messages is not unique to Hong Kong, but also very rampant in other countries. Take curbing telephone nuisances as an example. In the United States, after a registration system for blocking promotional calls was introduced in 2003, the people can register on-line by themselves and include their fixed-line or mobile telephone number in the "no-promotional-call list". If a user is still subject to such telephone nuisances after registration, he can claim compensation from the direct seller.

It is learned that one year or so after the implementation of the registration system for blocking promotional calls in the United States, as many as 63 million telephone numbers have been registered. Besides, 85% of the residents considered that promotional calls had substantially dropped after the implementation of the registration system; 20% of people even said that they were no longer subject to such nuisance. Judging from the situation in the United States, the cost of setting up such an online registration system is low but the effectiveness very great. We, therefore, consider that the Government should actively consider adopting a similar practice in Hong Kong.

Setting up a telephone registration system for blocking marketing calls is a relatively hard-line measure, enabling people who are totally resistant to marketing calls to be free from the nuisances. But in some cases, we also found that promotional calls can provide consumers with information that they wish to obtain. According to our survey, some people are willing to receive a reasonable number of promotional calls. In this connection, we propose conducting studies on the feasibility of a labelling system for promotional calls. For example, fixed-line telephone numbers mostly start with "2" or "3", whereas mobile telephone numbers start with "9" or "6". Stipulations can be made to require all promotional calls to register, and such calls can be assigned with telephone numbers starting with a particular number for identification purposes, in order to enable consumers to have greater flexibility in choosing whether or not to receive the information conveyed by such calls.

To eradicate the nuisances caused by promotional calls, we can start from the users who can proactively reject spam messages. Telecommunications companies also have the duty to take measures and provide services to filter spam promotional calls and short messages, in order to protect their customers from the nuisances. At present, mobile telephone users can request the service providers to reject calls from designated telephone numbers. Moreover, some telecommunications service providers also provide paid value-added services for

filtering computer generated phone calls and calls which block the call display function.

From this, we can see that it is not technically impossible to require telecommunications companies to provide services to filter promotional calls. In fact, some telecommunications companies have already taken concrete actions to provide such services. According to the information of the Office of the Telecommunications Authority (OFTA), telecommunications companies suspended and cancelled over 900 telephone lines used for spamming last year, but these actions were taken purely on the initiative of the telecommunications companies. At present, we can only hope that the telecommunications service operators will be mindful of their social responsibilities in their business operation, for effective protection is still lacking in their services to the customers. Spam promotional calls can be effectively stopped only when telecommunications companies are required to provide their customers with services to filter spam promotional calls and short messages.

Apart from promotional calls, on-street promotion is also a very common direct marketing practice which has led to the obstruction of access on the street. In such busy districts as Mong Kok and Causeway Bay, on-street promotional stands can be seen everywhere, and the main passageways in housing estates, the entrances/exits of MTR stations and footbridges have also become the anchoring points of these promotional activities. Promotional stands, big and small, and also salespersons are found everywhere at the access roads, occupying most of the space and causing obstructions on the street and sometimes compelling pedestrians to walk on the road, thus giving rise to competition for road space between pedestrians and vehicles. This has caused immense nuisances to the public and posed dangers.

Although on-street promotional activities do not involve actual trading of goods and do not constitute unlicensed hawking and it is therefore unnecessary for them to "run away" as unlicensed hawkers do, it does not mean that they can be conducted in a totally "lawless" state. Under the existing legislation, any person who has caused nuisance to others while promoting goods is actually liable for prosecution under the Summary Offences Ordinance.

However, according to government statistics, 1 202 complaints were received last year against on-street promotional activities for occupying public space, representing an increase of 33% over 2003; cases in which a verbal

warning was issued totalled 3 948, representing a 32% increase over 2003. Yet, prosecution was finally instituted in 17 cases only, an obvious drop compared to the 16 cases in 2003. We consider that the rate is disproportionate.

This shows that the obstruction of access by promotional activities has become increasingly rampant not because of loopholes in the legislation, but because of the Government's failure to address squarely the seriousness of the problem and lax enforcement. We urge the relevant government departments to strictly enforce the law, so that on-street promotional activities will not cause too much nuisance to the public.

Madam President, next, I would like to discuss misleading or deceptive marketing practices. Among the various types of complaints received by the Consumer Council, complaints against telecommunications services are most serious. The number of such complaints was the highest for two years in a row, with the marketing practices being the major cause of these complaints. The various district branches of the DAB received about 120 complaints from the public against unscrupulous marketing practices of telecommunications companies in the first five months of this year alone.

Take unscrupulous marketing practices in the telecommunications industry as an example. We found that many complaints are due to contractual disputes, because the words in the contracts are generally very small and inconspicuous and are therefore very easily overlooked by consumers. Coupled with the very complex and lengthy terms and conditions in the contract, even if consumers have noticed them, they may not necessarily be able to understand them all. Finally, they can only rely on the explanation and verbal undertaking of the salespersons, and this has opened a loophole for misleading or deceptive marketing practices.

In this connection, we consider that the Government should encourage business operators to simplify the provisions of their contracts with customers, so as to make the provisions more explicit and enhance their transparency. This will enable customers to understand the provisions more easily without having to rely solely on the explanation of the salespersons, thus reducing the chances of them being misled by unscrupulous salespersons.

In fact, over the past three years, there were a total of 44 consumer-related cases determined by the OFTA to have breached the Telecommunications

Ordinance, involving 180 complaints and 23 telecommunications service providers. However, since the introduction of section 7M of the Telecommunications Ordinance in 2000, the OFTA has never imposed fines on the law-breaching telecommunications companies. It has only issued warnings in respect of 32 complaints.

Earlier on, the DAB has met with the OFTA to gain an understanding of this matter. According to the OFTA, it is not easy to make a determination on telecommunications service operators because it will require the complainants to come forth and make a statement. We consider that it is precisely because prosecution is not easy that the OFTA should seize every opportunity to strictly enforce the law in order to produce a deterrent effect. Nevertheless, the OFTA has stated earlier that it would not pursue 46 cases in which *prima facie* evidence has been established for the breach of law. Instead, it has only required the four telecommunications service operators concerned to channel \$2.3 million for consumer education. We consider this grossly irresponsible.

Although the Government insists that fostering co-operation in the industry is the only positive way to address the problem, unscrupulous marketing practices by telecommunications service providers still exist. To effectively crack down on unscrupulous marketing practices, we consider it necessary to strictly enforce the law to impose regulation and raise penalties to impose severe punishments against misleading or deceptive marketing behaviour.

Madam President, I beg to move.

**Mr CHAN Kam-lam moved the following motion: (Translation)**

"That, as the practice of direct marketing has become increasingly prevalent in commercial activities and has given rise to such problems as consumers receiving lots of nuisance telephone calls and obstruction of access by on-street promotional activities, and as the number of consumers' complaints about being misled or deceived by salespersons are also on the increase, in order to safeguard consumers' rights and interests, this Council urges the Government to adopt measures to enhance the regulation of commercial marketing practices, including:

- (a) establishing a system for "blocking promotional calls";

- (b) requiring telecommunication companies to provide customers with services to filter spam promotional calls or short messages;
- (c) requiring the departments concerned to strictly enforce the relevant legislative provisions, so as to prevent excessive nuisance to the public caused by on-street promotional activities;
- (d) encouraging commercial clients to simplify the provisions of their contracts with customers, so as to make the provisions more explicit and enhance their transparency; and
- (e) raising penalties in order to impose severe punishments against misleading or deceptive marketing behaviour."

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

**PRESIDENT** (in Cantonese): Mr James TO will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

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

**MR JAMES TO** (in Cantonese): Madam President, I move that Mr CHAN Kam-lam's motion be amended.

I believe everyone who has a mobile telephone will face the problem of promotional calls, whether in the form of calls dialed through the Interactive Voice Response System or IVRS, direct conversation with the sales representatives or short messages service. These commercial marketing activities are even on a rising trend. As for on-street promotional activities, they already existed as early as some eight or 10 years ago and have since become popular. Certainly, we know that these activities, if conducted normally, will in fact be conducive to economic development and employment, particularly as these promotional activities can create abundant job opportunities.

Very often, we can see young promoters trying very hard to solicit business on the street late at night.

However, the Democratic Party is concerned that if such activities have reached the extent that they have subjected consumers to unreasonable nuisance, then a proper balance must be struck between these promotional activities and consumer interest in the law or the regulatory regime. We are even more concerned about misleading and deceptive activities, on which severe punishment should be imposed.

Madam President, my amendment seeks to make up for some inadequacies in the original motion, and there are two key points.

Firstly, the Democratic Party considers that while it seems indisputable to require telecommunications companies to provide customers with services to filter spam promotional calls or short messages, this must be handled very carefully before being truly put into practice, in order not to impede the development of normal commercial activities.

As far as I understand it, in respect of the regulation of spam emails, the OFTA does not mandatorily require service providers to provide the filtering service. At present, the email filtering service is provided normally at the request of customers and is a fee-charging service. If we make it mandatory, who is going to meet the cost? Is it to be borne by consumers or the relevant service provider? Even if the service provider is made to pay, the cost will still be shifted onto consumers either directly or indirectly. But given fierce competition in the telecommunications industry, telecommunications companies may perhaps provide the filtering service as a free value-added service to solicit more customers.

Besides, what telephone calls and short messages will need to be filtered out? This has to be clarified very clearly. For instance, the filtering of emails may be comparatively easy technically speaking, because consumers can find out from the subject, contents and sender of the email whether it is a promotional or spam email and can therefore choose to open it or otherwise, or the service provider may have already filtered out these email for its customers. Certainly, this sort of promotional emails is getting trickier and trickier. I once received an email from a person who claimed to be LEE Cheuk-yan, and I thought it was



really from Mr LEE Cheuk-yan. But it was only after I had opened it that I knew it was just a promotional email, and this is actually deceptive and misleading. But how can we filter out direct sales calls? If we simply filter out telephone calls that block out the caller's number, consumers may filter out important calls, such as long distance calls, anytime. Even if the technicalities can be resolved, but if consumers run into such promotional calls, whether it be direct conversation with the sales representatives or telephone recording, we must ask: Do consumers need these services? Moreover, how can we filter out unwanted messages but retain those considered to be useful by consumers, and how can we identify services that are considered useless or spam? Of course, some consumers may think that they do not need any service, whatever it is, and that if they need any of it, they would look for it on their own initiative and so, they must not be subject to such nuisance. But another question is: How to define the term "promotional"? It is because his friend may call him promoting some direct marketing products to him. Mr CHAN Kam-lam's proposal in his motion of assigning a special prefix to the telephone number of these services is a direction that can be considered. But as to how it can be specifically implemented, I think more detailed studies are needed.

Moreover, we can consider from another angle whether a notification system should be set up for intermediary telemarketers, that is, companies paid to conduct promotional activities for others, and require them to obtain a licence. Why do I say so? It is because there is no licensing system for money changers engaging in the changing of foreign currencies. But since we have to combat money laundering, we must at least know if certain specified activities do exist. When we know that certain activities do exist, we can then closely monitor the situation and look into whether further actions or licensing is necessary. This is to impose regulation from another angle.

For this reason, I have proposed an amendment in the hope that the OFTA can conduct studies in future to, among other things, address the problems arising from the mandatory requirement of providing the filtering service and to define "spam".

The second part of the amendment concerns the cooling-off period in the contract. I think this will help protect the rights and interest of consumers. Although some of the services that are promoted through direct promotional calls, such as insurance plans, do provide a cooling-off period, the majority of these services still do not provide for such a period.

A case in point is telecommunications services, or the so-called "timeshare" vacation accommodation service about which more complaints have been received. Once a consumer has signed the contract, the terms and conditions will take effect immediately, but the consumer is often required to sign the contract within a very short time. He may sign it following some special marketing practices or lobbying by the salesperson. Consumers may not necessarily have the time to understand the details and the terms of the entire service plan. We, therefore, propose that insofar as these commercial promotional activities are concerned, a cooling-off period should be provided for consumers to further consider whether they agree to accept these services ultimately.

In March this year, the Director-General of Telecommunications published a report on mis-selling of telecommunications services. But the report mainly put forward options of regulation of on-street promotional activities. While the concept of a cooling-off period is mentioned in the report, the proposal is primarily a call confirmation or verification mechanism whereby the service providers will ask consumers to go through the formalities once to confirm the services required by the consumers. We suggest that apart from this option, consumers can be given the right to call on their own initiative during the cooling-off period an office independent of the sales department to ask for the termination of their contract.

The report of the Director-General of Telecommunications does not cover promotional activities conducted through the IVRS system. It is learned that this will be dealt with at a later time. The Democratic Party considers that apart from this form of promotional activities, promotional activities conducted by way of direct conversation with salespersons cannot be neglected too. At present, promotional activities are not confined to telecommunications services. They actually involve a diversity of commercial activities in respect of banking services, insurance, slimming programmes, timeshare schemes, and so on. We, therefore, consider inter-departmental co-ordination necessary, and studies should be conducted on the proposal of providing for a cooling-off period in these contracts.

These are the reasons why I have proposed an amendment, but the Democratic Party supports the other parts of the original motion.

In respect of the "blocking promotional call" service, we propose that the Government should set up a "no electronic message" database, and incorporate into it the lists of "no email", "no short message" and "no promotional call" for centralized management. Some time ago, when the Government conducted consultation on "containing the problem of unsolicited electronic messages" or "junk mail", Mr SIN Chung-kai already expressed this view very clearly. We hope that the Government can consider it.

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

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

"To add "conducting a study on" before "requiring telecommunication companies"; to add "including defining the term 'spam' " after "short messages"; to delete "and" after "enhance their transparency;" and substitute with "(e) exploring the provision of a cooling-off period in the contracts, so as to allow time for consumers to consider the features of the service plans and decide whether or not ultimately to accept the services; and"; and to delete the original "(e)" and substitute with "(f)"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr James TO's amendment to Mr CHAN Kam-lam's motion be passed.

**MR ALBERT CHAN** (in Cantonese): Madam President, the telecommunications market in Hong Kong is thriving. Over the years, the OFTA has insisted on open and fair competition. This, I agree, and I think it also merits commendation. But since these licences were issued, government regulation of the practices of telecommunications companies has been lacking, resulting in unrestrained promotional or marketing activities by telecommunications companies that seriously affect the public. However, the Government has not yet made up its mind as to how this should be dealt with and how improvement should be made. Therefore, I think this is dereliction of duty on the part of the OFTA and the Government.

Marketing or promotional activities involve numerous disturbing acts. If we rank commercial behaviour in Hong Kong in terms of the nuisance caused,

those of telecommunications companies will definitely rank the first. It can be said that they are causing nuisance to the public all the time. In every corner of Hong Kong, including the main entrances or exits at MTR stations, shopping malls and housing estates, members of the public are subject to harassment by salespersons.

The case of telephone calls is the same. Whether you are at home or anywhere else in the world, so long as telephone service is available and once the telephone is switched on, one stands a chance of being disturbed. I think many colleagues or government officials (including the Secretary) may have personally experienced such nuisance for many times. The most obvious nuisance is that caused by direct marketing of health care services. I think the Secretary may also be very tired of it.

Such behaviour has become so unbridled that even our senior officials are subject to such nuisance because these companies have turned a blind eye to the basic rights of the people and public interest. I think this can be looked at in two ways. First, it has to do with the service of the telecommunications companies; second, other companies not related to telecommunications companies have caused nuisance to the public by making use of the service of telecommunications companies. So, I think the authorities should target actions at these two aspects and respond positively to address the problem, for these are basically promotional activities relating to telecommunications companies.

Many practices now adopted by direct marketing companies were first conducted by telecommunications companies, followed by other companies. Take sending short messages as an example. Telecommunications companies are the first users of such practices as sending short messages or telephoning their clients direct to promote their services. They have done so for many years. Telecommunications companies will telephone their customers telling them that they can redeem a new telephone set depending on the status of their service plan and that they can enjoy a certain amount of free airtime if they continue to use the company's service. Telecommunications companies are the first to do all this, and they have sent countless short messages to their customers. Sometimes, tens of these short messages can be received in a day.

The Government must impose regulation on such behaviour of telecommunications companies and other marketing companies. The mover of

the motion and Members who support it have made relevant proposals. I think there are, in fact, many examples, as this also happens elsewhere. I believe in his reply later, the Secretary will certainly say that consideration is being given to various measures. I do not believe the Government will continuously tolerate such behaviour.

Madam President, I also wish to draw the Secretary's attention to the phenomenon that telemarketing has also become a trend for crimes. In fact, the police just held a press conference today in this connection. This is entirely a cultural and social anomaly. Criminals are very clever nowadays. They know very well how to take advantage of these common practices. They do everything they can to ensure that their victims do not put down the phone, such as saying that they would chop off their children's hand if they hang up and that they would chop off their children's hand and foot if they do not give them money. It is precisely because the Government has tolerated those promotional activities for a long term that even criminals have come to realize that these practices are a very big market.

Although crime is another aspect of the problem, it has to be handled still. I only hope the Secretary will understand that members of the public are very tired of these practices which are already very common. As the direct marketing of crimes via telephone calls will push the problem to the extreme, the Government must address the problem squarely. I hope the Secretary will give us a good and positive reply later on.

Thank you, Madam President.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, a while ago Mr CHAN Kam-lam has talked in detail the disturbance caused by promotional activities on the mobile phone. Now I would like to talk about the various kinds of nuisance caused by on-street promotional activities to members of the public.

In recent years, I have received quite a number of complaints about the promotional activities of the telecommunications operators. Many of the victims are old people. One such case is related to an old age home not very large in scale.

The case is about an old age home which was informed and urged to pay in full a penalty of some \$3,000. This is because the person in charge of the old age home has signed a service contract with a telecommunications operator after strong persuasion by its salesperson. After thinking over the matter, the person decided not to use the service of that telecommunications operator and the sum of \$3,000 is the penalty which is imposed on a client who cancels the service contract. At first thoughts, there is nothing wrong with what the telecommunications operator is doing. But after looking into the incident, it is discovered that the person in charge of the old age home is a person almost 70 years of age. The elderly person does not know that rescinding the contract would entail a penalty, nor does the person know that the contract stipulates the installation of six telephone lines. Given the small scale of the old age home, it is absolutely not necessary to install so many telephone lines.

The old age home raised the matter with the telecommunications operator but the strange thing is, despite the apparent suspicions related to the incident, not only did the telecommunications operator not try to find out if the promotional tactics of the salesperson were problematic or not but it also used the contract to justify its insistence on the payment of the penalty. I intervened and after a lot of efforts made, including writing a letter to the company to demand that a thorough investigation be conducted, then the penalty was not pursued. However, even to date, the telecommunications operator has never offered any explanation to the old age home, nor has it withdrawn the letter demanding payment of the penalty. Hence nothing is done to rectify the wrong done on the person concerned.

The way in which this telecommunications operator has handled the complaint makes people suspect that similar events are actually caused not by individual salespersons but part of the general promotion strategy of that operator.

Madam President, these allegations are not fabrications. There are numerous similar complaints against telecommunications operators which in their bid to promote business are selling services which are not at all suitable. Figures from the Consumer Council on complaints against telecommunications operators have topped all kinds of complaints for the past two years. There were 7 740 such complaints last year alone, taking up 28.8% of the total number of complaints.

This kind of "out of the ordinary" promotional tactics employed by telecommunications operators can well be said to be in heaps and piles. The most common one is the extremely small print in the service contract which may even be available only in the English version. I do not think there are many consumers who can be careful and patient enough, let alone be able, to read and understand the real meaning of the full text of the contract. When consumers are left with no other choice, they can only trust in the salesperson who only talks about how attractive the goods or service is. Once the consumer is off guard, he or she may fall into the promotion trap.

There are some service contracts with terms that look extremely attractive, but their contractual period is extremely long, stretching from two to even three years. If clients want to rescind the contract after signing it, he or she has to pay a high penalty for dissolving the contract before expiry. Some telecommunications operators have a free trial period, but when the consumer does not want to use their service after the trial period, a long period of notice in writing is required to be given in advance. If no written notice is received, it is assumed that service will continue to be required. Consumers are often caught unaware in such situations. In the end they will lose money.

The abovementioned practices will only affect those who really want to buy products from these telecommunications operators. The people who are affected for no reason at all are the innocent passers-by. They are often victims of promotional activities of the telecommunications operators. Anyone who has been to places near the MTR stations in Causeway Bay, North Point or Mong Kok will know that in these crowded places, they need to get past all sorts of promotional stands. They have to weave through all sorts of obstacles and such perennial pestering from salespersons at these promotional stands is causing harassment to the people which is most unbearable.

Unfortunately, though the Government has received a lot of complaints about these promotional activities, it has not taken the situation well into account and done anything to regulate such activities by the telecommunications operators. These companies can get away with what they are doing despite the existence of strong evidence, such that their illicit promotional activities are being condoned.

The Office of the Telecommunications Authority (OFTA) often says that if it is proved that any act complained of has contravened the Telecommunications Ordinance, the operator concerned will be punished in accordance with the law.

However and in actual practice, things are very much different. I think Members still recall that ever since a relevant provision was introduced in 2000, the OFTA has never imposed a fine on fixed-line operators contravening the provision. Even for those four telecommunications operators which have been named — I want to name them again — they are: Hutchison Global Communications, i-Cable, Wharf T&T and New World Telecom, Members should recall that complaints against their illicit sales activities, of which 46 a *prima facie* case was established, but the OFTA did not impose a fine on these operators in accordance with the law. The OFTA only required these four telecommunications operators to comply with guidelines which were not legally binding and to share the costs of consumer education at some \$2.3 million and the matter was considered to be over and done with.

The DAB is of the view that as telecommunications operators have a huge clientele and their impact is widely felt, so in order that the basic rights of consumers can be protected and that the great surge in complaints can be averted, the authorities must effect stringent enforcement. Operators which have contravened the law must not be condoned. Penalties must be made stiffer so that sales activities which are misleading or deceptive must be punished severely. These will deter similar activities from happening.

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

**MR VINCENT FANG** (in Cantonese): Madam President, unscrupulous promotional practices will indeed constitute nuisances. Sometimes, they may even cause consumers to suffer monetary losses. So, the Liberal Party, being the representative of the business sector, very much agrees that the Government should impose an appropriate extent of regulation on excessively disturbing promotional behaviour and unscrupulous marketing practices.

The original motion mentions that a system for "blocking promotional calls" should be established. But now, fixed-line telephone services can actually reject telephone calls withholding the caller's number, or the input of a code is required before a call can be put through. The Liberal Party considers that similar services should be extended to mobile telephones, so that mobile telephone users can enjoy the right to choose whether or not to receive promotional calls, hence minimizing unnecessary nuisances. As regards the Government's plan to enact legislation next year to impose regulation on spam



electronic messages and extend the scope of regulation to automated promotional calls and require network operators to obtain the recipient's consent before sending promotional messages to the latter, or require network operators to give recipients the choice of whether or not to receive these messages in future when sending the first such message to recipients, we support all these initiatives.

Many small and medium enterprises (SMEs) have reflected to us that as they often rely on telephone to contact their clients in order to solicit and maintain their business, they are worried that excessive regulation will affect their normal business activities and hence deal a blow to their livelihood. Therefore, we hope that the authorities, when imposing regulation on promotional calls to protect consumers, can understand the plights faced by SMEs and carefully strike a balance. We, therefore, support the authorities' plan to impose regulation only on promotional activities conducted by automated telephone calls in the first phase.

The original motion also proposes to require communications companies to provide customers with services to filter spam promotional calls or short messages. It is learnt that in December 2001, the six mobile telephone operators in Hong Kong agreed on the Code of Practice on "Handling of Unsolicited Promotional Inter-Operator Short Message Service". In February this year, the "STEPS" campaign launched jointly by the authorities and the industry was further extended to regulate short messages sent by mobile network operators to their own customers. The Liberal Party welcomes these moves. We believe this will help combat spam promotional short messages.

However, we are concerned about the proposal in the original motion of determining whether a telephone call is a promotional call according to the number of calls made through a user's number or fixed-lined number. We are worried that this may affect academic research projects or opinion polls conducted by academic institutions, the media or political parties and may easily result in "overkill".

We also propose that the authorities should revise the current fixed-line and mobile telephone systems and introduce the "caller pays" arrangement. I believe this can reduce the losses incurred by the public due to nuisance caused by promotional calls. It can also greatly reduce the number of promotional calls.

The original motion also mentions targeting actions on on-street promotional activities. Given a lack of co-ordination among the relevant departments, actions are rarely taken and the problem has therefore remained. In some busy districts, particularly Mong Kok or Causeway Bay, during peak hours on holidays and at night, the streets are packed with promotional stands, big or small. This has not only caused nuisance to pedestrians, but also adversely affected the cityscape and even the operation of nearby shops. We, therefore, consider it necessary to step up regulation, in order to minimize the nuisance caused to the public.

As for the proposal in the original motion of encouraging commercial clients to simplify the provisions of their contracts with customers, we do not have much objection to it. But with regard to the amendment which proposes to add "exploring the provision of a cooling-off period in the contracts", the Liberal Party has reservations about it. While this motion centres mainly around the telecommunications industry, if we analyse it from a higher level, we are concerned that the provision of a cooling-off period in the contracts will put across a wrong message to the public, giving people the impression that we will make substantial changes to the well-established contract system. It will also cause even greater operational difficulties to operators who operate with normal marketing practices. Insofar as property transactions are concerned, the provision of a cooling-off period in the contract will allow any party to dissolve the contract without any conditions during the cooling-off period. Once property prices fluctuate, and when a party proposes to dissolve the contract, both the buyer and the seller may eventually suffer losses. The consequences may be very serious. So, the authorities must handle this with care.

Madam President, I so submit.

**MR WONG TING-KWONG** (in Cantonese): Madam President, competition is very fierce in the Hong Kong market. Some companies will employ a great variety of marketing approaches to promote their products; some have even resorted to unscrupulous practices, particularly as direct telemarketing has become increasingly common and rampant in recent years. Such conduct which infringes on the rights of other people is very disturbing indeed. It is necessary for the authorities to squarely address and monitor these practices, in order to protect consumer rights and interest.

The rapid development of telecommunications technology has enabled the transmission of information beyond all boundaries. So can marketing practices. Recently, telemarketing has become very popular in commercial promotion. People in the industry have revealed that after obtaining customers' information, say, their mobile telephone numbers, from various sources, such as on-street surveys, reservations in restaurants, application for services, random sampling and online transactions, the sellers will then promote their products to these customers by the so-called "cold calls". The public in general are particularly averse to these calls from strangers, as they are often forced to listen to the caller's introduction of the relevant products. Spam promotional calls or short messages have led to such problems as subjecting the public to nuisance and privacy intrusion and causing them to suffer financial losses.

I believe many members of the public as well as Members in this Chamber, like me, have been victims of such nuisance. When my mobile phone rings during meetings of the Legislative Council or when I am in the middle of other activities, I would rush out of the meeting venue to answer the call, and it is only after answering the call that I find out it is a promotional call, and this is so enraging. Moreover, I had also received such promotional calls by IDD when I was out of Hong Kong. I must say that they really get on my nerves. Sometimes the caller, on being rejected, may even hurl abuses at us. Days ago a member of the public said in a radio phone-in programme that as he often had to work outside Hong Kong, he had to pay a long distance telephone bill of some \$200 for these promotional calls that he had been forced to answer in recent months.

Promoting products or services to mobile telephone users does not only use the airtime of users, but also incur a cost to mobile phone users. This is commercial organizations forcing mobile phone users to shoulder the cost for promoting their products. This is reaping benefits at the expense of others. If no measure is taken to curb the nuisance caused by promotional calls, it will be tantamount to neglecting the rights and interest of consumers. The DAB conducted in early June a survey on nuisance caused by promotional calls to mobile phone users, and interviewed 1 018 mobile phone users. It is found that over 90% of the interviewees consider it necessary for the Government to enact laws to supervise the marketing practice of sending advertising calls or short messages to mobile telephone users.

Although mobile phone users can now ask the telecommunications operator to reject specified telephone numbers, this function can achieve but little effect since these promotional calls generally do not display the caller's number. Besides, as telecommunications operators do not provide their customers with a service to ban promotional calls, spam promotional calls, therefore, have not been curbed effectively.

While the OFTA has plans to put in place a mechanism whereby the telecommunications operator, after receiving a complaint from consumer, can trace the customer sending spam messages or even suspend or terminate the provision of telecommunications services to that customer, the DAB considers that before any regulatory measure is formally introduced, the Government should step up efforts to urge telecommunications operators to actively fulfil their social responsibilities in their operation and immediately terminate or refuse the provision of service to companies found to have sent spam promotional calls and short messages.

I personally think that to ensure reasonable and sound regulation, it is necessary to introduce a diversity of measures as suggested in the original motion proposed by Mr CHAN Kam-lam and the amendment by Mr James TO to step up regulation of commercial marketing practices, thereby fostering consumer confidence and helping the business sector expand their business.

Regarding the regulation of promotional calls to mobile phone users, the DAB proposes that the Government should require telecommunications operators to obtain the prior consent of their customers before sending advertising or promotional messages to them or require the provision of a free "do not call" service to go along with all promotional calls or short messages, so as to allow customers to reject the call or short message. Moreover, studies can be conducted on the feasibility of labelling promotional calls, so that mobile phone users can easily identify these calls and choose whether or not to receive the relevant information.

Enacting legislation or taking other regulatory measures is just a means. The ultimate objective is to win the confidence of consumers and prevent consumers from becoming wearied of normal commercial promotion. I hope the objectives as advocated by the Consumer Council that the Government should enact legislation, the industry exercise self-regulation and the business community fulfil their responsibilities can be achieved, so that Hong Kong can

become a place desirable for business operation and a paradise for public spending by the public.

Madam President, I so submit.

**MR PATRICK LAU** (in Cantonese): Madam President, I support the motion of enhancing the regulation of commercial marketing practices, because these marketing activities have caused much nuisance to the public and aroused much discontent in the community as many Members said earlier on. Some people have received promotional calls in the middle of the night, and so have I. It is better if someone is actually talking to you on the phone because you can at least ask him not to call you anymore. But those telephone recording systems nowadays just do not give you an opportunity to talk to the caller! Moreover, these systems can operate 24 hours a day. They do not show the caller's number for the recipient to reject such calls. Nor can we ask the telecommunications company to filter out such calls. This has made people feel very helpless indeed.

As regards those junk emails and short messages that have become increasingly common, people who do not wish to receive them must spend time deleting them, and as these advertising messages are generally long, the memory capacity for receiving normal emails and short messages may sometimes be affected. This is so annoying indeed! I, therefore, support the view that the Government should review the existing legislation and step up enforcement in order to stop unscrupulous marketing practices from continuously affecting the living of the people.

As far as I know, these promotional activities have caused inconvenience to the people in their living and brought about far-reaching consequences to society. Why do I say so? It is because the proliferation of on-street promotional activities has to a certain extent affected pedestrian boulevard and pedestrian precinct projects. As the existing legislation has failed to clearly spell out the enforcement department tasked to curb on-street promotional activities, it is unclear as to which department is responsible for the management of such activities in pedestrian precincts. This has even impeded many pedestrian boulevard and pedestrian precinct projects of the Transport Department and the Highways Department. I think this is where the biggest problem lies, but I do not know if it is the cause.

Apart from deterring pedestrian boulevard projects, on-street promotion constitutes unfair competition to shop tenants. In Hong Kong, land is scarce and extremely expensive, and rent can take up a substantial part of the overall operating expenditure. There is a shop selling fruit juice in Causeway Bay which is paying millions of dollars in monthly rental, but on-street promotional stands are not paying any rent, and this is most unfair to other shops indeed.

Madam President, given inadequacies in the existing legislation and as on-street promotional activities do not involve actual transaction of money or goods, law enforcement is difficult. So, I think the authorities should further improve the existing legislation and issue clear guidelines to the enforcement agencies concerned, so that law enforcement officers can step up efforts to combat and clear on-street promotional activities in accordance with the law and hence return the pavement to the pedestrians.

In fact, the provision of pedestrian precincts is originally meant to provide a more comfortable environment on the street and encourage people to do more walking rather than taking any means of transport, thereby creating a more environmentally-friendly city. But much to our regret, most of the space in these pedestrian precincts is occupied by salespersons engaging in on-street promotional activities. The situation in such districts as Causeway Bay and Mong Kok is particularly serious. The pavement outside the Queen's Theatre near this Council is a very good example. Those promotional activities have not only infringed on the rights of pedestrians to enjoy walking. They have even caused immense nuisance to pedestrians passing by.

I believe many people must have the experience of being stopped by salespersons on the street. They may ask the pedestrians to apply for a credit card or promote telecommunications services to the pedestrians. Or they may propose to take the pedestrians to view residential flats or ask them to join a fitness club. Their promotional practices are wide ranging, and even Mr WONG Ting-kwong has fallen prey to such practices. It is most annoying that they refuse to let you go and make you listen to their sales talk. Earlier on, Miss CHOY So-yuk said that the situation is equally bad even inside the MTR stations. These activities have not only affected the people of Hong Kong, but also tourists from foreign countries as well as Hong Kong's image as an international metropolis. If this is allowed to go on, and if we do not expeditiously solve this problem and eradicate on-street promotional activities, I am afraid this would have a negative impact on the tourism industry in Hong Kong.

I have all along stressed that there must be an ideal community environment before we can attract more tourists and more inward investments. To this end, apart from hardware facilities, we also need the support of software. That is, we need not only beautified streets, but also green trees, fine artistic decorations and embellishment with characteristics on the street. Regrettably, as we can see, advertisements and mobile telephones are hanging all over the trees and lamp posts in Causeway Bay, and we do not see any support of software. The pavements are already occupied by salespersons who are all over the places causing obstruction and congestion, thus making it impossible for pedestrians to stop by or stroll along the pavement to view the scenery on the street. Once you stop, you would be subject to their nuisance. Therefore, the culture of on-street promotion must be appropriately regulated, in order to protect the community environment and the overall economic development in Hong Kong.

I, therefore, agree that it is necessary to strictly enforce the law, so as to prevent nuisance to the public caused by on-street promotional activities. Madam President, exemption should be granted only for on-street activities carried out during the election of the Legislative Council. I also support establishing a system for "blocking promotional calls" and providing a filtering service and also imposing severe punishment on misleading and deceptive marketing behaviour, in order to protect the rights and interest of consumers. Thank you, Madam President.

**MS AUDREY EU** (in Cantonese): Madam President, just now Mr Patrick LAU said that he had been stopped on the street by salespersons promoting residential property to him. As for me, I was once a target of cosmetics sales promotion. I believe they must think that Mr Patrick LAU is a potential property buyer, whereas I need to have more tips about beautification.

Madam President, we receive many junk mails, junk fax and junk emails every day, and now, we even receive many junk calls. The response rate of these direct marketing practices is very low but since the cost of sending these messages is very low due to technological advancement, these promotional or advertising messages have become more and more rampant. While some people may find these messages useful, generally speaking, as the rate of these advertisements reaching a wrong target is very high indeed, many people have to spend much time dealing with these junk messages, which is a waste of life and time.

The original motion mentions making reference to the United States system of making a list for rejecting promotional calls. I would like to add that in order to stop these promotional calls, both aggressive and defensive actions are necessary. Apart from enabling members of the public to register their telephone numbers for rejecting advertising messages, the OFTA should proactively investigate into and regulate spam promotional calls. Otherwise, if we allow this to go on, the mobile telephones of the public would be turned into rubbish bins for wanton abuse by businessmen.

Moreover, many of these "guerrilla stands" are set up at places with high pedestrian flow, such as MTR stations, pedestrian precincts, and so on, as mentioned by Members earlier, and they have become "shops outside shops". This is, in fact, extremely unfair to shop operators, and these stands have caused obstruction to road access and nuisance to the public. But very often, many companies providing broadband services or mobile telephone traders or beauty parlours as I mentioned earlier will conduct their business at these stands.

Madam President, many of these companies are listed companies and so, it is entirely unnecessary for them to solicit business in a way as if they are "highwaymen". That said, competition is very keen in the telecommunications market. When one company has reduced its prices, another company will immediately follow suit, and as long as there is one company promoting its service in this rent-free way in order to cut down the cost while the law enforcement agency connives at its activities and takes no action at all, other companies will simply follow suit.

As we mentioned earlier, this will cause nuisance to the public and is also unfair to the salespersons, for they are often exposed to exhaust air at work, which is very inhuman. In this connection, I think it is necessary for Secretary Stephen IP to consider protecting their rights.

Since some of these stands promote only services and involve no cash transaction, Mr Patrick LAU said in his speech earlier that law enforcement might hence be difficult. In fact, law enforcement officers can institute prosecution against these promotional stands at places of heavy pedestrian flow for causing obstruction to road access under section 4A of the Summary Offences Ordinance, but the Government has seldom done so.



Moreover, Madam President, over the past six months or so, my office has often received the same kind of cases of seeking assistance in relation to a company selling "time share" vacation accommodation services. Its promotional practices have already "trapped" many people, and I hope the Government can follow this up. Many of these cases are most astonishing, involving mostly teenagers or young people in their twenties. Some of them are still studying and some have just graduated, who have their own credit cards. In most of the cases, before they were persuaded to join these schemes, they were told at first that they had won prizes and were then invited to attend a seminar at this company. The company would make them stay for four to five hours and even seven to eight hours, and they were made to pay as much as \$20,000 by credit card and what is more, they even had to make monthly instalments. I find it difficult indeed to imagine how the promotional practices adopted by this company can make these people sign such a contract.

Furthermore, Madam President, there are a lot of people affected. I am talking not about the cases of just one or two people. Last time when I met with them on these cases, there were some 20 to 30 people affected. While their cases were different, all of them were related to one same company. This promotional practice by way of "mental bombardment" is grossly inappropriate. I hope the Government will follow up these cases, because even though their cases are reported to the police, the police often do not accept them.

Three years ago there was a case in the Small Claims Tribunal, in which the Magistrate judged in favour of a consumer under the Unconscionable Contracts Ordinance, because the consumer had not only been barred from going to the lavatory. Even his mobile telephone had been taken away and this consumer was then subject to several hours of "mental bombardment" under such circumstances. If the Government and the police refuse to take action against such practice and when the consumers should seek assistance from the Court by bringing their cases to the Court individually, that would be far from cost-effective. I, therefore, call on the Government to take actions against such promotional practice.

Particularly as Hong Kong does not have a system for collective legal actions and the Consumer Council is not in a position to sue these companies on behalf of the people, the victims can only file their cases in Court by themselves. More often than not, I think there is a group of people who is particularly easy to fall prey to these companies, and when these people are asked to take legal action

against these companies, most of them may not be willing to do so. I, therefore, hope that the Government can consider the proposal made by the Consumer Council several years ago of instituting proceedings under the name of the Consumer Council or allowing the public to take legal actions collectively.

Besides, speaking of a cooling-off period, I very much agree that these promotional practices do not give consumers sufficient time to read the terms of the contract in detail and so, consumers have often signed contracts of terms that are very unfavourable to them. At present, a cooling-off period is already provided for life insurance policies in Hong Kong, and the Time Share Act in the United Kingdom also provides a 14-day cooling-off period. Mr Vincent FANG mentioned in his speech earlier that property prices would likely to fall in no time once a cooling-off period was provided. Madam President, I think it is precisely because multifarious practices are adopted to promote the sale of residential property that members of the public are led to think that since everybody is buying these flats, they would loose out if they do not buy any, and this explains why they would make a decision to buy it in a very short time. In fact, this is the kind of promotional practice that causes the most problems. Moreover, it is not my wish to see property prices fluctuate by a great margin in a short cooling-off period of seven or 14 days or even three days, because that will be a most unhealthy development. I, therefore, consider that a cooling-off period should also be provided in respect of property transactions.

Thank you, Madam President.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, the competition in the commercial world is most fierce. This is especially so in certain industries such as the telecommunications industry, the Internet services and pay television services, and so on. The competition is so keen that one may describe it as a case of life and death. In order to secure a larger market share, the promotional tactics employed by various enterprises are really versatile and innovative, some may even go so far as employing some extremist practices. In Hong Kong, promotional staff can be seen in every habitable corner of this territory. They are so hard-working that they can simply penetrate into every corner like mercury. Maybe such an extensive all-embracing approach of propaganda is really effective. However, when such promotional activities have affected the life of the people, can such tactic really achieve the intended promotional effect?

I believe many Honourable colleagues have, to a certain extent, been affected by various kinds of promotional practices. Such promotional practices as short messages sent to mobile phones, be they made by real persons or done through telephone recordings; staff distributing leaflets in extremely overcrowded streets; and promotional leaflets scattered all over the place on the streets to the extent of affecting the cityscape have seriously affected the life of the people. Therefore, I strongly agree that the authorities should regulate these promotional practices in the market. I must stress that, and I believe all Honourable colleagues will agree that, we do not intend to ban all the promotional practices in the market altogether, but we must ensure that the people do have the right to choose whether or not to receive such messages.

Madam President, with regard to mobile phone short messages, nuisance calls and showering promotional leaflets on the streets, I believe many Honourable colleagues must have already discussed them. And they have been reported in the press incessantly during the past few days. Therefore, I do not intend to list such promotional practices one after the other. Instead, I hope to mention some alternative promotional tactics, so that the authorities may handle these problems when it conducts a review of the various promotional practices.

The first example involves a pay television company. By capitalizing on the opportunity to conduct on-site maintenance work, the company, to our amazement, made its maintenance staff bring a promotional team into the building. If there were 10 flats on a certain floor, say from flat number one to flat 10, and if the maintenance work was to be done at flat number three, then the remaining nine flats, or even all the flats in the entire building, would become the targets of this promotional team. I consider this an irregular and dishonest practice that would cause serious nuisance to other residents. In the estate where I am living, I have learnt that many residents have already made such gate-crashing promotional staff as "unwelcome persons". The residents have been seriously harassed by such promotional practices. But still this is not the worst scenario. For the worst scenario, it happens just because their customer service is too good — that their maintenance staff would even conduct on-site maintenance work as late as 10.00 pm or even 11.00 pm in the night. Such a good service is provided originally for the convenience of customers, but now it is abused by the promotional team. Consequently, some residents will definitely be woken up from their dreams by the incessant ringing of their door

bells. As Ms Miriam LAU said earlier, some residents might even think that there is a fire. However, what is the result? All they get is a lot of crap from the salespersons. Please imagine how these residents will feel?

Let me cite another example. Some promotional staff of a certain pay television service provider, to our amazement, falsely claimed that there might be some reception problems, thus requesting the making of on-site inspections. The customers of course welcome their service, obviously unaware of their tricks. It was most miraculous that this so-called "inspection technician" turned out to be a genius who could confidently determine that there was no reception problem at all just by pressing a few buttons on the remote control unit, and even without touching the decoder at all. As the event developed to such a stage, this inspection technician could actually exit with great success. But, alas, at this moment, the curtain of the good show was finally raised. He showed the real purpose of his visit — that as a promotional staff member now, he presented a whole pack of leaflets introducing the so-called concessionary offers and new products, and so on. He did his most impressive presentation and tried to achieve his sales objectives. Gaining access to the homes of customers by telling tall stories and selling some products that may not suit them, should any responsible promotional staff behave in such a manner? Is it not necessary for the authorities to address this issue squarely?

In the face of such undesirable promotional practices, many people can only use the word "tedious" to describe how they feel about them. Can we lodge our complaints with the relevant service providers? In view of commercial interests, the providers would usually adopt delaying tactics in dealing with such complaints, hoping to sit on the issues. As a result, such an approach could only further enrage the customers. Can we lodge complaints with the Government? Which department or organization will accept such complaints? I believe most people do not have a definite answer to this question. The Government has not even designated an organization for handling such complaints. Therefore, if we do have a mechanism for handling complaints related to promotional practices, we should launch an extensive promotion campaign to tell the people about it. In this way, we can make use of the market force as well as the people's power to supervise and check the enterprises which employ and condone undesirable promotional practices. If the Government does not have a mechanism to handle such complaints, it should explore and implement one as soon as possible. All along, Hong Kong has been making the

provision of a level playing field as its objective. Tolerating the existence of such undesirable practices is simply contrary to this objective. In order to establish a level playing field and protect the people from unnecessary disturbances, I call on the Government to implement expeditiously the relevant policies in different aspects, so as to supervise, penalize and eradicate undesirable promotional practices. I so submit. Thank you, Madam President.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam President, regarding the marketing activities of telecommunication companies, their presence is felt throughout the territory. I say this because wherever you go, you can see their promotional activities. In fact, I have personally fallen victim to their promotion. A salesperson once kept knocking at my door and lured me into switching to use the service of his company. He said, all I had to do was to put my name on the form, and he would handle the rest of all the necessary procedures, including the cancellation of my subscription to other services as well as handling all other formalities. But, in fact, he had never taken care of such matters for me. So far, I have not paid any money to settle the bills, and I should still be owing the service provider money. I hope the service provider would sue me, because I want to tell the Judge in Court that the salesperson had been very unscrupulous. However, it has not taken any action so far.

Besides, such marketing activities are not initiated solely by telecommunication companies, but are well co-ordinated and facilitated by the many other organizations as well. Just take my case as an example. As I had received the above treatment, I decided not to pay the bills. It so happened that I had lost my credit card. As the service provider had said that, since I had opted to pay my bills by credit card, then if I lost the card, my autopay arrangement would become ineffective. So after losing the credit card, I felt it just served my purpose as I had intended not to pay the bills. Therefore, I said I would just forget it and decided not to get a replacement card. But two months later, the bank re-opened my account, thus allowing those bills which I said I would not pay to keep on debiting money from my account. The situation had gone on until I realized what was happening. All I could do was to tell the bank that they could not do that. But consequently, I now owe the bank money instead.

In fact, triggered by globalization, the so-called telecommunications revolution or network revolution has induced extremely keen competition. Such competition has prompted all the consortia to scramble for a share of the pie. The fortunate may be well taken care of, such as the developers of the Cyberport project, or the 3G operators, and get a larger share. The LI family is a typical example. The less fortunate may have to fight for their own shares with a lot of hard efforts. In fact, enterprises have been merging at an alarming rate. We can all see that, since the opening up of the market, enterprises are beginning to find ways of merging together. What I want to say is, such consortia involving huge amounts of capital have been acting in a most unscrupulous manner. When we were conducting electioneering campaigns, we were denied access to residential buildings. But they can gain access to residential buildings to conduct their marketing activities, and they have been mostly successful in doing so. I do not know how they can do it. For example, if we want to enter a certain residential building to distribute leaflets, we must first get the approval from its owners' corporation. We shall be denied access to the building if its owners' corporation refuses to grant approval, regardless of whether you are "Long Hair", Mrs FAN, or even people promoting whatever ideologies of democracy. They can simply say no. However, these telecommunication network salespersons can enter residential buildings, and they can even knock at your door several times a day.

I also once chatted with some people working in this industry. It was because I could not use the service soon after the installation was completed. I called up the service centre and told them I could not use the service. Then two days later, they sent a technician to fix it. Why did it happen after the installation? It was because the person responsible for the installation had plugged the wrong cable into the socket. Once the right cable was plugged into the right place, the internet connection worked immediately. So, consequently, it required the service of a technician to rectify the wrong cable error. It happened because the installation serviceman only received a very small amount of money per installation. So all he can do to improve his lot is to perform as many installations as possible. So, naturally, he is not responsible for anything that happens after the installation. Should any problem arise, he simply leaves it to the next person, that is, the so-called "technician", to fix it. It is because only the technicians are really employed on a monthly rate. Frankly speaking, regarding such practices, instead of levelling criticisms at the salespersons, we should actually direct our criticisms at the consortia concerned. The consortia

can be compared to the Roman Empire in which there was a hierarchy consisting of generals, legates, military tribunes, centurions and soldiers, and so on. Those front-line soldiers were just fighting for their own survival. We can all understand that it is all too natural for lowly paid workers to take as many orders as possible so as to earn more money.

With regard to the problem encountered by me, I have made numerous telephone calls to the service provider, asking them why a company of such sizeable proportions should treat their customers in that manner. But, the fact is, you cannot get any answer at all. It is because if you call on their service centre because you cannot use some of their services, you have to wait for at least 15 minutes before you are told by a staff on a recording that their lines are busy at that time, and you have to wait. So, you may have to wait for 15 minutes, and the longest waiting time I have experienced is one full hour. Such situations are actually tantamount to a deception or a fraud. But, just because they are some major consortia owned by people like LI Ka-shing, how can you summon up the courage to sue them? Who can have the courage to enact any legislation to enable us to sue them? Please imagine, if it is I who have done what they are doing, will I be accused of committing frauds? A very simple commercial principle is, if you have given an incorrect message to enable yourself to gain some benefits while making others suffer some losses, then you have committed a fraud. They are now actually committing frauds. In short, if you are willing to buy their service, they will say they can do everything for you. But, after the lapse of that moment, they could not care less about it. For such malpractices, the Government has not exercised any regulatory control over them. Instead, these people are allowed to commit such acts on the streets by exploiting some loopholes in law. They say that as they are not selling any material goods, so they can conduct their on-street marketing activities anywhere they like.

I can cite two concrete examples to illustrate how well they are protected. The first concrete example took place in Sheung Shui. A lady had been selling some homemade cakes and pastry in a housing estate after becoming unemployed. She was eventually beaten up by the security guards of that housing estate and later she was even prosecuted. Another example happened to a woman selling flowers on the Valentine's Day. She was also beaten up. She was just selling flowers like any ordinary florist does, and she had not shouted loudly in order to attract the attention of potential customers. As for the salespersons mentioned by me earlier, they belong to large corporations which intend to cheat Hong

Kong people systematically. From the top to the bottom, such corporations are cheating us consumers, making us suffer and making us incur losses. Yet they are not subject to any regulatory control. Although there are certain grey areas in law — I know such grey areas do exist, should the Government not exercise regulatory control over such acts? Regarding a helpless and desperate widow or an unemployed person who had no alternative but to sell flowers on the Valentine's Day, who just wanted to earn a bit of money while bringing happiness to others, the Government opted for arresting them. But for major consortia which have caused major grievances among the people with their multi-level fraudulent acts, the Government is simply condoning them. Such a government cannot be respected as a government at all.

Therefore, I hope the new Chief Executive, Mr TSANG, who has taken over the reins from Mr TUNG, can do something, instead of just mentioning public opinion polls all the time. The situation before us now is already carrying the full findings of an opinion poll, that is, everyone in Hong Kong thinks that such practices are wrong. Will Mr TSANG take any action? If he does not, then he should not mention opinion poll A, opinion poll B, opinion poll C or opinion poll D anymore. I think everyone, including those who are watching me making this speech over the television, should lodge more complaints against such malpractices, so as to make the Chief Executive Mr TSANG, realize the situation. By doing so, we are requesting him to address the issue expeditiously, not to exercise favouritism for the major consortia and not to allow the continued existence of such a situation, in which the consortia can cheat Hong Kong people by way of multi-level fraudulent acts, whereas the grass-roots people are not even allowed to sell some small items.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, insofar as this motion is concerned, the Democratic Party will of course support it. The Legislative Council Panel on Information Technology and Broadcasting also discussed the subject in June. Many people have lodged complaints to me through various channels, including sending emails to me. I had also personally been the victims of such practices — having received such promotional calls, especially when I was on overseas trips. As soon as I picked up the phone, the charges on



me started to count. Even if they were just some short messages, I was still charged \$2 per ordinary short message. Therefore, the OFTA or the Government should consider whether they should enact laws to control such practices. I believe the authorities would discuss this part in a more detailed manner later on.

I think the Government should seriously consider adopting the practice of the United States, that is, establishing the so-called "not-to-call list" or "not-to-fax list", which have been mentioned by Mr CHAN Kam-lam. Of course, the Government may worry that, if a "not-to-call list" is in place, then we may also need to have a "not-to-email list". We may not go as far as the "not-to-email list" now, but the "not-to-call list" and "not-to-fax list" are at the moment feasible options. Yet, later on, when the IP phone becomes prevalent, then it will be questionable whether the "not-to-call list" is still feasible. This is because by then I can make a call from an overseas place to Hong Kong via the IP phone without being charged a long distance call fee. However, in the short term, I believe this measure is still effective in some measure. At least, it is worthwhile to implement it within the territory of Hong Kong, unless the IP phone is used or the calls are made by way of using the IP in promotional activities in future.

I hope the Secretary can understand that, today's subject is not only targeted at the electronic form of promotional activities. It would be relatively easy to regulate the electronic form of promotional activities because it can be achieved by enacting legislation to regulate spam emails or spam electronic messages. But what is more difficult to tackle — the Panel has held discussions on this, but Mr Albert CHAN is not in this Chamber now — is the "street rogues" as described by Mr Patrick LAU. At present, we can see many such "street rogues" on the streets of many different districts. But they are not really hawkers. The various government departments and bureaux should hold a joint meeting to discuss ways of tackling the problem. I say this because although we are discussing the issue of "street rogues" dispatched by the telecommunications operators, some of them are not promoting telecommunications services. As we take a closer look, we can see that many of them are promoting slimming services, beauty clubs or other memberships, and so on.

We have all taken part in electioneering campaigns, and we all know that when we conduct some on-street activities, we would bring along with us some

facilities such as flexi-stands and flip-chart stands, and so on. Each of those people who are engaged in on-street promotional activities is promoting his business in this manner. I personally do not advocate the total prohibition of this kind of activities. Hong Kong is still a free city. But is it necessary for the authorities to draw up some forms of control so as to regulate them? I feel that the Government should think about this. At present, we have the General Duties Teams to regulate the activities of hawkers. But it would be inappropriate for them to prosecute these street promoters for causing obstruction on the streets. I still have not figured out a concrete method of tackling or regulating these activities. Now, the Government has established some hawker permitted areas. So, can the Government establish some promotion permitted areas? It is not so good to prohibit such promotional activities completely. But it is also not a feasible option to let the present situation continue with no control exercised by any government departments. Besides, with regard to some so-called "home visit promotional activities", Miss TAM Heung-man has also quoted some examples in this regard. Should the Government not specify some time restriction in order to specify the hours of the day during which salespersons can make home visits or knock the doors to conduct their promotional activities? These are issues that the Government should contemplate.

On today's subject under discussion, the Democratic Party has also discussed the issue of a cooling-off period. If the arrangement of a cooling-off period is to be implemented in future, it is most likely that it can only be implemented through the enactment of legislation. I think the Government should think about it. Many years ago, I had the experience of buying the kind of "time slots" of vacation resorts, as mentioned by Ms Audrey EU just now. What I had bought was a package coupon for a "time share" vacation resort operated by the Waltz Disney Company. After having bought the coupon for a month, I found that I would not have any chance to travel to the Disneyland anymore. So I returned the package coupon to that company and was refunded in full. Many think that it is very good protection for consumers, and hope that Hong Kong would not be deterred from trying to do some work in this direction. I personally think that enacting laws to implement a cooling-off period is mutually beneficial to both the business operators and the consumers. Many salespersons who adopt the approach of applying pressure on others when they promote their products must have previously received some professional training and learned to sell their products through various tactics. I feel that if a cooling-off period is provided for in law, then such tactics will naturally be useless. However, the

Government still has to introduce the relevant legislation, so as to save the consumers from falling prey to such promotional practices. The cooling-off period is not unique to Hong Kong. Such a period has already been provided for in legal provisions in many overseas territories. I hope the Government can conduct an in-depth study on the issue.

As for enacting legislation on the marketing practices of telecommunications services, I personally think that even if any penalty is specified in future, the offences should not be treated criminalized. Instead, some simpler ways should be identified to penalize the offenders. For example, the largest amount of complaints received by us is related to the receipt of promotional fax during the night. Now, a "not-to-fax list" is already in place. If people specialized in sending promotional fax or spammers are frequently complained by others, the relevant service operators may cut their telephone lines. However, in my opinion, cutting their lines alone is inadequate. In future, apart from this, a power to impose a penalty should be provided. I believe the relevant provisions are in the process of being drafted. However, on the idea of imposing a custodial sentence, I feel it is a bit too excessive. I hope the Secretary can give specific consideration to the issue of the "street rogues" because this is not just the terms of reference of the OFTA, as there are many other non-telecommunications operators conducting on-street promotional activities. Of course, as the competition in the telecommunications industry is very keen, so the operators in the industry are working relatively hard, and they are relatively more active in launching on-street promotional activities. The Government may choose not to regulate any of them; otherwise, any regulatory measures adopted must apply to all.

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

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If no Member would like to speak, I now call upon Mr CHAN Kam-lam to speak on Mr James TO's amendment. You have up to five minutes to speak.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, first of all, I would like to thank Mr James TO for proposing an amendment. Although we may not agree completely with his amendment, I still hope that the Government can do more in its regulatory work. Therefore, even when many proposals are put forward, the Government should still consider them.

Mr TO proposes to adopt the filtering approach by defining the term "spam", so as not to obstruct normal commercial activities. Regarding these suggestions, we are supportive. Of course, with the rapid progress of information technology nowadays, many different methods can be used for promoting business. We feel that, in order to tackle such problems, we must take some specific measures to achieve the intended purpose.

The Democratic Party worries that such regulation or measures may incur extra operating costs which may eventually be transferred onto the consumers. I think such a worry is most unnecessary because one nuisance call alone is already sufficient to warrant regulatory actions.

With regard to the suggestion of providing for a cooling-off period in the contracts, we understand that at present the insurance industry has also made a similar arrangement of providing for a cooling-off period in the contracts, some of which last for five days, others three days. The Consumer Council has also suggested that the Government may impose some regulation over certain industries.

However, we hold a certain viewpoint, that is, the arrangement of providing for a cooling-off period should only apply to some industries which are popular targets of complaints. This should be a better arrangement. If the "cooling-off period" arrangement is applied universally to all industries, it may impact on normal commercial activities. Therefore, in our opinion, the Government may apply the measure first to service industries which have received relatively more complaints, such as the telecommunications industry. This would give consumers some time to think more prudently about their decisions. On the one hand, this may prevent consumers from signing contracts under misleading circumstances. On the other hand, the cooling-off period may also prompt service providers to improve their services, thereby ensuring that the contract signed can be fulfilled eventually.

Besides, we think that the Government should step up its education and promotion initiatives through various channels to enable both consumers and service providers to learn to respect the contract spirit. In addition, the Government should also educate the people of the need to understand the terms of the contracts before putting their signatures on them, so as not to abuse the cooling-off periods.

Thank you, Madam President.

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I am very grateful to Members for their speeches. The Director-General of Telecommunications is also listening very carefully to the views expressed by Members in this Chamber. I am sure he would take all these into consideration.

It is increasingly common to promote the sale of goods and services on the telephone and on the streets. Hence this accounts for the disturbance caused to the public. I myself am often disturbed by direct-sale calls. For example, I may get a number of direct-sale calls in a day selling medical services and hair planting or hair growth services. Though I almost fainted in this Chamber last week, I believe there is no need for me to see a doctor a number of times a day. Though my hair is thin, there is no need for me to get hair growth services, at least for the time being. Mr Albert CHAN said earlier that he might need such services. But unfortunately, these are all tape recordings and even if I want to recommend Mr Albert CHAN to them, it would not be possible. I once sought the advice of Secretary John TSANG on how to deal with the disturbance caused by these direct-sale calls. As Mr TSANG is out of town on official business, so today apart from speaking about my personal experience, I also speak on behalf of Mr TSANG on this motion in his absence.

According to information provided by the Consumer Council, most of the complaints on undesirable sales practices received are related to telecommunications and broadcasting services. There were 1 135 and 1 709 complaints against these two industries in 2003 and 2004 respectively. There were 1 138 complaints in the first five months this year. These figures account for 29%, 33% and 40% of complaints against undesirable sales practices received by the Consumer Council in these periods of time. Other goods and

services frequently complained of undesirable sales practices include overseas holiday resorts, fitness clubs, hotel membership and beauty salon services. Complaints on undesirable sales practices of these services account for 11%, 13% and 12% of the total number of complaints lodged with the Consumer Council in 2003, 2004 and the first five months of 2005 respectively.

Despite the fact that Consumer Council has not compiled any statistics on undesirable telephone calls and on-street sales activities, the Consumer Council says that many of the complaints related to telecommunications and broadcasting services and marketing of services on the telephone and by on-street promotional activities.

A full-scale regulation of marketing practices may interfere with normal commercial operation. Therefore, we must strike a balance between protecting consumers and ensuring that normal commercial operation will not be hampered. As a matter of fact, in addition to protection offered in common law, we have many laws in place to protect the interests of consumers. Examples of these laws are the:

- (i) Supply of Services (Implied Terms) Ordinance which provides that suppliers of services are bound by implied terms such as the services concerned are to be supplied within a reasonable time and with a reasonable degree of care and skill;
- (ii) Trade Descriptions Ordinance which prohibits the making of false trade descriptions, marks or representation as to the supply of goods in the course of any trade or business;
- (iii) Unconscionable Contracts Ordinance which empowers the Court to offer relief to sales and purchase contracts or supply of service contracts ruled as unconscionable, and in deciding whether these contracts are unconscionable, the Court will take into account factors like undue influence imposed by the suppliers on consumers, or the use of any unfair practice; and
- (iv) Control of Exemption Clauses Ordinance which limits the extent to which attempt can be made to use terms and conditions in a contract or any other means to evade civil liabilities.

In addition, we have laws which address the practical conditions of a specific goods or service and they offer protection to the relevant consumers. An example is the Telecommunications Ordinance which seeks to address the services provided by licensed telecommunications operators and thus offers protection to consumers.

On problems caused by promotional telephone calls and on-street promotional activities, the Government has taken active steps to follow up. Below is the Government's response to measures mentioned by Mr CHAN Kam-lam in his motion:

On establishing a system for "blocking promotional calls", the Commerce, Industry and Technology Bureau (the Bureau) understands that promotional calls may cause inconvenience to users of telecommunications services. This especially applies to promotional calls made by machines. Companies aided by technology may dial a large number of calls within a short time and at very low costs. This affects the telecommunications network. Therefore, from the policy perspective, the Bureau plans to legislate to regulate spam electronic messages, and the scope of regulation should include machine-generated spam calls. This is because manually dialled promotional calls will involve higher costs and so the extent of the problem of bulk spam calls created may not have developed to such a state that warrants regulation. Furthermore, the regulation of this kind of calls may touch on the right of certain commercial activities to use telecommunications networks and whether such activities should be banned. We must think carefully and try to strike a proper balance between the right of the message receivers and the right of commercial organizations to make use of telecommunications networks to promote business. The Bureau has gathered views from the organizations concerned on the outline of the proposed legislation and it will brief the Legislative Council Panel on Information Technology and Broadcasting next month.

As to requiring telecommunications operators to provide a service for blocking spam promotional calls and short messages to clients, this is a kind of value-added service and so it is subject to the telecommunications operators seeing such a demand from clients. Some of these promotional calls, especially those dialled by a machine, do not display any caller number. The Bureau will discuss this with the telecommunications operators and encourage them to offer service to their clients to block incoming calls which do not display any numbers. Apart from this, there is also a problem with the telecommunications operators

who have no way at present to recognize a promotional call. If society comes to the view that there should be a way to recognize these promotional calls so that the telecommunications network may block these calls according to the preference of clients, then the Bureau may discuss the issue with the operators to see if any workable measures can be adopted.

Madam President, the problem of on-street promotional activities is a street management problem and this is the duty of many government departments. In many cases, on-street promotional activities do not involve any actual sale and purchase of goods and so prosecution cannot be made on grounds of unlicensed hawking. If such activities pose any obstruction to street cleaning, officers from the Food and Environmental Hygiene Department (FEHD) will first issue a warning and in most cases the salespersons engaging in such promotional activities will comply and move away the articles. If they do not heed the warning or continue to cause obstruction of access in a public place, the relevant department will take prosecution action as appropriate such as charging the persons concerned with obstruction to access in a public place under section 4A of the Summary Offences Ordinance (Cap. 228). In addition, departments like the FEHD and the Police Force will take joint actions from time to time to eliminate the obstruction and disturbance caused by these activities. During the period from January to May this year, the departments concerned have issued over 2 600 verbal warnings and pressed 53 charges against people involved in on-street promotional activities. The departments will continue with their co-operative efforts to regulate on-street promotional activities.

Moreover, Mr CHAN Kam-lam in his motion also urges the Government to encourage commercial clients to simplify the provisions of their contracts with customers, so as to make the provisions more explicit and enhance their transparency. Mr CHAN also urges that penalties be raised to impose severe punishments against misleading and deceptive marketing behaviour. We are convinced that the most effective way to protect the rights and interest of consumers is to help them exercise their rights and make a prudent choice as well as to encourage good business practice. Therefore, the Government agrees with Mr CHAN Kam-lam about a point in his motion, that the Government should encourage commercial clients to simplify the provisions of their contracts to make the provisions more explicit and enhance their transparency. Actually, the Consumer Council has all along encouraged good business practice. On 15 March this year the Consumer Council issued the *Good Corporate Citizen's Guide* which offers valuable and convenient reference to the industries on good



business practices. It includes areas like publicity and promotions, indication of prices and provisions in contracts which should be brief and easy to understand. The *Guide* received positive response from many chambers of commerce, business associations and professional bodies. On top of this, the Consumer Council is helping the beauty services sector to compile a code of good business practice. This will enhance service quality in the sector and further protect the rights and interest of consumers.

With respect to telecommunications services, the Director-General of Telecommunications has issued guidelines to licensed operators to require them to ensure clear and accurate description of goods and services and that all fees and charges are clearly set out and can be easily understood when they engage in promoting, marketing and advertising of telecommunications goods and services.

Apart from some general laws on consumer protection, with respect to telecommunications services, under section 7M of the Telecommunications Ordinance, a licensee shall not engage in conduct which is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including promoting, marketing or advertising the network, system, installation, customer equipment or service. Should the licensee be found to have contravened the Telecommunications Ordinance or the licensing conditions, the Director-General of Telecommunications may, after considering the situation, issue a written warning to the licensee to demand that remedy measures be made or a fine be imposed. For first-time offenders, the fine imposed can be up to \$200,000 and repeated offenders are liable to a fine of up to \$1 million. The OFTA has issued guidelines on misleading or deceptive conduct under section 7M of the Telecommunications Ordinance so that the industry and the consumers can know about their rights and responsibilities. If consumers think that the promotional activities of a licensee are in any way misleading or deceptive, they may lodge a complaint with the OFTA. When a *prima facie* case is established, the OFTA will carry out formal investigation into the case.

The amendment proposed by Mr James TO suggests that the Government should explore the provision of a cooling-period in the contracts, so as to allow time for consumers to consider the features of the service plans and decide whether or not ultimately to accept the services. With respect to promotional activities related to telecommunications services, the OFTA drew up nine Best

Practice Indicators in March 2005. One of these indicators is about confirmation calls. Before telecommunications operators provide any service, calls should be made to the consumer to confirm his agreement to purchase particular goods or services as per a written application. Such confirmation calls should be accurate and result in reliable confirmation as well as giving consumers the opportunity to void or change their applications. Thus, consumers are in practice given a *de facto* cooling-off period.

In sum, Madam President, government departments will take active measures to follow up problems and disturbance caused by increasingly common promotional telephone calls and on-street promotional activities, the problem of obstruction of access and consumers' complaints about being misled or deceived by salespersons. The Bureau will report to the Legislative Council Panel on Information Technology and Broadcasting next month on legislating to control spam electronic messages.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr James TO to Mr CHAN Kam-lam'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.

(No hands raised)

Mr CHAN Kam-lam rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for three minutes after which division will start.

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

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please cast your 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:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Ms LI Fung-ying, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Mr Vincent FANG and Mr Jeffrey LAM abstained.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG 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, 19 were present, 11 were in favour of the amendment and eight abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present and 18 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 CHAN Kam-lam, you may now reply and you have three minutes 12 seconds.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, it is very common for members of the public to be subject to the nuisance caused by promotional calls. That nobody, from the Secretary to the general public and Members of this Council, can be spared from such nuisance is evident that the situation is very serious indeed. Earlier on the Secretary has given us a reply, and we certainly welcome the Government's initiatives to identify ways to impose regulation. As regards these promotional activities, we also have to look at the problems behind them which are also worthy of our consideration. One of the problems is a kind of promotional activities called "gold planting", which is very common now. This is a kind of organized illegal activities which is common and has aroused great criticisms in the community. Recently, we have received some complaints and cases seeking assistance, and before that, the Court has already made some judgement. In these cases, the victims, after joining these "gold-planting" companies, were instructed to carry out some pyramid selling schemes. As they had to identify all possible ways to carry out their promotional work, they had done it by making telephone calls and conducting on-street promotional activities. This may be an underlying cause of the proliferation of promotional activities that we now see.

Another problem which warrants our deep thoughts is the source of information of these companies conducting promotional activities on the telephone. This is something worthy of our thoughts. Why can these companies obtain so much information of telephone service users? Of course, we are not suggesting that some telecommunications companies have illegally sold their information, but at present, in the contract that we signed with telephone service companies, there is a very simple provision allowing the company to provide certain information to the relevant parties for other purposes. We think that this does give cause for concern. Certainly, if the information of customers is illegally resold to other people, we would consider it necessary for the Government to conduct in-depth investigations into it, in order to protect the ultimate rights and interest of consumers.

Today, I thank the many Members who have expressed their concern on the nuisance caused by telephone or telecommunications services. I also hope

that the Government can expeditiously table the relevant regulatory legislation to the Legislative Council for due implementation. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHAN Kam-lam, as amended by Mr James TO, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Immediate resumption of sale of Home Ownership Scheme flats.

## **IMMEDIATE RESUMPTION OF SALE OF HOME OWNERSHIP SCHEME FLATS**

**MR ALBERT CHENG** (in Cantonese): Madam President, the second motion: Immediate resumption ..... Madam President, I move that the motion, as printed on the Agenda, be passed. I almost took the place of the President.  
*(Laughter)*

I was lucky in the drawing of lots, so I can now move this motion. It was Mr Albert HO of the Democratic Party who originally intended to move this

motion, but I am going to do so in his stead. Since a man of integrity will not claim the credit of others, I must make it very clear that I am moving the motion for Mr Albert HO.

Madam President, Secretary for Housing, Planning and Lands Michael SUEN announced in November 2002 nine measures to stabilize the property market, bringing an end to TUNG Chee-hwa's policy of "85 000 housing units". Actually, whether there were nine measures or 10, there has always been just one single measure in the housing policy of the Government — to restrict land supply and suppress the demand for public housing, so that the forces of the private-sector market directed by property developers can be left to determine the direction of the housing market. Owing to structural and historical reasons, the private-sector property market in Hong Kong is marked by acute monopolization, and the market mechanism cannot operate entirely freely. Once land supply is restricted, excessive demand will easily result. Given rational market expectations, low interest rates and the *de facto* relaxation of the mortgage policy, it is not difficult to understand why the property market has stabilized and turned active, even showing an upward trend following the price rises of luxury flats.

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

Regarding land supply, the Government has been trying to impose control by suspending land auctions and cleverly introducing the Application List System. The actual effects of the Application List System are far greater than those of the annual 50-hectare land disposal programme before the reunification. The reason is that the Application List System lacks any transparency and the Government is the only one in the know. If the price offered by a property developer is not satisfactory to the Government, the land lot concerned will not be put on auction at all. In other words, land prices under the Application List System may be high or low subject to the entire control of the Government. As long as the Government does not wish to sell off any lands cheaply, there will never be any supply of land at low prices. With the resultant excessive demand, land prices will never drop and the property market will see no substantial fluctuations, thus leading to a trend of steady increases.

In respect of housing demand, the Government has suspended the construction of Home Ownership Scheme (HOS) flats and the sale of these flats and public housing units, so as to eliminate the overlapping of the private-sector and public-sector property markets in terms of sales targets and prices following the plummeting of the property prices. The aim is to pull out from the market, so that buyers of public housing units and HOS flats may switch to private property developers.

In brief, Michael SUEN's measures on stabilizing the property market are entirely based on the interests of property developers, even to the extent of destroying the time-tested long-term housing strategy. The public housing policy, in particular, has been shattered beyond any redemption.

Following the financial turmoil, Hong Kong slipped into a period of acute recession, during which its financial services- and property-based economy came close to complete collapse. Owing to the negative wealth effect brought about by the sluggish property market and negative equity assets, the local economy was in the doldrums, completely sapped of strength. Assuming that there were 1.2 million property owners in Hong Kong, the total value of properties in Hong Kong would be as much as \$4,000 billion, so the consequences could be easily imagined. We may thus find it understandable for the Government to take some extraordinary measures during such unusual times. However, the property market has by now stabilized, and property prices have already risen by more than 50% when compared with the lowest levels in the past. The prices of luxury flats have even risen back to the levels during the property peak in 1997 and the number of negative equity assets has also dropped to roughly 10 000. All this shows that the property market has not only stabilized but also picked up steadily as interest rates rise and inflation returns. The resultant wealth effect has stimulated domestic consumption, conducive to economic recovery. Meanwhile, however, as the private-sector and public-sector housing markets have ceased to overlap, the housing demand of the middle and lower strata of society has once again become a problem that the Government must squarely address. If this problem is not addressed, a morbid mismatch between housing supply and needs is bound to occur again.

Honestly speaking, the Government's refusal to advance the sale of vacant HOS flats on the ground of maintaining policy consistency has not only led to a morbid mismatch between housing supply and needs but also resulted in a huge squandering of public resources, adding to the financial burden of the Housing

Authority (HA) and plunging it into a man-made financial crisis. The consequences will have to be borne by the 3 million public housing tenants and even all the 7 million people in Hong Kong.

I must point out that the housing policy of the Government actually consists of two inseparable components, namely, the land policy and the public housing policy. The Government may want to disguise its policy of high land prices as a means of stabilizing the property market, but in doing so, it must not sacrifice the interests of the middle and lower strata all the time and ignore their housing needs, or else it will sow the seeds of social instability. The Government's recent announcement that it will accept a land bidding at 80% of the open market value is obviously a concession made under pressure, because I have heard that some property developers even offered land biddings at just 30% of the open market value, thus making it impossible to initiate an auction of some prime sites. Property developers naturally hope to purchase lands at low prices while the Government maintains the policy of high land prices. That way, they can buy low and sell high, making as much profit as possible. Therefore, the Government must stand firm and adhere to its principles, refusing to sell off any lands cheaply.

Besides, since it is now possible for land prices to stabilize in the long run and property prices are going up steadily, the Government should once again restore the Long Term Housing Strategy step by step and consider the reintroduction of the HOS and the Tenants Purchase Scheme (TPS), with a view to satisfying the practical housing needs of the middle and lower strata in Hong Kong.

The resumption of the sale of HOS flats should just be the first step. The ultimate solution should be the formulation of a new long-term housing strategy, because the housing policy is not just something of economic significance but also a social issue of serious implications on people's livelihood and a political matter that affects society as a whole. If there is no secure housing and employment for 3 million Hong Kong people, how can the Government still claim that public opinion underpins the strength of its leadership and enhancing people's well-being is the first order of business of good governance?

Madam Deputy, a certain property developer has recently criticized others in the industry for being so obese that no socks can possibly fit them. During his election campaign, Mr TSANG once rode on the Mass Transit Railway, but I



have never seen him take a taxi. I believe that he has never patronized the "gang of 20% discount". Taxi drivers belonging to the "gang of 20% discount" must of course be criticized, but the Secretary for Housing, Planning and Lands has nonetheless become one of them, offering a 20% discount on the open market value of lands. This is nothing but an offer of benefits to property developers.

Well, let us not talk about this anymore, for we should not be jealous of the rich and scornful of the poor, nor should we be green-eyed either. Just let him go his own way if he really wants to offer benefits to property developers. But even when he does so, he must still do something to tackle the housing problem of public housing tenants. These people do not have enough money to patronize property developers because prices are rising as developers try to manipulate the market to their own favour. If all the 16 000 vacant HOS flats — God knows how many cockroaches and rats are breeding there — are offered for sale, then they can be sold to all these people who do not have enough money to patronize property developers. If even these people are forced to patronize property developers, the latter will become far worse than not being able to put on any socks. I am afraid that no clothes will ever fit them due to their obesity.

I therefore hope that Members can support this motion. Legislative Council Members are the representatives of the people, so we must accord priority to them and identify the inaccuracies. I think that if the wastage of public resources and the mismatch between housing supply and needs continue, we must take some actions. We are duty-bound to do so. I hope Members can support the motion and Mr Frederick FUNG's amendment.

Regarding Mr CHAN Kam-lam's amendment, he has already notified the President that if Mr Frederick FUNG's amendment is passed, he will withdraw his amendment. However, I do not support Mr CHAN Kam-lam's amendment because it gives Mr SUEN the majoh tile he exactly needs. This is not about "The Military Governor and the Sparrow" but "The Military Governor and the Biscuit". It obviously gives Mr SUEN the majoh tile he needs. The reason is very simple. If I were Mr SUEN, I would reply that there is in fact a timetable, a timetable which says that the sale of HOS flats will not resume before 2006. In that case, it is actually a waste of time, so we had better adjourn the meeting.

I so submit. Thank you, Madam Deputy.

**Mr Albert CHENG moved the following motion: (Translation)**

"That, since the beginning of this year, the local economy is showing signs of revival and the property market is also regaining vitality, the Government should no longer freeze the sale of Home Ownership Scheme (HOS) flats to boost the property market, and as the HOS flats are mainly targeted at public rental housing (PRH) tenants and low-income households who cannot afford private housing, the resumption of sale of HOS flats will have minimal impact on the private housing market, and it is only a waste of public resources to allow some HOS flats to remain unoccupied; as such, this Council urges the Government to immediately put up the surplus HOS flats for sale by phases, including the more than 3 000 flats which have never been offered for sale in the market as well as the over 10 000 unsold flats in existing HOS courts and returned HOS flats, and to consider the construction of new HOS estates as well as to consult the public on its overall housing strategy, including the policies on HOS flats and PRH rent, etc."

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

**DEPUTY PRESIDENT** (in Cantonese): Mr Frederick FUNG and Mr CHAN Kam-lam will move amendments to this motion respectively. The motion and the two amendments will now be debated together in a joint debate.

**DEPUTY PRESIDENT** (in Cantonese): I will call upon Mr Frederick FUNG to speak first, to be followed by Mr CHAN Kam-lam; but no amendments are to be moved at this stage.

**MR FREDERICK FUNG** (in Cantonese): Madam Deputy, the provision of public rental housing and HOS can be traced back to the 1967 Riot. The Riot prompted the British Hong Kong Government to conduct a whole series of reviews, and after Sir Murray MACLEHOSE had become the Governor of Hong Kong, many social policies were launched one after another. The HOS was one

of the most significant policies aimed at improving people's livelihood and maintaining their confidence.

The HOS has had a history of 28 years, and we observe that it has been serving the following functions throughout all these years:

1. By enabling the middle and lower strata of society to purchase and own properties at prices below market levels, it can improve their living conditions while increasing their sense of belonging to society as property owners.
2. It can help regulate the property market. The Government has been emphasizing its determination to uphold the free market, but there can never be any entirely or perfectly free market on earth. The free market as we see it today is still susceptible to manipulation and monopolization by consortia or individuals. Besides, the free market may also be affected by its inherent economic problems and may even go out of control. It is precisely here that HOS flats can serve their function of regulation.
3. The sale of HOS flats is a source of revenue for the Housing Authority (HA). Generally speaking, HOS flats are sold at prices equivalent to two thirds of their respective market values. This level of prices can already bring profits to the HA at a rate of 130%. The HA can then plough back the profits into the construction of other kinds of public housing, such as PRH. That way, the Government does not need to spend any tax revenue on such construction, or, to be precise, it does not have to apply for funding, thus avoiding any social disputes on, for example, what should be the reasonable level of revenue that should be spent on constructing PRH. This is also one advantage of HOS flats.
4. Since 1978, the HA has already sold roughly 300 000 HOS flats, and some 147 000 of these units have been sold to PRH tenants or households waiting for the allocation of PRH. The acquisition of HOS flats by these households has relieved the pressure on the HA to construct PRH units. The reason is that after moving into HOS flats, PRH tenants can vacate their units and those waiting for the

allocation of PRH can be removed from the Waiting List. In other words, more PRH units can be vacated and the Waiting List can be shortened. This is just like killing two birds with one stone.

Following the bursting of the economic bubble in 1997, there came a drastic decline in the demand for private housing units and in turn a nosedive of their prices to levels close to those of HOS flats. From 2000 onward, the HA already started to reduce the construction volume of HOS flats, and in late 2002, the Government finally decided to cease the construction and sale of HOS flats. The sale of completed flats and those still under construction at that time was suspended until after 2006. The Government explained that it must stand by the principle of posing no competition to the private-sector market and deliver a message to the market, that the Government was determined to reduce its intervention in the property market.

However, property prices have started to rise again since the beginning of this year. Let us not, for the time being, talk about the astronomical prices of luxury properties, the record level of more than \$20,000 per sq ft. But we should still try to satisfy the home ownership desire of grass-roots families and public housing tenants. As I have mentioned, home ownership is one of the factors contributing to social stability. The demand for home ownership is ever increasing, especially among public housing tenants with higher incomes. Besides, the children of some tenants have already grown up and their household incomes have thus increased. These tenants may have to pay 1.5 times or even double the net rent. To shun this policy, they may want to purchase HOS flats, so that they can solve the problem of having to pay 1.5 times or even double the net rent. To a certain extent, these households do not have sufficient resources or wealth for the purchase of private housing units. These public housing tenants belong to the sandwich class, and they want to purchase HOS flats.

The demand for public housing resources is still present in society. In recent years, the Housing Department has raised the threshold for public housing application, thus succeeding in reducing the number of qualified applicants. And, since 1987, the policy on well-off tenants I mentioned just now has been enforced to reduce the subsidy for public housing tenants whose incomes are above the Subsidy Income Limit. Recently, the HA has even considered a further reduction of the Subsidy Income Limit for well-off tenants, and the interval between income declarations has also been shortened to two years. And, there is also the suspension of the sale of HOS flats. The Hong Kong

Association for Democracy and People's Livelihood (ADPL) thinks that this policy, which was introduced in 2002, is aimed at forcing those public housing tenants aspiring to home ownership to enter the open market, so as to increase the number of buyers and jack up the property prices. How can this be called a free market? I maintain that the Government is obliged to offer assistance to the sandwich classes living in PRH. The means adopted should be one of encouragement, not punishment.

The sale of HOS flats can also alleviate the fiscal deficit of the HA. Last year, the HA ran into a deficit of more than \$500 million. The sale of HOS flats can generate revenue for the HA, thus enabling it to redeploy its resources. It will then be able to resume the construction of recreational facilities, maintenance works and redevelopment projects in PRH estates, for example. Because of the sale suspension, returned or unsold flats will be accumulated and left vacant for prolonged periods, thus necessitating repair works. And, when they are eventually sold in the future, these flats will also have to be renovated. I have heard that such renovation will require as much as \$400 million. In that case, why should we waste our public money?

We think that the Government must construct new HOS flats as soon as possible to cater for the needs of society, especially the basic needs of public housing tenants. Why? There are four reasons.

First, the HOS has had a history of 27 years and we are all very familiar with its operation, achievements and effectiveness. Therefore, we do not think that there is any further need to study its effectiveness and operation. For this reason, we do not think that any further studies should be conducted. Instead, the scheme should just be resumed.

Second, I wish to talk about the question of demand. The subscription rate of the HOS used to be very high. It was oversubscribed three or four times right at its beginning and at its height, it was oversubscribed 30 times. Even when the Government announced the sale suspension of HOS flats in 2002, it was still oversubscribed three times. Of course an oversubscription rate of three times is just one tenth of an oversubscription rate of 30 times. But when compared with other subscription rates in the property market at that time, an oversubscription rate of three times was not too bad already. I believe that if the sale of HOS flats can resume now, the oversubscription rate will certainly be higher than three times.

Third, from the sociological perspective, as the number of home owners increases, society will become increasingly stable. Two weeks ago, Secretary for Housing, Planning and Lands Michael SUEN also expressed the Government's approval of the HOS. He said (and I quote), "It will facilitate these residents to improve their living standard and expedite their pace of moving up the ladder." (End of quote)

Fourth, the HOS can induce public housing tenants with higher incomes to vacate their units. I consider that this is far better than resorting to the policy on well-off tenants as a means of pressing, coercion and punishment — according to the Secretary there is no such intention, but the recipients admit that they have such a feeling.

Therefore, the ADPL is of the view that the grassroots and the middle and lower strata of society have been most deeply impacted by the cessation of the construction of HOS flats. Besides, the cessation is not conducive to social and housing mobility. Therefore, the cessation is beneficial only to property developers and the property market. If the related problems have been solved, the time is now right for the Government to reactivate the mechanism.

I hope that apart from considering the interests of property developers, the Government can at the same time pay heed to the housing problem of the middle and lower strata of society and environmental issues. It must not be biased towards the interests of property developers. In fact, the masses and the low-income strata of society are all waiting for government assistance in bettering their living quality and conditions.

I do not support the amendment of Mr CHAN Kam-lam because it does not request the Government to reinstate the HOS or the relevant policy. Apart from this, however, the views put forward in his amendment are basically the same as those contained in my own amendment. I am convinced that this is no longer the time for any studies. If studies are conducted again, and even if the construction of HOS flats resumes today, it will still take five more years before any flats can be completed. We are all very familiar with the effectiveness and achievements of the HOS. If we all think that there is a need, the Government must be obligated to go ahead immediately.

As for the overall housing strategy, covering such issues as the rent-to-income ratio, the quality of housing and the need for redevelopment, I

agree that we should spend some time on further discussions. But since they have all been discussed for some 20 years, I hope that an integrated housing policy can be drawn up as soon as possible even if further reviews are still to be conducted. Honestly speaking, of all government policies, the housing policy is best able to reduce the wealth gap and assist the poor. I therefore hope that Members can render their support.

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, as soon as the Hong Kong economy started to decline in 1997, the property market immediately entered an "ice age". HOS flats, once coveted so much by people, were no exception, and their subscription rates likewise dropped. There was a brief rejuvenation of the property market in 2000, but this lasted less than a year and the market soon plummeted again. In an attempt to stabilize the property market, the Government formulated the "SUEN's Nine Strokes", under which the role of the Government in the property market was re-defined. The subscription rates of the last few phases of HOS flats all went down; they were oversubscribed by more than 10 times during the peak period but the rate of oversubscription fell to just five or six times in the last few phases. It was against such a background that the Government sentenced the HOS to death in an attempt to stabilize the property market — the sale of the remaining HOS flats would be suspended until late 2006 and it has since stopped the construction of new HOS flats.

After surviving the onslaught on SARS, the economy of Hong Kong has gradually bottomed out and turned stable, and property prices have also started to rise steadily. Recently, the prices of some luxury flats have even attained record-high levels since the property peak in 1997. The problem of negative equity assets, which has been tormenting Hong Kong for years, has also lessened. The number of such assets has dropped from the peak of more than 100 000 to less than 10 000 in the first quarter of this year. We can thus see that the property market has stabilized and become active again, with people starting to restore their confidence in the property market. All this has not been easy to achieve, so we must treasure the existing economic situation.

But it must be noted that the Government has in fact paid a very high price for the gradual stabilization of the property market. The decision of the Government to suspend the sale of HOS flats triggered off the Hung Hom Peninsula incident, in which the Housing Authority (HA) not only suffered a

huge loss in revenue but also had to accept a "cession of territory" due to various contract restrictions. This led to an avalanche of public outcries against the HA, dealing a direct blow to the prestige of the Government in governance.

Besides, the decision also resulted in the sudden emergence of 25 000 vacant HOS flats, a phenomenon of "housing units being left vacant despite the presence of demand". Over the past few years, the HA has spent a ledger sum of about \$200 million on the maintenance, repairs and government rent of these flats. If the HA insists on the policy of not advancing the sale of these flats, the expenditure may increase still further.

Apart from the Government and the HA, the sale cessation of HOS flats has also victimized some shop tenants. As a result of the cessation, the occupancy rates of four HOS estates have been lower than originally planned. The shop tenants there thus suffer immensely, for they are forced to operate in a business environment without residents and customers. Since the inception of their businesses, all the shopping arcades have been extremely quiet, so it is very difficult for them to carry on. The Housing Department (HD) has been offering rent concessions for quite some time to assist the shop tenants in tiding over their difficulties, but it must be pointed out that the root cause of all the difficulties is in fact the shortage of shoppers. As long as these HOS estates are not fully occupied, the shop tenants will have to face such a predicament and there will be no relief unless they fold their businesses altogether.

The various undesirable consequences of the sale cessation have already surfaced, and requests for resuming the sale of HOS flats as soon as possible have started to be heard in society. The DAB has all along been actively advocating the early resumption of the sale of HOS flats. We are of the view that although the overall economy has improved, the common masses are still unable to benefit. According to the wage statistics announced by the Government in March this year, the average wage in December last year was 1% lower than that in the corresponding month of 2003. Some human resources consultants have even pointed out that very few employees were given any pay rises last year, because pay freezes and pay cuts were still the case with most companies. It is further pointed out that there were not any pay rises until the beginning of this year. Despite the economic improvement and the stabilization of the property market, many grass-roots people are still unable to buy any private housing units.



The DAB maintains that the Government must pay heed to people's demand for HOS flats, and that it is necessary to advance their sale. We believe that as long as the Government can handle the sale appropriately, the private property market will not be affected. Besides, the resources thus obtained from the sale of these flats can help the HA relieve its fiscal deficit and increase the turnover of public housing units.

Madam Deputy, the decision to suspend the sale of HOS flats has reduced the turnover of public housing units, thus making it impossible to deploy resources appropriately and to reduce the waiting time. We are concerned about the fact that following the sale suspension, the sitting tenants of PRH have lost a rung in the ladder of home ownership. This has removed an incentive which can encourage them to vacate their units for allocation to others in greater need, and which can in turn achieve a more appropriate use of public housing resources.

The sale of HOS flats has all along been a main source of revenue for the HA, so the decision to halt the sale of these flats has plunged it into financial difficulties, thus directly affecting the future development of public housing. Since the lawsuit connected with The Link REIT is not yet completed and the listing plan is seriously delayed, the sale of HOS flats at an earlier time will help ease the fiscal deficit of the HA.

Whenever I see blocks and blocks of brand-new yet unlit HOS flats towering against the night sky, I will inevitably think of the problem I have mentioned. The Government has been emphasizing that its housing policy must be stable and consistent. We agree. However, has it ever occurred to the Government that the failure to make an early announcement on a schedule of selling the 10 000 or so vacant HOS flats has itself added uncertainties to the market? Such uncertainties will produce equally negative impacts on the property market.

Madam Deputy, this explains precisely why I wish to move an amendment to Mr Albert CHENG's motion. We have always maintained that the Government should sell the vacant HOS flats in batches as soon as possible. Opinions in society have been divided as to whether the sale of HOS flats should be advanced. Some hold the view that at this very time when the property market has just started to recover, the 10 000 or so HOS flats must not be offered for sale lest the market may be adversely affected. Others, however, hold the

opposite view. I think that as long as a concrete timeframe is drawn up, as long as there is more market transparency, so that market players can absorb the news and make appropriate preparations, the possibility of over-reaction and excessive repercussion in the market can be minimized. I maintain that the Government must promptly put forward a detailed scheme on dealing with the remaining HOS flats. Such a scheme should specify:

- first, a sales timetable, giving information on the number of phases and years involved in selling all the flats;
- second, the number of flats to be sold in each phase, or a sales limit for each phase, lest the market may be flooded by large numbers of housing units in a very short time;
- third, a priority list of HOS estates for sale; and
- fourth, the targets of sale, whether they are supposed to be white form applicants, or green form applicants or both, with a specified proportion for each category.

Some may fear that the sale of these HOS flats may suppress property prices. To address their concern, the DAB proposes to accord priority to PRH tenants, that is, green form applicants. This will help increase the turnover of PRH units and thus achieve a better use of resources. And, more importantly, if these HOS flats are sold only to PRH tenants, the impacts on the property market as a whole can be minimized. For this reason, granting the backing of other favourable factors, the property market will be able to continue to develop in a steady and healthy manner.

Madam Deputy, the motion today also deals with another topic — the construction of new HOS flats. I must stress that the Government has to take account of current circumstances and cater for the housing need of the grassroots. For this reason, it should reconsider the implementation of various measures to assist them in purchasing their own homes, including the sale of existing HOS flats and the construction of new ones. However, since the property market and the economy have not yet fully recovered and the people are still unable to fully benefit, the DAB agrees that the Government should halt the construction of HOS flats for the time being despite its long-standing emphasis that the construction of HOS flats should resume at a suitable time later. But what

should be the opportune time? In this regard, the Government and various social sectors must join hands to conduct in-depth studies and surveys. On my part, I agree that consultations and studies on this issue should be conducted. The main reason for my amendment to the original motion in this regard, that is, the main reason for deleting "to consider the construction of new HOS estates", is that it is a bit repetitive to say so. Since the last part of the original motion already urges the Government "to consult the public on its overall housing strategy, including the policies on HOS flats and PRH rent", it is redundant to mention the construction of new HOS estates.

In regard to the amendment of Mr Frederick FUNG, the DAB does have some reservations. The amendment demands the Government to resume the construction of HOS flats immediately. This is very dangerous. We reiterate that any decision on such a significant matter must be preceded by very careful consideration.

Thank you, Madam Deputy.

**MR LEE WING-TAT** (in Cantonese): Madam Deputy, the housing policy of the Democratic Party consists of the following points.

First, we maintain that there must be an adequate and stable supply of land, so that players in the free market can formulate consistent and sustainable policies on the sale and purchase of lands and the supply of private housing units.

Second, we maintain that the grass-roots people must be provided with sufficient public housing units, so that the waiting time can be shortened and applicants can be allocated housing units early.

Third, we maintain that a small number of HOS flats must still be constructed every year. This will not only help some grass-roots people realize their dreams of home ownership but also regulate the supply of private housing units.

We notice that the private property market has picked up very significantly since the end of the SARS outbreak. But we can also see that in the next few years, the supply of land will be smaller on the one hand, and the supply of private housing units will be unable to attain the relatively stable levels in the past on the other. At present, the Government relies solely on the Application

List System as a means of controlling the supply of land to suit market demands. Unfortunately, however, the Application List System has been functioning for one year but the results over the past six months have not been satisfactory at all. That being the case, we are of the view that the resumption of regular land auctions should be seriously considered. But the Government seems to hold the opposite view.

As far as we are aware, no free market economists have ever opposed the holding of regular land auctions. Admittedly, under the Application List System, property developers can have the initiative to a greater extent, but the holding of regular land auctions is something that no advocates of capitalism or the market economy will possibly oppose. Recently, the Government has revised the Application List System, but I frankly cannot see the rationale behind this move. This policy has been functioning very smoothly. Over the past one or two years, all biddings filed by property developers under the Application List System have been successfully sold, with the selling prices exceeding the bidding prices by as much as 40% to 200%.

Madam Deputy, to be very honest, I have rarely seen any government policy as successful as this one. But the Government has revised the policy of its own accord. This really puzzles me a great deal. The usual case is that even when the Government has made an error, it will still refuse to make amends despite any public outcries. It is indeed very rare for the Government to make any changes when it has done nothing wrong, when there is no public pressure. This may be a manifestation of Mr TSANG's pledge that his work as the Chief Executive will be underlined by "Strong Governance".

However, I must say that his "Strong Governance" is actually qualified, in the sense that there will be exceptions. What I mean is that there will be no more "Strong Governance" when he deals with property developers. I think we can use two other expressions, namely, "cowardly governance" and "the rule of man" to describe his dealings with property developers. By "cowardly governance", I mean that regardless of whether a policy is good or bad, he will soften and change his stance when he meets any pressure from property developers. I have been in charge of the Democratic Party's housing policy for a very long time, but I simply fail to see any justifications for revising the Application List System. There is nothing wrong with this policy, so I cannot see why it has to be revised. What is the reason for accepting a bidding price which is 20% off the market value? The Government has offered a very grand

rationale, saying that although a bidding price that is 20% off the market value is accepted, property developers must still offer the market price at the auction before the land lot can be sold. However, will the supply of land thus increase? I have personally asked the Secretary whether the Government is prepared to offer a 30% discount, or 40% discount, off the market value if property developers do not submit any bidding under the Application List System.

If the Government's logic holds, then why does it not allow members of the public to do the same? If all members of the public do not pay their taxes, is the Government going to offer them a 20% discount in the next demand note? The answer is of course no. If anyone does not pay his tax, the Government will certainly sue him. I have in fact taken pains to ask Secretary Michael SUEN whether there is anything wrong with this policy. According to him, there is nothing wrong with the policy. I have also asked him whether the operation of the policy has been smooth. His answer is yes. In that case, why has the Government still revised the policy? According to the Secretary, it is because property developers are reluctant to submit any bidding under the Application List System. But I would say that if they refuse to do so, the Government can well resume the holding of regular land auctions. Why does the Government reject this option? I fail to see why.

Madam Deputy, why did I also say "the rule of man"? The Government says that everything must be based on sensible analyses and scientific data. But I fail to see any reference to such analyses and data when it comes to the revision of the Application List System. This explains why I think that Mr TSANG's "Strong Governance" is qualified by exceptions. There will be exceptions once the Government deals with property developers.

Madam Deputy, Chief Executive Donald TSANG says that he will be guided by public opinions in whatever he does. A couple of days ago, the Democratic Party conducted an opinion survey in which 590 people were interviewed. The first question in the survey was about whether or not they would support the sale of the 16 000 HOS flats from this year onwards. Those who answered "yes" represented 59.8% (that is, nearly 60%) of all the respondents, while 15% answered "no" and 25% said that they did not have any opinion on this. Hence, we can see that people's opinions on this are very clear. Our second question was about whether or not they would support the construction of new HOS flats after the sale of all the vacant HOS flats.

Fifty-six per cent of the respondents answered "yes"; 23% of them said "no; and, 20% said that they had no idea. Therefore, if it is true that the Chief Executive is guided by public opinions, then we must ask him to act according to these opinions.

Finally, I wish to point out that while many government policies are marked by continuity and very few changes throughout, the housing policy has nonetheless undergone many drastic changes over the past one or two decades, especially since 1991. The main reason is that there is always a very great force that blows the Government off its feet in many cases, preventing it from enforcing a sensible, sustainable and long-term policy in the interest of Hong Kong people. Property developers are precisely this force. They are able to hold sway in the housing policy of Hong Kong. They even play a dominating role.

I once mocked Secretary Michael SUEN, saying that if his Policy Bureau continued to do things that way, then it would be best for it to move its office to the secretariat of the Real Estate Developers Association instead of stationing in the Government Secretariat anymore. I understand that there will be a motion debate on sales guidelines for property developers sometime later. Although this has nothing to do with the motion topic today, I must still say that this upcoming motion could show the many loopholes in the sale of private housing units.

If a member of the public is caught littering, he will be fined \$1,600. But if property developers somehow disseminate any undesirable messages in the market, they will not face any fine at all. There is just a set of guidelines. Honestly speaking, I simply cannot find any other governments in the world that are so lenient. But, well, the Government's leniency is exclusively for property developers. It will not be lenient with the common people. If any member of the public is caught littering, he will definitely be fined \$1,600.

For all these reasons, Madam Deputy, I will support both the original motion of Mr Albert CHENG and Mr Frederick FUNG's amendment. In any case, if the Government does not change the general policy direction, there will be very little chance for the HOS policy to develop soundly, because property developers can play such a dominating role in the formulation of government policies. Thank you, Madam Deputy.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam Deputy, due to the Government's erroneous housing policy, the property bubble burst and property prices plummeted following the onslaught of the Asian financial turmoil years back. The nosedive of property prices not only turned the properties of numerous owners into negative equity assets but also plunged many small and medium enterprises with mortgage liabilities into financial difficulties. In 2003, when SARS broke out in Hong Kong, the property market of Hong Kong nosedived further to the bottom. For this reason, the Government took an about-turn, abandoning the measure of curbing the property market and switching suddenly to a policy of vigorously "jacking up" the market. Secretary Michael SUEN, the official with responsibility for the housing policy, introduced the so-called "SUEN's Nine Strokes" in an attempt to "jack up" the property market. It was hoped that property prices could thus be raised to stabilize people's confidence. One of the "SUEN's Nine Strokes" was the cessation of the sale of Home Ownership Scheme (HOS) flats.

Before going into the discussion, I wish to recapitulate the history of the HOS. In the late 1970s, with the objective of enabling those people who could not afford private housing units to realize their dreams of home ownership, the Government introduced the HOS, under which residential housing units were sold at prices lower than the market rate. I believe many people have benefited from the HOS and succeeded for the first time in purchasing their own homes. In many cases, those who purchased HOS flats in the early years have even made use of their properties as "stepping-stones", in the sense that they have been enabled to buy and sell in the property market for profits, thus paving the way for improving their living conditions. It can hence be seen that by offering opportunities for people who cannot afford private residential units to purchase their own homes, the HOS market can serve to bridge a gap of supply in the property market. We can conclude that as long as there continues to be such demand, there will be a point to retain the HOS market.

Should the Government resume the sale of HOS flats? Is there still any point to retain the HOS? To answer these questions, we have to find out the existing conditions of the property market and whether the common people are able to afford private residential properties. According to the Hong Kong Property Review 2004 compiled by the authorities, the prices of small/medium units rose by nearly 30% when compared with the prices in 2003. When we also look at the income statistics of Hong Kong people, we will discover that the

rates of Hong Kong people's income rises are really nothing when compared with the surge in property prices. That being the case, how can a small family wishing to purchase a home for the first time afford the very expensive private properties? Even if some of these families can still manage despite difficulties to afford private residential units, their living standard will inevitably fall. Should the Government still tolerate the continued existence of the situation under which Hong Kong people "must work for the whole of their lives for property developers"? That is why I think that there is a need for the existence of the HOS.

The Government has repeatedly told us that since the prices of private residential units are now within the means of people, it is no longer necessary to retain the HOS and there is no urgent need to sell the remaining HOS flats. But are the prices of private residential properties nowadays really within the means of everyone? The property prices today are the result of the Government's forcible attempts to jack up the market. In other words, they are not the equilibrium prices of the market today. Put simply, they are not the reasonable outcome of automatic market adjustments. That being the case, how can the Government prove that all aspiring home buyers can afford private residential units, and that it is no longer necessary to retain the HOS? Is it true that the real intention of the Government is to continue to jack up the market? If not, why is it so hesitant about selling the remaining HOS flats at an earlier time? As long as it can impose some sort of control on the number of flats to be offered, the property market will not thus collapse. Am I correct?

Another point is that according to economic theories, the immediate resumption of the sale of HOS flats and the continued implementation of the HOS will actually enhance the economic impetus of Hong Kong. The economic growth of a place depends on increases in various different forms of transactions. In the context of Hong Kong, property purchases are arguably the biggest monetary transactions to people in general. Even in the case of HOS flats, a single purchase will still inject a million dollars or so into the economy. What is more, the beneficiaries of the sale of HOS flats will certainly not be those who can have the means to purchase private residential units. As a result, there will simply be no overlapping of demand. When the total volume of economic transactions increases without affecting the sale of private residential properties, there will be economic growth. Obviously, it will be far more effective to boost Hong Kong's economic development by assisting people who are otherwise



incapable of purchasing properties than by vigorously promoting retail businesses. Besides, when there are more property owners, more people will be able to benefit from the wealth effect and rising property prices.

Madam Deputy, the Government thinks that it is no longer worthwhile to retain the HOS; it just wants to maintain the established policy and conclude the matter by selling all the HOS stock. This is a completely erroneous direction. Unless the Government abolishes all the administrative measures preventing the property market from following the laws of the market in its development, the property market of Hong Kong will remain a distorted market. As long as the distorted market continues to exist, we must not gainsay the importance of HOS flats. We must also make the best use of the HOS policy, so as to benefit the common people and enable all those who wish to become property owners to realize their dreams. I so submit. Thank you, Madam Deputy.

**MR LI KWOK-YING** (in Cantonese): Madam Deputy, since the Government stopped the construction of HOS flats in 2002, more than 10 000 surplus HOS flats have been left vacant, thus leading to a huge wastage of resources. One practicable way of fully utilizing our limited resources is the immediate resumption of the sale of HOS flats.

The cessation of the sale of HOS flats has undoubtedly produced many negative impacts. To begin with, the existence of large numbers of vacant HOS flats has led to a wastage of resources. Since the cessation of sale, the Housing Authority (HA) has altered the designated use of some HOS flats, converting them into disciplined services quarters, PRH units, and so on. But the number of converted flats is certainly very small when compared with the 25 000 flats left unsold at the time of the cessation of sale. At present, as many as 16 000 flats have not yet been dealt with, thus resulting in a wast of resources and the undesirable mismatch between housing supply and demand.

This undesirable consequence is largely attributable to the Government's moratorium on the sale of HOS flats, a policy that brought an end to the macro objective of the HOS. The objective of the HOS is to provide a home purchase opportunity for those people who are not qualified for PRH despite their inability to purchase private residential units. Apart from being a means of helping people with limited means to realize their dreams of home ownership, the HOS is

also the best solution to the shortage of public housing resources, as it can induce public housing tenants in better financial conditions to vacate their units. However, since the Government stopped the construction and sale of HOS flats, a gap between PRH and HOS housing has thus emerged. This has, on the one hand, deprived public housing tenants in better financial conditions of a good opportunity of home purchase and exerted heavier pressure on the Waiting List for public housing on the other. As a result, many low-income families waiting for public housing have to wait much longer before they can be allocated public housing units. The Government's resumption of the sale and construction of HOS flats can facilitate the mobility of public housing tenants and speed up the allocation of public housing units to a larger number of needy people. That way, the mismatch between housing supply and demand can be eliminated.

As a matter of fact, besides bringing benefits to grass-roots people, the resumption of the sale of HOS flats will also carry very positive implications on the HA. The sale of the remaining HOS flats can, for example, relieve the financial burden of the HA in dealing with these vacant flats. According to the information of the HA, as at the end of March 2005, the maintenance and management costs and government rent relating to the remaining HOS flats amounted to as much as \$216 million. Moreover, before these remaining flats can be sold, simple renovation and repair works have to be carried out in most cases. The estimated expenditure on such works is \$9.1 million. The longer the delay in resuming the sale of these flats, the older they will become as time passes. In the end, they will all turn into old properties. If the Government keeps on refusing to sell these HOS flats, it will have to shoulder huge repair costs; and, when it finally decides to sell them some time later, it will have to face the losses resulting from depreciation, renovation and maintenance. To put it simply, it is always to better to endure short-term pain instead of allowing the disease to remain untreated. Instead of allowing the flats to remain vacant, in which case the Government will have to waste money on their maintenance and management, why does it not resume their sale as early as possible to ease the financial burden?

What is more, the resumption of the sale of HOS flats will give the HA a stable source of revenue. The sale of HOS flats has been the main source of revenue for the HA. As a result, the sale cessation has deprived the HA of its main source of revenue. The rent paid by shopping centre tenants is of course another source of revenue, but even this source of revenue may drop from time

to time due to low occupancy rates. Because of all these unfavourable factors, the HA has had to face very acute financial hardship. The HA must therefore rack its brain, so as to identify more sources of revenue. If the sale of HOS flats can bring substantial revenue to the HA, it should really be seriously considered as a source of revenue. The proceeds from the sale of HOS flats can be used for investments and even if these proceeds are deposited into the banks, the amount of interests will still be very enormous. Therefore, the endless deferment of the sale of HOS flats will only deny the HA a good source of revenue.

Madam Deputy, as the economy is gradually picking up, the Government should keep abreast of the times and review the timetable for the sale of HOS flats, so that the vacant flats can be sold as early as possible. This can eliminate the mismatch between housing supply and demand in addition to giving the HA a stable source of revenue. That way, both the common masses and the HA will stand to benefit. Madam Deputy, I so submit.

**MR ALAN LEONG** (in Cantonese): Madam Deputy, the suspension of the sale of HOS flats was one of the "SUEN's Nine Strokes" introduced in 2002 with the aim of arresting the decline of the property market. More than two years have passed and the property market has recently shown signs of stabilization and even recovery, but the political and social problems caused by the suspension have never stopped emerging. This reflects that the Government has forgotten one fact: Housing units are not mere commodities but also things that will closely affect people's livelihood and social stability.

If the Government can do some careful observation, it will see that in the past, when many Hong Kong people in their twenties started working and prepared to get married, they were faced with spiralling property prices, but thanks to the various kinds of public housing schemes, they managed to have a stable home at this critical period in their life. Every day, they left their "cosy nests" and struggled in the stormy world of their work, gradually establishing their careers to the benefit of their families and society.

By spending public money on solving the people's housing problem, the Government is in fact "storing wealth among the people" and this is conducive to social stability. Lord Murray MACLEHOSE, the Governor who launched a massive public housing construction programme in the 1970s, once remarked

that the shortage of housing was a major source of conflicts between the Government and the people. I urge the Government not to lightly gainsay the social significance of public-sector housing.

(THE PRESIDENT resumed the Chair)

The suspension of the sale of HOS flats was meant to arrest the decline of the property market, but then such an abrupt suspension has also led to a whole chain of different effects because the HOS has been a very important housing scheme assisting people in solving their housing problem. In an attempt to ease its financial pressure, the Housing Authority (HA) first sold the Hunghom Peninsula and this nearly resulted in an ecological scandal. Then, it attempted the listing of its shopping arcades and car parking facilities, but this stirred up all sorts of disputes connected with The Link REIT. The ensuing class confrontations and social conflicts, so rarely seen over the past four decades, are indeed very worrying.

Nowadays in Hong Kong, many people are still unable to save enough money to make the down payment for a private residential unit despite their hard work. At the same time, however, they are not qualified for PRH. In other words, they are caught in a dilemma. The HOS used to give a ray of hope to these "sandwiched" people. However, since the Government has chosen the broad direction of giving way to property developers and leaning over and backwards for them, and also since the Government simply ignores the significance of regulating housing supply as a means of narrowing the wealth gap, the hope of these "sandwiched" people is shattered, much to the pity of all.

I basically support the resumption of the sale of HOS flats, but at the same time I do have some reservations about an immediate resumption.

During the colonial era, a policy of high land prices was adopted and the economy was much too reliant on real estate as a source of income. As a result, the Government was unexpectedly driven into providing huge quantities of public housing units and HOS flats for the purpose of maintaining social stability. This was of course not a healthy direction. Then, in its early days, the SAR Government implemented the policy of "85 000 housing units", but then, the policy suddenly "ceased to exist" without any signs and indications. People thus feel that the Government's housing policy is altogether inconsistent. The

whole series of land policy blunders can actually reflect the lack of any stable and consistent housing policy on the part of the Government. People are thus caught in all sorts of uncertainties.

Some investment consultants I know were commissioned by overseas investors shortly after the reunification to conduct assessments on whether or not the housing policy of Hong Kong was conducive to investments. Surprisingly, these investment consultants all reached this conclusion: There was no housing policy as such in Hong Kong. In its February issue of 2001, the *Economist* downgraded the rating of Hong Kong's business environment from the third position in the world to the 12th position. The confusing housing policy was one of the major reasons for such downgrading.

In 2002, the Government announced the policy that no HOS flats would be sold before the end of 2006. This is not a good policy because it fails to balance the interests of private property investors and those of HOS users. However, I also wish to point out that since there are just 18 months to go before the moratorium expires, we should not take any hasty move even if we wish to abolish the policy. If the HA resumes the sale of HOS flats before 2006, it will commit the same error of policy inconsistency, losing all credibility before investors. Worse still, it will at best be able to treat the symptoms only. What I mean is that all key and significant problems, including those connected with the adjustment of land administration to suit market needs and cater for the basic housing need of the people, will not be solved instantly by the immediate resumption of the sale of HOS flats.

The proper way to solve all these problems should be to make use of the remaining one and a half years to perfect land administration and the private property market, and to foster a consensus in the Legislative Council and civil society on the distribution of public-sector and private-sector housing.

The Government should formulate and announce a concrete timetable for the sale of HOS flats after 2006, so that society as a whole can make appropriate preparations. It should also strive to reform the mode of land planning by allowing the participation of civil society and enhancing the procedural transparency of land grants and auctions to protect the interest of property purchasers. In view of the signs of market recovery, it should slow down the pace of withdrawing from the property market. Finally, it should join hands with society to forge a consensus on balancing private-sector and public-sector housing, instead of paying heed to the wishes of property developers only.

In the interim to 2006, the Government should reform the systems of land supply and planning. It should also facilitate reforms of the private property market in the direction of diversification, so that the needs of investors and home buyers can both be catered for. Public-sector housing is a means of remedying market imbalance and satisfying the livelihood needs of the people, so its provision should not be stopped lightly. Quite the contrary, the views expressed in the discussions in the Legislative Council and the wider community should be adopted as the basis of the Government's housing policy.

With these remarks, Madam President, I support Mr CHAN Kam-lam's amendment.

**DR JOSEPH LEE** (in Cantonese): Madam President, the Home Ownership Scheme (HOS) is highly significant, in terms of either bridging the private-sector and public-sector housing supply or stabilizing the property market. The HOS policy involves a very extensive scope of issues, so we must discuss the motion topic today from different perspectives.

The resumption of the sale of HOS flats is a policy that will affect the economy of Hong Kong and people's livelihood. Since many market uncertainties and policy principles are involved, we do not think that this is the right time to resume the sale immediately or earlier than scheduled. Nor do we think that it is a desirable policy.

The decision to halt the construction and sale of HOS flats was taken by the Government in 2002 as a remedial measure after the property market had been devastated by the policy of "85 000 housing units". It was also an undertaking on the withdrawal of government intervention in the property market. We can still remember very clearly that when this measure was announced, the Government asserted that the decision on suspending the sale of HOS flats would never be reversed, and that it would not break a promise it had made to the people. For this reason, any hasty move to resume the sale of HOS flats immediately or earlier than scheduled will necessarily involve the consistency of the Government's housing policy, an issue regarded as highly significant by Hong Kong or any democratic society. Social stability depends largely on the manner in which policies are formulated and enforced. In this particular case, if the Government is to build up its integrity, it must make sure that its housing policy is always consistent and clear in the long run. When it comes to policy

enforcement, it is a proper attitude to adhere to what is right. A wavering housing policy will only plunge people into all sorts of uncertainties. Any failure of the Government to honour its undertaking will deal a severe blow to investor confidence, the consequences of which may be very serious.

What is more, I simply cannot believe that when the Government made this decision years back, it had not considered the problems and costs arising from the 16 000 vacant HOS flats. The Government's present reluctance to resume the sale of HOS flats immediately or earlier than scheduled actually stems from nothing but the basic attitude of maintaining its integrity as a government. Such reluctance may not necessarily have anything to do with rigid policies or a failure to keep abreast of new circumstances.

Frankly speaking, this is not the right time to resume the sale of HOS flats immediately or earlier than scheduled. Some think that because the economy of Hong Kong has started to recover since the beginning of this year and the property market has turned active, the Government should no longer try to jack up the market by suspending the sale of HOS flats. They thus propose to sell the remaining HOS flats in batches. But the property market has always been extremely sensitive to policy changes, so can buyers' confidence and investment desire withstand the impacts produced by such policy wavering? Can the economy and the property market, which have just started to recover and turned active since the beginning of this year, withstand the invisible impacts of an immediate resumption of the sale of HOS flats — that is, can they withstand the market intervention, the "invisible hand", of the Government once again?

Some others argue that since the sales targets of HOS flats are mainly low-income families, or people who cannot afford private housing units, resuming the sale of HOS flats will cause very light impacts on the market of private residential properties. This is obviously an underestimation of the power of the "invisible hand". The resumption of the sale of HOS flats may not be as destructive as the policy of "85 000 housing units", and its pressure on the property market may not be so heavy as to cause a total market collapse. But we are still of the view that while we should not overestimate the destructive power of resuming the sale of HOS flats, we must not underestimate the impacts of such a move on the market of private residential units either. If we ignore the impacts of the housing policy on the property market, there will be dire consequences. Such oversight is nothing but a policy blunder.

Many people assert that property prices have started to "defrost" and speculation has emerged again. But all this can actually be found only in several new property developments, or, precisely, just in the majority of luxury residential property developments. And, let us not forget that there have not been too many such developments anyway. The so-called speculation now cannot be taken to mean that the property market as a whole has regained its vitality. I understand that those who bought their properties at the property peak years back are still suffering a loss of 45% on average, because property prices are still at comparatively low levels. Besides, the banks are still nursing more than 10 000 negative equity assts now. And, the recent rises in property prices have not spread to such remote places as Tin Shui Wai and Tuen Mun. The prices of second-hand properties in these places simply range from just \$1,500 to \$2,000 per sq ft. Basically, most Hong Kong people can afford such prices — assuming that they are rich enough to buy properties — because they are even lower than the prices of HOS flats. What is more, HOS flat owners have to pay regrant premiums, so their costs may even be higher than those of ordinary second-hand properties. That being the case, HOS flat owners simply cannot sell their properties without incurring losses. These low-price private residential properties do not carry too much appreciation potentials and their prices may well plummet if the sale of HOS flats is resumed prematurely, thus adversely affecting the Hong Kong economy to a certain extent. In any case, it is always advisable to make sure that the property market can develop soundly and pick up steadily, for this can help the Government eradicate the fiscal deficit. For the sake of Hong Kong's overall interests at this stage, we do not agree that this is the right time to resume the sale of HOS flats immediately or earlier than scheduled.

Some people think that the proceeds from resuming the sale of HOS flats earlier than scheduled can ease the fiscal deficit of the Housing Authority (HA). However, there are not too many surplus HOS flats left and they will certainly be sold out sooner or later. Hence, they cannot be relied upon as a long-term means of dealing with the structural deficit of the HA. Moreover, the Government has proposed to sell a specified number of these flats every year starting from 2007. As a result, advancing the sales resumption will not possibly improve the existing financial position of the HA in any effective manner. Actually, all of us can see that if the HA really wishes to solve its deficit problem, it must think of other ways instead of relying on resuming the sale of HOS flats. To sum up, advancing the resumption of the sale of HOS flats is not a desirable measure.



Madam President, the Government once announced that it would seek to deal with the surplus HOS flats in ways that would not affect the market. For this reason, in 2004, the HA sold roughly 4 300 such HOS flats to the Government for use as disciplined services quarters. Besides, about 3 000 units were converted into PRH units. The HA has since been studying the possibility of altering the use of the remaining flats. We maintain that the Government must squarely address the problem of vacant HOS flats. It must put forward a workable scheme in the near future and announce a timetable and specific measures as early as possible before the sales resumption in 2007. There must be sufficient time for public consultation, so that a prudent housing policy can be formulated. Therefore, resuming the sale of HOS flats immediately or earlier than scheduled is definitely not a good way to solve the problem.

Madam President, I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam President, the Hunghom Peninsula incident proved that all the actions taken by the Government to jack up the property market and protect the interests of property developers were wrong. The Hunghom Peninsula incident is now history. All of us have paid a price; everybody has paid a price except property developers.

Some Members propose to resume the sale and construction of HOS flats. Is their request groundless? Absolutely not. Actually, the HOS is just like a two-edged dagger, having both advantages and disadvantages. Why did the Government come up with such a strange scheme in the very first place? All was attributable to the policy of high land prices in Hong Kong. At that time, many people could not "board the train of property purchase", or, precisely, they could not even get any where near this "train". I am talking about those people who were not qualified for PRH but who were at the same time unable to buy any private residential properties (They could of course "quench their thirst" by visiting some show flats and then go back home to dream about buying one). The HOS policy is by nature a freak.

Actually, if the Government can invest all resources in the construction of better PRH units, there will be no need for any HOS flats. The reason is very simple. If our PRH units can attain the standards of the Council Houses in Britain, then they will certainly become decent homes for people. The HOS has

actually been devised due to the lack of any alternatives. The Government will stop at nothing to boost the property market and further the interests of property developers.

Since the 1980s, the Government has adopted the so-called "well-off tenant policy", requiring well-off tenants to pay double the net rent, 1.5 times the net rent or even the market rent. This appears to be fair on the surface. But while there is the policy of doubling the net rent, there is not any policy on doubling tax payments. A PRH tenant must pay double the net rent or even the market rent when he earns more money.

However, there is no such thing in respect of tax liability. Property developers are so obese that no trousers can fit them, so obese that extra large couches have to be made especially for them. But their tax liability will not be doubled. This Government has been telling us that people who still live in PRH units when they can earn huge incomes are all villains, so they must be made to pay double the net rent. This Government is really insane and anti-intellectual. When the masses still want to live in PRH units after earning a bit more money, the Government want to force them to surrender their units. But in the case of rich people, even when they reap enormous profits from rent-seeking activities, even when they have so much money that they must make investments overseas, their tax liability will not be doubled. This is indeed an anti-intellectual society, an anti-intellectual government.

The Government even has the face tell us that it is not working for the interests of property developers but for the cause of fairness. It has told us that if The Link REIT cannot be listed, the HA will die, thus victimizing public housing tenants. But may I ask the Government why it refuses to sell all those completed HOS flats for which there is a great demand? People can sell their HOS flats for profits, but they can do so only after several years.

Why does the Government want the listing of The Link REIT, stirring up so much trouble in society? Why does it want to sell off its assets cheaply to create an impression of high rents? Why does it want to sell off the common assets of 7 million people cheaply, ignoring the well-being of several million public housing tenants? The sole objective of the Government is making money.

The Government has explained to us that its objective is to make money. But it now refuses to sell the completed HOS flats, and for this reason, it has to spend some \$200 million on the repairs and maintenance of these saleable HOS flats. Such behaviour is indeed anti-intellectual and idiotic. The Government hopes that the people of Hong Kong will really believe its nonsense. Actually, in the case of the Application List System, the behaviour of the Government is just the same. Following the introduction of the Application List, since property developers are reluctant to offer high bidding prices, the Government has decided to satisfy them by offering discounts. If a 20% discount does not work, it is prepared to offer a 30% discount or even a 40% discount. What results does the Government want to achieve? The Government hopes that in their rent-seeking activities, property developers can "buy more flour" at low prices. And, when prices start to rise, the Government will sell the completed flats like selling bread.

Actually, the Government is being openly cunning. Why do so many people fail to bid for a land lot under the Application List System and accumulate enough land reserves? All is because of the regrant premium policy. The regrant premium policy works for the interests of large consortia, especially LI Ka-Shing. We can all see that LI Ka-shing has been extremely successful in benefiting from the regrant premium policy. The whole game is indeed largely a trick. I therefore urge the Government to construct more public housing units. If not, it should convert HOS flats into PRH units. The Government must maintain its present public housing policy and expedite the sale of HOS flats. However, the situation now is not quite like this. How can a government as depraved as this one talk about strong governance?

Before Donald TSANG even assumed office, Mr Stanley HO had already disclosed that he would adopt the policy of high land prices. Is Mr HO a tortoise, a seer of some kind? Is he really able to tell the past and the future? I hope — I sincerely hope — that Mr TSANG can really live up to his promise of strong governance. It is hoped that he can refrain from the policy of high land prices, curb rent-seeking activities and sell the vacant HOS flats as early as possible. (*The buzzer sounded*) If he cannot do so, he should stop all these empty talks and calling himself a politician.

**PRESIDENT** (in Cantonese): Mr LEUNG, your speaking time is up.

**MR RONNY TONG** (in Cantonese): Madam President, I also agree with Mr LEUNG that it is very worrying to hear how Mr Stanley HO called upon the Chief Executive to restore the policy of high land prices. This policy is actually aimed at making real estate the locomotive of Hong Kong's economic development once again. Over the past seven years, the people of Hong Kong have no doubt been battered by negative equity assets and the economic pains inflicted by the sluggish property market. But does this mean that the Government should blatantly interfere with the property market by controlling the supply of HOS flats, so as to boost prices or even maintain the policy of high land prices? Is this policy truly in line with the interests of Hong Kong people?

In 2002, in an attempt to arrest the decline of the property market, the Government introduced a number of "superb measures" to stabilize property prices. Over the past three years or so, these "superb measures" have indeed worked very effectively. However, these "superb measures" have also produced one undesirable consequence — adversely affecting Hong Kong's overall policy on public-sector housing.

To begin with, the roles of public housing and the Housing Authority (HA) have come under impacts. Public housing has all along been the most significant kind of social welfare that can be enjoyed by the middle and lower strata of Hong Kong. More than half of the Hong Kong population can thus live in a relatively stable environment at low cost. In the 1970s, this measure served to make up for people's low wages, thereby fostering social stability, an element essential to the economic take-off. In the 1970s and 1980s, when land prices soared, public housing provided the lower strata with the protection of basic housing. When the property bubble burst, public housing also served as a shelter for the victims.

However, following the cessation of the sale and construction of HOS flats, the HA has lost one of its major sources of revenue. Its cash balance dropped from \$32.6 billion in 2002 to \$17.3 billion. Last year, there was even a fiscal deficit of nearly \$1 billion. The fiscal deficit has been used as a good excuse for the Government to curtail the role of the HA in the provision of public housing. In the listing of The Link REIT last year, for example, the Government successfully shifted the focus of social discussions from the role of the HA to the eradication of the fiscal deficit through assets divestment. In the long run, the diminished role of the HA in public housing will not be beneficial to the grass-roots people.

Another point concerns how the cessation of the sale and construction of HOS flats may affect the private property market during the course of economic recovery. Those opponents of the resumption of the sale of HOS flats at this very time have questioned whether the intention is to dampen the property market. However, I do not think that this should be a real cause of worries. We need only look back at the 1980s and 1990s to see that even during the property boom, it was still possible for the Government to sell HOS flats on a regular basis. Has the sale of HOS flats ever dealt any serious blows to the property market? As long as the prices of HOS flats are reasonable and the timing and quantity of sales are appropriate, HOS flats will provide the common people with an economical option when property prices are high. Actually, according to many commentaries, the HOS market and the ordinary private property market are markedly different in terms of prices, product quality and even consumer expectations. The HOS market is actually very different from the private property market.

Over the past three years, the large numbers of surplus HOS flats pending disposal by the Government have become a very sensitive issue. There are some 16 000 surplus HOS flats, and about 40 000 flats are under construction. I hold that the only best way to deal with all these flats during the period of economic recovery should be to sell them all to Hong Kong people as early as possible in separate batches and at reasonable prices. The Hunghom Peninsula incident has shown us that selling HOS flats to property developers at low prices and allowing them to carry out extensive renovation afterwards will produce many adverse social consequences, including environmental damage. It has been proven that Hong Kong people will not accept such consequences.

Madam President, Hong Kong people hate to see both the policy of high land prices during the colonial times and also the crisis of negative equity assets after the reunification. If we push the Hong Kong economy back to the path of relying solely on property development, if we restore the policy of high property prices without providing housing to the grass-roots people at reasonable prices, then we are in effect handing over our economic lifeline to property tycoons. Mr Donald TSANG likes to end the pain of his rivals. Will he also end the pain of those people battered by the fluctuations of the property market early?

Madam President, I agree that given the over-heated conditions of the property market now, the Government should not and must not continue to

suspend the sale of HOS flats as a means of stabilizing the property market. Resuming the sale of HOS flats can vacate more public housing units for allocation to the grass-roots people who are in much greater need. This will help improve their living conditions. At the same time, the Government should thoroughly consult the public and various sectors of society, with a view to formulating a clear and integrated long-term policy on land and housing. In particular, it must undertake to abandon its past policy of high land prices, which only looked after the interests of property developers rather than that of the general public.

Thank you, Madam President.

**MR ALBERT HO** (in Cantonese): Madam President, during the short span of some 10 months from 2001 to 2002, the Government introduced as many as three major adjustments to the policy of selling and constructing HOS flats. I can recall that all these three adjustments were announced by Mr Donald TSANG, then the Financial Secretary. The first adjustment involved the reduction of the annual sales volume to some 10 000 flats. In the second adjustment, the volume was reduced further to 7 000 or 8 000 flats. The third adjustment was announced in November 2002. The decision at that time was to stop the sale and construction of HOS flats, and the date of resuming the sale of these flats was scheduled in 2007.

Madam President, I am of the view that the adjustments to the highly significant and time-tested HOS policy were not preceded by any thorough and detailed considerations on the part of the Government. I think the decision to stop the sale and construction of HOS flats was very hasty, because we can prove that the Government has never fully considered the positive function of the HOS in the history of Hong Kong's housing development, the function of providing many public housing tenants with a ladder leading to private property ownership.

Besides, the Government seems to have failed to fully consider all the legal issues relating to the construction of HOS flats with private-sector participation. At the early stage of the Hunghom Peninsula incident, for example, the Government wrongly thought that it could not buy back the HOS estate and must therefore sell it cheaply to the property developer. The public thus thought that the selling price was much too low, \$800 million to \$1.5 billion lower than the market value. This was in fact a loss of public assets.

In addition, before making such an important policy decision, the Government had never consulted the Housing Authority (HA). I can remember that I once asked the then Secretary for Housing, Planning and Lands an oral question on this. I asked him to which government official was responsible for making final decisions on the HOS policy. He replied that it was the HA. Admittedly, under the Housing Ordinance, the Chief Executive may issue orders on what actions the Government should take. But the Government has never admitted having exercised such a power under the Housing Ordinance. The then Financial Secretary simply made the announcement first and then went ahead to force the HA to accept the announced decision. As a result, the HA did not have any opportunity to conduct any thorough, detailed and open studies on how the cessation of the sale and construction of HOS flats would affect the overall finance of the HA and what financial losses there might be. Madam President, we have good reasons to believe, and we are worried, that this decision of the Government was actually made under the pressure of property developers. The aim was to introduce a strong force that can jack up the market, but the Government has thus lost its independent authority of prudent policy formulation.

Madam President, some 16 500 HOS flats are frozen until 2006. This policy has obviously become outdated in the context of today and it will result in a huge wastage of public resources. The Democratic Party has recently conducted a study and the findings have been forwarded to the HA. According to the findings, if the Government adheres to the original schedule of selling 2 000 flats a year starting from 2007, then by the time all the 16 500 flats are sold, we will have incurred a loss of \$11.43 billion in total, which is an enormous sum indeed. To be expected, the Secretary will certainly query such estimation later on. But the basis of our computation is all very clear and detailed, covering management costs, government rent, losses in rents and interests and, naturally, depreciation, an item that the Secretary will probably question. We are talking about blocks that will have remained vacant for 10 years, totally unoccupied and battered by the elements throughout. I hope the Secretary will not tell us that people will be willing to purchase these flats at the prices of brand-new properties. I think this really runs counter to common sense.

Our Chief Executive should really show his mettle as a politician and take the resolute decision of reviewing this obviously outdated policy anew, so as to reduce our losses. The demand of the Democratic Party is reasonable indeed.

We just hope that the sale of HOS flats can resume this year, starting with a sales volume of 2 000 flats. Next year, 3 000 or 4 000 flats can be sold. And, afterwards, about 3 000 flats can be sold every year. Then, by 2009, we will be able to sell all the vacant HOS flats in an orderly manner. The opinion survey conducted by us shows that more than 60% of the respondents do support a policy change in this way. Our recommendation can most certainly avoid policy rigidity and inconsistency. As a result, the Government does not need to worry. I hope that the Government can carefully consider our proposal.

Thank you, Madam President.

**MR WONG KWOK-HING** (in Cantonese): Madam President, during a recent radio interview, Secretary for Housing, Planning and Lands Michael SUEN reiterated that due to the need for maintaining the consistency and predictability of the land policy, the decision of suspending the sale of HOS flats until 2007 would not be reversed, lest a reversal might create an impression of policy inconsistency. He further remarked that the market was capable of making self-adjustments to correct any unhealthy development. Mr SUEN also expressed the hope that the property market would not experience any sharp fluctuations, though he also believed that under the close watch of the Government, the general public and developers, sharp fluctuations would be very much unlikely.

Such are the views of Mr SUEN on resuming the sale of HOS flats and they also show us clearly that the Government is not prepared to advance the resumption.

Policy inconsistency and its effects on the self-adjustments of the market are the reasons for the Government's refusal to advance the sales resumption. But can these reasons be justified? If we care to study the effects of the sale of HOS flats on the property market, we will notice that Mr SUEN's arguments are not justified.

Madam President, before 1997, there was always a continuous and huge supply of HOS flats, but at the same time, property prices simply kept on rising. The pace of price rises never slowed down due to the availability of HOS flats. On the other hand, even when the Government stopped the sale of HOS flats in 2003, property prices still went down. In other words, the availability of HOS



flats cannot possibly influence the rise and fall of property prices. These are all historical facts.

Why are property prices not affected by the availability of HOS flats? We must remember that the purchase of HOS flats are subject to income and asset limits. We may look at the income limit announced by the HA and the Housing Department on 31 August 2002 as an example. The household income limit for a family of two to five members was \$20,000 and the asset limit was \$480,000. I believe even if the sale of HOS flats is resumed now, the income limit will be more or less the same as that announced in 2002. A four-member family earning just \$20,000 a month will certainly live a very hard life if it must support all its members and meet monthly mortgage payments. If the Government does not resume the sale of HOS flats earlier than scheduled, if it continues to force people to purchase private housing units, how can these middle- and low-income families have the means to do so?

HOS flats have always been the first properties that public housing tenants purchase. Recently, we have frequently heard the Government say that the public housing policy must be improved, so that well-off tenants can vacate their units as quickly as possible for allocation to those in genuine need. However, has it ever occurred to us that even the incomes of these well-off tenants cannot enable them to purchase private residential units? On the one hand, the Government hopes that more well-off tenants can vacate their units, but on the other, it has never made any arrangements for these tenants to buy properties they can afford. How can the Government induce them to vacate their public housing units?

Madam President, it is a waste of resources to leave HOS flats vacant. The HA not only loses a source of revenue due to the sales suspension but also has to spend as much as \$216 million on the government rent, rates and management fees of the 16 000 vacant flats. It is estimated that by the end of next year when the sale of HOS flats resumes, the HA will have to pay \$170 million more. This huge sum of public money will all be washed down the drain. On the one hand, the HA and the Housing Department have to waste hundreds of millions of public money on maintaining these flats and on the other, our very valuable public housing resources are being wasted as well. How can we possibly recover all these direct or indirect monetary losses in the future? Is the Government going to increase the prices to recover all the costs incurred over the

past few years when it resumes the sale of HOS flats in 2007? Is this fair to intending buyers of HOS flats? The Government now unilaterally thinks that without the supply of any HOS flats, people will all buy private residential units, and this will jack up the market. It fails to realize that this is in fact a very erroneous concept. The reason is that the demand for private residential properties and that for HOS flats actually belong to two different levels. As we all know, the rises and falls of property prices are related to the shape of our economy and the supply of land by the Government in the private-sector property market. And, HOS flats are sold mainly to low-income people who cannot afford private residential units. The sale of HOS flats will have very little effect on the market of private residential properties. If the HA and the Government still cling to their erroneous concept, they will only render low-income people who cannot afford private residential units unable to purchase a "cosy nest" despite their hard work.

The Federation of Trade Unions reiterates that a proper public housing subsidy policy should be "based mainly on PRH and supplemented by HOS flats". The objective of PRH is to provide a shelter for the lower strata of society when land prices and rents are high. And, the sale of HOS flats is supposed to play a supportive role. Thank you, Madam President.

**MRS SELINA CHOW** (in Cantonese): Madam President, in late 2002, the SAR Government decided to withdraw its visible hand extended through the HOS to the property market when it called a halt to the construction and the sale of HOS flats until the end of 2006. The past three years have seen a gradual recovery of the property market and a decreasing number of negative equity cases. Meanwhile, riding on the opportunity provided by the stabilizing of the property prices as well as the relatively lower mortgage interest rates, many Hong Kong people have bought their own properties to become home owners.

However, today Mr Albert CHENG requests the Government to immediately resume the sale of surplus HOS flats and he even requests the Government to launch HOS construction projects again. He justifies his proposals on the grounds that the property market is regaining vitality and property prices are rising. With regard to such viewpoints, the Liberal Party must express disagreement and holds that the property market is not as robust as described by Mr CHENG.

I believe many of us must be aware that many banks have been adjusting upwards their prime rates or the mortgage interest rates for newly signed housing loans. In last three months alone, the mortgage rates have been adjusted upwards for four times, resulting in an aggregate increase of 1% to 1.25% in the actual mortgage rates. Meanwhile, as external factors remain uncertain, the number of property transactions has dwindled substantially. According to the estimate by property consultants, the number of property transactions for the month of June will drop by 27%, as compared to that of May.

Such market conditions have made some small property owners reduce their asking prices when they put their flats on sale. Some property owners are slashing their asking prices by as much as \$100,000 to \$200,000 or more. It is therefore evident that the property market is still rather fragile. Besides, as some discrepancy continues to exist between the interest rates in the United States and Hong Kong, the shadow of the interest hike cycle is still looming, which will definitely affect the property market. This is completely contrary to Mr CHENG's description of the market situation as "regaining vitality".

Some people say that the property price has reached \$20,000 or even \$30,000 per sq ft. But do make it clear that these are prices for the luxurious apartments only, not for small- to medium-sized flats, which are the kinds of homes owned by the majority of the people, or the kind of flats in the secondary market. In fact, prices for these flats have not soared substantially. At the present stage, if over 10 000 HOS flats are launched onto the market, they would constitute direct competition with these small- to medium-sized flats, dealing a heavy blow to the fragile property market.

During the past few years, Hong Kong has been plagued by the negative equity problem. As at March this year, there were still 14 000 cases of negative equity mortgages. Besides, we should bear in mind that in recent years, many people have bought flats with second mortgages. The mortgage ratio of these people may reach as high as 90% or 95% of the prices of the properties. Should there be any fluctuations in the property market, the negative equity problem will emerge once again. After all, we do not want negative equity property owners to take to the streets again, do we?

With regard to the request for the immediate resumption of sale of HOS flats with a view to helping the people to buy their own homes, I would like to

point out that property prices in some new towns have dropped to a level comparable to that of HOS flats, and in some instances, they are even cheaper. Coupled with second mortgage arrangements, it is no longer too difficult for an ordinary citizen to buy his own home now.

All these have happened because the Government has managed to keep its words in suspending the sale of HOS flats over the past few years, so that the people could regain their confidence in the property market, and in the meantime, investors have faith in the SAR Government in ensuring consistency in policy enforcement without making abrupt changes overnight. We understand that some Honourable colleagues are anxious and worried about that the HA may run into a deficit crisis. However, the HA has stated that it will not have such a problem from now and up to 2007. Furthermore, later on The Link REIT will still be able to seek a listing on the stock exchange. On the contrary, if the Government does not keep its promise and resume the sale of HOS flats one or two years ahead of schedule in order to alleviate the financial pressure, will it evolve into a confidence crisis affecting not only the SAR Government, but also the property market?

Both Mr CHENG's original motion and Mr Frederick FUNG's amendment have mentioned that the Government has frozen the sale of HOS flats in order to boost the property market. But as I said just now, property prices in the private market are already comparable to, or even lower than, the prices of the HOS flats, so is this really a way to boost the property market? Even if we argue that this is giving a boost to the property market, it is just an attempt to stabilize the market, thereby preventing property prices from falling sharply. This is a measure intended to protect the properties of the ordinary people. If we ask the Government to discard such a measure, does it mean that we should try to victimize the small home owners? Will we feel happy only after we have seen the collapse of the property market? For these reasons, we do not agree to the immediate resumption of sale of HOS flats.

On the issue of whether the construction of HOS estates should be resumed, the Liberal Party had said in the past that the Government should withdraw from the property market in due course, stop intervening and allow the market forces to run their natural courses. This was also the major reason for the Government to make the decision then of suspending the construction of HOS estates. Furthermore, as property prices have dropped to a level affordable to the people, the historical mission of the HOS should have come to a full stop. Later on,

upon the resumption of sale of surplus HOS flats, and when they are sold completely, the Government should withdraw its visible hand and retreat fully from the property market.

On the issue of the rents of PRH, the Liberal Party has always stressed that the rental policy must really offer comprehensive and effective assistance to the needy. Therefore, we suggest that the Government should provide different levels of rental subsidies to tenants with different financial difficulties. The Ad Hoc Committee on Review of Domestic Rent Policy has concluded an initial discussion on public housing rental review, and it plans to conduct a public consultation on its initial recommendations right after the Court of Final Appeal has completed its hearing on the case of PRH rent in October. The Liberal Party therefore hopes that the Government can honour its pledge of formulating an open and fair rental policy as soon as possible.

Madam President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, both the original motion and the two amendments today mention that since the local economy has shown signs of revival and the property market is also regaining vitality, the Government should not continue holding the vacant and surplus HOS flats in its tight grip without putting them on sale, and it should not continue wasting housing resources in this manner.

I believe that they have moved this motion and amendments probably because of the phenomenon we all see, but insofar as Secretary Michael SUEN is concerned, he finds them completely meaningless. As quoted by Mr WONG Kwok-hing just now, Secretary Michael SUEN said that he completely did not accept this reason. He simply does not care about whether the market is good or bad. His most important principle is simply: That the housing policy should not be changed all the time, and that as the Government has already made a promise — just as said by Mrs Selina CHOW, it must keep its words to the very end, and at the present stage, the Government must maintain its stand and should not make frequent and abrupt changes, to which the market cannot adapt.

I believe this is the most significant viewpoint held by the Secretary, and I believe he will present similar viewpoints in his response later on, and such viewpoints will not differ greatly from those expressed by Mrs Selina CHOW.

However, is it necessary for the Government to be so stubborn? As a government, it is witnessing that our social resources are draining and being wasted day after day, should it insist on its stand to the end without acting on its conscience? Should the Government act in such a manner?

As many Honourable colleagues said, insofar as the unsold or vacant HOS flats are concerned, several hundred million dollars are being wasted daily in management fees and government rent, and so on, discounting the losses incurred in terms of property prices. Can we simply ignore them by saying "forget it"? With regard to the promise made to the market, what actually is the market? It is just referring to the private property market, that is, it is just referring to the promise it has made to the property market. However, has the Government reviewed its own promise to the people, especially the promise made to the grass-roots people?

I still remember when the Housing Authority (HA) was first established, the authorities kept saying that it would assist Hong Kong people in acquiring suitable accommodation within their means. This is the service the HA said it would provide. However, was this a promise? If so, today, how can this promise be honoured, and how can it be maintained?

Today, many public housing tenants have been penalized by the HA. They are accused of being well-off tenants and required to pay higher rents. So they have to try all means to purchase their own homes. In the '70s, '80s or even the '90s, they still stood the chance of moving from PRH flats to HOS flats. But what is their situation now? Such flats do not exist now. How on earth can the HA enable the people to acquire suitable accommodation within their means?

Just as Mrs Selina CHOW said just now, actually the private property market might not be affected by competition from the HOS alone. Instead, there are some more significant factors such as the interest rate, which is one of the factors at work. Interest rates may lead to fluctuations in the market. Therefore, why must we say that the HOS will definitely affect the property market? On the contrary, the HOS can assist PRH tenants to improve their living conditions. Why can the Government not think in this way?

I feel that the remarks made by Mr WONG Kwok-hing just now were very useful. He said that, as the Government said that it must keep its own promise,

could it say that the promises it made in the past were not promises at all? Madam President, this is a very important point. For a housing policy which has been implemented over a long period of time, it has to be changed now due to a new promise made in view of market fluctuations, and surprisingly such a promise can override an earlier promise which had made great contribution over a long period of time. What is it all about?

I hope Honourable colleagues can understand that we should not make the decision of resuming the sale and construction of HOS flats just because of the booms or the declines in the market. It is most significant for us to identify ways of maintaining the housing policy and direction adopted during the past three to four decades. In fact, in the '60s, '70s, '80s and even the '90s, public housing used to be a very significant foundation for facilitating the overall development of society. Just because we have such housing policies in stock, despite low wages and other unfavourable factors, the PRH tenants can still tolerate the adversities and work hard to promote vitality in the local economy and enable it to flourish. All these are achievements, results and effectiveness. How can we write them off, ignoring them altogether?

As a matter of fact, the cessation of sale of HOS flats has already brought about a very serious consequence. As pointed out by Mr Ronny TONG just now, the HA is now facing a very major difficulty, that is, its own deficit. In the past, the sale of HOS flats was a very effective way of solving its fiscal deficit. But under the present circumstances, the Government has to transfer the fiscal deficit to PRH tenants. That explains why the authorities had said that they had to conduct a review of the rental policy. In essence, it means how the authorities can maintain the fiscal balance of the HA and the Housing Department by increasing the rents. This is a major direction of the Administration. But is it fair and reasonable?

Therefore, Madam President, ultimately, I will of course support the policy of resuming the sale and construction of HOS flats. However, I do not wish to consider the issue just from the perspective of the market. I feel that we must uphold the housing policies, and take care of the grass-roots people by enabling them to acquire suitable accommodation within their means. Madam President, I so submit.

**DR YEUNG SUM** (in Cantonese): Madam President, I rise to speak in support of Mr Albert CHENG's motion and Mr Frederick FUNG's amendment.

On 13 November 2002, the Government suddenly convened a press conference to announce a freeze on the construction and sale of the HOS flats. The Government offered a number of reasons, one of which was that there was overlap between the private-sector and public-sector property markets. The Government argued that there was no need to continue building and selling HOS flats, as property prices in the private market had dropped, and members of the public could afford buying flats in the private market. In view of the overlapping, the Government came to the view that it should withdraw from the property market. Later on, the Government said that it would like to have more time to review its housing policy. After the review of housing policy in 2003, the Government announced that it would stop building HOS flats indefinitely, and that it would withdraw from the property market completely in order to allow the market to run its course fully.

Madam President, in my view it is obvious that the Government made that decision purely because of pressure from real estate developers. At that time, people like Mr LI Ka-shing and Dr Stanley HO had commented on several occasions that the Government's HOS policy constituted direct competition with the people for profit — here the "people" refer to themselves — and this policy had affected their commercial interests as well as the unrestrained operation of the property market in Hong Kong. The Government eventually bent to such enormous political pressure and announced that it would put a halt to the construction of HOS estates indefinitely and withdraw from the property market.

In fact, the Government's move has dealt a very heavy blow particularly to the HA which will lose a recurrent and substantial source of income. Insofar as the HA is concerned, the sale of HOS flats is a major source of income. Looking at the financial situation of the HA, we can see that the operation of PRH consistently incurs deficits. The surplus of the HA is completely attributable to the proceeds from the sale of HOS flats. The Government's decision to suspend the sale of HOS flats and withdraw from the property market will, in my opinion, bring the financial situation of the HA under enormous pressure. In fact, the HA has already incurred a deficit amounting to several billion dollars.



Moreover, the HA still has a stock of more than 16 000 vacant HOS flats. A large amount of money is required for either maintaining the flats now or doing repair work when these flats are due to be offered for sale in the market in late 2006. This sum of money, amounting to several hundred million dollars, is really money wasted for no good reason. Besides, we cannot generate any rental income from these flats. I personally believe that it was a very hasty decision which would lead to very bad consequences.

Mr TUNG's governance always left us with a feeling that he was relatively biased in favour of the commercial and industrial sectors. Now a new Chief Executive has assumed office, and he has said that he would build a harmonious, people-based society. I hope the Secretary can seriously consider Mr Albert CHENG's motion and Mr Frederick FUNG's amendment, and ride on the opportunity of a reviving property market — we even worry that there might be a temporary shortage of supply or a burst of the bubbles in the market — to put up the vacant HOS flats for sale in phases. In this way, the Government can help stabilize the property market and give the people an opportunity to buy their own properties.

In fact, I have contemplated a question. Is it a responsibility of the Government to assist the people to buy their own properties, or should their ownership of properties be achieved purely through the adjustment of market forces? But if we think more seriously, is the property market in Hong Kong really a free market? I believe what we have learned in the university is just some textbook stuff. In reality, the property market in Hong Kong is certainly not as absolutely free as theorized by Milton FRIEDMAN. In fact, there is a high degree of intervention from major real estate developers in the market and the supply of Government land, and that is a major adjustment force at work. Therefore, I think the Government should consider seriously the purposes served by the HOS. Does it serve a social purpose? Does it serve an economic purpose or even a political purpose?

In my opinion, the construction of HOS flats does serve political, economic and social purposes. The major reason is that constructing HOS flats can make some adjustment to our not at all free market. When prices of private properties are high, the Government can offer some HOS flats for sale to make adjustment to the market on the one hand and give customers another option on the other. When property prices plummet, the Government may reduce the number of HOS flats to be built or to be sold. I think the Government may fully

utilize the HOS flats for achieving the purpose of making market adjustment without having to worry about being accused of intervention, as this market is not absolutely free after all.

Moreover, the HOS also serves a very important social purpose, that is, the provision of a social ladder to facilitate the upward mobility of the people. For our generation of people who grew up in squatter areas and public housing estates, we have witnessed many cases in which public housing tenants would purchase HOS flats after earning more income. Having bought their own flats, they would return their PRH flats to the HA, and as a result, the HA could build less such PRH flats. In the meantime, public housing tenants can improve their living conditions. Therefore, I think the HOS is a ladder for facilitating the upward social mobility of the people, thereby contributing greatly to the social stability of Hong Kong.

Many opinion surveys show that Hong Kong people aspire to owning a home of their own. Home ownership facilitates their self-identification, helps them to build up a sense of belonging to the community and fosters social stability. It can have a very positive effect on maintaining work ethics as well. Therefore, to put it in simple terms, the HOS can facilitate market adjustment, provide a ladder for upward social mobility of the people and promote social stability. Reliance on the market alone cannot achieve such effects. The market is primarily profit-driven — it exists only when there is profit. It only caters for the needs of those who can afford it, and basically it does not cater for the needs of the ordinary people who aspire to becoming home owners.

Such an adjustment function should be provided by the Government. Therefore, the Democratic Party hopes that the Government can consider this seriously. We are not asking the Government to take the place of the market. We just want the Government to help co-ordinate the market, so as to make the people capable of affording to buy a flat for themselves. This will be conducive to the economic and social stability of Hong Kong and it also provides a chance for the people to move upward. Since the Chief Executive has indicated that his governance will be people-based, the Government should respond to the current state of the property market by putting up the surplus HOS flats for sale in phases, and seriously consider the re-instatement of the HOS policy. Of course, the number of HOS flats to be built will depend on the actual market situation, but the Government should not rescind the HOS policy simply because of the market

conditions and the criticisms made by real estate developers, otherwise, it will bring about great repercussions to Hong Kong. Thank you, Madam President.

**DR KWOK KA-KI** (in Cantonese): Madam President, the Government's HOS policy represents a continuation of the policy adopted for the construction of public housing in 1953 to cope with the enormous housing demand of the people at that time. The role of the Secretary in this regard is in fact very important. In my opinion, of the three Secretaries of Departments and 11 Directors of Bureaux under the leadership of Chief Executive Donald TSANG, it is Mr SUEN whose work has the most direct bearing on the livelihood of the general public as well as the real estate developers, whom Mr TSANG has to deal with. In fact, even the prospective bosses of Mr TSANG (that is, the many bosses Mr TSANG has to look up to) have to count on the policies devised by Mr SUEN. I remember a little while ago a major property developer said property prices would definitely rise, because Mr SUEN would surely have many tricks up his sleeve. I do not know what tricks the Secretary has got — maybe it is the permanent suspension of the HOS policy, or an extended freeze on the sale of HOS flats. Or maybe all these are counted as only one of the many tricks. That property developer must have high expectations of the Secretary.

Just now some Honourable colleagues from the Liberal Party said they worried that property prices would be suppressed if HOS flats were offered for sale again. I think they have over-reacted. Nowadays, property developers have got many ways to promote their products. Recently some real estate properties are asking for more than \$20,000 per sq ft, with a price tag of \$40 million or more for a single flat. Yet more than 80 flats were sold in just a few days. The property developers even suspended the sale in view of the excessively popular demand. Although property prices have been on the rise, the problem is that not everyone can afford a property with a price tag of \$20,000 per sq ft. After all, not everybody could afford the sky-rocketing property prices.

I remember Mr SUEN once said in this Council that property prices had risen to a level that was even higher than that of 1997, but the prices for flats in the medium-to-lower market had not increased yet. It immediately struck me that he was implying that the property prices had not gone up high enough. Maybe the targets of Mr SUEN and the property developers had not been

reached yet. Given the current situation, it seems that the Government will not consider reviewing its housing policy until property prices in the medium-to-lower market have also reached the 1997 level again, and when the general public once again find themselves unable to afford buying their own homes. However, when that really happens, not only the general public will suffer, so will the Government, because by then both its reputation and the stability of its governance will be undermined as well. Never work for the interests of a handful of property developers. Naturally, property developers are very influential these days. Even the medical school of the university from which I graduated has to be named after a real estate tycoon because of the enormous donation he has made. Given this background, I have great respect for this property developer for his colossal clout, and I believe the Secretary may have to respect him as well. However, if he really acts in that way, it is certainly not good news for many Hong Kong people.

In fact, I think the Government has a major responsibility in governing Hong Kong in a sound and stable manner. Clothing, food, housing and transportation are four important necessities for the Chinese people. To be able to govern Hong Kong in a sound and stable manner means that the Government has to take care of the housing need, out of the four important necessities, of the general public. The HOS has definitely played an important role in this aspect. Since the HOS was launched, 400 000 flats have been sold, providing a stable and amicable living environment to more than 1.6 million people. As some Honourable colleagues have said earlier, a stable living environment enables the people to improve their living environment from a most undesirable one to a better one through a process of beautifying society. In other words, they can progress from living in rented flats to buying their own homes, and this process brings about a very important and stabilizing effect. To those people who cannot afford the properties offered by private property developers, particularly the expensive properties that are put up for sale in the market recently, HOS flats are possibly their only option.

Therefore, if the Government decides not to build and sell HOS flats anymore, the move will actually affect many grass-roots people. Given that there are still some surplus HOS flats in stock, it is certainly ironic for the taxpayers, the HA and those people looking forward to allocation of flats to know that the Government is unwilling to review its policy at a time when property prices are spiralling. It is also ironic because the Government still has

to spend \$400 million to maintain, repair and refurbish these flats, and these \$400 million are money squandered down the drain. Many Members, including myself representing the medical sector, as well other Honourable colleagues representing the education and other social service sectors, are hoping that the Government can allocate more resources for the underprivileged and the chronic patients in order to provide better care to them. If the funds that are now spent unwisely on boosting up the property prices or making property developers feel comfortable can be used instead on the early resumption of sale of HOS flats, it would be very good news to the Government, the general public, the HA, and the many people who expect the Government to adopt policies which are truly people-based.

A few days ago, the Chief Executive said his governance would be people-based. I think if it is really people-based, the Government has to definitely feel the anxiety of the people insofar as their housing need is concerned. Property prices can escalate rapidly to a level at which wage earners can never afford to buy a flat for the rest of their lives. This is in fact a dangerous signal. Is it true that the Government really has to wait with folded arms until bubbles are formed and eventually about to burst in the property market and when more people are becoming negative-equity property owners or more people are going bankrupt? Will Hong Kong suffer the old great pains once again? Should those who have already found the property prices almost unaffordable, yet fearing that they will keep surging, rush ahead to become home owners irrespective of all the risks attached? Should the Government be using all of its strength to jack up the property market until the major property developers are happy with their returns? Is the Government waiting for the arrival of that moment?

I hope neither the Secretary nor the Chief Executive will be doing this. I support the motion and all the amendments proposed by Honourable colleagues. I hope the Government can conduct a serious review to consider whether it is necessary to expeditiously resume the sale of HOS flats and launch the construction of HOS estates again.

Madam President, I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, when we discuss this topic today, some laughter seems to be ringing in my ears. I recall Dr

Stanley HO had said, "Haha, of course, Donald is nice." The Government has actually conveyed an overall impression to the people that, its most important "customers" or "clients" are none other than the property developers, whom the Government must pamper carefully. Therefore, I believe that, even if today's motion is passed — I do not know what the ultimate voting result would be — even if the motion is passed, the Government would still not accept our opinion because it will only listen to the laughter of Dr Stanley HO.

I feel that the Government should actually conduct a review of what it has been doing. If it says that it will strive for "people-based" governance, then who are the "people" it is referring to? Does this "people" refer to property developers like Dr Stanley HO, or the general public? I very much hope that the Government can adopt the perspective of those lower sandwich class people, who cannot afford to buy their own homes, in thinking about the present property prices as well as their future.

I have personally experienced such a situation. In 1989, I was allotted a chance to buy a HOS flat under the balloting system, and then in 1991 — well it should be 1990 when I was allotted the chance under the balloting system, and I bought the HOS flat in 1991. At that time, I was the sole breadwinner of the family. My wife was not working, but she was expecting the birth of our daughter. With a monthly income of less than \$20,000, I should never be able to afford buying an expensive flat in the property market. On the other hand, we had to pay over \$6,000 as the monthly rent for the flat we were living in. If I could not buy the HOS flat then, our living conditions would be very tough in the following years in the early '90s. The fact that I could buy a HOS flat had in fact enabled me to enjoy a long period of stable life in the early '90s. This is my personal experience.

Regarding young people nowadays earning between \$10,000 and \$20,000 a month, I am particularly concerned about whether they can afford to buy their own homes? They are basically not eligible for applying for public housing, and it has become increasingly costly for renting flats in the private sector, and recently the rents are rising as well. They cannot afford to buy a flat in the private property sector, and even if they have such money to buy it, the monthly mortgage repayment is still a very heavy burden for them. In fact, the HOS has served a social function, that is, to release the resources from the "flats", and then such resources can be re-invested in other sectors of the economy. After taking up residency in their HOS flats, some may have the spare money to invest

in the education of their children, or spend the spare money on such aspects as their own further education, personal interests or training. If the resources are locked up by a residential flat, all the above aspects have to be given up. Therefore, I hope the Secretary would not forget the functions of the HOS. However, as in the beginning of this speech, the Government may only listen to the laughter of property developers.

Besides, I would like to respond to the question on the "invisible hand". Mrs Selina CHOW just said that the cessation of sale of HOS flats had terminated the Government's control, that is, there would not be any more control from the Government. In fact, how can this happen? On the issue of housing, there can never be any free market because the Government can always control its supply. As the land is owned by the Government, if it does not supply any land, then property prices will definitely surge; and if more land is supplied, then property prices will surely drop. Therefore, it is impossible to terminate all the control. For example, some property developers are now complaining that the Government is reluctant in letting them bid for land through the Application List System. The Government makes such a move just because it is exercising its control over the supply of land. On the other hand, the MTR Corporation Limited (MTRCL) and the West Rail are also using their property incomes or property developments to subsidize their transportation services, which is similar to what the HA is doing — that it is using its HOS income to subsidize its public housing programme. If the Government has to withdraw its intervention completely, does it mean that the Government has to recover all the development rights (property developers had once disputed such an arrangement) from the MTRCL and the West Rail?

Besides, the Government may also approve modification of land use of agricultural lands. Many people now proceed to change the land use after having bought some agricultural lands. Even such changes of land use have to be approved by the Government. So all these are controlled by the Government. There is not a single aspect that is not controlled by the Government. What are we discussing now? It is the issue of whether 2 000 HOS flats should be put up for sale annually if it is decided that the sale of HOS flats should be resumed. Even if more flats are put up for sale, I do not think there will be any problem. The Government controls the supply of large quantity of land, and then it acts in a very mean manner by just offering 2 000 flats for sale to the grass-roots people, that is, those belonging to the lower sandwich class.

On the other hand, if the Audit Commission conducts a value for money audit, can it work out how much social resource has been wasted? Does the Government have to assume responsibility for this? Is the Government boosting the property prices just for the sake of property developers, at the expense of the resources of the entire society? I strongly believe that, even if the sale of HOS flats is resumed, it may not necessarily make property prices plummet because we are talking about two different markets, two different worlds. The world in the centre of our discussion is the world of the lower sandwich class. They need HOS flats. The flats which property developers are interested in selling are those luxurious flats or semi-luxurious flats, which is another world. Therefore, I do not believe the sale of HOS flats would have any negative impact.

Therefore, the Hong Kong Confederation of Trade Unions supports the resumption of sale of HOS flats. We also feel that this is the only way that we can solve the HA's financial problem thoroughly. Otherwise, even if the Government has sold its car parks, the proceed can only last for several years, and at the end of the day, the financial problem of the HA cannot be solved at all. I am also afraid that the Government may have a hidden agenda: Will the Government stop the construction of HOS flats completely in future? The Government may basically be unwilling to allocate more funds for the purpose. As the Government has suspended the construction of HOS projects, the next ones to face the axe could be PRH flats. By then Hong Kong people may have to weep with great grief. Thank you, Madam President.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, Secretary Michael SUEN in fact has already listened to my speech delivered at the Hong Kong Housing Authority (HA). That speech was already detailed enough, so I do not have too many points to add here. However, I would like to respond to the speeches of several Honourable colleagues and to speak in support of Mr Albert CHENG who is sitting in front of me. This is because we do hold similar views on the issue of the sale of HOS flats — of course we do not always see eye to eye on each and every issue.



Is it important for a government to keep its promise? I do agree it is. However, the policies of a government should be adjusted according to different circumstances at different times. The Government introduced the Application List System in the past, but now a 20% discount is offered for the bidding of land through this system. In this case, has the Government broken its earlier promise? The Government will enact a lot of legislation on various matters, and amendments have to be made from time to time to such legislation. The core issue under discussion is just a matter of time difference of 18 months. Is such a time difference so important? I do feel it is. That is why we have brought it up for discussion.

If the Government wishes to bring the property market onto a proper path, which option would have a smaller impact on the property market: offering 16 000 flats in the market over a shorter period of time, or over a longer period of time? If we look at the issue from this perspective, then I would also agree to certain opinions of Mr CHAN Kam-lam. In a television interview, he once openly said that the Government might consider first selling the HOS flats to green form applicants, if such flats were really offered for sale. If we first sell 2 000 to 3 000 HOS flats to green form applicants (Members of the Liberal Party have left the Chamber), will this really affect the property market?

The green form applicants mentioned by me just now are all tenants of public housing. I believe the impact of this on the property market would be zero. As a matter of fact, if the people living in PRH do not purchase HOS flats through the green-form arrangement, actually they will not buy any flats at all. The HOS has provided a ladder for them, as Mr LEE Cheuk-yan said just now.

If all the 16 000 HOS flats are put up for sale within the contracted period of two to three years after 2006, the proportion of HOS flats as opposed to the private property market will become higher by then. Will it not cause an even greater impact on the property market by 2007 and 2008? If these HOS flats are offered in the market at the rate of 2 000 per year, all the 16 000 can be sold within six to seven, or seven to eight years. But is this what the Government is planning to do? Therefore, if the Government has a clearer mind on this point, it should really offer the HOS flats for sale as soon as possible, and it should sell

such flats to green form applicants, so as to minimize the impact on the private property market. In this way, the Government can sell these flats as soon as possible. If 2 000 flats are sold this year, and another 2 000 flats are sold next year, then altogether 4 000 flats can be sold in two years. By 2007, the remaining 3 000 to 4 000 flats (sic) can be put up for sale in the market, then the period required for disposing all the surplus HOS flats can then be shortened. It is the Government's policy to try to identify a way of selling all these HOS flats without causing an excessively substantial impact on the property market, is it not?

The Government said that it must keep its own promise. But is it worth the while for it to keep such a promise? We will come to a different conclusion only if the Government is also selling these flats to white form applicants, thereby enabling a lot of people to buy such flats — just as the situation in 2001 when the Government was selling as many as 10 000 HOS flats in a year during the booming period of the property market. However, we have now already specified the number of flats to be sold, and, as Mr CHAN Kam-lam said in the beginning of his speech, a timetable has also been specified. It is indeed a good thing for the Government to specify now the number of flats to be sold.

Madam President, I believe even though we have put forward our viewpoints, Secretary Michael SUEN will still say in his reply later that the Government will maintain its original stance by adhering to its original timetable in selling the HOS flats after 2006. Therefore, I do feel that I am "wasting my breath" in stating my view here. However, I feel that the Government should not adopt such a "bad loser" mentality. Mr LEE Wing-tat has said aptly that this viewpoint is supported by public opinions. According to an opinion survey conducted by us, 60% of the respondents support the sale of the HOS flats. Why does the Government not act according to public opinions? When will the Government act according to public opinions? Maybe let us urge the Government to conduct an opinion poll. Maybe we can ask Donald TSANG to conduct an opinion poll, in which the people are asked whether they agree with the resumption of sale of HOS flats this year. If the Government finds that 60% of the people agree with the resumption of sale of HOS flats this year upon the completion of the opinion poll, then Donald TSANG should not mention public opinions on Monday. As public opinions have already shown that they would

like to see the Government resume the sale of HOS flats, this is the aspiration of the people. And the HA has the need too, does it not? Frankly speaking, I am insisting my stand just for the sake of upholding my personal belief. I simply do not understand what the Government is doing.

I so submit — though I do feel that I have "wasted my breath".

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr Albert CHENG, you may now speak on the two amendments. You have up to five minutes to speak.

**MR ALBERT CHENG** (in Cantonese): Madam President, altogether 15 Members, including myself, have spoken.....

**PRESIDENT** (in Cantonese): Mr Albert CHENG, I would like to remind you that you shall now speak on the two amendments. Later on, you will have the opportunity to make your conclusion.

**MR ALBERT CHENG** (in Cantonese): Fine. Altogether 15 Members have spoken, with two of them proposing amendments to my motion. Of course, insofar as housing policy is concerned, both Mr Frederick FUNG and Mr CHAN Kam-lam are considered experts. Naturally, I support Mr Frederick FUNG's amendment, that is, the Government should put up the HOS flats for sale and proceed with the construction of HOS estates as soon as possible. I feel that, in order to strike a balance in its housing policy, the Government has an unshirkable responsibility to take such actions.

With regard to the speech of Mr CHAN Kam-lam, I am somehow surprised because I completely agree with what he has said, but he seems to be

opposing my motion. I do not know whether he will vote against my motion, but he has already informed the President that he will withdraw his amendment if both Mr Frederick FUNG's amendment and my original motion are passed. Mr CHAN Kam-lam said that he disagreed with certain parts of the wording of my original motion. Had he told me earlier, I would have deleted those parts for a very simple reason — that they are just some repetitions.

In fact, the most important point is the Government must expeditiously put up the HOS flats for sale. We all know that, as mentioned by several Members just now, if over 16 000 flats are left vacant, it will create a mismatch of housing supply and demand, and the Government also has to spend a lot of money on renovating and maintaining such flats. If the Government honours its promise in 2007 — the Government does not do that very often — then the property prices may plummet again. If that happens, the Government may not sell the HOS flats anymore. If the Government really honours its promise and put up the HOS flats for sale, then those who buy such flats may have to regret deeply afterwards. I said this because, from my own experience, flats which have been left vacant for years will go rotten and stink. Therefore, I very much hope that both amendments and my motion can be passed.

When Mr LEE Cheuk-yan delivered his speech, he said that it could achieve nothing even if the motion was passed. Mr SIN Chung-kai said that it was simply a waste of breath to hold a debate on the issue. However, I still recall that the Chief Executive Mr Donald TSANG had said in this Chamber on Monday that if the motions passed in the Legislative Council were in line with public opinions, he would listen to them carefully and accept them. This is a pledge made by Mr TSANG. He said he would act according to the framework of public opinions in setting policy priorities. If Honourable Members of this Council also agree to act according to such a framework and priorities, we will definitely have fewer arguments, and there will also be a greater chance for the Government to agree to the motions proposed by Members. Finally, Mr TSANG said that we all understood our relationship in the establishment, and while it was the Government who made the policy decisions ultimately, it will definitely respect the wishes of Members. Regarding motions moved by Members which are supported by public opinions, the SAR Government will not ignore them if they are passed by a unanimous vote. These remarks were made

by Donald TSANG when he spoke in reply to a question raised by Mr CHEUNG Man-kwong on that day.

Now, I have one suggestion: For the interests of the people, can all Honourable Members act in a people-based manner by making an attempt to vote for this motion unanimously at separate voting? This motion is supported by public opinions because Mr LEE Wing-tat said that the Democratic Party had conducted an opinion survey on it. By doing so, we can immediately find out whether Mr TSANG would really honour his promise, or whether he simply forgets what he has said. Therefore, I hereby implore Members to support the motion as well as the amendments.

I so submit. Thank you, Madam President.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, first of all, I would like to thank Members for their views on the housing policy and the sales arrangements for surplus Home Ownership Scheme (HOS) flats.

In November 2002, in view of the sluggish property market and the serious imbalance between housing supply and demand, the Government conducted a comprehensive review of the housing policy in response to the expectations of the community. The Government then announced its housing policy statement and clarified the different roles played by the Government and the private property market, stressing that in future the Government will confine itself to providing public rental housing to those who could not afford private accommodation. The statement also underlined the importance of maintaining a free and stable environment for the sustained and healthy development of the property market on a level playing field. To achieve this objective, the first and foremost task of the Government is to provide adequate land for housing and other developments in response to market demand. Besides, the Government has decided to cease all subsidized home ownership schemes and withdraw from its role as property developer, so as to minimize intervention in the market. This market-oriented approach is aimed to maintain a stable environment for home ownership and investment. In line with these principles, in October 2003 the Government announced that the surplus HOS flats would not be offered for sale before the end of 2006. The purpose of this arrangement is to allow more time for the Government's repositioned policy to take root and consolidate, so

that the balance of supply and demand could restore gradually in a clear and stable environment.

I believe most people have accepted the Government's position as enshrined in the statement. It is, therefore, incumbent upon us to reaffirm the Government's determination to maintain this clear, comprehensive and consistent housing policy so as to sustain the confidence of the public and investors in the property market. Indeed, as the economy picks up, the property market has been recovering gradually. The overall value of Hong Kong's property assets has increased by about \$872 billion from November 2002 to the present. The number of negative equity cases also fell from the peak of about 100 000 at the end of June 2003 to about 14 000 at the end of March 2005. The general social atmosphere is also brightening up. These indications reassure us that the repositioned housing policy is heading in the right direction and is in line with the overall interests of the public.

Some Members said that the private property market is very active and this inferred that there are substantial potential demands in the market to absorb surplus HOS flats without affecting the stability of the market even if these flats were put up for sale earlier. This is open to debate. When announcing the repositioned housing policy, we had pointed out clearly that the surplus HOS flats have to be disposed of prudently. The Government also announced firmly that the surplus HOS flats will not be offered for sale before the end of 2006. The market is fully aware of the Government's position and policy. In the light of such information, the public and investors are able to formulate their home ownership and investment plans in a transparent market environment. I accept that as a responsible Government we must constantly be on the alert to changes in market circumstances and respond accordingly. However, I must stress that the current stock of surplus HOS flats is not a tool for regulating demand in the property market. Therefore, the timing and the arrangements for the disposal of these surplus flats should not be determined by market fluctuations. Instead, we should ensure that the manner of their disposal will not undermine public confidence in the property market and the Government's housing policy.

The cornerstone of the repositioned housing policy is to maintain the sustained healthy development of the property market in a transparent market environment. Under no circumstances should we deviate from this principle. Hence, the surplus HOS flats will not be offered for sale before the end of 2006.

Another argument in support of an earlier resumption of the sale of surplus HOS flats is a reducing unsold inventory and a shrinking supply of new completions in the next two to three years. According to this argument, these factors may lead to a shortage in housing supply and the sale of HOS flats should be expedited to ease the pressure of a shortage in supply.

On the concern that the drop in production volume may lead to a shortage in the supply of new flats, I would like to take this opportunity to explain the relevant data. The number of works commencement in the first five months of 2005 is 6 000 flats, which is lower as against 7 300 flats for the same period last year. However, there are two points which I would like to highlight. First, a projection of future housing supply which merely based on the works commencement figure of a few months is by no means accurate. According to our information, the quarterly works commencement figures in the past years may vary significantly. Second, the number of works commencement of new flats accounts for only part of, but not the overall supply, of private housing. Our latest figures reveal that the supply of private residential flats available for sale in the next two to three years will still be considerable from the following four sources:

- (1) about 39 000 flats are under construction;
- (2) about 16 000 flats have been completed but remain unsold;
- (3) the residential land with premium paid or lease modified can provide about 10 000 flats; and
- (4) the land sold by the Government last year and on which construction works will commence soon can provide about 5 000 residential flats.

The total number of flats from the above four sources already adds up to about 70 000, which has not yet taken into account planned development projects of the two Railways and the Urban Renewal Authority. We can see that the potential supply is by no means low.

As regards the supply of land, through the Government's Application List System and other sources of land supply including modifications of land leases, developers can always decide whether to increase their land reserves and construct more buildings in the light of market demand.

Some Members expressed concern over the aspirations of the grassroots for home ownership. As I have just said, the Government is determined to withdraw from the property market and will not construct subsidized flats for sale. This is to avoid overlapping of the public and private housing markets which in the past had led to serious imbalance. The resumption of the sale of surplus HOS flats after the end of 2006 is to make good use of these flats. We have absolutely no intention to re-create another subsidized housing market.

Despite termination of the HOS, flats of various types and prices are available in the private property market. Together with a wide range of mortgage plans in the market, intending home buyers should be able to choose suitable properties according to their budgets. Public housing tenants and eligible applicants on the Waiting List can also buy HOS flats or Tenants Purchase Scheme flats under the Secondary Market Scheme without payment of premium. Besides, since early May this year, the Housing Authority (HA) has relaxed the alienation restrictions to allow free transaction of HOS flats sold after two years in the open market after payment of premium. This arrangement enables HOS flat owners to sell their flats in the open market earlier and in turn increases the supply and circulation of small and medium sized flats in the secondary property market, thereby offering a wider range of choices to intending buyers.

Some Members considered that early resumption of HOS sales will reduce the costs in managing the vacant flats on the one hand and generate income to improve the HA's financial situation on the other. I fully understand Members' concern about the substantial holding costs incurred by the surplus HOS flats. Nevertheless, cessation of HOS sales is an integral part of the repositioned housing policy. After careful evaluation of all relevant factors, we are of the considered view that the Government should refrain from any gestures which may affect public confidence in the housing policy and the property market. On this premise, the HA should not resume the sale of surplus HOS flats for the sheer purpose of improving its financial situation.

Members hope that the Government would consult the public on the overall housing policy. In fact, ensuring better housing for all is the mutual goal of the Government and the Legislative Council. All along, we have been exchanging views and discussing with the Legislative Council and the Panel on Housing on broad principles and operational arrangements and reporting the progress on various aspects of the implementation of housing policy. We also



listen to the views and aspirations of the public through different forums and channels. The Government and the HA will continue to review and promote the rational and efficient allocation of public housing resources, review the priority of various areas of work and formulate a long-term policy for public housing development with a view to focusing the limited resources to cater for the most needy groups in the community.

As regards public housing rent policy, the HA's Ad Hoc Committee on Review of Domestic Rent Policy has completed initial discussions on the development of a rent fixing and adjustment mechanism that is objective, clear, flexible and conducive to the sustainable development of the public housing programme. The HA plans to consult the public on the rent policy review after conclusion of the appeal case regarding the judicial review on public housing rents by the Court of Final Appeal in October this year.

In conclusion, from the perspectives of the repositioned housing policy, flat supply and the prevailing circumstances of the property market, there is no strong reasons to justify early resumption of HOS sales. However, in the light of the concerns of the public, Members and the industry, the HA will as soon as possible discuss and consult the industry on the sale arrangements for the surplus HOS flats from 2007 onwards, including a specific timetable and target groups, so as to facilitate the market and the public to plan ahead.

Thank you, Madam President.

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

**MR FREDERICK FUNG** (in Cantonese): Madam President, I move that Mr Albert CHENG's motion be amended.

**Mr Frederick FUNG moved the following amendment: (Translation)**

"To add "given that the Home Ownership Scheme (HOS) helps improve the living environment of the grass-roots people, releases more public rental housing (PRH) units for those in need and relieves the deficit

situation of the Hong Kong Housing Authority, and" after "That,"; to delete "Home Ownership Scheme (HOS)" after "no longer freeze the sale of" and substitute with "HOS"; to delete "public rental housing (PRH)" after "the HOS flats are mainly targeted at" and substitute with "PRH"; to delete "as such" after "some HOS flats to remain unoccupied;" and substitute with "therefore"; to delete "consider" after "returned HOS flats, and to" and substitute with "resume"; and to delete "HOS flats and" after "including the policies on". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Frederick FUNG to Mr Albert CHENG 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)

Mr Frederick FUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the amendment.

Mr WONG Yung-kan and Mr WONG Ting-kwong abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr LEUNG Kwok-hung and Mr Albert CHENG voted for the amendment.

Mrs Selina CHOW voted against the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, eight were in favour of the amendment, 13 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 11 were in favour of the amendment, one against it and six abstained. 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 CHAN Kam-lam, you may now move your amendment.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I move that Mr Albert CHENG's motion be amended.

**Mr CHAN Kam-lam moved the following amendment: (Translation)**

"To add "as" after "That,"; to delete "the Government should no longer freeze the sale of Home Ownership Scheme (HOS) flats to boost the property market, and as the HOS flats are mainly targeted at public rental housing (PRH) tenants and low-income households who cannot afford private housing, the resumption of sale of HOS flats will have minimal impact on the private housing market, and it is only a waste of public resources to allow some HOS flats to remain unoccupied; as such, this Council urges the Government to immediately put up the surplus HOS flats for sale by phases" after "the property market is also regaining vitality," and substitute with "this Council urges that, in the light of the actual market situation and having regard to the views from various sectors of the community, the Government should expeditiously formulate and announce to the public the specific arrangements for the sale of surplus Home Ownership Scheme (HOS) flats"; to delete "to consider the construction of new HOS estates as well as to" after "returned HOS flats, and" and substitute with "should specify the timetable and the target buyers, with a view to enhancing the transparency of its housing policy and the housing supply to facilitate the market and the public in making plans for the future; the Government should also"; and to delete "PRH" after "including the policies on HOS flats and" and substitute with "public rental housing"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Kam-lam to Mr Albert CHENG'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)

Mr Tommy CHEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**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:

Ms Margaret NG, Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Dr Fernando CHEUNG voted against the amendment.

**Geographical Constituencies:**

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mr Ronny TONG voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mrs Selina CHOW, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat and Mr Albert CHENG voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, nine were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 10 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr Albert CHENG, you may now reply and you have six minutes two seconds.

**MR ALBERT CHENG** (in Cantonese): Madam President, altogether 15 Members, including myself, have spoken. The earlier response furnished by Secretary Michael SUEN surprised me a lot because he did not realize that his words were self-contradictory. He said that Home Ownership Scheme (HOS) flats were not a tool for regulating the market. I absolutely agree with his point. In that case, why does the Government not put the HOS flats up for sale? Therefore, I do not know what he was talking about. However, it does not matter. He might be a silent supporter of mine in his private capacity.

The reasons held by Members opposing or evading the issue are all too simple, namely, the policies of the Government cannot be changed too abruptly. If a certain policy is wrong, why can it not be changed abruptly? Or does it mean that no matter how wrong a certain policy is, it can never be changed once it has been formulated? Even Mr TUNG can be dismissed. Two months ago, could anyone envisage that Donald TSANG would become the Chief Executive? Members opposing the motion justify their position on the ground of upholding the free market. Mrs Selina CHOW said she insisted on upholding the operation of the free market. Both Dr YEUNG Sum and Mr SIN Chung-kai have also given their responses on the issue. What free market is there to speak of? Nowadays, we have "SUEN's Eleven Strokes" for controlling our land supply. During the pre-transitional period, the Central Government set the limit that only 50 hectares of land could be sold annually in order to prevent the British from selling our land at exceptionally low prices and then pocketing all the proceeds prior to their departure. But now, "Mr SUEN with Eleven Strokes" is even more daring than the Central Government. It appears to me that he does not trust anyone, not even himself. After his 10 strokes had been made, the total amount of land sold last year was less than 10 hectares. Was this not a deliberate act of controlling land supply, thereby jacking up the land premium? Where is the free market? What does a free market actually constitute? Now, we are just requesting the Government to, from now on, put up 2 000 HOS flats, or 3 000 at most, for sale annually. Moreover, the Government has also said that those flats will be put up for sale between end 2006 and 2007, so only 3 000 units at the most will be sold from now until 2006. As such flats are not a tool for regulating the market, then just let us ask the Government to go ahead to sell them. I really do not know how we can explain all these to the people.

Now, if tenants of public housing want to buy any properties, they will normally buy HOS flats. When Mr CHAN Kam-lam moved the amendment, he also said in his speech that such flats should first be sold to green form applicants. These people need to go through a means test before they are allowed to buy such flats. They cannot afford to buy the flats from those property developers who have become "too fat to put on their socks". To put it more bluntly, these property developers are taking money from the plates of the beggars. You cannot get blood from stone. These people have gone through the means test to prove that they do not have the money to buy flats from the private property market. They may afford to buy tenement flats in the old district of Shum Shui Po, which is the geographical constituency of Mr Frederick FUNG. But if they really do so, they may have to regret deeply afterwards.

There was a certain Member (to be more specific, I am referring to Mrs Selina CHOW) who said that private residential flats were now even cheaper than HOS flats. I dare not argue whether this is possible. However, the people can enjoy a certain discount in buying HOS flats — a discount as much as nearly 50%. On the other hand, do property developers offer such discounts? If the answer is in the affirmative, I would also like to buy one for myself.

Unfortunately, it appears that this motion, together with the two amendments, will not be passed. If this motion is passed and supported by public opinions, Donald TSANG will have to rack his brain next Monday to figure out what to do next. However, he will not have to do so now. He said if a motion was supported by popular opinions, and was passed at separate voting, then he would not act against it, that is, he would not say "I am afraid I cannot follow your suggestion", and so on. He has already withdrawn such remarks, and has pledged not to make them again in future. However, as this motion will not be passed in the Legislative Council, he may never have to take this challenge.

All along, people from different parts of the world (including Singapore) have visited Hong Kong to learn from our housing policies. We build public housing for people who cannot afford to buy the more comfortable private housing flats. But we hope that, after improving their lot, they can have the means to buy HOS flats. After owning their HOS flats, they can further improve their lot by buying private housing flats. However, now the Government says that it will not put up any HOS flats for sale in future. After listening to the words of Secretary Michael SUEN, I am very frightened. What makes me frightened? If I did not get the message right, I hope he can correct me. Today, I heard him say in the Legislative Council that the Government would not build subsidized housing anymore in future. Many Honourable colleagues have heard that as well. We are all shocked. I do not understand whether the Secretary was actually saying that the Government would not build HOS flats anymore in future. Did the Government mean that it would not build subsidized housing flats for sale in future? If I did not get the message right, I hope the Secretary can correct me.

Is everyone in Hong Kong actually working for property developers? Many say that Hong Kong practises a simple tax regime. Many people hold that we enjoy low tax rates. However, many of us are unaware that, apart from paying our own tax, our expenditure on housing (such as rents or mortgage payments) is rather enormous. When compared with the situation in the United



States, the incomes of Hong Kong people, after deducting our housing expenditure, are less than those of the Americans. Hong Kong is a place where the tax rates are high, but our tax money is paid not to the Government, but to the property developers. Mr LEE Wing-tat said earlier that Secretary Michael SUEN should relocate his office to the Secretariat of the Real Estate Developers' Association of Hong Kong. If the Secretary really does that, I shall be very happy because, by then, it will not be the Secretary, but Mr Abraham SHEK, who will formulate the policies. I so submit. Thank you, Madam President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHENG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHENG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Mr Bernard CHAN, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the motion.

Mr WONG Yung-kan and Mr WONG Ting-kwong abstained.

#### Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr LEUNG Kwok-hung and Mr Albert CHENG voted for the motion.

Mrs Selina CHOW voted against the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, eight were in favour of the motion, 12 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 11 were in favour of the motion, one against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

#### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 6 July 2005.

*Adjourned accordingly at three minutes to Eleven o'clock.*

## Annex I

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2, Division 5	In the heading, by deleting " <b>the Matrimonial Causes Ordinance</b> " and substituting " <b>certain Ordinances</b> ".
New	By adding immediately before the subheading " <b>Matrimonial Causes Ordinance</b> " -  <div style="text-align: center;"><b>"High Court Ordinance</b></div> <div style="text-align: center;"><b>10A. Rules concerning deposit, etc. of moneys, etc. in High Court</b></div> Section 57(1) of the High Court Ordinance (Cap. 4) is amended by repealing "Chief Justice" and substituting "Chief Judge of the High Court".
New	By adding immediately after clause 14 -  <div style="text-align: center;"><b>"Criminal Procedure Ordinance</b></div> <div style="text-align: center;"><b>14A. Chief Judge to make rules</b></div>

Section 79D of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing "Chief Justice" and substituting "Chief Judge".

**14B. Application for dismissal of charges contained in a notice of transfer**

Section 79G(8) is amended by repealing "Chief Justice" and substituting "Chief Judge".

**District Court Ordinance**

**14C. Suitors' Funds Rules**

Section 73(1) of the District Court Ordinance (Cap. 336) is amended by repealing "Chief Justice" and substituting "Chief Judge".

**Evidence (Miscellaneous Amendments)  
Ordinance 2003**

**14D. Part added**

Section 17 of the Evidence (Miscellaneous Amendments) Ordinance 2003 (23 of 2003) is

amended, in the new section 79L of the Criminal Procedure Ordinance (Cap. 221), by repealing "Chief Justice" and substituting "Chief Judge".

15

(a) By adding immediately before subclause (1) -

"(1A) Notwithstanding the amendment made by section 10A to section 57(1) of the High Court Ordinance (Cap. 4), any rules made under section 57(1) of that Ordinance which are in force immediately before the date of commencement of section 10A shall on and after that date continue in force as if they were made by the Chief Judge under section 57(1) of that Ordinance as amended by section 10A."

(b) By deleting subclause (2).

(c) By adding -

"(5) Notwithstanding the amendment made by section 14A to section 79D of the Criminal Procedure Ordinance (Cap. 221) -

(a) any rules made under section 79D of that

Ordinance which are in force immediately before the date of commencement of section 14A shall on and after that date continue in force as if they were made by the Chief Judge under section 79D of that Ordinance as amended by section 14A;

- (b) any directions given under section 79D of that Ordinance which are in force immediately before the date of commencement of section 14A shall on and after that date continue in force as if they were given by the Chief Judge under section 79D of that Ordinance as amended by section 14A.

(6) Notwithstanding the amendment made by section 14B to section 79G(8) of

the Criminal Procedure Ordinance (Cap. 221) —

- (a) any rules made under section 79G(8) of that Ordinance which are in force immediately before the date of commencement of section 14B shall on and after that date continue in force as if they were made by the Chief Judge under section 79G(8) of that Ordinance as amended by section 14B;
- (b) any directions given under section 79G(8) of that Ordinance which are in force immediately before the date of commencement of section 14B shall on and after that date continue in force as if they were given by the Chief Judge under section

79G(8) of that Ordinance  
as amended by section 14B.

(7) Notwithstanding the amendment made by section 14C to section 73(1) of the District Court Ordinance (Cap. 336), any rules made under section 73(1) of that Ordinance which are in force immediately before the date of commencement of section 14C shall on and after that date continue in force as if they were made by the Chief Judge under section 73(1) of that Ordinance as amended by section 14C."

Part 3           By deleting Division 6.

New              By adding immediately before the subheading  
**"Prevention of Bribery Ordinance" -**

**"Dangerous Drugs Ordinance**

**34A. Surrender of travel document**

Section 53A of the Dangerous Drugs Ordinance (Cap. 134) is amended -

(a) by adding -



"(4A) Subject to subsection (8), a person to whom a notice under subsection (1) is addressed shall not leave Hong Kong, whether or not the notice has been served on him under subsection (3), before the expiry of a period of 3 months from the date of the notice unless -

(a) an application made under section 53B(1) for the return of a travel document is granted; or

(b) an application made under

section  
53C(1) for  
permission  
to leave  
Hong Kong  
is  
granted.";

(b) in subsection (5), by repealing  
"thereupon";

(c) by adding -

"(7A) Subject to  
subsection (8), a travel  
document surrendered to  
the Commissioner of Police  
or the Commissioner of  
Customs and Excise in  
compliance with a notice  
under subsection (1) may  
be detained for a period  
of 3 months from the date  
of the notice unless an  
application made under  
section 53B(1) for the  
return of the travel

document is granted.";

(d) in subsection (8) -

(i) by repealing

everything before

"for not more than"

and substituting -

"(8) The

period of 3

months referred

to in

subsections (4A)

and (7A) may be

extended";

(ii) by repealing "further

detention" and

substituting

"extension";

(e) in subsection (10), by adding

"and sections 53B and 53C"

after "In this section".

#### **34B. Section added**

The following is added -

**"53C. Application for permission  
to leave Hong Kong**

(1) Without prejudice to section 53B, a person on whom a notice under section 53A(1) is served may at any time make written application to the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, for permission to leave Hong Kong and every such application shall contain a statement of the grounds on which it is made.

(2) Before determining an application under subsection (1), the Commissioner of Police or the Commissioner of Customs and Excise may require that any matter of fact relied on in the application shall be substantiated by statutory declaration.

(3) Any person aggrieved by the refusal of an application under subsection (1) may, within 14 days of being informed of such refusal, appeal to a magistrate against that refusal and the magistrate may, upon considering the

grounds of the application and any evidence which may be adduced in relation thereto by or on behalf of either party, order that the person be permitted to leave Hong Kong.

(4) The decision of a magistrate in relation to an appeal under this section shall be final."."

35

By deleting paragraphs (a) and (b) and substituting -

"(a) by adding -

"(3A) Subject to subsection (6), a person to whom a notice under subsection (1) is addressed shall not leave Hong Kong, whether or not the notice has been served on him under subsection (2), before the expiry of a period of 6 months from the date of the notice unless -

(a) an application made under section 17B(1) for the return of a travel document is

granted; or

(b) an application made under section 17BA(1) for permission to leave Hong Kong is granted.";

(b) in subsection (4), by repealing "thereupon be arrested and taken before a magistrate" and substituting "be arrested and taken before a magistrate by a police officer or by a person appointed in that behalf by the Commissioner";

(c) by adding -

"(5A) Subject to subsection (6), a travel document surrendered to the Commissioner in compliance with a notice under subsection (1) may be detained for a period of 6 months from the date of the notice unless an application made under section 17B(1) for the return of the travel document is granted.";

(d) in subsection (6) -

(i) by repealing everything before

the proviso and substituting -

"(6) The period of 6 months referred to in subsections (3A) and (5A) may be extended for a further period of 3 months if a magistrate, on application by the Commissioner, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such extension:";

- (ii) in the proviso, by repealing "who surrendered the document" and substituting "to whom the relevant notice is addressed".

36

By deleting paragraphs (b) and (c) and substituting -

"(b) in subsection (6), by repealing "subject

to such conditions as to the further surrender of the travel document and the appearance of the applicant at any time and place in Hong Kong as may be specified." and substituting -

"subject to the conditions that -

(a) the applicant shall further surrender his travel document to the Commissioner at such time as may be specified; and

(b) the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.";

(c) by repealing subsection (7) and substituting -

"(7) Where a travel document is



returned to the applicant under this section subject to a condition imposed under subsection (5)(a) or (6)(a), then after the time specified under that subsection, the provisions of section 17A(3A) shall continue to apply in respect of the applicant and the provisions of section 17A(5A) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section."."

New

By adding immediately after clause 36 -

**"36A. Section added**

The following is added -

**"17BA. Permission to leave  
Hong Kong**

(1) Without prejudice to section 17B, a person on whom a notice under section 17A(1) is served may at any time make application in writing to the Commissioner or to a magistrate or both

for permission to leave Hong Kong, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section -

(a) the applicant may be required to -

- 
- (i) deposit such reasonable sum of money with such person as may be specified;
  - (ii) enter into such recognizance with such sureties, if any, as may be specified; or
  - (iii) deposit such a sum of money and enter into such a recognizance as may be specified;
- (b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by

that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(7) Where a person is permitted to leave Hong Kong under this section subject to a condition imposed under subsection (5) or (6), then after the

time specified under that subsection or (if applicable) after the last of such times, the provisions of section 17A(3A) shall continue to apply in respect of the person as if the person had not been permitted to leave Hong Kong under this section.

(8) Proceedings before a magistrate under this section -

(a) shall be conducted in chambers; and

(b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) shall apply, with the necessary modifications, to appeals

against an order of a  
magistrate under this  
section.

(9) Anything to be specified in  
respect of an applicant under this  
section shall be specified by notice in  
writing served personally on the  
applicant."

**36B. Further provisions relating to  
security, appearance, etc.**

Section 17C is amended by adding -

"(1A) Where a person granted an  
application under section 17BA fails to  
comply with the requirement of any  
condition imposed under that section, any  
deposit made or recognizance entered into  
under that section may be forfeited by a  
magistrate on application by the  
Commissioner or under section 65 of the  
Magistrates Ordinance (Cap. 227).".

37

In the proposed section 9B, by adding "and the  
Court of Appeal or the Court of First Instance, as  
the case may be, is satisfied that the application

is without merit," after "the Hong Kong Court of Final Appeal Ordinance (Cap. 484),".

38 In the proposed section 13B, by adding "and the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that the application is without merit," after "the Hong Kong Court of Final Appeal Ordinance (Cap. 484),".

66 (a) In paragraph (b), by deleting the full stop and substituting a semicolon.

(b) By adding -

"(c) in paragraph (c), by adding "或命令" after "決定".".

198 (a) By deleting the subheading "**Firearms and Ammunition Ordinance**" before the clause.

(b) By deleting the clause.

## COMPANIES (AMENDMENT) BILL 2004

**COMMITTEE STAGE**Amendments to be moved by the Secretary for  
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
New	<p>By adding -</p> <p><b>"1A. Interpretation</b></p> <p style="padding-left: 40px;">Section 2(5) of the Companies Ordinance (Cap. 32) is amended by repealing "or concurrence".</p>
2	<p>(a) By deleting "Companies Ordinance (Cap. 32) is amended by adding" and substituting "following is added".</p> <p>(b) In the proposed section 2B(2)(b), by adding "or subsidiary company" after "to a subsidiary".</p> <p>(c) In the proposed section 2B(3) -</p> <p style="padding-left: 40px;">(i) by adding "129," after "128,";</p> <p style="padding-left: 40px;">(ii) by adding "161B, 161BA," after "161,".</p>
3	<p>By deleting the clause and substituting -</p> <p><b>"3. General provisions as to contents</b></p>



**and form of accounts**

Section 123 is amended -

- (a) in subsection (3), by repealing "in the following provisions of this section or";
- (b) by repealing subsection (4) and substituting -

"(4) Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts -

- (a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company; or
- (b) is inconsistent with the requirement to give a true and

fair view of the  
state of affairs  
or the profit or  
loss of the  
company,

then -

- (c) in the case of  
paragraph (a),  
additional  
information that  
is necessary to  
give a true and  
fair view  
thereof shall be  
given in the  
accounts or  
statement, as  
the case may  
require; and
- (d) in the case of  
paragraph (b),  
the directors of  
the company  
shall depart  
from those  
requirements to  
the extent that  
is necessary to

give a true and  
fair view  
thereof with the  
reasons for and  
particulars and  
effects of such  
departure to be  
given in the  
accounts or in a  
statement  
annexed to those  
accounts."."

4 By deleting the clause.

5(b) (a) By deleting the proposed section 126(4) and  
substituting -

"(4) Where compliance with the  
requirements of the Tenth Schedule and  
other requirements of this Ordinance as  
to the matters to be included in a  
company's group accounts or in a  
statement annexed to the group accounts -

(a) would not be sufficient to  
give a true and fair view  
of the state of affairs or  
the profit or loss of the  
company and its

subsidiaries; or

- (b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries,

then -

- (c) in the case of paragraph (a), additional information that is necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require; and
- (d) in the case of paragraph (b), the directors of the company shall depart from those requirements to the extent that is necessary to give a true and fair view thereof with the reasons for and particulars and effects of such departure to be given in a statement annexed to

the company's group  
accounts."

(b) By deleting the proposed section 126(5).

7(a) By deleting "'or established" after  
"incorporated"' and substituting "'where the  
subsidiary is a body corporate," before "the".

7 By adding -

"(aa) in subsection (1), by adding -

"(ba) where the subsidiary is not a  
body corporate, the address of  
its principal place of  
business;";".

7(b) In the Chinese text, by deleting the proposed  
section 128(2)(a) and substituting -

"(a) 如憑藉第2(4)、(5)、(6)及(7)條，某屬法人團體的企  
業(“前者”)的股份會為斷定該企業是否另一企業(“後  
者”)的附屬公司的目的，而被視為由後者持有或並非由  
後者持有，則前者的股份須視為由後者持有或(視屬何情  
況而定)並非由後者持有；及".

8 In the proposed section 129A(1), by deleting  
everything after "general" and substituting -

"meeting -

(a) the name of the undertaking  
regarded by the directors as

being the company's ultimate  
parent undertaking; and

(b) if known to them -

(i) where the undertaking  
is a body corporate,  
the country in which  
it is incorporated;  
and

(ii) where the undertaking  
is not a body  
corporate, the  
address of its  
principal place of  
business."

10 (a) In the proposed section 140(2)(d)(i), by  
deleting "the subsidiary" and substituting "a  
subsidiary".

(b) In the proposed section 140(2)(d)(ii), by  
deleting "the parent" and substituting "a  
parent".

18 In the proposed Twenty-third Schedule -

(a) within the square brackets, by deleting  
", 124";

(b) in section 1(1), in the definition of  
"shares", by deleting ", for the purposes  
of the provisions specified under section

- 2B(3) of this Ordinance,";
- (c) in section 1(1), in the definition of "undertaking" -
- (i) by deleting ", in relation to the provisions specified under section 2B(3) of this Ordinance, includes" and substituting "means";
  - (ii) in paragraph (a), by deleting "or corporation";
  - (iii) in paragraph (b), by adding "or" at the end;
  - (iv) in paragraph (c), by deleting "body" and substituting "association";
- (d) in section 2(1), by deleting everything after "if -" and before "and controls" and substituting -
- "(a) (i) in the case where both the parent undertaking and the subsidiary undertaking are bodies corporate, the subsidiary undertaking is a subsidiary of the parent undertaking by

- virtue of section  
2(4), (5), (6) and  
(7) of this  
Ordinance; or
- (ii) in any other case,  
the parent  
undertaking -
- (A) holds a majority  
of the voting  
rights in the  
subsidiary  
undertaking;
- (B) is a member of  
the subsidiary  
undertaking and  
has the right to  
appoint or  
remove a  
majority of its  
board of  
directors; or
- (C) is a member of  
the subsidiary  
undertaking";
- (e) by renumbering section 2(1)(c) as section  
2(1)(b);
- (f) in section 2(2), by deleting "subsection  
(1)(b)" and substituting "subsection



- (1)(a)(ii)";
- (g) by deleting section 2(3) and substituting -
- "(3) An undertaking shall be treated as the parent undertaking of another undertaking if a subsidiary undertaking of the first-mentioned undertaking is, or is to be treated as, the parent undertaking of that other undertaking; and references to a subsidiary undertaking of the first-mentioned undertaking shall be construed accordingly.";
- (h) in section 2, by adding -
- "(4) Sections 3 to 10 contain provisions explaining expressions used in this section and otherwise supplementing this section.";
- (i) in section 3(1), by deleting "section 2(1)(b)(i) and (iii)" and substituting "section 2(1)(a)(ii)(A) and (C)";
- (j) by deleting section 3(3);
- (k) in section 4, by deleting "section 2(1)(b)(ii)" and substituting "section 2(1)(a)(ii)(B)";
- (l) in section 4(c), by deleting "or concurrence";
- (m) in section 5, by deleting "section

- 2(1)(c)" and substituting "section 2(1)(b)";
- (n) in section 5(a), by deleting "有權對該另一企業發揮支配性影響力" and substituting "有對該另一企業發揮支配性影響力的權利";
- (o) in section 5(b), by deleting "a right" and substituting "such a right";
- (p) in section 7(c), by deleting "or concurrence";
- (q) in section 8(a), by deleting "and" and substituting "or".
- 19(1) By adding "in relation" after "apply".
- 19(2) By deleting everything after "apply" and substituting "in relation to a company until that amendment applies in relation to the company.".
- 20 By deleting "sections 124(2), 126(2)" and substituting "sections 124(2)".

## Annex III

## CHILD CARE SERVICES (AMENDMENT) BILL 2005

## COMMITTEE STAGE

Amendments to be moved by the Secretary for  
Health, Welfare and Food

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting the clause and substituting -</p> <p><b>"2. Commencement</b></p> <p>(1) Subject to subsection (2), this Ordinance shall come into operation on 1 September 2005.</p> <p>(2) The following provisions of this Ordinance shall come into operation on 1 September 2007 -</p> <p>(a) section 9 (in relation to paragraphs (a), (b) and (c) of that section);</p> <p>(b) section 10 (in relation to paragraphs (a), (b)(iii), (c)(iii) and (d) of that section);</p> <p>(c) section 11 (in relation to paragraph (c) of that section);</p> <p>(d) section 12; and</p> <p>(e) section 20 (in relation to paragraph (d) of that section)."</p>

- 11 In paragraph (d) -
- (a) in the proposed regulation 4(6)(a), by deleting "a date specified by the Director by notice published in the Gazette" and substituting "1 March 2006";
  - (b) by deleting the proposed regulation 4(8).
- 12 By deleting paragraph (b).
- 13 By deleting the clause.
- 14 In paragraph (b) -
- (a) in the proposed regulation 21(4)(a) and (5)(a), by deleting "post-relevant date" and substituting "specified";
  - (b) in the proposed regulation 21(6) -
    - (i) in the definition of "post-relevant date premises" -
      - (A) by deleting "post-relevant date" and substituting "specified";
      - (B) by deleting "在有關日期後啟用的" and substituting "指明";
      - (C) in subparagraphs (a) and (b), by deleting "the relevant date" and substituting "1 September 2005";

- (D) by deleting the semicolon at the end and substituting a full stop;
  - (ii) by deleting the definition of "relevant date".
- 18
- (a) In paragraph (b), in the proposed regulation 31(1A)(c), by deleting "post-relevant date" and substituting "specified".
  - (b) In paragraph (d), in the proposed regulation 31(4) -
    - (i) in the definition of "post-relevant date premises" -
      - (A) by deleting "post-relevant date" and substituting "specified";
      - (B) by deleting "在有關日期後啟用的" and substituting "指明";
      - (C) in subparagraphs (a) and (b), by deleting "the relevant date" and substituting "1 September 2005";
      - (D) by deleting the semicolon at the end and substituting a full stop;
    - (ii) by deleting the definition of "relevant date".

19 By deleting the clause and substituting -

**"19. Smoking and spitting**

Regulation 38(1) is amended -

- (a) by repealing "Except in a room specified by the Director, no person shall smoke in a" and substituting "No person shall smoke in the premises of any";
- (b) by repealing "during the hours that a centre is being operated".".

20 (a) In paragraph (a), in the proposed Part IA, by deleting the definition of "relevant date".

(b) In paragraph (b)(ii) -

- (i) in the proposed paragraph 2(a), by deleting "during the period of 6 months immediately before the relevant date" and substituting "between 1 March 2005 and 31 August 2005 (both days inclusive)";
- (ii) in the proposed paragraph 2(b) -
  - (A) in sub-subparagraph (i), by deleting "the relevant date" and substituting "1 September 2005";
  - (B) in sub-subparagraph (ii), by adding "on or after 1 September 2005" after "subsequently approved";
- (iii) in the proposed paragraph 2(c) -
  - (A) in sub-subparagraph (i), by adding

- “at any time before 1 March 2005”  
before “had been the principal of”;
- (B) in sub-subparagraph (ii), by  
deleting “during the period of 6  
months immediately before the  
relevant date” and substituting  
“between 1 March 2005 and 31 August  
2005 (both days inclusive)”.
- (c) In paragraph (c) (ii) -
- (i) in the proposed paragraph 2(a), by  
deleting “during the period of 6 months  
immediately before the relevant date” and  
substituting “between 1 March 2005 and 31  
August 2005 (both days inclusive)”;
- (ii) in the proposed paragraph 2(b) -
- (A) in sub-subparagraph (i), by adding  
“at any time before 1 March 2005”  
before “had been a registered  
teacher”;
- (B) in sub-subparagraph (ii), by  
deleting “during the period of 6  
months immediately before the  
relevant date” and substituting  
“between 1 March 2005 and 31 August  
2005 (both days inclusive)”.

22 By deleting everything after “accepted on or after” and  
substituting “1 September 2005.”.

- 23
- (a) By deleting "the day appointed for the commencement of section 3 of this Ordinance" and substituting "1 September 2005".
  - (b) By deleting "that commencement" and substituting "1 September 2005".



## Annex IV

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT)  
(NO. 2) BILL 2004

## COMMITTEE STAGE

Amendments to be moved by the Secretary for Health,  
Welfare and Food

<u>Clause</u>	<u>Amendment Proposed</u>
4(b)	<p>By deleting the proposed definition of “orally consumed product” and substituting -</p> <p>“orally consumed product” (口服產品) -</p> <p>(a) means a product (whether or not it is a medicine) for human consumption which is intended to be taken orally and is in any of the following forms -</p> <p>(i) pill;</p> <p>(ii) capsule;</p> <p>(iii) tablet;</p> <p>(iv) granule;</p> <p>(v) powder;</p> <p>(vi) semi-solid;</p> <p>(vii) liquid; or</p> <p>(viii) a form similar to</p>

any of the forms  
mentioned in  
subparagraphs (i),  
(ii), (iii), (iv),  
(v), (vi) and  
(vii); and

(b) does not include a product  
which is customarily  
consumed only as food or  
drink (that is to say, to  
provide energy, nourishment  
or hydration) or to satisfy  
a desire for taste, texture  
or flavour.”.

5

In the proposed section 3B -

(a) in subsection (1), by deleting  
“specified in column 2 of that  
Schedule, and any Note to that  
Schedule, in relation to that claim”  
and substituting “allowed under the  
provisions in column 2 of that  
Schedule (as read subject to the Note  
in that Schedule)”;

(b) by adding -

“(1A) Where section 3(1) does not apply to an advertisement by virtue of section 3(2), in so far as the advertisement is also an advertisement for an orally consumed product, subsection (1) does not apply to the advertisement.”;

- (c) in subsection (2)(c), by deleting “效果” and substituting “意思”.

8

In the proposed section 8 -

- (a) in subsection (2)(b), by deleting “or on”;
- (b) in subsection (2)(c) -
- (i) by deleting “samples of packaging and labels and”;
- (ii) by deleting “the purposes of the inspection” and substituting “such purpose”;
- (c) in subsection (2), by adding “的目的” after “是否獲遵從”;

10

In the proposed Schedule 4 -

(a) in item 4, by deleting everything in column 2 and substituting -

“(a) Subject to paragraph (b), the following claims are allowed -

(i) “This product is suitable for people concerned about blood sugar. 此產品適合關注血糖的人士服用。”;

(ii) “This product may assist in stabilizing blood sugar. 此產品或有助於穩定血糖。”;

(iii) “This product is intended for people concerned about blood sugar. 此產品以關注血糖的人士為對象。”; and

for the  
consumption by  
people concerned  
about blood sugar.  
此產品供關注血糖的人士  
服用。”。

- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not

been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease.

此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”。

(See Note)”;

(b) in item 5, by deleting everything in column 2 and substituting -

“(a) Subject to paragraph (b), the following claims are allowed -

(i) “This product is suitable for people concerned about blood pressure. 此產品適合關注血壓的人士服

用。”;

(ii) “This product may assist in stabilizing blood pressure. 此產品或有助於穩定血壓。”;

(iii) “This product is intended for people concerned about blood pressure. 此產品以關注血壓的人士為對象。”; and

(iv) “This product is for the consumption by people concerned about blood pressure. 此產品供關注血壓的人士服用。”.

(b) In relation to a product which is not registered under the Pharmacy and

Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

"This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease.

此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。

為此產品作出的任何聲稱亦沒有



為進行該等註冊而接受評核。此  
產品並不供作診斷、治療或預防  
任何疾病之用。”。

(See Note)”;

(c) in item 6, by deleting everything in  
column 2 and substituting -

“(a) Subject to paragraph (b),  
the following claims are  
allowed -

(i) “This product is  
suitable for  
people concerned  
about blood  
lipids/  
cholesterol. 此產  
品適合關注血脂/膽固醇  
的人士服用。”;

(ii) “This product may  
assist in  
stabilizing blood  
lipids/  
cholesterol. 此產  
品或有助於穩定血脂/膽  
固醇。”;

- (iii) "This product is intended for people concerned about blood lipids/cholesterol. 此產品以關注血脂/膽固醇的人士為對象。"; and
- (iv) "This product is for the consumption by people concerned about blood lipids/cholesterol. 此產品供關注血脂/膽固醇的人士服用。".
- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in

paragraph (a)(i), (ii),  
(iii) and (iv) are allowed  
only if the advertisement  
clearly includes the  
following disclaimer -

“This product is not  
registered under the  
Pharmacy and Poisons  
Ordinance or the  
Chinese Medicine  
Ordinance. Any claim  
made for it has not  
been subject to  
evaluation for such  
registration. This  
product is not intended  
to diagnose, treat or  
prevent any disease.

此產品沒有根據《藥劑業及毒藥  
條例》或《中醫藥條例》註冊。  
為此產品作出的任何聲稱亦沒有  
為進行該等註冊而接受評核。此  
產品並不供作診斷、治療或預防  
任何疾病之用。”

(See Note)";

(d) in the Note -

- (i) by deleting "both the product label and the advertisement are" and substituting "the advertisement is";
- (ii) by deleting "any claim or disclaimer" and substituting "a claim stated in column 2";
- (iii) by adding ", but where there is included in the same advertisement any other claim or disclaimer that is stated in column 2, that other claim or disclaimer (as the case may be) shall also be limited to that language" before the full stop.

**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Frederick FUNG's supplementary question to Question 2**

As regards the status of the 75 bankrupts not automatically discharged on 1 April 1999 due to objection by trustee or creditors, and so on, according to the record of the Official Receiver's Office, 53 bankrupts were not automatically discharged from bankruptcy on 1 April 1999 because of the trustee's objection. All these 53 bankrupts were subsequently discharged on various dates between January 2000 and March 2002 inclusive.

The remaining 22 bankrupts were not automatically discharged on 1 April 1999 because they had departed from Hong Kong without notifying the trustees as required. Pursuant to section 30A(10) of the Bankruptcy Ordinance, their bankruptcy period have thus ceased to run until they return to Hong Kong and notify their trustee. Out of these 22 bankrupts, only three had returned to Hong Kong and notified their trustee. Among these three bankrupts, one had subsequently paid off his debts in full and the receiving order and adjudication order against him were rescinded and annulled respectively in April 2005. The other two had just returned to Hong Kong earlier this year and are yet to be discharged from bankruptcy.

**Appendix II****WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Frederick FUNG's supplementary question to Question 2**

As regards the situations of the remaining nine bankrupts, they had made payment to their creditors, and therefore, their receiving orders and adjudication orders were rescinded and annulled respectively by the Court during the 12-month transitional period provided under section 30C of the Bankruptcy Ordinance, which started on 1 April 1998. Consequently, they were no longer bankrupts on 1 April 1999.

**Appendix III****WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr Albert HO's supplementary question to Question 2**

As regards if there is an alternative way to apply for discharge from bankruptcy, has the Government informed the bankrupts concerned of it so that they would not need to "waste" a year, before the Bankruptcy (Amendment) Ordinance 1996 came into operation on 1 April 1998, all bankrupts, irrespective of the length of their bankruptcy, could have their bankruptcy discharged or have their receiving orders and adjudication orders rescinded and annulled in three ways as follows:

- (a) By applying to the Court for a discharge order. In considering the application, the Court would, among other things, take into account the conduct of the bankrupt and the amount of assets available for distribution to the creditors; or
- (b) By making a full payment of the bankrupt's debts and applying to the Court to rescind and annul the receiving order and adjudication order respectively; or
- (c) By making a proposal (a composition or scheme of arrangement) to repay the bankrupt's debts. Such proposal must be accepted by his creditors and approved by the Court before his receiving order and adjudication order could be rescinded and annulled respectively.

When the Bankruptcy (Amendment) Ordinance 1996 became operative on 1 April 1998, the above three ways still applied to those bankrupts where the relevant bankruptcy petitions were made to the Court before the said date. These "alternative ways" to seek discharge from bankruptcy and to rescind and annul the receiving and adjudication orders were mentioned in relevant materials, such as the pamphlets/guides issued by the Official Receiver's Office.

While "alternative ways" are available, the provisions for automatic discharge from bankruptcy brought about by the Bankruptcy (Amendment) Ordinance 1996 appeared to have been adopted by more bankrupts, as they did not have to arrange repayment of their debts and/or make application to the Court. The transitional arrangement was handled according to section 30C of the Bankruptcy Ordinance.

## Appendix IV

## WRITTEN ANSWER

**Written answer by the Secretary for Health, Welfare and Food to Mr LEE Cheuk-yan's supplementary question to Question 5**

The average working hours of various types of staff in residential care homes for the elderly participating in the Enhanced Bought Place Scheme (EBPS) are tabulated below for Members' reference:

**Average Working Hours of Staff in EBPS Homes**

參與改善買位計劃的員工平均工作時數

<i>Post</i> 職位	<i>Average Working Hours per Staff per Day</i> <i>(including meal break)</i> 每人每天的平均工作時數 (包括用膳時間)
Home Manager (主管)	N.A. 不詳
Registered Nurse (註冊護士)	9.47
Enrolled Nurse (登記護士)	9.97
Health Worker (保健員)	11.46
Care Worker (護理員)	11.76
Ancillary Worker (助理員)	11.33



## Appendix V

## WRITTEN ANSWER

**Written answer by the Secretary for Health, Welfare and Food to Dr Joseph LEE's supplementary question to Question 5**

The manpower requirements on residential care home for the elderly participating in the Enhanced Bought Place Scheme (EBPS) are tabulated below for Members' reference:

**Manpower Requirements of EBPS Homes**  
參與改善買位計劃的院舍須符合的人手標準

	<i>The EBPS requirements in terms of man-hour per day for a care and attention home with 100 beds 以一間設有 100 個宿位的護理安老院為例 改善買位計劃要求每天的工作時數</i>			
	<i>EA1 甲一級</i>		<i>EA2 甲二級</i>	
	<i>Number 人數</i>	<i>Man-hours 工作時數</i>	<i>Number 人數</i>	<i>Man-hours 工作時數</i>
<b>Manger</b> 主管	1	No requirement 不限	1	No requirement 不限
<b>Registered Nurse</b> 註冊護士	1	8	-	-
<b>Enrolled Nurse</b> 登記護士	4	32	-	-
<b>Health Worker</b> 保健員	4	32	9	72
<b>Care Worker</b> 護理員	20	160	20	160
<b>Auxiliary Worker</b> 助理員	11	88	8.5	68
<b>Total</b> 總數	41	320	38.5	300