

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 6 July 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, S.B.S., 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, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

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.M., 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, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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, G.B.S., 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 TIMOTHY FOK TSUN-TING, G.B.S., J.P.

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE RAFAEL HUI SI-YAN, G.B.S., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

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

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

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

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

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

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Securities and Futures (Investor Compensation — Levy) (Amendment) Rules 2005 .....	108/2005
St. John's College Ordinance — Resolution .....	109/2005
Building (Planning) (Amendment) Regulation 2005 .....	110/2005
Pilotage (Dues) (Amendment) Order 2005 .....	111/2005

**Other Papers**

- No. 99 — Sir Robert Black Trust Fund  
Annual Report for the year from 1 April 2004 to 31 March 2005
- No. 100 — Annual Report 2003-2004  
Hong Kong Broadcasting Authority
- No. 101 — Report of the J.E. Joseph Trust Fund Trustee, and Audited  
Statement of Accounts and Auditor's Report for the Fund,  
for the year from 1 April 2004 to 31 March 2005
- No. 102 — Report of the Kadoorie Agricultural Aid Loan Fund  
Committee, and Audited Statement of Accounts and  
Auditor's Report for the Fund, for the year from 1 April  
2004 to 31 March 2005
- No. 103 — Hong Kong Export Credit Insurance Corporation  
Annual Report 2004-2005
- No. 104 — Sir David Trench Fund for Recreation  
Trustee's Report 2004-2005

No. 105 — Clothing Industry Training Authority  
Annual Report 2004

No. 106 — Construction Industry Training Authority  
Annual Report 2004

No. 107 — Report of the Public Accounts Committee on Report  
No. 44 of the Director of Audit on the Results of Value for  
Money Audits  
(July 2005 - P.A.C. Report No. 44)

Committee on Rules of Procedure of the Legislative Council of the  
Hong Kong Special Administrative Region  
Progress Report for the period October 2004 to June 2005

Report of the Panel on Manpower 2004/2005

Report of the Panel on Commerce and Industry 2004/2005

Report of the Panel on Public Service 2004/2005

Report of the Panel on Administration of Justice and Legal Services  
2004/2005

Report of the Panel on Home Affairs 2004/2005

Report of the Panel on Transport 2004/2005

Report of the Panel on Housing 2004/2005

Report of the Panel on Security 2004/2005

Report of the Panel on Constitutional Affairs 2004/2005

Report of the Panel on Food Safety and Environmental Hygiene  
2004/2005

Report of the Panel on Financial Affairs 2004/2005

Report of the Panel on Education 2004/2005

Report of the Panel on Planning, Lands and Works 2004/2005

Report of the Panel on Welfare Services 2004/2005

Report of the Panel on Economic Services 2004/2005

Report of the Panel on Health Services 2004/2005

Report of the Panel on Environmental Affairs 2004/2005

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

Report of the Bills Committee on Banking (Amendment) Bill 2005

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Address. Dr Philip WONG, Chairman of the Public Accounts Committee (*a telephone rang*) will address this Council on the Report of the Public Accounts Committee on Report No. 44 of the Director of Audit on the Results of Value for Money Audits.

**Report of the Public Accounts Committee on Report No. 44 of the Director of Audit on the Results of Value for Money Audits (July 2005 - P.A.C. Report No. 44)**

**DR PHILIP WONG** (in Cantonese): Madam President, on behalf of the Public Accounts Committee (the Committee), I have the honour to table today our Report No. 44, which corresponds with the Director of Audit's Report No. 44 on the results of value for money audits, which was tabled in the Legislative Council on 20 April 2005.

As in previous years, the Committee has selected for detailed examination only those chapters which, in our view, contained more serious allegations of irregularities or shortcomings. The Report tabled today covers our deliberations on the two chapters selected.



The first chapter is on "Diesel vehicle emission controls". The Committee notes that, in his 1999 policy address, the Chief Executive announced that the Government would allocate \$1.4 billion to implement a comprehensive programme to reduce, by 2005, respirable suspended particulate emissions from vehicles by 80%, and nitrogen oxides emissions from vehicles by 30%. He also said that when these targets were met, Hong Kong's air quality would compare favourably with that of major cities in developed countries such as New York and London, and the respiratory health of Hong Kong citizens would substantially improve.

However, the Committee is gravely dissatisfied that, although about \$1.2 billion have been spent so far on implementing the measures outlined in the 1999 policy address to reduce vehicle emissions, the air quality in Hong Kong has not improved. When the Administration sought funding approvals for implementing the measures, it had not informed the Legislative Council that reduction in vehicle emissions might not be able to bring about improvement to the air quality.

The Committee is seriously disappointed that, in 2004, the annual averages of respirable suspended particulates and nitrogen dioxide at roadside level still exceeded the maximum safe levels as laid down in the Air Quality Objectives, by 45% and 26% respectively. We also note that the figures were increasing between 2002 and 2004.

The Committee is greatly dissatisfied that the smoke opacity standard of 60 Hartridge Smoke Units (HSUs) adopted by the Transport Department (TD) is less demanding than the Environmental Protection Department (EPD)'s standard of 50 HSUs. The TD's standard is one of the less stringent standards in Asia. The Committee urges the Commissioner for Transport to tighten the TD's standard, with a view to harmonizing the standards adopted by the TD and the EPD.

The Committee notes that the EPD may withdraw an emission testing notice issued to the owner of a smoky vehicle if the vehicle concerned has passed the TD smoke test before the due date of the EPD smoke test. The Committee is seriously concerned that such practice may have created a loophole in the smoky vehicle control programme because the TD smoke test is less stringent than that of the EPD.

The Committee is also seriously concerned that, of the suspected smoky vehicle cases reported in 2003 and 2004, all the owners were allowed more than 14 days to take their vehicles to the designated vehicle emission testing centres for the smoke test. In 18% of the cases, the time allowed was more than 30 days. The Committee strongly recommends that the Director of Environmental Protection should ensure that the prescribed period for smoky vehicle owners to pass the smoke test is strictly adhered to.

The second chapter is on "The Postal Mechanization System (POMS) at the Air Mail Centre". The Committee finds it unacceptable and inexcusable that the Post Office did not effectively monitor the work and performance of the Consultant and the Contractor. It had relied heavily on the Consultant in supervising the inspections and testing of the POMS. As a result, although a number of acceptance tests for the POMS were not conducted strictly in accordance with the terms of the Contract, the Post Office agreed that the Consultant should issue acceptance certificates to the Contractor. In addition, there was little internal discussion in the Post Office relating to the conduct of inspections and testing of the POMS. Neither was there any written record of internal meetings and communications among the Post Office, the Consultant, the Contractor or the Department of Justice which demonstrated the justifications for, and the circumstances leading to, the Post Office's and/or the Consultant's acceptance of non-compliance with the contractual requirements.

The Committee recommends that, in future, when the Post Office purchases equipment, including postal equipment, through tendering procedures or engages consultancy service, the Postmaster General should ensure that the requirements specified in the agreement or contract are realistic and attainable, and that the terms and conditions therein are fully enforceable. He should also ensure that all the terms and conditions of a contract are strictly adhered to. In addition, the Postmaster General should seek the advice of the Government Logistics Department or the Department of Justice, as appropriate, if there are any difficulties in enforcing or handling cases of non-compliance with the conditions of contract by a contractor. He should ensure that the mechanism to monitor the work and performance of a consultant or contractor is implemented effectively and proactively.

The Committee wishes to take this opportunity to urge other government bureaux and departments which engage the services of consultants to draw on the experience of the Post Office. They should proactively monitor the work and

performance of their consultants to ensure that all contractual requirements are met. Where deviations from and non-compliance with the contractual requirements are warranted, they should make sure that the cases are fully justified and properly documented.

On the acceptance tests of the POMS, the Committee is seriously dismayed and finds it unacceptable that the acceptance tests of the integrated mail processors, packet sorting systems and parcel sorting system of the POMS were not carried out in accordance with the terms of the Contract. Despite the deficiencies in the acceptance tests of these systems, the Consultant still issued to the Contractor the acceptance certificates for these systems. Moreover, the confidence trial period of the POMS was shortened from 90 days to 64 days, which did not meet the contractual requirement. However, the Post Office had not assessed the implications of the shortened trial period on the maximum down time allowed in the Contract.

The Committee is also seriously dismayed and finds it unacceptable that the performance of the integrated mail processors and packet sorting systems did not meet the contractual requirements. Moreover, the hourly throughput of the parcel sorting system fell substantially short of the capacity specified in the Contract.

On the utilization of the POMS, the Committee is seriously dismayed that during the years from 1999-2000 to 2003-04, the integrated mail processors were used to sort only 55% of the letters, and the packet sorting systems only 31% of the packets, at the Air Mail Centre each year. The respective average daily operating hours of each integrated mail processor and each packet sorting system ranged from 3.9 hours to 4.8 hours and from 2.6 hours to 7.2 hours only.

Regarding the payments for the POMS, the Committee is alarmed and strongly resents that there were overpayments of \$7.1 million to the Contractor. Moreover, 15 payments were not made to the Contractor within one month of receipt of the invoices, resulting in the Government's foregoing the special discounts in the amount of \$200,000.

The Committee also finds it unjustified that, although the Post Office had been informed of the postponement of the opening of the new airport from June 1997 to July 1998 at different times, an additional consultancy fee of \$3 million

was still incurred for reason that the opening of the Air Mail Centre in the new airport was delayed.

I would like to take this opportunity to assure this Council that the Committee's work does not stop upon the tabling of a report. The Committee, with the professional support of the Director of Audit and the Legislative Council Secretariat, operates a clearance system to keep reviewing issues which are outstanding from its previous reports. Following a recent exercise conducted under the system, the Committee has written to urge the Administration to expedite actions on issues which are still outstanding.

Madam President, as always, the Committee has made our conclusions and recommendations in this Report with the aim of ensuring value for money in the delivery of public services.

I wish to record my appreciation of the contributions made by members of the Committee. Our gratitude also goes to the representatives of the Administration who have attended before the Committee. We are grateful to the Director of Audit and his colleagues as well as the staff of the Legislative Council Secretariat for their unfailing support and hard work.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek will address this Council on the Report of the Panel on Manpower 2004/2005.

### **Report of the Panel on Manpower 2004/2005**

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Manpower, I now present to the Legislative Council the report on the work of the Panel during the year 2004-05, and highlight a few major areas of work of the Panel.

As regards whether a minimum wage should be introduced, some members considered that a minimum wage could provide adequate income protection for elementary workers and alleviate the problem of poverty. Some members suggested that a minimum wage should be set for workers in the

cleansing, security and catering trades first. Another member considered that a statutory minimum wage should be introduced for all trades.

Some other members, however, pointed out that introducing a minimum wage was not the only way to safeguard the benefits of employees. These members considered that before the issue was deliberated by the Labour Advisory Board (LAB), a precondition of introducing a minimum wage should not be imposed.

The Panel was divided over whether a maximum number of working hours should be prescribed. Some members supported doing so in order to protect the interests of those workers with the least bargaining power. Moreover, more jobs would be created as a result. They urged the Administration to put concrete proposals to the LAB for deliberation.

Some other members, however, opposed the setting of maximum working hours, as this would undermine the flexibility of the labour market and business environment, and the competitiveness of the local workforce in relation to neighbouring areas.

The Administration stated that the issue of prescribing a minimum wage and maximum working hours was complicated and had a far-reaching impact on the future socio-economic development of Hong Kong. In examining the issue, the Administration would keep an open mind, and seek to facilitate the fostering of a consensus among employers, employees and the Government. As a first step, the issue of prescribing a minimum wage and maximum working hours would be put to the LAB for deliberation.

Some members queried why meal breaks were excluded from the normal working hours of non-skilled workers employed by some contractors of government outsourced service and why the meal breaks were unpaid. These members urged the Administration to conduct a comprehensive review of the meal break arrangement in the mandatory requirement prescribed in government service contracts.

A member considered that the Administration should promote good employer practice through awarding higher marks to such employers in the scoring scheme for assessment of tenders.

The Administration indicated that meal breaks had never been included in the definition of the normal working hours per day as set out in the Census and Statistics Department's Quarterly Report of Wages and Payroll Statistics. Whether wages would be paid for meal breaks should be one of the terms of employment.

The Panel passed a motion urging the Administration to require that the monthly wages to be paid by contractors of outsourced services to their workers in the eight-hour service contracts (covering meal breaks) should be stipulated in the average wage rates for relevant industries as published in the Quarterly Report.

The Panel expressed grave concern about abuse of the Protection of Wages on Insolvency Fund (PWIF). While some members urged the Administration to formulate effective measures to prevent abuse of the PWIF, some other members considered it necessary for the Administration to step up enforcement against abuse of the PWIF.

Some members suggested that applicants of the PWIF should not be required to satisfy the eligibility requirements for legal aid. They also suggested that the Labour Department should, on behalf of the employee concerned, apply for a winding-up petition or a bankruptcy petition against the employer so that it would obviate the need for an applicant to apply for legal aid.

The Administration indicated that prosecution was instituted whenever there was sufficient evidence and the worker concerned was willing to testify in Court. As enforcement alone could not address all the problems, additional measures were being considered to further prevent abuse of the PWIF. The Administration would carry out an in-depth study of the measures and referred those considered to be viable to the LAB for consideration.

The Panel was informed that, in order to address the problem of non-availability of employees' compensation insurance (ECI) in recent years, a residual scheme would be launched by the Hong Kong Federation of Insurers (HKFI) in the first half of 2006. The Administration would continue with its study on the viability of a central ECI scheme in Hong Kong.

Some members were of the view that the proposed residual scheme could not provide coverage for self-employed persons and part-time domestic helpers. They therefore considered it necessary to establish an ECI scheme.

The Panel passed a motion urging the Administration to expeditiously introduce a central ECI scheme.

I would like to take this opportunity to thank members for their contribution to the work of the Panel. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG will address the Council on the Report of the Panel on Commerce and Industry 2004/2005.

### **Report of the Panel on Commerce and Industry 2004/2005**

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, I am very pleased to address this Council here today. I am still in good shape. In my capacity as Chairman of the Panel on Commerce and Industry, I present this year's report on the work of the Panel, and give a brief account on several major areas of work.

While the Panel welcomed the implementation of the second phase of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA), it was hoped that Hong Kong could capitalize on the benefits brought about by the liberalization of trade in goods and services. On employment, the Panel noted that, given the capital-intensive tendency of the industries in Hong Kong, the vast majority of the new jobs created were in the services sector. The Panel urged the Administration to pursue further enhancements of CEPA with the Mainland, and would continue to monitor the implementation of future phases of CEPA and its impact on the local economy.

Views were exchanged between the Panel and the Administration on economic restructuring. Members of the Panel expressed great concern about the rapid developments in neighbouring territories. To avoid mismatch in the employment market, the Panel considered it necessary for the Administration to strive to strengthen retraining of the affected workers to enable them to cope with restructuring. Some members also requested the Administration to further study the feasibility of establishing a border industrial zone in Lok Ma Chau.

The Panel was generally supportive of the staging of the Sixth Ministerial Conference of the World Trade Organization in Hong Kong late this year. Insofar as the security arrangements were concerned, members noted that the necessary security plan would be devised having regard to overseas experience and local circumstances. They also noted the protestors' freedom of expressing their ideas during the event period. Some members urged the Administration to properly co-ordinate various arrangements, such as traffic measures, availability of hotel accommodation and the staging of hospitality and cultural programmes during the event period.

Intellectual property rights protection is a major concern to the Panel. The Panel was briefed on the consultation paper issued in December last year with respect to a review of certain provisions of the Copyright Ordinance and, subsequently, the preliminary proposal. To evaluate more fully public views on end-user criminal liability, copyright exemption and other issues related to the Copyright Ordinance, the Panel would hold a meeting to listen to the views expressed by various sectors.

The Panel kept in view a recent prosecution case against the illegal distribution of copyright movies on the Internet using Bit Torrent (BT). As this was the world's first criminal prosecution of its kind, the Panel would continue to keep in view its outcome. The Panel supported in principle measures for protecting intellectual property rights while hoping that the ordinary flow of information on the Internet would not be affected by law enforcement.

The Panel was supportive of the proposed new strategic framework for innovation and technology development, and the three-tier funding model. As regards the proposed establishment of Research and Development (R&D) centres in a number of technology focus areas, members were concerned how the operation of those R&D centres would be monitored and how the use of public fund in a cost-effective manner could be ensured. Attaching great importance to the corporate governance and the surveillance mechanism of the R&D centres, the Administration would, depending on the progress report, disburse operating grants in instalments. Members of the Panel were also greatly concerned whether the operating cost of the R&D centres would be too high, thus affecting the resources injected into the R&D projects.



Regarding the Administration's proposal to cease making new investments under the Applied Research Fund and to inject its residual balance into the Innovation and Technology Fund, the Panel had no objection.

The written report also gives an account on the work of the Panel in other areas during the year. I would like to take this opportunity to thank members of the Panel and the Secretariat for their contribution to the work of the Panel. I so submit. Thank you.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the Report of the Panel on Public Service 2004/2005.

### **Report of the Panel on Public Service 2004/2005**

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Public Service, I present to the Legislative Council the report on the work of the Panel from October 2004 to June 2005. The report gives an account on the major work of the Panel in the past year. I would like to highlight a few key points here.

In the past year, the Panel closely monitored the Administration's initiative to reduce its expenditure through various measures, including reduction in the civil service establishment and adjustments to civil service pay and allowances. The Panel also examined other policy issues, including the policy governing post-retirement employment of civil servants, policy governing the employment of non-civil service contract (NCSC) staff, measures for managing misconduct and under-performance in the Civil Service, and the staff consultation mechanism in the Civil Service.

On containing the size of the Civil Service, the target of the Administration was to reduce the civil service establishment to around 160 000 by 2006-07. Given that the civil service establishment had been substantially reduced in the recent few years, the Panel expressed concern that further reduction might have adverse impact on the delivery of public service. The Panel was assured by the Administration that in taking forward the initiative of reducing the civil service establishment, the authorities concerned would adhere to the guiding principle that the delivery of public service would not be adversely

affected. The Panel was also concerned that, in order to achieve the target for reducing the civil service establishment, bureaux and departments had been meeting the operational needs through employing NCSC staff and implementing outsourcing programmes in recent years. In this connection, the Panel stressed the importance of maintaining a stable Civil Service devoted to the provision of necessary public services on a long-term basis. Having examined the employment of NCSC staff, the Panel passed a motion to urge the Government to immediately examine the feasibility of including posts persistently filled by NCSC staff into the permanent establishment.

As regards civil service pay adjustment, the Panel noted that the appeal by the Government against the two court rulings made in November 2004 and February 2005 respectively was being examined by the Court of Final Appeal. According to the two rulings, section 10 of the Public Officers Pay Adjustment Ordinance and section 15 of the Public Officers Pay Adjustments (2004/2005) Ordinance were inconsistent with Article 100 of the Basic Law. The Panel would keep in view the developments of the incident and its impact on civil servants and the employees of government-funded public bodies. As regards the progress of formulating a more comprehensive civil service pay adjustment mechanism, the Panel noted that the Administration had decided to conduct a pay level survey (PLS) this year. In view of staff concern about the way of conducting the survey and whether the consultancy commissioned by the Government would conduct the PLS in a fair and impartial manner, the Panel urged the Administration to conduct the PLS prudently, take full account of the concern and worries of civil service organizations, and maintain good communication with the staff side in the course of conducting the PLS.

As regards the review of job-related allowances (JRAs), the Panel noted that in February 2005, the Administration completed the phase three review of the JRAs payable to the civilian grades, namely, the Hardship Allowances payable to staff of the Department of Health (DH) and the Food and Environmental Hygiene Department (FEHD), and civil servants working in the Hospital Authority. The Panel objected to the proposed cessation/reduction in the payment of Hardship Allowance, as the staff concerned had been subject to high-risk work environment with the outbreak of different kinds of communicable diseases in recent years, in addition to the obnoxious nature of the duties. In this connection, a motion was passed by the Panel requesting the Government to defer the relevant proposal, and to consult afresh civil service organizations on the payment of Hardship Allowance thoroughly. Upon further

consideration, the Administration maintained its view that the relevant proposal should be implemented on 1 April 2005 as planned. The Panel was assured that the relevant departments and organizations would continue to explain and communicate with their staff on the review recommendations.

Furthermore, the Panel followed up the review of the policy on post-retirement employment of former directorate civil servants and welcomed the preliminary review proposals put forward by the Administration. The Administration indicated that it would take into account views of the staff side, Members of this Council as well as the public before making a final decision on the proposed changes. The Administration's plan was to implement the revised system in the latter half of 2005. On the other hand, in view of the wide public concern about a possible conflict of interests between the previous service of Ms Elaine CHUNG, the former Deputy Director of Housing, in the Government and the employment she took up after retirement, the Panel urged the Administration to conduct a full investigation. In March 2005, the Panel queried the investigation report provided by the Civil Service Bureau and passed a motion requesting the Government to conduct an independent investigation into the matter. In its written response, the Civil Service Bureau pointed out that it had tried its best to address the concerns of the public and this Council whilst at the same time being reasonable and fair in its approach to the investigation. In the absence of new evidence or information, the Civil Service Bureau did not see a valid case for conducting another investigation.

Regarding measures for managing misconduct in the Civil Service, the Panel stressed that the level of punishment should be commensurate with the gravity of the offences/misconduct. At the request of the Panel, the Administration undertook to examine the current mechanism in determining the level of punishment.

Regarding the staff consultation mechanism in the Civil Service, the Panel noted that the Committee on Freedom of Association of the International Labour Organization, in its 334th Report, made four recommendations with respect to the views expressed by the Hong Kong Confederation of Trade Unions in relation to the handling by the Government of the civil service pay adjustment in 2002. Some members requested the Administration to take into account the recommendations made by the Committee on Freedom of Association and take the appropriate legislative measures to establish a collective bargaining mechanism to negotiate collectively the terms and conditions of employment of

civil servants. The Administration pointed out that, given that the policy decisions in relation to civil service pay could only be implemented with the funding approval of the Legislative Council or enactment of legislation, the terms and conditions of employment of the Civil Service could not be determined solely between the executive organ and the staff side. Nevertheless, the Administration undertook to continue to keep in view the operation of the staff consultation mechanism in the Civil Service, and will further perfect the system when necessary and at appropriate times.

Lastly, I would like to take this opportunity to thank members of the Panel and the Secretariat for their contribution to the work of the Panel.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Ms Margaret NG will address the Council on the Report of the Panel on Administration of Justice and Legal Services 2004/2005.

### **Report of the Panel on Administration of Justice and Legal Services 2004/2005**

**MS MARGARET NG:** Madam President, in my capacity as Chairman of the Panel on Administration of Justice and Legal Services (the Panel), I briefly report on the major work of the Panel in the current Session.

It is of fundamental importance that the quality of justice must not be compromised under any circumstances. The Panel had expressed concern that the savings measures introduced by the Judiciary to cope with budgetary constraints since 2003-04 might affect the quality of justice in the long run. The Panel agreed that the Judiciary's budgetary arrangement should be reviewed to build in clearer institutional safeguards to ensure that judicial independence is not subject to executive influence, and the Judiciary is provided with adequate resources for the proper administration of justice. In this connection, the Panel had made a number of suggestions for the consideration of the Administration.

During the current Session, the Panel held two joint meetings with the Panel on Manpower to discuss the Report of the Working Party (the Report) appointed by the Chief Executive on the Labour Tribunal and received views

from deputations on the Report. Of the 37 recommendations made in the Report, the Panel noted that those on measures to improve the operation and practices of the Labour Tribunal had been implemented, while those involving legislative amendments had to be followed up separately. Apart from views on some of the recommendations, some members called upon the Administration to take into account the practices adopted in other jurisdictions in considering measures to improve the mechanism for enforcement of awards. Some members considered that a major review of the existing system for resolving employment disputes should be conducted. Members agreed that matters relating to the review of the operation of the Tribunal should be followed up by the Panel on Manpower. The Panel on Administration of Justice and Legal Services would follow up issues relating to the existing mechanism of enforcement of court judgements in civil cases.

With respect to the establishment of a third law school at The Chinese University of Hong Kong, the Panel discussed the likely impact of such a development on the provision of legal services. The Panel invited the Planning Committee of the new law school to revert to the Panel on its work progress and academic curricula in six months' time. The Panel also shared the concern of the other two law schools that the setting up of a new law school would dilute the existing limited resources. The Panel considered that the overall resources provided for the three law schools should be increased to ensure that they could co-operate and compete on fair and equal terms in improving legal education and training in Hong Kong.

The Panel had initiated discussion on the issue of limited professional liability, and received views from the Hong Kong Institute of Certified Public Accountants and The Law Society of Hong Kong (the Law Society). The professional bodies considered that professional liability needed to be reformed urgently, as Hong Kong was trailing behind other jurisdictions in implementing professional liability reform. The Panel suggested that the Administration should undertake a detailed study of the issue of limited professional liability and its likely impact on the community without further delay.

The Panel had also closely monitored the review undertaken by the Law Society of its Professional Indemnity Scheme. The Panel was advised that members of the Law Society had voted in favour of a Qualifying Insurers Scheme to replace the current scheme. The Law Society had commenced drafting of a new set of rules for the purpose of putting in place the new scheme.

It had also commenced discussion with the insurance sector on the minimum terms and conditions as well as other practical details of the scheme, and would report to and consult its members in due course. Given the outstanding issues and the practical steps required to be taken, the Panel was advised that a more realistic date for implementation of the new scheme would be 1 October 2006.

On the progress of implementing an arrangement for reciprocal enforcement of judgements in commercial matters between the Hong Kong Special Administrative Region (SAR) and the Mainland, the Panel noted that despite active discussions, there were still differences between both sides as regards the preferred arrangement to be adopted. The Panel was advised that the SAR maintained the view that the scope of the arrangement should remain as originally proposed, that is, covering only money judgements given by a court of either the Mainland or the SAR exercising its jurisdiction pursuant to a valid choice of forum clause contained in a commercial contract. The Panel requested the Administration to consider the various issues of concern raised by the Hong Kong Bar Association (the Bar) and members' suggestions in finalizing the arrangement.

Arising from a judicial review before the Court of First Instance in *PV and Director of Immigration*, a Special Advocate was appointed for the first time in Hong Kong. In the light of the court case, the Panel discussed the policy and procedure relating to the appointment of Special Advocates as well as the principles and criteria for selecting Special Advocates. The Administration's position was that situations which warranted the appointment of Special Advocates must be extraordinary and exceptional. The Panel was concerned that the PV case had far-reaching and complicated implications, and requested the Administration and the Bar to give further thoughts to the various issues raised by members at the meeting.

Lastly, I would like to report that the Panel welcomed the Administration's decision to introduce the Pilot Scheme on Mediation of Legally Aided Matrimonial Cases. The Panel noted that the Scheme would last for one year and the evaluation of the Scheme would be completed by the first quarter of 2007. The Administration had assured the Panel that mediation would not be imposed against the will of legally aided applicants as a condition for the grant of legal aid for initiating court procedures.

Madam President, these are my short remarks on the report.

I would like to take this opportunity to thank members of the Panel for their contribution and to put on the record my warm appreciation for the able and unfailing support given by the Legislative Council Secretariat throughout. I am sure members of the Panel would join me in this. Thank you.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG will address the Council on the Report of the Panel on Home Affairs 2004/2005.

### **Report of the Panel on Home Affairs 2004/2005**

**MR TOMMY CHEUNG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Home Affairs, I would like to report on the work of the Panel during the Legislative Session of 2004-05.

The major work of the Panel over the past year has been explained in detail in the report. I would like to make a brief report here on the three important issues of legislation on prohibition of racial discrimination, building management, and the provision of leisure and cultural services facilities.

The respective United Nations Treaty Monitoring Bodies had repeatedly expressed their concern about the absence in the Hong Kong Special Administrative Region (SAR) of legislation prohibiting racial discrimination and recommended the SAR Government to introduce legislation for such purpose. After the publication by the Government of a consultation document on legislation on prohibition of racial discrimination, the Panel discussed the legislative proposals with the Administration and received views from deputations.

According to the Government, discrimination against new arrivals from the Mainland was outside the scope of the relevant bill. Some members were worried that discrimination against new arrivals from the Mainland was similar to racial discrimination in nature. As the problem was fairly serious, failure to enact legislation against such discrimination would encourage more discriminatory acts against the new arrivals.

The Administration explained that the discrimination experienced by new arrivals from the Mainland was not covered by the definition of racial

discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, it was a form of social discrimination and should be resolved by way of strengthening public education and publicity.

The Administration would report to the Panel once it has completed the analysis of the results of the public consultation exercise.

The case of Albert House had aroused wide public concern. In this connection, the Panel discussed measures to protect owners from legal liability arising from unauthorized building works (UBWs) or common parts of their buildings. Some members suggested that a fund, with contributions from premiums for third party insurance, should be set up to help property owners meet compensation payments.

Regarding the concern that insurance companies were generally unwilling to provide coverage for buildings with UBWs, some members suggested that the Administration should consider setting up a statutory body, similar to the Hong Kong Export Credit Insurance Corporation, to undertake insurance for such buildings and also for those without owners' corporations.

The Panel received a briefing from the Administration on 25 leisure and cultural services (LCS) projects initially identified for priority treatment.

Members of the Panel were concerned that, of the 25 LCS projects identified for priority treatment, most were not scheduled for commencement until the years between 2008 and 2011. Some members also criticized the Administration for failing to prioritize the implementation of the LCS projects in accordance with the pressing needs of the local community. For this reason, a Subcommittee was set up by the Panel to monitor the Government in following up the outstanding LCS projects of the defunct Municipal Councils and implementing other relevant projects.

Lastly, I would like to take this opportunity to thank members for their support for the work of the Panel over the past year.

Madam President, I so submit.



**PRESIDENT** (in Cantonese): Mr LAU Kong-wah will address the Council on the Report of the Panel on Transport 2004/2005.

### **Report of the Panel on Transport 2004/2005**

**MR LAU KONG-WAH** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Transport, I now highlight the work of the Panel in the year 2004-05.

The Panel expressed grave concern about the toll increases of the Eastern Harbour Crossing, Tate's Cairn Tunnel and Tai Lam Tunnel. The increases would not only add to the financial burden of the public, but also impact on traffic. The Panel therefore urged the tunnel companies to consider deferring the toll increases or offering concessionary tolls to motorists. The Panel also called on the Administration to review the decision of allowing the tunnel companies to increase their tolls.

Whilst recognizing the inherent problems associated with the "Build-Operate-Transfer" tunnels whereby tunnel operators would only aim at maximizing their profit, the Panel called on the Administration to review the relevant arrangement and its effectiveness. The Administration should also implement measures to reduce tunnel tolls and boost utilization of scarce tunnel resources with a view to addressing the transport needs of the public.

On railway development and operation, the Subcommittee on Matters Relating to Railways, set up under the Panel, would continue to closely monitor the development, implementation and operation of Hong Kong railways. The Subcommittee reviewed the operational readiness of the Tsim Sha Tsui Extension (TSTE) and Ma On Shan Rail (MOSR) to ensure that they could provide the travelling public with safe and quality journeys.

On fares, the Subcommittee urged the Kowloon-Canton Railway Corporation (KCRC) to review the fares of the TSTE and MOSR in the light of the affordability of the general public. Members also expressed grave concern about the noise nuisance caused by the commissioning of the MOSR. Members also urged the Administration and KCRC to implement effective measures to minimize the disturbance on nearby residents.

The implementation of Route 4, South Island Line (SIL) and West Island Line (WIL) was high on the agenda of the Panel. The Panel urged the Administration to expedite the comprehensive planning and implementation of tourism and commercial developments in Southern District of Hong Kong Island, and also discuss with the MTR Corporation Limited (MTRCL) the construction of a cost-effective SIL, so as to ensure that there would be adequate transport facilities to support the development of Southern District and to cater for the transport needs of local residents. Apart from the SIL, Route 4 should also be implemented at the earliest opportunity. Regarding the WIL, as residents of Western District had been striving for the construction of the WIL for more than 20 years, the Panel also urged the Administration to expeditiously reach a final agreement with the MTRCL on the construction of the WIL so as to fully meet the transport needs of residents in that district.

On infrastructure, having regard to the additional traffic generated by various major projects, including the Shenzhen Western Corridor, Deep Bay Link, Lok Ma Chau Spur Line, Hong Kong Disneyland Phase I, Hong Kong–Zhuhai–Macao Bridge, and so on, the Panel considered there was an urgent need to review the matching transport measures in the Northwest New Territories. The Panel also called on the Administration to speed up the planning and implementation processes to ensure timely provision of transport infrastructure to meet forecast demand.

During the year, the Panel also reviewed the operation of non-franchised buses and a series of proposed measures for enhancing road safety.

I have given a brief account on the work of the Panel during this year. Here I thank members for their support in the past year and the Secretariat for its effective and professional support. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam will address the Council on the Report of the Panel on Housing 2004/2005.

### **Report of the Panel on Housing 2004/2005**

**MR CHAN KAM-LAM** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Housing, I table the report of the Panel in 2004-05 and give a brief account on several major areas of work mentioned in the report.

How the surplus Home Ownership Scheme (HOS) flats should be disposed of remained a matter of great concern to the Panel. According to the existing requirement, unsold or returned HOS flats and unsold HOS flats in partially occupied or sold HOS courts could continue to be used for HOS purpose only. However, it was decided that these flats would not be sold to Green Form applicants before the end of 2006. The Panel considered such an arrangement a waste of resources since the suspended sale would not only result in loss of income, thereby further aggravating the financial hardship faced by the Housing Authority (HA), but also incur extra costs for managing and maintaining those flats. In view of the gradual revival of the local economy, and the increased aspiration for home ownership of the public, the Panel passed a motion calling on the Administration to expeditiously resume sales of these HOS flats to Green Form applicants.

The plan of the Private Sector Participation Scheme developer to demolish and redevelop the Hunghom Peninsula has aroused wide public concern. In order to understand how the Government should deal with the application for redevelopment or lease modification from the developer, the legal basis upon which the Government could require the payment of additional premium for redevelopment and whether such a requirement could prevent demolition, redevelopment, and so on, the Panel requested the Administration to make public all of its correspondence with the developer as well as papers and minutes of internal meetings at which the disposal was discussed. The developer subsequently announced that it would not proceed with the demolition or redevelopment of the Hunghom Peninsula.

The Panel was deeply concerned about the HA's decision to divest its shopping arcades and car parks through the establishment of a Real Estate Investment Trust (The Link REIT) to tackle its budget deficit. This proposal would have an impact on commercial tenants, consumers and the staff of the Housing Department. Despite the undertaking that there would be no forced redundancy of civil servants as a result of divestment of the facilities and assistance would be provided to outgoing contract staff, the Panel remained concerned about the impact of the divestment on commercial tenants and service providers. In this connection, the Panel passed a motion calling on the HA and The Link Management, responsible for managing the facilities, to jointly discuss with the commercial tenants as soon as possible the specific transitional arrangements in concrete terms before the listing of The Link REIT. The HA

should put the listing arrangements on hold until a consensus has been reached between The Link Management and the commercial tenants. Following the application for judicial review of the HA's statutory power to divest its assets by two public housing tenants, the HA announced its decision to postpone the listing of The Link REIT in December 2004.

The Government decided to appeal against the judgment delivered by the Court of First Instance on the HA's decision to defer its rent review for public rental housing (PRH). The Panel was disappointed to find that the HA was reluctant to implement any rent relief measures lest this would jeopardize its position in future legal proceedings that might arise. In consideration of the financial hardships faced by PRH tenants, the Panel urged the HA to reduce PRH rents or introduce rent relief measures as soon as practicable.

On housing for senior citizens, the Panel welcomed the decision to raise the asset limits for elderly households and exercise discretion to allow elderly property owners in dilapidated buildings to move into Housing for Senior Citizens flats. However, it was pointed out that it was essential to pursue the provision of housing assistance to the elderly from a wider perspective in preparation for the ageing of the population.

The other main points of the Panel's work are set out in the report tabled. Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr James TO will address the Council on the Report of the Panel on Security 2004/2005.

### **Report of the Panel on Security 2004/2005**

**MR JAMES TO** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Security, I would like to table before this Council the report on the work of the Panel in 2004-05, and highlight a few major areas of work of the Panel.

The Panel held a discussion on whether the Independent Commission Against Corruption (ICAC) had abused its powers to search for and seize

journalistic materials by raiding the offices of several newspaper organizations last year. Some members considered that the ICAC should apply for production orders under the Interpretation and General Clauses Ordinance before applying for search warrants when the production order was not complied with. If law enforcement agencies readily applied for warrants to search media organizations in conducting law enforcement work, the freedom of the press might be undermined. A Subcommittee was formed to take charge of reviewing the statutory provisions on search and seizure of journalistic materials.

Some members expressed grave concern about the policy on entry visa applications, particularly the jurisdiction of the Hong Kong Special Administrative Region (SAR) in dealing with immigration control matters. They questioned whether the seven guiding principles announced by Mr QIAN Qichen in 1995 could override Article 154 of the Basic Law. According to the provision, the SAR could apply immigration control on entry into, stay in and departure from the SAR by persons from foreign states and regions.

The Administration pointed out that, in considering an application, the Director of Immigration (D of Imm) would take into account all relevant factors and circumstances before making a decision. In particular, the D of Imm would consider whether allowing the entry of the person concerned was in the public interest. He would also have regard to QIAN's seven guiding principles when considering an application for an entry visa from a government official of Taiwan where an official contact was involved.

Expressing concern about the problem of illegal labour, the Panel noted that the number of illegal workers arrested in the first 10 months of 2004 stood at 4 575, or an increase of about 3.6% over the corresponding period in 2003. Of them, about 94% were visitors from the Mainland. Members urged the Administration to identify the provinces and cities from which these illegal workers had come, so that the problem could be tackled at source. Members also urged the Administration to step up publicity efforts on the immediate imprisonment of employers of illegal workers.

The Administration pointed out that it had maintained close liaison and exchanged intelligence with the mainland authorities to tackle the problem at source. Particulars of mainland visitors found or suspected of having worked illegally in Hong Kong were passed to the mainland authorities so that their subsequent applications to visit Hong Kong could be subject to closer scrutiny.

The Panel noted the various support services in relation to the employment of rehabilitated offenders provided by the Correctional Services Department, other government departments and non-governmental organizations. Members urged the Administration to organize market-oriented training courses for prisoners, so as to equip them with the skills required by the market for seeking employment after release.

Some members expressed concern about the requirement of disclosing criminal records in government post application form and in the private sector. They were of the view that for the purpose of privacy protection, employers should not require job applicants to disclose whether they had criminal convictions. A member suggested that applicants for some posts in government departments (posts which are not considered to be too sensitive) should not be required to indicate in the application form whether they had criminal convictions.

Members were advised by the Administration that, since January 2004, the requirement for applicants to disclose their criminal records, if any, in the application form had been deleted. As regards non-civil service contract posts, it would be up to individual departments to decide whether integrity checks should be conducted having regard to the job nature and the department's operational requirements.

The Panel also discussed the assistance provided by the Administration to Hong Kong residents detained in the Mainland and their family members, and the notification mechanism between Hong Kong and the mainland authorities. Members were very concerned about how the legal rights of Hong Kong residents being detained in the Mainland could be safeguarded and whether visits by their family members were allowed. They considered that cases of detention of Hong Kong residents in the Mainland should be dealt with in a fair and just manner, and as expeditiously as possible.

The Administration pointed out that, under the "one country, two systems" principle, the Government should not interfere with law enforcement and the judicial process in the Mainland. Upon the request of the detainee or his family members, however, the Administration would render practical assistance to them in accordance with the existing mechanism. Visits by family members to the detainee could be allowed, if consent was given by the relevant mainland authorities.

The Panel urged the Administration to discuss with the mainland authorities with a view to reaching a consensus on allowing government officials of the SAR to visit detainees in the Mainland. The Administration undertook to submit this request to the mainland authorities again.

As for the length of time required by the mainland authorities to notify the Hong Kong authorities of cases of detention of Hong Kong residents, the Administration undertook to discuss with the mainland authorities how the period of notification could be further shortened.

Lastly, on behalf of members of the Panel, I would like to take this opportunity to thank colleagues of the Secretariat and other people for their contribution to the work of the Panel. Thank you.

**PRESIDENT** (in Cantonese): Dr LUI Ming-wah will address the Council on the Report of the Panel on Constitutional Affairs 2004/2005.

### **Report of the Panel on Constitutional Affairs 2004/2005**

**DR LUI MING-WAH** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Constitutional Affairs, I report on the major work of the Panel during the Legislative Session of 2004-05.

During the Session, the Panel closely monitored the work progress of the Constitutional Development Task Force (Task Force) and discussed the relevant issues at a number of meetings. Some members considered that the views collected by the Third Report of the Task Force during the consultation period were not representative, and that a referendum was the best way to gauge whether a proposal was widely accepted by the community. Some other members felt that the Fourth Report had not addressed the public's aspiration for universal suffrage in 2007 and 2008, or provided a roadmap for constitutional development for the purpose of achieving the ultimate aim of universal suffrage. The Administration expressed the hope that a mainstream proposal could be formulated, pending the completion of the public consultation on the Fourth Report.

The Panel also dealt with two motions proposed by members in connection with constitutional development. The motions separately called on the Administration to conduct a referendum on the specific proposals on electoral methods in 2007 and 2008, and carry out an opinion poll on the specific proposals set out in the Fourth Report. Both motions were negatived by the Panel.

The Panel held a discussion on the need for enacting a political party law. Members made various suggestions to facilitate the development of political parties, including providing financial assistance to political parties, granting tax exemption to political parties, enhancing participation of members of political parties in advisory and statutory bodies, and abolishing the statutory requirement that the Chief Executive-elect must relinquish his political affiliation. The Panel noted that the Administration would, in considering the electoral methods for 2007 and 2008, study ways to make room for political parties to participate in public affairs. The Administration would also explore other financial schemes to facilitate the development of political parties.

Following the office of the Chief Executive becoming vacant on 12 March 2005, the Administration briefed the Panel on the bill to be introduced into the Legislative Council. The bill sought to provide that the term of office of the new Chief Executive should be the remainder of the term of the preceding Chief Executive. The Administration also explained to the Panel the justifications for its changed position on the term of office of the Chief Executive.

Some members expressed concern that the Government would seek an interpretation of Article 53 of the Basic Law concerning the term of office of the new Chief Executive from the Standing Committee of the National People's Congress (NPCSC). A motion urging the Government to give an account to the Legislative Council before seeking an interpretation from the NPCSC was passed by the Panel.

The Panel also discussed the qualification of some Election Committee (EC) members to make nominations and vote in the Chief Executive Election. The Panel noted that an EC member whose name appeared on the final register would only be disqualified if he had, among other things, ceased to have a substantial connection with the subsector concerned. Whether the EC members concerned had lost their substantial connection with their respective subsectors



would need to be considered on a case-by-case basis. Some members considered that it was unfair and irresponsible of the Government not to advise these EC members their status in law.

With respect to the review of the confusion arising from the polling and counting arrangements in the 2004 Legislative Council Election, the Panel discussed the Interim Report and the Final Report submitted by the Electoral Affairs Commission (EAC) to the Chief Executive and the report presented by an Independent Committee of Experts (the Experts Committee) appointed by the Chief Executive. Although the Experts Committee had put forth eight conclusions and 13 recommendations, some members remained of the view that the report had failed to address whether the blunders occurred on the polling day were attributable to the planning and decision-making process of officers at the management level.

The Panel also discussed the application of certain provisions of the Prevention of Bribery Ordinance to the Chief Executive. Some members considered that the lack of progress of the review after a lapse of more than six years was totally unacceptable. After discussion, the Panel agreed to form a subcommittee under the Panel to follow up the issue.

Regarding the proposal made by the Independent Commission on the remuneration package and post-office arrangements for the Chief Executive, members in general supported the new remuneration package for the Chief Executive. Some members expressed concern that the committee to be set up to advise former Chief Executives on post-office employment was lacking actual power. Some other members expressed concern about the signing of a written undertaking in the form of an agreement by each Chief Executive signifying agreement to abide by the post-office restrictions on taking up office and how the agreement was legally enforceable.

Members also expressed concern about the scope and duration of the post-office services recommended by the Independent Commission for former Chief Executives, such as the provision of office accommodation, a car with chauffeur services, and bodyguard services. Some members considered that these services should not be provided on a lifelong basis and should only be provided on a need basis (to facilitate the participation of a former Chief Executive in public services, for instance).

Madam President, I would like to take this opportunity to express my sincere thanks to members of the Panel and staff members of the Secretariat for their work and efforts. On behalf of the Panel, I would like to thank various government officials, members of the community who have attended our hearings, experts and academics for their support for the work of the Panel.

Madam President, these are my short remarks with respect to the report of the Panel. Thank you.

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan will address the Council on the Report of the Panel on Food Safety and Environmental Hygiene 2004/2005.

### **Report of the Panel on Food Safety and Environmental Hygiene 2004/2005**

**MR WONG YUNG-KAN** (in Cantonese): Madam President, as Deputy Chairman of the Panel on Food Safety and Environmental Hygiene, I would like to submit to this Council the report on the work of the Panel in 2004-05.

In the past year, the Panel discussed with the Administration and consulted the relevant trades on a number of major issues relating to food, agriculture and fisheries.

On the prevention of avian influenza, in view of the outbreaks of avian influenza in a number of places in the region, the Panel made a number of attempts to discuss with the Administration long-term initiatives for preventing avian influenza. The Panel supported in principle the adoption of better risk management measures. As the trade felt strongly about reducing the live poultry population in Hong Kong and introducing a voluntary surrender scheme for poultry farmers and wholesalers, the Panel urged the Administration to discuss in detail with the poultry industry, and offer assistance to the trade and workers as far as possible to ensure the continuous operation of the live poultry industry.

As for nutrition information labelling, the majority of members supported the requirement for labelling energy and nine core nutrients on all pre-packaged food, and requested the Administration to expeditiously submit the legislative proposal for implementation. Some members, however, proposed making

reference to the practice of overseas countries and the nutrition labelling legislation being drafted by the Mainland to facilitate compliance by the trade.

The Panel was gravely concerned about the regulation of food premises operating without a licence, particularly subsequent to the occurrence of food poisoning incidents in these food premises. To safeguard public health, some members considered that the Administration should take immediate enforcement action on these food premises. Some members pointed out that some operators had not been able to obtain the licence before commencing operation because of the lengthy licensing procedures.

A Subcommittee was subsequently formed under the Panel to study with the Administration and the trade the streamlining of food business licensing. The Subcommittee generally supported reducing the number of licences or permits required for the food business, and encouraging private professional practitioners to take part in the certification of compliance with licensing requirements.

The Panel also held a discussion on the regulation of live fish by such means as requiring fish traders to report information on the source and distribution of coral fish, and stepping up the sample inspection of coral fish in order to reduce ciguatera poisoning incidents.

As regards the regulation of the quality of seawater for keeping live seafood, some members held the view that the voluntary accreditation scheme for seawater suppliers might not be able to ensure the quality of water. The Administration should increase sampling checks of seawater at various points of the supply chain.

As the legislative proposal made by the Administration for protecting fisheries resources involves the designation of fisheries protection areas and the implementation of a moratorium on fishing, some members of the fishing community felt strongly about it. The Panel therefore requested the Administration to further discuss with the fishing community and alleviate their difficulties during the moratorium.

Details of all issues discussed by the Panel are set out in the report. I shall not repeat them here.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr Bernard CHAN will address the Council on the Report of the Panel on Financial Affairs 2004/2005.

### **Report of the Panel on Financial Affairs 2004/2005**

**MR BERNARD CHAN:** Madam President, in my capacity as Chairman of the Panel on Financial Affairs (the Panel), I present the report on the work of the Panel from October 2004 to June 2005. I now address the Council on the major issues covered by the report.

On Hong Kong's overall economic situation, the Panel was pleased to know that the Hong Kong economy was back on an upswing and the Government's fiscal position had improved. Members were however concerned that the majority of the people in Hong Kong were not able to benefit from the economic recovery. They urged the Administration to address the acute problem of the widened gap between the rich and the poor, and the unemployment problem of aged workers, workers with low education attainment and construction workers. Members also requested the Financial Secretary to consider transferring part of the accumulated surplus of the Exchange Fund to the general revenue so as to meet the government expenditure and to finance new initiatives for improving the livelihood of the general public. Noting that the Financial Secretary did not consider it necessary to contemplate making such a transfer, Members urged the Financial Secretary to reconsider the issue, taking into account the motion passed by the Council on 1 June 2005 urging the Government to, among other things, review the existing methodology for sharing the Exchange Fund's investment incomes between the Government and the Hong Kong Monetary Authority and to allocate more investment income of the Exchange Fund to the Government.

On management of public finance, the Panel conducted a research on the management of government investment incomes. Having examined the research report, Members considered that the Administration should put in place a proper mechanism to govern the dividend payout policy of public corporations. The mechanism should cover the circumstances under which the dividends payable to the Government should be paid or waived. Moreover, the Administration should strengthen the role of public officers appointed to public corporations in ensuring the protection of government investment interests. In examining the research report, Members also expressed concern on related

issues, in particular the impact of land grant policy on government revenue, and the principle adopted in the assessment of land premium. Given that land and revenue generated from its sale were important sources of income for the Government, Members urged the Administration to ensure the effective use of the limited land resources and that its land grant policy was able to safeguard public interest and maximize financial gains for the community.

On budget-related proposals, the Panel followed up three proposals mentioned by the Financial Secretary in his 2004-05 or 2005-06 Budget speech. On the proposed new Personalized Vehicle Registration Marks Scheme, Members expressed various concerns about the proposed scheme, particularly about its cost-effectiveness, and its impact on the income of the Lotteries Fund, law enforcement and intellectual property rights. As regards the proposals on abolition of estate duty and exemption of offshore funds from profits tax, some Members were concerned that these two proposals would only benefit the middle and the wealthy classes. When the Panel was consulted on the proposal on exemption of offshore funds from profits tax, Members requested the Administration to quantify the economic benefits of the proposal and set out the financial implications of the proposal, including the estimated amount of tax revenue foregone. Members also expressed concern about the Administration's proposal to apply the proposed exemption with retrospective effect to the year of assessment commencing on 1 April 1996. The Administration undertook to take into account Members' views in finalizing the details of the proposal.

The Panel continued to monitor the progress of various initiatives for enhancing corporate governance and examined three proposals put forward by the Administration. On the initiative to enhance the regulation of listing, the Panel supported the proposal to amend the Securities and Futures Ordinance to give statutory backing to major listing requirements. However, some Members expressed reservations on the need and merits of the proposal of empowering the Securities and Futures Commission (SFC) to impose civil fines on issuers and directors for breaches of the statutory listing rules. On the proposal of splitting the chairman post of the SFC into a non-executive chairman post and a chief executive officer post to improve the SFC's governance structure, some Members supported the proposal in principle while some did not support, and some expressed reservations on the proposal. As regards the proposal of establishing the Financial Reporting Council (FRC), a great majority of Members indicated their support for the proposal in principle for enhancing the oversight of the public interest activities of auditors and the transparency of the

self-regulatory regime of the accounting profession. Some Members however expressed concern about the proposal, in particular, the possible overlap of investigatory functions of the FRC, the Hong Kong Institute of Certified Public Accountants and the SFC, and whether the function of the FRC should be purely investigatory. The Panel requested the Administration to explore how these concerns could be addressed.

On the regulation of the banking sector, the Panel supported the implementation of the New Basel Capital Accord in Hong Kong for improving risk management of banks and keeping in pace with international developments. On the other hand, in examining the policy issues arising from the destruction of rented safe deposit boxes by DBS Bank (Hong Kong) Limited, the Panel noted that banks providing safe deposit box service generally included an exemption of liability clause in their contract with customers. Some of these clauses purported to exclude or restrict a bank's liability even in the case of loss or damages caused by negligence of the bank or its staff. Members queried whether the exemption of liability clause had breached the Code of Banking Practice (the Code). The Panel was pleased to note that all relevant authorized institutions had conducted a comprehensive review of the terms and conditions for safe deposit service and other banking services to ensure that they were consistent with the Code.

On investor protection, the Panel followed up the outcome of the public consultation exercise conducted by the SFC on the enhanced regulatory measures on securities margin finance providers. Given that the practice of pooling and repledging of non-borrowing clients' collateral was unfair to clients and infringed their rights, Members urged that the Administration and the SFC should work out a concrete timetable for abolishing such a practice and achieving complete segregation of borrowing and non-borrowing margin clients' collateral. The Administration and the SFC were invited to report progress to the Panel before the end of 2005. As regards the SFC's review of the level and funding of the Investor Compensation Fund (the Fund), some Members expressed support for the proposal to introduce an automatic levy triggering mechanism in order to increase transparency of the operation of the Fund, and the proposal to suspend the levies if the net asset value of the Fund exceeded \$1.4 billion. Following public consultation, the Administration has tabled the relevant amendment rules at the Legislative Council today.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum will address the Council on the Report of the Panel on Education 2004/2005.

### **Report of the Panel on Education 2004/2005**

**DR YEUNG SUM** (in Cantonese): Madam President, in my capacity as Chairman of the Panel of Education, I would like to report on the work of the Panel during the 2004-05 Legislative Session.

The major work of the Panel has been explained in detail in the report. I now give a brief report on the four subjects of reforming the academic structure for senior secondary education and higher education, small-class teaching, review of the medium of instruction for secondary schools and secondary school places allocation, and special education.

In October 2004, the Administration issued a consultation paper entitled "Reforming the Academic Structure for Senior Secondary Education and Higher Education". The Panel held three special meetings to discuss with the Administration the proposed "3+ 3+ 4" academic structure. The Panel also received views from a total of 48 deputations.

Members in general expressed support for the implementation of the "3+ 3+ 4" academic structure. They, however, were of the view that the Administration should incorporate the provision of special education and integrated education into the new senior secondary academic structure. They also held the view that the Administration should provide appropriate professional development programmes and sufficient support for teachers to prepare for the implementation of the new academic structure.

Some members expressed concern about the curriculum design, assessment, pedagogies, and class size for teaching Liberal Studies as a core subject at senior secondary levels. They suggested that Liberal Studies should first be taught as an elective subject, and be included as a core subject only when sufficient experienced teachers were available, and appropriate pedagogies and assessment mechanisms, and support measures were put in place.

The Administration explained to the Panel that on the basis of the views received during the public consultation exercise, it would decide the appropriate

timing for implementing the "3+ 3+ 4" academic structure and incorporating Liberal Studies as a core subject into the senior secondary curriculum. The Administration would also consult teachers thoroughly on the design of appropriate development programmes for different subjects. The Panel would receive regular reports from the Administration on the progress of implementing the new academic structure.

Some members were supportive of the early implementation of small-class teaching so as to enhance teacher-student interactions, students' learning outcomes and development, and quality of school education.

Regarding the three-year longitudinal pilot study on small-class teaching being conducted by the Administration (the Study), the Panel held discussions with the overseas consultant to the Study, members of the Steering Committee, representatives of some participating schools, academics in small-class teaching and the Administration about the review of the progress of the Study.

Some members stressed that, apart from academic results of students, the benefits of small-class teaching should be assessed in terms of teacher-student interaction and learning attitude of students. They considered that small-class teaching should be implemented as far as the resources permitted.

The Panel discussed with the chairman and members of the Working Group on Review of Secondary School Places Allocation and Medium of Instruction for Secondary Schools of the Education Commission (the Working Group) a consultation paper published by the Working Group. The Panel also received views from 26 deputations.

Some members supported the broad direction of mother-tongue teaching. However, they opposed the within-school streaming approach whereby a school could operate both classes adopting English as the medium of instruction and classes adopting Chinese as the medium of instruction. They considered that the current policy on medium of instruction which allowed the operation of both schools adopting English as the medium of instruction (EMI schools) and schools adopting Chinese as the medium of instruction (CMI schools) should continue. The Administration should, however, provide more resources to CMI schools to enhance the English proficiency of their students. Moreover, some members were also concerned that the number of EMI schools might decrease gradually as a result of the prescribed criteria of student ability for EMI schools.



At the request of members and the deputations, the Education Commission agreed to extend the consultation period by two months to 2 July to allow stakeholders, particularly parents, more time to express their views. The Panel would follow up the outcome of the consultation in due course.

The Panel held a joint meeting with the Panel on Welfare Services to discuss the provision of boarding places, senior secondary education and employment opportunities to children with special educational needs.

Members were of the view that children with special educational needs should be provided with adequate support. They expressed concern that the needs of these students would be neglected under the proposed "3+ 3+ 4" academic structure. Upon the recommendation of the two Panels, the House Committee set up a Subcommittee to study the provision of boarding places, senior secondary education and employment opportunities to children with special educational needs.

Lastly, I would like to take this opportunity to thank members for their support for the Panel in the past year.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr LAU Wong-fat will address the Council on the Report of the Panel on Planning, Lands and Works 2004/2005.

### **Report of the Panel on Planning, Lands and Works 2004/2005**

**MR LAU WONG-FAT** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Planning, Lands and Works, I present the report of the work of the Panel during the year 2004-05. I will highlight a few major areas of work of the Panel as follows.

During this Session, a number of meetings were convened by the Panel to explore the development of the West Kowloon Cultural District (WKCD). The Panel also met with some 30 organizations from building and arts and cultural sectors for exchanging ideas. For the purpose of understanding the contents of

the screened-in proposals, the Panel made a guided tour to the exhibition of the three screened-in proposals on the first day of exhibition. All proponents were also invited to attend the Panel meeting held on the same day to elaborate on their plans. As the House Committee had decided in January 2005 to set up a Subcommittee to follow up the WKCD project, the Panel decided that further study of the issues relating to the project would be taken up by the Subcommittee.

Development along the Victoria Harbour was another matter of grave concern to members. The review of Wan Chai Development Phase II was discussed in a thorough and in-depth manner by members. A number of members reiterated the need for the Government to abide by the principle laid down by the Court of Final Appeal on reclamation. Moreover, various proposals should be taken into account for addressing traffic congestion in Hong Kong North, instead of making the construction of the Central-Wan Chai Bypass as the bottomline. Proposals that may be considered for addressing traffic congestion include standardizing the tolls of the three cross-harbour tunnels, allowing less buses to enter the busy areas of Central, and so on. As regards Kai Tak Review, the Panel pointed out that the principle of "zero reclamation" should be observed in developing the outline concept plan for Kai Tak.

On urban renewal, members received views expressed by the residents affected by the redevelopment projects on the compensation arrangements made following the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004. Members noted it was the practice of the Urban Renewal Authority (URA) to commission seven professional surveyor firms to prepare valuations of a notional seven-year replacement flat for the purpose of determining the compensation amounts to be offered. I am very pleased to learn that the Government has acceded to members' request. Starting from March 2005, the URA would disclose the names of the relevant surveyor firms and the figures of valuation to the tenants to enhance the transparency of valuation.

Madam President, to address a long-standing problem, the Panel supported the proposed legislation for the reconstitution of missing and illegible government leases. Members noted the intention of the Administration to introduce an automatic reconstitution mechanism for Block Crown Leases issued in early 1900s which were substantially in the same terms. For missing or

illegible government leases that could not be reconstituted automatically, they could be reconstituted on application. Persons who incurred loss or damage as a result of automatic reconstitution might make a statutory claim against the Government. Members made several suggestions to improve the proposed legislation, including allowing the affected persons to make claims without a time limit.

An account of other areas of work of the Panel, including the discussion on the land disposal mechanism and examination of a number of public works, has been given in the report. I shall not repeat the details here.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han will address the Council on the Report of the Panel on Welfare Services 2004/2005.

### **Report of the Panel on Welfare Services 2004/2005**

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, I will speak in my capacity as Chairman of the Panel on Welfare Services. The report seeks to report on the work of the Panel during the 2004-05 Legislative Session, and is tabled at the Council meeting on 6 July 2005 in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council.

During the year, the Panel dealt with several major tasks, including the strategy and measures to prevent and tackle domestic violence. In view of the concern caused by this issue, the Panel set up a task force, and follow-up action is still being taken.

Madam President, I will give a brief account on various issues without going into them in detail because I have some problems with my eyes.

The second issue is the "Review of the Comprehensive Social Security Assistance Scheme". A task force was set up by the Panel to carry out a series of work with respect to this issue. The relevant work is still being undertaken at the moment.

Next, support and assistance for tetraplegic patients living in the community. A number of meetings were convened to undertake work in various aspects for partially-paralysed patients and tetraplegic patients. Thanks to the efforts of various sides, improvements were already made in certain areas.

The Panel also expressed concern about the services for the elderly, including the provision of health care for elders in a non-hospital setting. Details of some of the work undertaken by the Panel in this area have been set out in the report. Concern was also expressed by the Panel about the initiative of converting self-care hostel and home for the aged places into care and attention places providing continuum of care. Some organizations had also put forward a number of proposals to us. Madam President, with respect to the social security assistance provided for needy elderly persons, the Panel had conducted a series of explorations, discussed with relevant organizations, and exchanged a lot of views with the Government.

Furthermore, the policy on assisting women in poverty was explored as we found that there were quite a number of poor people in Hong Kong society. A discussion was thus held by the Panel on this issue, and 11 deputations were invited to express their relevant aspirations and expectations.

Madam President, regular meetings were convened by the Panel with the Government with respect to the Community Investment and Inclusion Fund for the purposes of conducting discussion and receiving views from organizations. Furthermore, concern was expressed by the Panel about the Partnership Fund for the Disadvantaged. The Government earmarked a \$200 million one-off grant to the Fund to help relevant participating organizations. Such work saw jointly involvement of various government departments and the Panel. Furthermore, members discussed the financial support to subvented organization after the Tide-Over Grant (TOG) period. In 2001, a Lump Sum Grant arrangement was introduced by the Government. In the interim, the Panel discussed the partnership between some non-governmental organizations and the Government and proposed that a TOG arrangement be made. Given that the TOG would cease in 2006-07, grave concerns were expressed by relevant organizations. Members would continue to follow up the issue.

Besides the work mentioned above, the Panel also undertook a lot of work in other areas, including funding for welfare services in 2005-06, the report on the Severe Acute Respiratory Syndrome, and so on.

Madam President, for various reasons, I will not read out the contents of the Panel report in detail. However, I have submitted the report to colleagues for reference.

**PRESIDENT** (in Cantonese): Mr James TO will address the Council on the Report of the Panel on Security 2004/2005.

### **Report of the Panel on Economic Services 2004/2005**

**MR JAMES TIEN:** Madam President, as Chairman of the Panel on Economic Services (the Panel), I would like to report on the major work of the Panel during the 2004-05 Legislative Session. As the report already gives a detailed account of our work, I would only highlight a few points here.

During the Session, we had kept various major tourism infrastructure projects under periodic review. The Hong Kong Disneyland (hereinafter known as "the park") will be opened in September this year. To ensure the smooth commissioning of the park, we called on the Administration to draw up contingency plans and keep in view the preparation and operation of the phased opening of the park and the corresponding public communication plan, and make necessary adjustments as necessary.

Whilst we were in support of the Administration's initiative to develop a heritage tourism facility at the Central Police Station Compound, we were concerned about the potential conflict between the preservation requirements and commercial viability of the project. We urged the Administration to work out a mode of operation which would be both financially sustainable and beneficial to the community. In the meantime, the Administration should also ensure the sustainable development and proper conservation of the Compound.

During the Session, we had also reviewed with the Administration the progress of the Ngong Ping Skyrail, and made various suggestions to improve the design of the open plaza development at the existing Tsim Sha Tsui Star Ferry Pier, and the improvement schemes in the Peak. We were also briefed on the proposed redevelopment of Ocean Park.

On tourism promotion, we were concerned about the work of the Hong Kong Tourism Board. We asked the Administration to ensure that the work and spending of the Board would be value for money and that an effective mechanism was in place to monitor its expenditure to safeguard public interest.

Regarding protection for outbound travellers, we were gravely concerned about the safety of and insurance for tour groups and had reviewed with the Administration and the Travel Industry Council of Hong Kong measures to reduce operational risks and enhance protection for outbound travellers.

Electricity tariff was high on the agenda of the Panel. The 6.5% increase in average net tariff by Hongkong Electric Company Limited (HEC) and the cancellation of tariff rebate by CLP Power Hong Kong Limited (CLP) for 2005 had aroused much public concern. We considered that the permitted rate of return as stipulated in the Scheme of Control Agreements signed between the Government and the two power companies were too high in present-day economic climate. Given that HEC and CLP were earning huge profits over the years and that a majority of the general public had not yet benefited from the recovery of the local economy, we took the view that the proposed tariff adjustments by the two power companies for 2005 would adversely affect the economy and add to the financial burden of the consuming public and the business sectors. In December 2004, the Panel passed a motion strongly opposing the respective proposals of CLP and HEC to stop offering tariff rebates and raise electricity tariff in 2005, and urging the Government to expeditiously launch a consultation exercise on the development of the electricity market in 2008.

In February 2005, the Administration started a public consultation on options for future development of the electricity market after the expiry of the current Scheme of Control Agreements in 2008. We called on the Administration to take into account a number of principles in deciding on the way forward for the future development of the electricity market. These included the need to ensure the stability, safety and reliability of electricity supply at reasonable prices, the provision of a transparent and flexible regulatory framework to cope with changes in circumstances, the wider use of renewable energy and reduction of emissions of pollutants in the generation of electricity, and the implementation of power interconnection to enhance competition. We would continue to discuss with the Administration issues relating to the future development of the electricity market in Hong Kong.

There were also allegations that the adjustments of local oil product prices were always quick in going up but slow in coming down and that the pace of price adjustments by various oil companies tended to be synchronized, while product pump prices often failed to truly reflect import costs. During the Session, we met with the major oil companies in Hong Kong to exchange views on the related issues. We also requested the Administration to take heed of any unfair mode of competition that might emerge in the local oil market, and monitor closely the situation with a view to increasing competition in the oil industries and enhancing the transparency of product prices, thereby safeguarding commercial clients and the public against high oil prices.

On heliport development, we had expressed reservation about the Administration's plan to designate a permanent domestic heliport along the waterfront in front of the Western Park Sports Centre in Sheung Wan. Apart from adverse noise impact, the proposed heliport in Sheung Wan would also occupy valuable waterfront space and was not accepted by heliport operators either. As an alternative, we requested the Administration to further examine the feasibility of the shared-use of the proposed government helipad at the Hong Kong Convention and Exhibition Centre with these commercial operators.

Facing competition from other ports in the region, we considered it necessary for the Administration to introduce measures to improve inland connectivity and reduce cross-boundary trucking costs so as to capture more cargo sources in the region. There was also a need to increase the transparency of the mechanism for determining terminal handling charges.

Madam President, these briefly outline the work of the Panel during the Session. And I, as Chairman, would also like to thank all members of the Panel and the Secretariat for their support during the past year. Thank you.

**PRESIDENT** (in Cantonese): Mr Andrew CHENG will address the Council on the Report of the Panel on Health Services 2004/2005.

### **Report of the Panel on Health Services 2004/2005**

**MR ANDREW CHENG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Health Services, I now present the report to the

Legislative Council the report on the work of the Panel during the year 2004-05, and highlight a few major areas of work of the Panel.

The Panel held discussions on the proposed amendments to the Smoking (Public Health) Ordinance. The Panel was concerned about enforcement of the legislation and was sceptical whether the Tobacco Control Office would have sufficient manpower to enforce the smoking ban in indoor workplaces and public places effectively. Some members suggested that staff of other government departments, such as the Labour Department and the Food and Environmental Hygiene Department, should also be involved in the enforcement of the smoking ban during their inspection of the relevant indoor workplaces and public places. The Administration was also urged to consider introducing a fixed penalty system similar to that for littering offences.

Madam President, the proposed Hospital Authority (HA)-wide Drug Formulary was discussed by the Panel in three of its meetings. While members had no objection in principle to the policy of standardization of drugs in all HA hospitals, they expressed concern that the introduction of the Drug Formulary was perceived by many patient groups and members of the public as a cost saving measure to reduce public health care expenditure. Some members worried about the impact on patients, as public hospitals had all along been providing the same medical treatment to patients suffering from the same illness regardless of their means. Although a safety net would be available, some might fail to meet the eligibility criteria for subsidy by a narrow margin and had to exhaust their lifelong savings to pay for the necessary drug charges.

The Administration pointed out that the present draft Formulary included more than 1 200 types of drugs covering the majority of drugs required by patients and more than 60 types of them were for the treatment of cancer-related diseases. One important aspect of the Government's health care policy was that patients who could afford to pay should contribute to the drug expenses. At present, some expensive drugs were already self-financed by patients. Those in genuine hardship were given assistance under the targeted subsidy principle.

The Panel passed a motion at the meeting on 8 March 2005 urging that the cost of drugs proven to be of significant benefits but extremely expensive should be fully met by the HA without any means testing of the patients, and that an appropriate fee reduction mechanism should be put in place to subsidize patients to buy drugs which were outside existing safety net protection.



Madam President, the Administration reported to the Panel on 13 June 2005 the views collected in the three-month public consultation exercise. The Administration pointed out that as drugs for acute and chronic diseases (some being expensive drugs) were included in the Formulary and covered within the standard fees and charges, there would not be any significant impact on the chronically ill, elderly and underprivileged. The HA would review the present assessment criteria for drugs under the Samaritan Fund. The affordability of applicants would be determined on the basis of disposable income and the required drug expenditure. Members requested the Administration to provide a paper on the safety net mechanism for discussion by the Panel in October 2005.

The Panel was briefed in June 2005 on the Administration's way forward in the development of Chinese medicine clinics in the public sector.

Members urged the Administration to implement the plan to establish 18 Chinese medicine clinics in the districts as soon as possible to meet the need of elderly patients. The Administration explained that the main problem in setting up more clinics was the lack of suitable sites. In the case of Wan Chai and Yuen Long, the sites were already available. Given the efficiency made possible by the use of information technology, it was not necessary for the clinics to be attached to a hospital. They could therefore be more conveniently located for the benefit of patients. The Administration would identify suitable sites in the other districts with a view to meeting its objective of setting up 18 Chinese medicine clinics as early as possible.

Madam President, recently, the incidents of patients waiting throughout the night for consultation at general out-patient clinics have aroused grave concern from the Chief Executive, Mr TSANG, and the Secretary. The issue of corpses found being stacked on top of each other in a public mortuary has also turned into an unresolved mystery. Madam President, the Panel will strive to pursue these two issues before the summer holiday to ensure that both the living and the dead are treated with dignity.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk will address the Council on the Report of the Panel on Environmental Affairs 2004/2005.

**Report of the Panel on Environmental Affairs 2004/2005**

**MISS CHOY SO-YUK:** Madam President, as Chairman of the Panel on Environmental Affairs (the Panel), I wish to report on the work of the Panel during the 2004-2005 Legislative Council Session.

Sewage treatment remained high on the agenda of the Panel. In view of the uncertainties about the future population build-up in the harbour area, the high cost and additional land requirement for the biological treatment plant and the water quality to be achieved through the provision of chemical treatment and disinfection for the whole harbour catchment, the Panel generally agreed to the Administration's approach of implementing the Harbour Area Treatment Scheme Stage Two in two phases. The first phase would involve the collection and treatment of the remaining sewage from the northern and western Hong Kong while the second phase would involve the building of a new biological treatment plant. The Panel had no objection to the proposed first phase but was concerned about the efficacy and worthiness of the second phase given the substantial investment involved, and the fact that a large proportion of pollution was coming from the Pearl River Delta Region. As the need for the second phase would be reviewed in 2010, the Administration was urged to advise on the criteria and parameters to be adopted in the review.

On air quality, the Panel noted that the deteriorating air quality in Hong Kong was not only attributed to roadside pollution caused by local vehicles but also to regional air pollution as a result of the rapid economic and industrial development in the Pearl River Delta Region. Given that regional air pollution could not be resolved by Hong Kong alone, the Panel considered it necessary for the Administration to closely monitor the progress of the Pearl River Delta Air Quality Management Plan drawn up in collaboration with the Guangdong Provincial Government to ensure that the emission reduction targets could be achieved.

As emission from power plants was a major source of air pollution, the Panel held the view that the two local power companies should endeavour to control emission as part of their social and corporate responsibility. To reduce emission from power plants from the regional perspective, the Panel supported the early implementation of the proposed emissions trading pilot scheme covering power plants in Hong Kong and Guangdong. The Administration was also urged to examine the feasibility of introducing renewable energy on a larger scale in Hong Kong through joint ventures with counterparts in the Mainland.

As regards waste management, the Panel noted that the construction waste disposal charging scheme, which aimed to provide an economic incentive for developers and construction contractors to reduce construction and demolition waste, would be implemented in the summer of 2005. There was however concern that the charging scheme might not be able to curb the problem of fly-tipping on agricultural land by unscrupulous developers and contractors, particularly if some landowners allowed disposal of construction waste on their agricultural land under the guise of land filling for profiteering. The Administration was therefore urged to set out clear guidelines to differentiate between land filling and fly-tipping activities in order to plug the loophole.

The substantial amount of municipal solid waste generated every day was another cause of concern for the Panel. While agreeing to the adoption of a three-pronged waste management strategy to prevent the production of waste, to recover waste materials and dispose of unrecyclable waste, the Panel noted with concern that the Administration's focus seemed more on waste disposal than recovery. In this connection, the Panel passed a motion urging the Administration to include in parallel in the upcoming strategy document on municipal solid waste a holistic and comprehensive plan, targets and timeframes for measures on waste avoidance and minimization; recovery, recycling and reuse, as well as bulk reduction and disposal of unrecyclable waste.

To promote the growth of the waste recycling and environmental industry in Hong Kong, the Panel generally supported the establishment of the EcoPark. However, concern was raised on the proposed *modus operandi* whereby the operation and management of the EcoPark would be entrusted to an operator through leasing or licensing by way of open tender. The Panel cautioned that the operator might tend to recruit anchor tenants with a view to profiteering, thereby affecting the opportunity of small local recyclers.

The Panel also examined other issues, such as the staffing arrangement of the Environment, Transport and Works Bureau, the engagement process in building a sustainable development strategy for Hong Kong, noise pollution, nature conservation policy as well as related financial and legislative proposals. For details of these areas of work of the Panel, Members may wish to refer to the report. Madam President, I would like to express my sincere gratitude to Panel members and the Secretariat for their unfailing support over the past year. Thank you.

**ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. A supplementary should only contain one question and should be as concise as possible. Also, Members should not make statements when asking supplementaries, as this contravenes the Rules of Procedure.

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

**MTR Extensions on Hong Kong Island**

1. **MR MA LIK** (in Cantonese): *Madam President, in February this year, the MTR Corporation Limited (MTRCL) submitted to the Government a revised project proposal on two railway extensions, namely the West Hong Kong Island Line (WIL) and the South Hong Kong Island Line (SIL). The Panel on Transport of this Council also passed two motions in the same month urging the Government to expedite the construction of the railway extensions. In this regard, will the Government inform this Council:*

- (a) *the proposed implementation timetable for the WIL; and*
- (b) *whether the WIL and the SIL are still treated as a single project, and thus only one financial analysis report has been provided; if so, whether such an approach is the cause for the WIL's not being implemented yet?*

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

(in Cantonese): Madam President,

- (a) The Chief Executive-in-Council has agreed that:
  - (i) the MTRCL should be asked to proceed with the preliminary planning and design of the proposed WIL, involving the extension of the MTR Island Line from Sheung Wan to

Kennedy Town with two intermediate stations at Sai Ying Pun and University;

- (ii) negotiations with the MTRCL on the detailed scope, cost and implementation programme for the WIL should commence; and
- (iii) the proposed SIL should be kept under review and its way forward considered in the light of the results of the review on the planning of tourism and commercial development in the Southern District due to be completed by the end of 2005 and our consideration of Ocean Park's redevelopment proposal.

We are following up the above decision, and are now negotiating with the MTRCL on the detailed scope, cost and implementation programme for the WIL. We hope that we can reach agreement with the MTRCL as soon as practicable.

- (b) In the revised proposal submitted by the MTRCL in February this year, the WIL is set out as one proposed project. The SIL is split into "South Island Line (East)" and "South Island Line (West)". A separate financial analysis on the WIL has been provided in the proposal.

**MR MA LIK** (in Cantonese): *Madam President, we all know that many members of the public have been fighting for the construction of the WIL for more than two decades. As mentioned by Mr LAU Kong-wah in the report earlier, the present decision of the Government is indeed belated and everybody is delighted to learn of it. However, in the main reply, the Government only mentioned those things it should do and expressed the hope of reaching agreement with the MTRCL as soon as practicable. May I ask whether this actually means that if no agreement can be reached, the WIL may not necessarily be constructed? As a result of the extensive press coverage last week, the public have formed the impression that the Government will certainly construct the WIL. But the main reply of the Government appeared not to be so certain. Therefore, I wish to have a definite answer.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND LANDS** (in Cantonese): Madam President, as a matter of procedure, all railway projects (whether undertaken by the MTRCL or the KCRC) must undergo several stages. To begin with, the MTRCL will conduct its own studies on routing, so as to identify districts that are in need of railway construction. After this, when the planning of a proposed project reaches a certain stage and further investments are required, it will need to obtain the "green light" of the Executive Council regarding the detailed scope of the project, its cost computation and implementation timeframe before it proceeds any further, makes further investments, and draws up a more comprehensive and detail plan. At this very stage, the Government will step in and negotiate with the railway operator. Changes in station locations of the railway and its alignment blueprint may then be made if necessary. More importantly, we will conduct thorough discussions with the railway operator on cost computation. It is only after both sides have reached agreement on the amount of investment that a further decision will be made to determine whether the project is to be implemented.

**MR MA LIK** (in Cantonese): *Can I ask a follow-up question?*

**PRESIDENT** (in Cantonese): Is it part of your supplementary question just now?

**MR MA LIK** (in Cantonese): *I only wish to know whether the WIL will certainly be constructed. It appears the Secretary has not answered this part of my supplementary.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND LANDS** (in Cantonese): Madam President, at this stage, we have not yet made any firm decision on the construction of this railway. We are currently studying the report submitted by them, and we do find the project feasible so far, which is why the Executive Council has given its "green light" for their continuation of the relevant work. However, we have not yet decided whether the railway project will be implemented.

**DR YEUNG SUM** (in Cantonese): *Madam President, the "green light" has been given to the construction of the WIL. However, no decision whatsoever has*

*ever been made regarding the railway development in the Southern District, particularly the eastern section of the SIL (between Admiralty and the South Horizons). Madam President, the Aberdeen Tunnel has to be intermittently closed and there is frequent traffic congestion in Pok Fu Lam. Besides, there are also the Ocean Park extension works as well as the many hotels and buildings coming on stream after the redevelopment of Wong Chuk Hang Estate. In regard to the SIL, especially its eastern section, has the Government focused only on pure commercial considerations without paying any heed to the benefits of society as a whole, such as the positive impacts on tourism and district development? I hope the Government can give a definite answer to this question.*

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

(in Cantonese): Madam President, as mentioned in the main reply, the Planning Department is reviewing the planning of tourism and commercial development in the Southern District, the report of which is due to be completed by the end of 2005. We must take account of this report as it will contain the latest findings on the population and economic activities in the district. Besides, the Government must also examine the redevelopment proposal of Ocean Park. The Executive Council considers it more sensible to consider the construction of the SIL by the end of 2005, when the results of these two reviews are released.

**MR ANDREW CHENG** (in Cantonese): *Madam President, the Panel on Transport has all along thought that the main problem with the WIL and the SIL is the lack of any agreement on investment amounts between the Government and the MTRCL. Now, in the main reply of the Secretary, it is emphasized that the Government has started negotiations with the MTRCL on the detailed scope, cost and implementation programme for the WIL. When the Secretary replied to Mr MA Lik's supplementary just now, she said that the Government had not yet decided whether to construct the WIL. Concerning the policy on government investment in the WIL, may I ask the Secretary whether the amount of investment should be regarded as such a key factor, bearing in mind that the project will cost only \$6 billion to \$7 billion and the MTRCL is making a profit of \$4.4 billion a year?*

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

(in Cantonese): Madam President, we do appreciate Members' great concern

about the amount of government investment in all infrastructure projects. Members should be all the more concerned about this case because the MTRCL must bear part of the investment. The amount of government investment in this project is therefore precisely the subject of our negotiations. We will verify the various data set out in the proposal of the MTRCL, so as to ascertain the amount of government investment required for this development project. Besides, the relevant Policy Bureaux and government departments will also conduct discussions on the need for government financial support. If there is such a need, they will also try to identify a suitable form of support. This is the consistent practice adopted by the Government for all railway development projects.

**MS MIRIAM LAU** (in Cantonese): *Madam President, when the Panel on Transport discussed the WIL at its meeting in February this year, the Government replied that a decision on the construction or otherwise of this railway must be preceded by studies on various issues, including the impacts on other means of public transport. The Government has now started negotiations with the MTRCL on the detailed scope and implementation programme for the WIL. It implies that a decision has already been made. May I ask the Government whether it has already completed its study on the impacts on other means of transport? If yes, will it share the findings with us? And, can it submit to the Legislative Council a paper on the findings?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND LANDS** (in Cantonese): Madam President, we can well appreciate the concern of the transport sector about the impacts it may sustain as a result of the WIL and the SIL. Now that the WIL has reached the present stage of detailed planning, we will seek to ascertain the impacts of the project on our overall transport and transportation on the basis of more detailed information.

The impacts of the WIL on public transport at grade can be lessened by reorganizing the public transport network within the railway catchment area. Such reorganization can ensure the proper co-ordination of Hong Kong's overall public transport network and maintain its high efficiency. That way, maxicabs and buses can continue to operate in a favourable business environment. We will certainly consult the relevant District Councils, the road public transport sector and residents on any reorganization of transport routes. We have not yet completed the study on this, which is why we are unable to provide a detailed



report. We are still at the stage of negotiations, but we will continue with the work.

**MS MIRIAM LAU** (in Cantonese): *The Secretary has not told us whether she will furnish us with the findings in writing after the completion of the study.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND LANDS** (in Cantonese): We can do so.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the Secretary has told us that the main problem with the WIL now is the lack of any agreement on the amounts of investment. May I ask the Secretary whether the lack of any planning for the SIL so far has also been due to the same problem? Actually, the opinions of the District Council concerned and residents are all very clear. There is simply no need for the Government to conduct any consultation at all. Why is the pace of SIL studies slower than that of WIL studies?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND LANDS** (in Cantonese): We have also heard the opinions of many people about the SIL. Honestly speaking, the construction of a new railway line has always been supported by members of the public since the very beginning. I believe that all of us do share the same view in this respect. However, we still need to carefully consider many issues, such as alignment, the number of stations and how fares are to be set on the basis of overall economic benefits. That is why we are now studying various financial, planning, land, transport and works problems. Back to the SIL, we are still waiting for two reports. One of these reports, a report from the Planning Department, is about the tourism and commercial development in the Southern District. We expect the data on demographic growth and commercial activities set out in the report to be different from those collected in the past. The other report is on the analysis and examination of Ocean Park's redevelopment proposal. Addressing this last question: Should \$5.5 billion be spent on redeveloping this major tourist attraction, with a view to promoting the tourism development of the whole district? We must wait for the completion of these two reports before making any final decisions.

**DR RAYMOND HO** (in Cantonese): *Madam President, according to the Secretary, the construction of new railways will always be welcomed by all from the very beginning. However, when the WIL project was tabled for discussions in the Legislative Council Panel on Transport, it was met with the strong objection of various public transport operators. It was due to such opposition that the Government started to consider the construction of the SIL. If the Government decided to shelve the WIL for the time being, then may I ask the Government whether it would still adhere to the strategy of halting all discussions on Route 7, which has now been renamed Route 4? This route is badly needed by land transport on Hong Kong West, and discussions on its construction have been dragging on for 30 years. Or, will it in the meantime first deal with those road sections, those traffic black spots, which are in need of improvement?*

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

(in Cantonese): *Madam President, Route 7, now renamed Route 4, overlaps the western section of the SIL in function. Therefore, when we consider the construction of the SIL, we will also consider it together with Route 4. Should we build a road or a railway? We will consider both together.*

**MR HOWARD YOUNG** (in Cantonese): *Madam President, the Secretary has referred to benefits for tourism and Ocean Park. I wish to point out that the \$5.5 billion is actually a loan that must be repaid to the Government in future. May I ask the Government what it means by benefits for tourism — rises in the admission figures of Ocean Park or the economic benefits derived from an additional day spent by tourists in Hong Kong on average? What does the Government have in mind — macro-economic benefits or micro-economic benefits?*

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

(in Cantonese): *Madam President, when considering transport policies, we will of course also consider the economic benefits that may be brought by other policies to members of the public and society as a whole. This explains why I say that we must wait for the Government's review report on Ocean Park's redevelopment proposal. I believe the report will certainly mention the effects of tourism development on the Southern District as a whole. That is why we*

will wait for the report before we consider how our transport policy should tie in with such development.

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

### **Relocation of Hong Kong Sports Institute**

2. **MR LAU CHIN-SHEK** (in Cantonese): *Madam President, it has been reported that the Government intends to relocate the Hong Kong Sports Institute (HKSI) in order to co-organize the equestrian events for the 2008 Beijing Olympics. In this regard, will the Government inform this Council whether:*

- (a) *there are other venues for staging the events;*
- (b) *it has consulted in advance the elite athletes, coaches and staff of the HKSI on the relocation of the HKSI; and*
- (c) *it has assessed the impact of relocating HKSI on the training of local athletes and their achievements in competitions?*

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

- (a) At the end of last year, the Beijing Organizing Committee for the Games of the 29th Olympiad (BOCOG) made preliminary contacts with the Government of the Hong Kong Special Administrative Region (SAR) to explore the possibility of making use of Hong Kong's strengths in equine care and quarantine to relocate the 2008 Olympic Equestrian Events to Hong Kong. The strengths of Hong Kong lie mainly in its advanced equine medical facilities of international standards, a group of professionals specializing in horse care, and an equine quarantine regime recognized by most countries. Staging the equestrian events in Hong Kong would be better able to ensure the safety of the horses as well as the smooth conduct of the events than in Beijing. Since then, the Home Affairs Bureau has been holding discussions in this regard with the BOCOG on behalf of the SAR Government.

I would like to point out that the International Olympics Committee (IOC) has not yet made a final decision on the venue for the 2008 Beijing Olympic Equestrian Events. If Hong Kong is eventually chosen to stage the events, the Hong Kong Government will be responsible for co-ordinating and implementing the arrangements for staging the events in Hong Kong, including the provision of competition venues. The Hong Kong Jockey Club (HKJC), working as a partner of the Hong Kong Government, will be responsible for the design and construction of the venues as well as the provision of support services and facilities for the imported horses and professional input to the events.

Apart from the competition arena, the venue for staging the Olympic equestrian events should also include enough stables to accommodate about 300 imported horses, a main arena with a seating capacity for 20 000 and different types of training grounds (sand, grass and indoor). In addition, a quarantine area with sufficient quarantine stables, as well as training grounds for the horses is needed. In view of these stringent requirements and standards set by the Federation Equestrian Internationale (FEI) and the fact that there are less than three years for preparation before the 2008 Olympics, we, after deliberations with our consultant, came to the conclusion that the only possible site would be Penfold Park and the HKSI adjacent to the Shatin Racecourse. Our considerations are as follows:

- (1) the Shatin Racecourse is well equipped with core supporting facilities (such as an equine hospital, some quarantine stables, horse training grounds, laboratories, a feed storage area and a team of professional staff) which can provide efficient and cost-effective back-up services for the Olympic equestrian events. This is the most important consideration for site selection and the fundamental reason for staging the equestrian events in the vicinity of such facilities.
- (2) a substantial saving in the cost of staging the equestrian events can be achieved by pooling together the existing resources and facilities of the HKSI, Penfold Park and the Shatin

Racecourse and by carrying out suitable conversion works to cater for the events. The cost will be much lower than that of constructing a new venue. Making optimum use of existing resources, together with the backup of temporary facilities, will enable equestrian events to be staged in a cost-effective manner. This new and innovative model to be adopted in Hong Kong will set a new example for future equestrian events worldwide.

- (3) if we look for another site to build a new venue for the equestrian events, we will not be able to reap the benefits of making good use of existing resources, that is, the stables at the Shatin Racecourse and the logistic support available there for horses. The staging of the events will become less cost-effective as the construction and operation costs will be significantly increased. As a consequence, we will be in the same dilemma which other Olympic Games host cities have found themselves in, that is, they have been left with "white elephant" facilities that are inefficient and ineffective to maintain after the staging of equestrian events.

After conducting detailed site investigation and studies, the internationally accredited equestrian architectural consultant commissioned by the HKJC proposed that the existing sites of Penfold Park and the HKSI be used to construct horse stables, equine quarantine facilities as well as horse training grounds. The HKSI will also be used as the venue for staging two of the core equestrian events, namely Dressage and Show Jumping. In addition, the Beas River Country Club and part of the Hong Kong Golf Club in Fan Ling will be used as the venue for the Cross-Country Events. According to the design proposed by the consultant, the HKSI will have to be vacated temporarily for two years from early 2007 to the end of 2008 so that it can be converted into an arena for equestrian events that meets Olympic standards. After the events come to an end in September 2008, all indoor facilities and most of the outdoor ones of the HKSI will be reinstated and suitably upgraded before they are handed back to the HKSI for use.

The BOCOG also supports the proposed design as it can make use of our strength in horse care and resources for such care and, at the same time, enhance cost-effectiveness. The proposal has been submitted to the IOC and the FEI as the basis for considering the proposed relocation of the 2008 Olympic Equestrian Events to Hong Kong.

- (b) The SAR Government understands that the proposal to use the HKSI might arouse concerns among members of the sports community, including elite athletes, and that it was necessary to address their dissatisfaction and concerns and start a dialogue on the reprovisioning plan. As the proposal to relocate the Olympic equestrian events to Hong Kong was at a preliminary stage and its feasibility had yet to be studied and determined, the IOC repeatedly requested the BOCOG and the SAR Government to keep the matter strictly confidential. In accordance with such request, we could only make contacts with the President of the Sports Federation and Olympic Committee of Hong Kong (SF&OC) and the Chairman of the Board of Directors of the HKSI through informal channels and the scope of discussions was limited.

In early April this year, upon obtaining the consent of the BOCOG, we immediately briefed the Sports Commission and the Board of Directors and management of the HKSI on the staging of the equestrian events in Hong Kong and the potential impact on the HKSI. In mid-April, we met with all the staff members and athletes of the HKSI by group to brief them on the matter.

Since May this year, representatives of the Home Affairs Bureau, Leisure and Cultural Services Department (LCSD) and Architectural Services Department together with the management of the HKSI have met with the Chairman/President and head coaches of the National Sports Associations (NSAs) of 15 elite sports in order to listen to their views on the reprovisioning arrangements, to better understand their unique training needs as well as to exchange views on the preferred temporary training venues. After the first round of meetings, we and the management of the HKSI are now in the process of compiling and studying the requirements of the

various elite sports. We will hold further discussions with the coaches and athletes of the NSAs with a view to devising a preliminary reprovisioning plan.

We are well aware that in order to come up with a suitable and feasible plan for the reprovisioning of the HKSI, we need active participation and input by athletes so as to improve and fine-tune the arrangements. The Home Affairs Bureau held a meeting with representatives of the Hong Kong Elite Athletes Association (HKEAA) last week to listen to their requests and views on issues that were of concern to athletes, such as the arrangements for the reprovisioning of the HKSI. This Monday, we also met with representatives of the Elite Sports Committee, the SF&OC, the Board of Directors of the HKSI, the HKEAA as well as heads of the NSAs of elite sports, coaches and athletes to discuss with them the details of the reprovisioning plan and to solicit their views. To grasp the opportunity of staging the Olympic equestrian events in Hong Kong to upgrade and modernize the training facilities for elite sports, in order to tie in with the long-term development of local elite sports, we have set up a broadly-represented task force after the meeting to explore feasible options for reprovisioning the HKSI and to make concrete recommendations to the Sports Commission in about half a year.

In fact, the reorganization and reprovisioning of the HKSI is an integral part of the strategy for the long-term development of sports in Hong Kong and also an important item on the agenda of the Elite Sports Committee. We are of the view that as the HKSI is the only elite sports training centre in Hong Kong, it is necessary to conduct a comprehensive review of its site and facilities to work out the way forward and a definite timetable so that elite athletes will be provided with the best training environment, thus attaining the policy objective of "promoting elitism in sports". I hope that the task force will draw on collective wisdom and put forward a reprovisioning proposal to the Sports Commission and the Government for consideration.

Madam President, I would like to make it clear that, irrespective of whether the Olympic equestrian events would eventually be staged

in Hong Kong, the way forward for elite sports and the long-term reprovisioning plan of the HKSI will be the focus of our future discussions.

- (c) We have conducted an internal assessment of the impact of the temporary reprovisioning of HKSI on athletes, and we understand that albeit temporary, the relocation will, to a certain extent, disrupt and affect the training of athletes. Therefore, we fully understand the concerns expressed by the athletes, and have not underestimated their reactions and requests relating to the temporary reprovisioning plan. Therefore, the primary objective of the reprovisioning plan is to ensure that during the short period of HKSI reprovisioning, the athletes will continue to be provided with a stable training environment that meets their needs.

We have now completed the first round of discussions with the NSAs of 15 elite sports, and have reached a general consensus with the HKSI management and the NSAs concerned on the temporary base for the HKSI. The NSAs have also put forth concrete proposals to us on the location of the necessary training venues and the relevant supporting facilities required during the reprovisioning period. We will make our best endeavour to accommodate their proposals, and will consult the athletes before we finalize the plan in order to work out the best possible arrangements.

Our elite athletes have achieved good results in major sports competitions in recent years, scaling new heights for Hong Kong in the international sports arena. This shows that the performance of local elite athletes is improving, which is an achievement we should be proud of. The Hong Kong Government is committed to ensure that the daily training of the athletes would not be adversely affected due to the possible temporary reprovisioning of the HKSI. In fact, we will take this opportunity to enhance our support to the NSAs of elite sports in terms of provision of training venues to further assist the development of their training programmes. For example, following discussions and consultation with the two NSAs for table tennis and squash, we will provide, under the reprovisioning arrangements, a training venue for the exclusive use by each of these two elite sports. The training venues will become centres for



training athletes from junior squads to the elite teams. Such arrangements are better than those provided by the HKSI and will also better satisfy the need of the NSAs to have their own training venues. With regard to other elite sports, we will also work towards this direction and do our best to meet the needs of the NSAs concerned.

I strongly believe that a reprovisioning plan formulated by drawing on collective wisdom will be able to provide elite athletes with a suitable training environment, enabling them to concentrate on preparing themselves for the competitions ahead. Besides, local elite athletes are the cream of the younger generation. Like elite athletes of other countries, they have strong adaptability and the determination to overcome adversity. I am confident that they would be able to rise to the challenges brought by the relocation of the HKSI and concentrate on their training to strive for even better results in future competitions.

After all, in staging an Olympic-class event, we have to meet very high requirements and standards. During the process of preparation, we need the support and co-operation of not only elite athletes, but also the general public to make the events successful. In this connection, we will not only maintain dialogue with the relevant parties of the HKSI but will also brief the District Councils through the Home Affairs Department in due course.

Madam President, the Olympic Games is a premier sports event that attracts world attention. The fact that Beijing has been successful in its bid to host the 2008 Olympic Games reflects the growing recognition of and importance attached to China's position on the international stage. The SAR shares the glory and pride. It is encouraging and heartening to learn that Hong Kong may, by virtue of our strengths, have the chance to participate in one of the events by providing the competition venue. Besides enhancing Hong Kong's reputation and status in the international sports arena, the staging of the equestrian events in Hong Kong will bring about substantial economic benefits. Judging from media coverage and the overall response of the community in recent months, Hong Kong people are taking a favourable and positive view towards this event.

I believe that the community is looking forward to the opportunity to participate in this international sports event, and to share the joy of our country. The community at large also looks to the event as a means to boost our economy, enhance the vitality of the community and further promote the development of elite sports in Hong Kong.

**PRESIDENT** (in Cantonese): Since the Secretary for Home Affairs has spent almost 15 minutes on the reply to this main question, I will suitably extend the time allowed for this oral question.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, as stated by the Secretary in part (c) of the main reply, our elite athletes have achieved good results in major sports competitions in recent years, scaling new heights for Hong Kong in the international sports arena. Therefore, we are particularly concerned about the viewpoints and sentiments of our elite athletes. Many athletes have expressed that the career life of an athlete is short. Thus, from their point of view, disrupted access to sports ground of any duration, even only for a year or two, may ruin their entire career as an athlete. The Secretary said earlier that their concerns had been taken into account and that discussion had been held with elite athletes last week. Will the Secretary inform us of the result of the discussion? Do the athletes feel assured about this? If their worries have not been removed, should the Government insist on hosting the equestrian events at the expense of the needs of these athletes?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I have to thank Mr LAU Chin-shek for his question. During rounds of discussions with our elite athletes, they have indicated unanimous support for the hosting of equestrian events in Hong Kong in principle. Of course, the temporary reprovisioning of the HKSI will make them somewhat anxious, worried about the extent of the reprovisioning. However, we wish to seize this opportunity the HKSI reprovisioning to strive for better support venues for athletes. We understand very well that the career life of an elite athlete is short. They devote strenuous efforts to their training, always looking forward to bring glory to the people of Hong Kong in international events. Time and again, they have given us reason to feel proud.

Therefore, we definitely will not affect the training of athletes. We only wish to take the opportunity of relocation and temporary reprovisioning to provide better complementary service and support in terms of technology and venues. We will thus negotiate with each and every NSA to ascertain their needs in this respect and how we can assist them to do better.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, will the Secretary give me a simple and clear answer whether the minds of these athletes have been set at rest? If their worries have not yet been removed, will the Government still insist on hosting the equestrian events?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *Madam President, after several rounds of discussions, I think the concerns of these athletes have been addressed progressively. However, do they feel totally assured? Understandably, not. They all look forward to a finalized reprovisioning plan, and will only feel totally relieved when they see one. We will do our level best in this respect to try to ease their worries.*

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary said earlier that he would ease their worries, but in a forum of athletes, they expressed doubts by asking "Is the Government sincere in promoting sports?" This reflects exactly their doubts about the approach of the Government. One of the messages in the forum even stated that the Home Affairs Bureau aimed to stifle the elite athletes of Hong Kong or sell them out.*

*Moreover, in the last paragraph of the main reply, the Secretary said that the staging of equestrian events in Hong Kong would boost our economy and enhance Hong Kong's reputation and status in the international sports arena, which is in a way expressing support for the staging of equestrian events. However, in considering the issue — the Government may consider it very prestigious, but elite athletes on the contrary may find it offensive and consider that the Government has sold them out. In considering the issue, what has made the Government so determined that the equestrian events must be staged in Hong Kong? In fact, if our elite athletes win medals in the Olympiad, will Hong Kong not share the same glory?*

*May I ask the Secretary, during the course of decision-making, whether too much emphasis has been placed on "reaping glory" for the Government, thus overlooking the sport development of elite athletes?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the staging of the Olympic equestrian events will certainly bring benefits to Hong Kong as a whole, but this will at the same time enable the people of Hong Kong to see for themselves clearly how the holding of a grand sport event will drum up the interest of the public and enhance their knowledge in sports. If more people can gain knowledge in this respect and thus understand the spirit of the Olympics, this will give a big push to the support and recognition given to the elite athletes at large. This is comparable to the winning of medals in the international sports arena by our elite athletes, which will also make the people of Hong Kong feel proud. Regarding why we should do so, as asked by Mr LEE Cheuk-yan earlier, I have already given a detailed answer in my main reply. We are compelled to do so, for we have to make full use of the strengths of Hong Kong. What are the strengths of Hong Kong? These are some of the basic facilities now available in the Shatin Racecourse which we can be proud of but are not available elsewhere. Since we have to make use of these facilities and expand them further, we have to borrow the venues of the HKSI temporarily.

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

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, in my question, I mainly asked the Secretary whether "reaping glory" for the Government should come before all other things.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): This is definitely not for the sake of "reaping glory" for individuals or the SAR Government, indeed we do so to "reap glory" for the people of Hong Kong.

**DR YEUNG SUM** (in Cantonese): *Madam President, that the incident has developed to such a state is indeed regrettable. If Hong Kong could stage the*

*equestrian events without sacrificing the training of our elite athletes, it would be most desirable. But it seems hardly possible now that we can make the best of both worlds. Our elite athletes have made great contributions to the local sports sector. Had the relocation of the HKSI been proposed earlier, everything would have been fine. But, now, at this very crucial juncture when the 2008 Olympiad in Beijing is only two years away, the performance of our elite athletes will be severely affected if they have to move their quarters and training grounds. May I ask the Secretary, if the prevailing views of the majority of our elite athletes are against the relocation of the HKSI — they do not oppose the staging of the equestrian events but request that the HKSI be not relocated — will the Government change its plan of relocating the HKSI?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, upon the conclusion of the preliminary discussion with all NSAs in respect of different sports, a general consensus has been reached among most of them in respect of the reprovisioning arrangements. Members can hardly understand the situation if I put it in such general terms. Perhaps I will cite the example of table tennis as an example to illustrate my point. The training of table tennis athletes are now being conducted in the HKSI where only eight table tennis tables are available. Now, we hope that through the reprovisioning plan, the training of table tennis athletes can be arranged to take place at a venue of the LCSD at Cornwall Street which have 16 tables exclusively for table tennis and the number can be increased to 24 tables if necessary. For this reason, the athletes do very much appreciate the arrangement of this plan. Moreover, at the Cornwall Street venue of the LCSD, other ancillary services, such as fitness room, common room, sports medicine section and coach offices, and so on, can be provided in a one-stop mode. The facilities there are better than those provided by the HKSI, the continuity of training of athletes can be better safeguarded and the complementary facilities and venues can be upgraded. We will upgrade one by one the facilities provided for athletes and will examine each of these facilities with them.

**DR YEUNG SUM** (in Cantonese): *Madam President, I asked the Secretary if the prevailing views of elite athletes were against the relocation of the HKSI — the Secretary only cited the case of an item or two in his reply earlier — if most of them oppose the relocation of the HKSI, will the Government change its relocation plan?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we have had discussions with NSAs of 15 elite sports. According to the consensus reached, the majority of them support the reprovisioning plan.

**MR ANDREW CHENG** (in Cantonese): *Madam President, I would like to follow up the reply given by the Secretary to Dr YEUNG Sum's question earlier. Elite athletes have gone all-out to express their views on the Internet, and they have even made calls to many Members' Offices opposing the approach adopted by the Government this time. However, the Government stated that its plan was supported by many NSAs. Does the Government understand that the grab it so claimed has made on the so-called public sentiments, public opinions and the feelings of elite athletes is actually an act riding roughshod over dissenting opinions, a slight move that may affect the entire situation? Does the Government consider this approach has not only stifled the strenuous efforts made by elite athletes in the past, but also ignored their contribution in striving for better results for Hong Kong? Therefore, may I ask the Secretary whether alternative options are available, for I have never heard about that? If the Government is not bent on having its way, has the Secretary ever thought about constructing another venue to co-organize the equestrian events? We do not oppose to the bid for co-organizing the equestrian events, but could the Secretary at least give a .....*

**PRESIDENT** (in Cantonese): Mr Andrew CHENG, have you put forth your supplementary question? You have already raised several questions.

**MR ANDREW CHENG** (in Cantonese): *Madam President, please let me raise a clear question, will you?*

**PRESIDENT** (in Cantonese): Fine. But you should make it short, for some Members are still waiting for their turns to ask questions.

**MR ANDREW CHENG** (in Cantonese): *Will the Secretary inform us whether he has any "fall-back plan"? Has he ever considered staging the equestrian*

*events at other suitable venues such that the relocation of the HKSI in Sha Tin is not required?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the present plan on venue arrangement was a decision made after the completion of studies by consultants and experts on the facilities now available in Hong Kong and the availability of venues for the staging of these events in our vicinity. We came to this decision after careful deliberation.

**PRESIDENT** (in Cantonese): We have spent more than 26 minutes in this question. Last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, according to the Secretary, the HKSI is the only place in Hong Kong used for the training of professional athletes, and that the Government has had discussions with the management of the sports sector and NSAs. Is the Secretary sure that a consensus has been reached between every NSA and its branch associations, and that such consensus is reached after consultation? Is the Secretary sure that members of each branch associations of the NSAs have been consulted and a consensus on supporting the approach of the Government has been reached? The Secretary said earlier that better facilities would be provided to athletes, for example, more tables for table tennis are available in a venue of LCSD at Cornwall Street than in the HKSI at Sha Tin. However, has a consensus on this ratio been reached? Is the Secretary sure about this?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we had not only held discussions with the NSAs, we had also discussed the matter with the coaches and athletes of each sport before we came to this conclusion. The increase in the number of table tennis tables is only one of the examples, and there are other examples, such as squash. However, among the 13 elite sports, only the training of eight elite sports need the facilities in the HKSI, while the training of five elite sports is now conducted outside the HKSI. Therefore, we only focus our studies on the requirements of these eight elite sports, and will try to satisfy and cater for these requirements as far as possible.

**DR RAYMOND HO** (in Cantonese): *Madam President, my question asked the Secretary whether he was "sure" about the two consultations and consensus mentioned by me earlier. I asked him whether he was sure but he has not answered me whether or not he is "sure".*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *Madam President, generally speaking, the NSAs can well represent the coaches and athletes of a certain sport, but we are not quite certain. Therefore, apart from consulting the NSAs of these sports, we have also examined the issue with the chief coaches, coaches and athletes of these sports.*

**PRESIDENT** (in Cantonese): *I know that this issue will be discussed again at the meeting of the Panel on Home Affairs on 8 July, so Members who are disappointed of not having the opportunity to raise supplementary questions today may follow up the issue on that day.*

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

### **Visa-free Entry to Hong Kong**

3. **MR HOWARD YOUNG** (in Cantonese): *Madam President, at present, both mainland and Taiwan residents are required to hold valid visas for visiting Hong Kong. However, mainland residents holding entry visas of other countries or regions who intend to travel to and from that country or region via Hong Kong can enjoy visa-free entry to stay in Hong Kong for not more than seven days. This measure is also applicable to Taiwan residents who hold Mainland Travel Permit and intend to travel to and from the Mainland via Hong Kong. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of mainland and Taiwan residents who have visited Hong Kong through this channel since the introduction of the above measure; and*
- (b) *whether it will consider extending the application of the measure so that residents of other countries or regions, who are currently*



*required to hold valid visas for visiting Hong Kong, will also be entitled to visa-free entry to stay in Hong Kong for not more than seven days by holding valid entry visas to the Mainland, thereby boosting the number of inbound visitors, promoting the tourism industry and stimulating the economy; if it will, of the timing for implementation; if not, the reasons for that?*

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

- (a) Since 1 August, 1993, mainland visitors holding People's Republic of China passport may enter and stay in Hong Kong for up to seven days for transit purposes. In the past three years, an average of 1.31 million mainland visitors entered Hong Kong through this arrangement each year. Furthermore, since 1 June 1998, residents of Taiwan travelling to and from the Mainland on the strength of Travel Permit for Taiwan Residents Travelling to and from the Mainland (commonly known as "Travel Permit for Taiwan Residents") may also enter and stay in Hong Kong for up to seven days for transit purposes. In the past three years, an average of 1.21 million residents of Taiwan entered Hong Kong through this arrangement each year.
- (b) In formulating and reviewing its visa policy, the Government of the Hong Kong Special Administrative Region (SAR) will ensure that the relevant measures, while maintaining effective immigration control, accord maximum travel convenience to *bona fide* visitors and business travellers so as to attract more visitors to visit Hong Kong, thereby promoting inbound tourism and local economic development. When considering whether to grant visa-free access to nationals of a country or territory, we will take into account, in addition to immigration control and security considerations, such factors as bilateral economic and trade relations, reciprocity and the economic and political conditions of that country or territory.

Whether a visitor is holding a visa or an entry permit for the Mainland or other countries or territories is only one of the relevant factors to be considered for the purposes of immigration control.

In deciding whether nationals of a country or territory are to be granted visa-free access, we also have to take into account other factors as mentioned above, including security, bilateral economic and trade relations, reciprocity and the individual circumstances of that country or territory.

The SAR Government and the Bulgarian Government have signed an Agreement on Abolition of Visa Requirements and it will come into effect on 14 July this year. At present, nationals of about 170 countries or territories may visit Hong Kong visa-free. We believe that the existing visa policy has struck an appropriate balance between providing travel convenience and promoting economic and trade activities on the one hand, and maintaining effective immigration control and safeguarding Hong Kong's security on the other. We will continue to review our policy from time to time and make appropriate adjustments in the light of changes in circumstances.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, it can be seen from the main reply given by the Secretary earlier, visa-free transit is indeed a good measure which brings about a total of 2.5 million inbound tourists from these two places every year, accounting for more than 10% of the annual inbound tourists. Given the great benefits brought about by the policy of visa-free transit, may I ask the Secretary whether he has considered the possibility of extending the application of the policy to dozens of other countries which do not enjoy visa-free transit treatment? Even if the policy cannot be extended at one go, is it possible to select a few major countries as targets so that greater benefits can be brought to Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, it is possible to do so. However, we have to consider the benefits to be brought to Hong Kong's tourism and economy once the immigration policy is relaxed. At the same time, a balance should be struck between a relaxation of the policy and its impact on Hong Kong's internal security or immigration control. If it is considered that, after balancing the two sides, the added benefits outweigh the security or immigration control considerations, we will definitely proceed with it.

**PRESIDENT** (in Cantonese): Mr YOUNG, do you wish to wait for another turn to ask another supplementary question? Please press the button and wait for your turn.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, may I ask the Secretary of the particular reasons for saying in part (a) of the main reply that both Taiwan visitors holding Travel Permit for Taiwan Residents or mainland residents are permitted to enter and stay in Hong Kong for up to seven days only? Is there room for relaxation of such to 14 days to one month? Given that mainland residents can travel to Taiwan via Hong Kong (though it is not allowed for the time being), whereas Taiwan residents can travel to the Mainland via Hong Kong or mainland residents can travel to Thailand via Hong Kong, do we have the conditions for relaxing their limit of stay in Hong Kong? Why the period of stay is limited to just seven days? Can the limit be relaxed to two weeks or even one month? Is there such room for relaxation?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, there is certainly room for relaxation. As stated in my reply to the supplementary question raised by Mr Howard YOUNG, we have to take various factors into consideration. For example, should their limit of stay in Hong Kong be relaxed, and what is the impact on immigration control once it is relaxed? According to the statistics provided by the Hong Kong Tourism Board, the average period of stay of visitors from the Mainland or Taiwan is only one day or at most two, or at a maximum of two days or at most three. Therefore, the existing arrangement of allowing them to stay in Hong Kong for not up to seven days can meet the needs of the majority of visitors. As to whether this limit can be relaxed, the answer is certainly in the affirmative. The granting of a period of stay of either seven days or 14 days does not make any difference to these visitors, but once the limit of stay is relaxed, it will facilitate those entering Hong Kong to engage in illegal activities (for example, prostitution), thereby affecting Hong Kong's internal security or immigration control. My response to Mr SIN Chung-kai is that frequent reviews will be conducted, and a balance must be struck between facilitating visitors and maintaining effective immigration control and internal security.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, in the last paragraph of the main reply, the Secretary mentioned that the SAR Government had signed visa-free agreements with 170 countries or territories. May I ask the Secretary with which countries the SAR Government is currently conducting such negotiations? Which countries are facing strong demands from their residents? Have we signed any agreement with these countries?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, first of all, I have to clarify that we have not signed visa-free agreements with 170 countries or territories. In the main reply, I only mentioned that the nationals of 170 countries or territories may visit Hong Kong visa-free, because they were granted visa-free entry to Hong Kong through administrative means in many cases, which obviated the need to sign bilateral visa-free agreements.

Regarding Mr LAU Kong-wah's question about the countries or territories with which we are currently conducting negotiations, my response is there are indeed a few of them, but I do not have the list in hand. Yet, I can name a few off the cuff, and they include such larger countries as Brazil and Mexico of South America. All along, we have been discussing with the United States on the possibility of providing convenience to Hong Kong residents by granting visa-free treatment as we have unilaterally granted United States passport holders visa-free entry to Hong Kong, while SAR passport holders visiting the United States still have to apply for visas for the time being. We have been liaising with the United States Government to explore the possibility of granting Hong Kong residents the same visa-free treatment.

**MR JEFFREY LAM** (in Cantonese): *Madam President, the Secretary mentioned earlier that economic and trade relations is one of the considerations. We witnessed an increase of over 51% in the export freight volume to the former Soviet Union last year, while that of the freight export to Iraq also exceeded 32%. As a result, some airlines also intended to introduce direct flights to these two countries as well. However, the visa arrangement has rendered this impossible for the time being. In the light of these major economic considerations, may I ask the Secretary whether he will consider expediting the granting of visa-free treatment to visitors from these countries?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the SAR Government will review its visa policy regularly to ensure that while maintaining effective immigration control, maximum travel convenience is accorded to *bona fide* visitors and businessmen coming to Hong Kong for business so as to attract more visitors or investments from outside Hong Kong, thereby promoting inbound tourism and economic development.

During the review, suitable adjustments to the visa policy will be made in the light of changes in circumstances. In addition to immigration control and security considerations, we will also take into account the bilateral economic and trade relations (that is the relations mentioned by Mr Jeffrey LAM earlier) and reciprocity. We hope that after giving the countries or regions concerned with the convenience of visa-free entry, they will grant the same visa-free treatment to Hong Kong residents, if possible. On the other hand, consideration should also be given to the stability of the economic and political environment of the countries or regions concerned. We have recently reviewed the visa policies on Russia and Iraq, and considered that the existing visa arrangement should be maintained because of security reasons. We believe the existing visa policy has struck an appropriate balance between providing travel convenience and promoting economic and trade activities on the one hand, and maintaining effective immigration control and safeguarding Hong Kong's security on the other. We will expeditiously process all inbound visa applications, and continue to make necessary changes to the policy in the light of changes in circumstances.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, if I have not misinterpreted it, applications for visa in the Mainland are indeed more difficult than applications under the Individual Visit Scheme (IVS). The Secretary said that he had to take into account security reasons, but there are already plenty of mainlanders coming to Hong Kong under the IVS. Can a mainlander travel from the Mainland to Thailand or elsewhere via Hong Kong as conveniently as mainland visitors do in coming to Hong Kong under the IVS? I am aware that the Secretary has considered and balanced various factors. Inbound visitors from the Mainland may not have to stay for too long, but seven days may not be enough for businessmen, and therefore they should be given greater flexibility. At present, inbound visitors from the Mainland will stay an average of one to two days. Will the internal security be seriously affected if the limit of stay is*

*relaxed? I cannot see the possibility of this happening. My supplementary question is: Can the Secretary seriously consider relaxing the seven-day limit to 14 days or even one month?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I wish to thank Mr SIN Chung-kai for the supplementary question. I must explain here our policy and the Mainland's exit policy. The purpose of our existing visa policy of allowing visitors to stay visa-free for seven days is to provide convenience in transit to mainland passport holders who travel to a third country or region via Hong Kong, or those returning to the Mainland from overseas via Hong Kong. This is the main point. As for mainland residents, two-way exit permits must be obtained regardless of whether they are coming to Hong Kong for visits or business. This is the policy of the SAR Government, which is also the policy of the mainland Government.

The issuance of a passport by the Chinese Government is only for its national to travel abroad, but not Hong Kong, because Hong Kong is now part of China. Although Hong Kong implements "one country, two systems", we are still part of China. If mainland residents want to do business in Hong Kong, they should not enter Hong Kong as if they were in transit on the strength of a People's Republic of China passport, and immediately returned to the Mainland after doing business without travelling to a third country. This is not compatible with the exit policy and control of the Mainland and we would not encourage mainland residents to do this.

If there is a genuine need for them to make business trips to Hong Kong, a permit for multiple-journeys between Hong Kong and the Mainland is currently available to them. This is a two-way permit for multiple-journeys designed for business visit endorsement. In the past, some people abused the business visit endorsements by "engaging in illegal employment" while in Hong Kong. However, this kind of two-way permit, which is valid for multiple-journeys, are designed for mainland residents who need to come to Hong Kong to do business or visit relatives and then return to China. They should not be treated as transit visitors on People's Republic of China passports if they just come here for business or other purposes.

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

**MR HOWARD YOUNG** (in Cantonese): *Madam President, Mr Jeffrey LAM just pointed out the point of breakthrough, and that is Russia. The Secretary said he would have to take into account visa-free treatment, security reasons as well as economic and trade relations. However, in fact I did not seek "to reach the goal in one step" with respect to granting visa-free treatment to all countries, but just allowing visitors to enter Hong Kong in transit on People's Republic of China visas. Will the Government consider making a breakthrough? In particular, Chinese President HU Jintao has recently visited Russia and the relations between both countries is harmonious. Some held that it was very easy for Russia residents to apply visas for visiting China, but it was extremely difficult to apply one for visiting Hong Kong.*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I would like to thank Mr Howard YOUNG for raising this supplementary question. Maybe I will discuss the issue with our colleagues in the Immigration Department and the police after the meeting, and examine if there is room for relaxing the relevant provisions. As regards the granting of permission to Russian nationals to visit Hong Kong, I can tell Mr Howard YOUNG that discussions have been held with the Russian authorities on reciprocal visa-free treatment. However, the issue is rather complicated because apart from security consideration, reciprocity is another concern.*

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

### **Way of Handling Detainees**

4. **MR ALBERT HO** (in Chinese): *Madam President, it has been reported that the police arrested black market labourers suspected of being engaged in prostitution during a large-scale anti-vice operation mounted in June this year, and took them to a police station. As there was insufficient space in the detention room of the police station, the detained labourers were put in a "Temporary Holding Area" (THA) which was poorly equipped for detention, and were left to be freely videotaped and taken pictures of. In this connection, will the Government inform this Council whether:*

- (a) *the police adopted similar practices for detaining suspects arrested in large-scale anti-crime operations in the past five years; if so, of the reasons for that;*
- (b) *it has assessed if the above practice of detaining suspects has infringed upon privacy and the rights protected by the International Human Rights Treaties (IHRT); if an assessment has been made, of the outcome; and*
- (c) *the police will consider amending the existing internal guidelines on the detention of suspects and the way of handling detainees, including transferring suspects to detention rooms of other police stations when there is a large number of suspects, enhancing the facilities of THAs for better privacy and specifying clearly the longest duration of detention in THAs?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Administration is fully aware of the public concern at the incident referred to in the Honourable Member's question. As the Commissioner of Police has indicated publicly, he has arranged for a review.

Where the duty officer of a police station is not able to process an arrested person immediately, for example, when there are too many arrested persons waiting to be processed at the same time, he has to ensure that the arrested person is detained in a safe environment. For the purpose, a police officer of the rank of Superintendent or above may designate an area inside a police station as a THA for the temporary holding of detained persons pending processing by the duty officer. The rights of an arrested person detained in a THA are the same as those of other detainees.

The THA involved in the incident, that in the Tsim Sha Tsui Police Station, is the only outdoor THA. Given public concern, the police have already discontinued using that THA.

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

- (a) THAs have been used in the past where the circumstances warrant, for example, in operations involving large-scale arrests. As far as



the THA inside the Tsim Sha Tsui Police Station is concerned, it has been used once or twice a year on average.

- (b) The police fully respect the privacy and rights of arrested persons detained in police stations. All detention facilities, including THAs, are not accessible to the public and cannot be readily viewed from a public place.
- (c) A review of temporary detention facilities is currently underway. It will look into such issues as the conditions of those facilities and the possibility of utilizing detention facilities of other police stations in future. As far as detention time is concerned, it is a general rule that the processing of arrested persons should be undertaken as expeditiously as possible, and that the length of time that a person may be detained, whether in a THA or other detention facility, should be kept to the minimum. Procedures are also in place to ensure that the length of time arrested persons are held in detention facilities will be regularly reviewed to ensure that arrested persons will not be detained beyond what is necessary.

**MR ALBERT HO** (in Cantonese): *Madam President, first of all, I would like you to make a ruling, for the Secretary has not answered part (b) of my main question in his main reply earlier. That part clearly asked the Secretary whether the incident had infringed upon the privacy and the rights of the detainees protected by the IHRT. However, in the main reply, the Secretary only stated the general case that the police would not do anything that might infringe upon human rights, but gave no reply to part (b) of the main question. Will the Secretary first answer this part before I put my supplementary question?*

**PRESIDENT** (in Cantonese): Mr Albert HO, please state your supplementary question at the same time. In fact, the situation mentioned by you happens very often. The same situation did arise and the Member concerned did wish the Secretary to first make clarification before he/she raised a supplementary question. However, to save time and considering that many Members want to ask supplementary questions, I would rather not dwell on this, so please put your supplementary question together now.

**MR ALBERT HO** (in Cantonese): *Madam President, in fact, if the Secretary could first answer that part, it will be easier for me to follow up. However, I respect your instruction.*

*Madam President, we know clearly from the main reply that those so-called open THAs are located outdoor, meaning that a large metal cage is used to detain quite a number of persons. Regarding the incident mentioned in the main question, some women suspected of being engaged in prostitution were detained by the police in a cage where people outside could see them and a number of reporters could even take photographs of them openly. Madam President, these photographs are published clearly in the magazine now I am holding, and the front pages and the second pages of a number of newspapers the next day also carried these photographs. May I ask the Secretary, in respect of the incident in relation to which a number of Members and members of the public strongly considered that privacy of individuals had been infringed upon, individual dignity being insulted and Hong Kong's reputation as a civilized city tarnished, will the Secretary give an open apology to the general public of Hong Kong and the persons affected, and undertake that no future cases will be handled this way? What I request is an apology and an undertaking.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have indeed answered Mr Albert HO's question. In part (b) of my main reply, I said, "the police fully respect the privacy and rights of arrested persons detained in police stations." THAs are located in areas inside police stations and we do have indoor detention facilities, but at the time of the incident, all indoor facilities were occupied, and thus the outdoor THA was used. However, these temporary facilities are located in areas not accessible to the public, which cannot be readily viewed from a public place, and no reporters are allowed to take photographs there. But, unfortunately, reporters somehow managed to take those photographs; as we all know, reporters here are very sharp. After the incident, we felt most sorry about it and the Commissioner of Police had given his apology for this. Members have to understand that, during the operation, the police had acted in full compliance with the law and the THA in question satisfied all statutory requirements. We absolutely have no intention to infringe upon the privacy of the detainees. I can assure Members about this.

**MR ALBERT HO** (in Cantonese): *Madam President, will the Secretary clarify whether he is suggesting that he needs not make another apology because an apology has already been made?*

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have nothing to add. The Commissioner of Police does feel sorry about the incident.

**MS AUDREY EU** (in Cantonese): *Madam President, will the Secretary explain how those reporters can be so sharp as to be able to take photographs of the situation at that time? As the Secretary said in part (b) of the main reply that THAs could not be readily viewed from a public place, will the Secretary explain from where those reporters could have taken those pictures?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I cannot answer this for the reporters. However, if reporters stacked up articles outside to become high enough to look over the wall, or got to a high spot, they might see the situation inside the THA. Members know the situation of our workplace, if one can look over the wall, one will be able to see the situation inside.

**MR ALBERT CHENG** (in Cantonese): *Madam President, I would like to follow up Mr Albert HO's supplementary question. The Secretary said earlier that the Commissioner of Police had already made an apology about the incident, but Mr Albert HO had also asked in his supplementary question whether the police or the Government, after reviewing this incident, could ensure that the same mistake would not be made in future as far as infringement of human rights and privacy are concerned?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have already said earlier that the police absolutely had no intention to infringe upon the human rights and privacy of detainees. After this incident, the police have already ceased using the THA in question.

**MR ALBERT CHENG** (in Cantonese): *Madam President, the Secretary just said that the THA in question has ceased to be used now, but my supplementary question asked the Secretary whether he could ensure that the same mistake would not be made in future?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, the police are now reviewing the incident to identify areas where improvement is necessary. Certainly, upon the completion of the review, we will definitely come up with some improvement measures.*

**MR JAMES TO** (in Cantonese): *Madam President, as far as I know, the operation carried out on that night was a large-scale one and the officers concerned thought that outstanding achievement had been made. They thus made arrangements for reporters to take photographs and explained the course of the operation to them, hoping that reporters would give extensive coverage to the operation to show that a successful operation had been conducted. The so-called apology tendered by the Commissioner of Police only suggested he was sorry if the incident gave the public such an impression. May I ask the Secretary for Security, first, if he has tried to understand whether front-line officers had intentionally made arrangements for reporters to take photographs; second, in view of the occurrence of this incident, if he will, on behalf of the Government, tender an apology here officially to the persons affected and the public?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I do not know whether Mr James TO's supplementary question is suggesting that some police officers, in order to claim credit for their achievement, deliberately infringed the privacy of some detainees by holding them in the THA and allowing reporters to take photographs of them? Insofar as I understand it, this was not the case. In respect of the occurrence of this incident and the consequence thus caused, I feel deeply regretted personally.*

**MR JAMES TO** (in Cantonese): *Madam President, may I clarify my supplementary question?*

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

**MR JAMES TO** (in Cantonese): *Madam President, my supplementary question did not say that the police had deliberately held those detainees there, but the actual situation was that really a large number of persons were arrested, so they were detained there and arrangements were made for reporters to take photographs there. Had the Commissioner of Police investigated the case before answering this question?*

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

**SECRETARY FOR SECURITY** (in Cantonese): I have nothing to add. However, I may tell Mr James TO that the police are now reviewing the entire incident and examine in which aspects we can do better.

**PRESIDENT** (in Cantonese): Mr James TO, please wait for another turn.

**MS EMILY LAU** (in Cantonese): *Madam President, this incident is really a shame. That is why I also asked a question about this last week. May I ask, again, if the Secretary has ever seen the holding area there? I heard that it is very crowded and the space available becomes even smaller after the cage has ceased to be used. In some holding areas, it is so crowded that persons arrested have to remain standing; there is not even space for them to sit down, not to mention lying down. May I ask the Secretary whether he considers such situation humane?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have been to the holding areas. At present, the police have 50 indoor THAs. However, I can tell Ms Emily LAU that these holding areas are mainly used by the police to temporarily detain suspects arrested. The police should complete

all necessary processes in the shortest time possible. These suspects will either be charged or released on bail. Therefore, the duration of detention is very short. Ms Emily LAU said just now that, more often than not, detainees did not even have the space to sit down. But I think this situation is not common, and it happens only when a lot of people are arrested and that indoor detention facilities are fully occupied. It is exactly for this reason that such so-called outdoor THAs have to be used, as in the case happened a fortnight ago. We are now reviewing the situation to see whether we can make use of detention facilities of other police stations if similar circumstance arises in future. That is to say, some detainees will be transferred to other police stations to make available more detention facilities in the police station where an operation will be carried out. This may thus avoid overcrowding or a repeat of the incident occurred at temporary holding facilities a fortnight ago.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I asked whether the situation in holding areas is humane if they are so crowded that detainees do not even have the space to sit down.*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, my answer is: first, the arrested person will only be held there for a very short period of time; second, the so-called situation that arrested persons did not even have the space to sit down is neither common nor frequent. Having said that, we are now working on a solution to the problem and see whether some suspects can be transferred to other police stations for detention if similar situation does arise in future.*

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, I do not know whether there are cases where detainees can hardly find a place to stand in the holding area, but I was once held in a detention room because of my involvement in a protest related to the Eastern Harbour Crossing. At that time, I was stung by the fleas there and the bites can still be seen today. There are certainly a lot of fleas in those places. The Secretary for Security needs not answer this; but I consider he really should follow up .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, then, do you have any supplementary question to put forth?

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, my supplementary question is: (laughter) the Secretary, in reply to Mr James TO, said that he really did not know the police had arranged for reporters to take pictures, is that right? I find the reply of the Secretary unclear. May I ask the Secretary, or ask the Secretary via the President, even if the privacy of those detainees have not been infringed, whether it is not humane to put persons suspected to be engaged in crimes in an outdoor cage, exposing them to the misery of scorching sun or lashing rain? I have seen in movies that Negro slaves were treated this way. They were locked in metal cages under the scorching sun or lashing rain so that people could select them easily. May I ask the Secretary whether he thinks it is humane to lock a man in a cage exposing him to the elements? If it is not humane, should the Secretary not apologize to these people who had to endure such inhuman treatment as exposure to the elements in this age?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think we have to consider the facts of the case on that day. On that day, a lot of people were arrested and the detention room of the police station did not have sufficient space to hold all of them, so the outdoor THA was used. At that time, detainees were only held there by the police for a short period of time, but not as Mr LEUNG Kwok-hung suggested that they had been locked there for exposure to the elements as punishment.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, no, it has not been answered. It was a sunny day; there was no rain but the sun was fierce. But even if people were only detained for "a short period of time", it was not an explanation.*

**PRESIDENT** (in Cantonese): Mr LEUNG, you have to put your question instead of stating the situation on that day. Please state your question now.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Madam President, may I ask whether it is humane to lock those people there, leaving them to the burning sun?*

**PRESIDENT** (in Cantonese): Mr LEUNG, please be seated. Secretary for Security, do you have anything to add any further?

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think the police had already done their level best in the circumstances, exercising their power in the most humane conditions. Certainly, in hindsight, during the course of the entire incident, we surely could have done better in certain aspects.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

**MISS TAM HEUNG-MAN** (in Cantonese): *Madam President, the Secretary said earlier that the authorities had 50 detention areas, but he repeatedly said in his reply that the duration of detention was very short. May I ask the Secretary whether studies have been conducted on improving the detention facilities of police stations to safeguard the reasonable basic rights, including privacy, of detainees? Moreover, is sufficient space been provided in police stations to hold them, so that they will not be locked outdoor and left under the elements?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the 50 detention areas I mentioned earlier are only indoor THAs. The detention facilities of the police are more than that. At present, in various police stations, there are 247 detention rooms for men in total which can hold 1 156 persons, and for women, there are 125 detention rooms which can hold 538 persons. And as I said earlier, there are also 50 indoor THAs. The police may use these detention rooms flexibly according to the circumstances.



Miss TAM Heung-man asked me just now that whether reviews would be conducted with a view to improving the present detention facilities. I think we will do this regularly. Of course, this may involve resources. As to whether we have the resources to do so, that is a separate issue.

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

**Recruiting People with Political Aspirations to Serve as Administrative Assistants to Directors of Bureaux**

5. **MR SIN CHUNG-KAI** (in Cantonese): *Madam President, when running for the election, the Chief Executive put forth the new idea of recruiting people with political aspirations to serve as administrative assistants (AAs) to Bureau Secretaries. In this regard, will the Government inform this Council:*

- (a) *of the details of this idea, including the entry requirements of AAs, their remuneration package, duties and authority, whether they will be politically appointed and have to share similar political beliefs with the Bureau Secretary they work with, and the requirements of them in respect of confidentiality and prevention of conflict of interests;*
- (b) *whether AAs may be transferred to the Civil Service when they leave office in the future; and*
- (c) *for those who have left the Civil Service to take up AA posts, whether they can be re-employed as civil servants on the terms of their former ranks?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, the Chief Executive said during his election campaign that to meet public expectations that constitutional development should be taken forward, he would consider how we could improve the political structure and enhance public participation in political affairs. Apart from reforming the "hardware" of the electoral systems, we also have to nurture the "software" of political talents in

order to create an environment conducive to furthering constitutional development. The view of the Chief Executive was to develop a political career path for publicly spirited individuals, with a view to grooming talents with wide-ranging experience in politics. The political career path envisaged may be divided into various stages. Initially, those with political aspirations will be given the opportunity to assume government positions at the middle ranking level, for example, as Assistants to Directors of Bureaux. These individuals may be drawn from various sectors, including the political and business sectors as well as the Civil Service. At a later stage, after working for the Government for a certain period of time to gain some experience, they may stand for Legislative Council election. In so doing, they can benefit from the electioneering experience and broaden their political skills as Legislative Council Members. Eventually, they may return to the Government to join the political tier of the Government of the Hong Kong Special Administrative Region (SAR), for example, by filling the positions of Director of Bureaux. In the longer term, these arrangements will help to extend the opportunities for political participation and widen the pool of political talents.

The thinking outlined above is preliminary and requires further study. In considering any proposals, the fine traditions of a permanent, professional and politically neutral Civil Service must be preserved. This will allow civil servants to continue to assist the political tier in formulating and implementing policies and delivering services to the public in an impartial and professional manner.

We appreciate that this is a very important issue with significant implications. The Chief Executive will elaborate on our ideas in the policy address to be delivered in October. We will formulate a comprehensive package of proposals in consultation with senior civil servants and fully consult the views of the Civil Service, political groups and the community, and certainly the views of Legislative Council Members as well, so that any proposals put forth will meet the concerns of the community.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, as regards the idea of AAs mentioned in part (a) of the main question, according to my understanding and knowledge, three types of staff did not necessarily belong to the Civil Service when existing Secretaries of Departments and Directors of*

*Bureaux accepted the government appointment, and they may choose on their own. These posts include chauffeur, personal secretary — No, it should be chauffeur, information officer and personal assistant (that is, PA). They do not necessarily belong to the Civil Service. May I ask what the material difference between the so-called PA and AA is? Since existing PAs also assist in political affairs and routine work, is AA the same as PA? Is this what the idea is? If not, what is the difference between them?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, a number of colleagues who are currently working in the personal offices of Secretaries of Departments and Directors of Bureaux can either be civil servants or non-civil servants. As stated by Mr SIN Chung-kai earlier, these posts include AA, information officer and also PA. Under the existing establishment, PA is in fact the same as our personal secretary, who assists in arranging work schedule, taking phone calls and handling paper work, and so on; whereas AA assists in handling various political matters including clerical work, drafting of papers for submission to the Chief Executive in Council and the Legislative Council, as well as replying Members' questions, and so on. The majority of these clerical and internal policy duties are co-ordinated by them on our behalf, which currently come under their job duties. This is in fact different from the Chief Executive's thinking, which proposed that certain middle ranking posts in the Government should be opened to people outside the Government, including those with political background, from the business sector and other professions. If the post of Assistant to Director of Bureau is created, the actual division of labour in the Government requires detailed study.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, my question is about the difference between them? The Secretary has just answered "This is in fact different....." (Laughter) Can he give an account of the difference? My question is very clear.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, we hope to expand more opportunities for political participation by opening up these middle ranking posts in the Government. On the other hand, Principal Officials will be able to take in more community views and step up

engagement through the Assistants. This is the broad direction of the idea and we will further examine the division of labour in the Government during the summer recess, so that Members will be briefed and reported in detail when the policy address is delivered.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the response of the Government is just repeating what Mr Donald TSANG said when running for the office of Chief Executive. It failed to respond to the legal status of AAs and the manner of implementation. Furthermore, it reveals that senior civil servants have in fact not been consulted on the idea of AA. Will the Government inform this Council whether or not the proposal put forward by the Chief Executive has been thoroughly considered? Will it be aborted at any time? Has the proposal itself been put forward too hastily?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, we have been committed to implementing the political appointment system over the past few years. We, the 10-odd Secretaries of Departments and Directors of Bureaux, have already gained some experience during the process, and we will continue to implement the system in that direction. Regarding the system of political appointment of principal officials, we have opened up new horizons and introduced a new system. Political responsibilities are now separated from the permanent Civil Service and borne by us. We now have to liaise broadly with all walks of life and various organizations to take in more community views, and yet we only have a mere 10-odd people in the political tier, which is indeed very uncommon around the world. We have to further develop political relations and enhance the collection of community views on the one hand, while preserving the most important political neutrality and permanent professional system of Hong Kong's Civil Service on the other. We will take into account these two aspects and proceed with caution.

Apart from conducting a review of the hardware of the electoral system from a wider perspective, I believe the Chief Executive may also wish to expand the opportunities to pool more political talents. We will give full play to the software in this respect and explore new room, so as to increase the opportunities for political participation.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, what the Secretary said just now was in fact nonsense and failed to respond to my question. My question is: Has the proposal of AA been thoroughly considered; will it be aborted at any time and has the proposal itself been put forward too hastily? The Secretary has not answered these questions at all.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, since the questions raised by Mr CHEUNG Man-kwong had implied a critique, which is not based on any facts, it is therefore difficult to respond.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, my question is based on facts. As the main reply given by the Secretary has not responded to the three parts of this question, but merely repeated the Chief Executive's election platform, so may I ask the Secretary whether the proposal has been considered thoroughly and put forward too hastily? My question is well-founded, and maybe you could listen to the playback and confirm what I have just said. I pointed out in my first sentence that the Secretary's main reply had not answered the question raised by an Honourable Member.*

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, the accountability system has been implemented in the past few years because we know it is in the right direction and it is necessary to do so, and we also know it should continue. Therefore, it is time for us to further extend the opportunities for political participation. Of course, since the Chief Executive Election was just over with the new Chief Executive having assumed office, we are prepared to carry out further studies in an active manner in this summer. We will also continue to consult senior civil servants and civil service groups in due course, so as to ensure that a practicable proposal that is conducive to the overall development of the system will eventually be drawn up.

**MR LEE WING-TAT** (in Cantonese): *Madam President, for someone who have participated in politics for 20 years like me, the remarks made by Mr Donald TSANG in running for the election and the reply earlier only give me the impression that it is nothing but an outlandish proposal. May I ask the Secretary, if he or his boss (that is, Chief Executive Donald TSANG) really wants to expand the opportunities of political participation for politicians, whether it would be better to review or submit reports for discussion with candidates who belong to political parties on a more effective way to expand such opportunities, instead of putting forward these "nonsensical" proposals?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): *Madam President, I have already said that we will consult the civil service groups as well as political parties and groups again as soon as a preliminary proposal is ready. In fact, it can be seen that apart from policy formulation and parliamentary liaison, personal offices of ministerial officials around the world also carry different types of staff — some started out as civil servants, some have political background, while some may have served in different trades before joining the Government. This arrangement can be found around the world, so why is the proposal definitely not practicable here?*

**MS AUDREY EU** (in Cantonese): *Madam President, as stated in the third paragraph of the main reply, the Secretary appreciated that this is a very important issue with significant implications, and will therefore be addressed in the policy address to be delivered in October. Given that the Secretary also agreed that the issue has significant implications, will he consider conducting consultation in the first place — that is to elaborate on the ideas and consult civil servants, the community, political groups and all walks of life, as mentioned in the last part of the third paragraph? Will this be done before the delivery of the policy address? Is this not a case of putting the cart before the horse when the Secretary stated in advance that the issue would be addressed in the policy address to be delivered in October before consultation is conducted? Will this be a repeat of the accountability system practice? Two years ago, the proposal of the accountability system was only briefly mentioned in the policy address, and no progress was made since then. Then all of a sudden, it was tabled and the Legislative Council was requested to "make a final decision" within six weeks. Nevertheless, this does not mean that consultation has been conducted. Will the*

*Secretary consider not to put forward this proposal in the policy address to be delivered in October, but to announce it after consultation is conducted?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, Ms Audrey EU has in fact emphasized on different occasions that we should solicit views extensively, so as to ensure that all new arrangements are practicable and have taken on board views from different groups and all walks of life. We attach great importance to this point, and believe that any proposals made by us will be implemented only after thorough consultation and discussion. Therefore, if we are able to draw up a preliminary proposal this autumn, we will be most willing to bring it out for discussion.

**MS AUDREY EU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My supplementary question is: Is the announcement of the proposal in October without conducting any consultation a case of putting the cart before the horse? In other words, should "a final decision" be made before consultation is conducted? Will the Secretary please answer this part of the supplementary question, Madam President?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, as soon as a preliminary proposal is announced, no matter the policy address is delivered in autumn or October, the public will be given opportunities to comment and examine on it before implementation.

**MR ALBERT HO** (in Cantonese): *Madam President, all these years, the Government has never thought it has the responsibility of grooming political talents in Hong Kong. This time, Mr Donald TSANG suddenly mooted this idea when running for the election, and deliberately announced it during his election campaign where people who could possibly cast votes for him were in attendance — members of the Election Committee. This gives other people an impression that his proposal was apparently appealing to those he would like to solicit support, implying that they themselves or their favourites would have an opportunity to become AAs, thereby giving an impression that it is seemingly a political buy off. Although the Chief Executive has just taken office, in the*

*Secretary's reply given in response to this supplementary question today, it seems that the Government has gone through serious consideration in relation to the implementation of this policy. However, consultation on the policy has yet to be conducted, and we are also uncertain as to whether it has been approved by the Chief Executive in Council. How will the Government allay the worries of the people and assure them that the preliminary proposal is not a political deal that intends to bribe other people?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, being a candidate running for the office of Chief Executive, Mr Donald TSANG had in fact put forth ideas in various aspects when running for the election, including the reorganization of the Executive Council, expansion of the Commission on Strategic Development and proposed creation of the Assistant to Director of Bureau post. The purpose of putting forward these reforms is to take on board extensive public opinions and expand the opportunities for political participation, so as to ensure that the policies implemented by the SAR Government can meet the needs and interests of the overall development of Hong Kong, as well as effectively nurturing political talents in various areas. This is the philosophy put forth by the Chief Executive when running for the election, which also forms part of his political platform. Since he is now elected and in office as the new Chief Executive, the Government will actively consider how best the ideas can be put into practice. Nevertheless, it is necessary for the Government to work with the Legislative Council in administration. Once a proposal is ready, we will report to the Legislative Council for discussion in the relevant panels, and then report to the Finance Committee as appropriate.

Lastly, I have to reiterate that this is not the first time we raised our concern about nurturing political talents in Hong Kong. In fact, when we discussed with Honourable Members about Hong Kong's political development some time ago, I mentioned that in addition to the hardware of the electoral system, consideration should also be given to providing more room for nurturing software, that is, political talents. Therefore, the philosophy is indeed consistent.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question now.



**DR LUI MING-WAH** (in Cantonese): *Madam President, it can be seen from the main reply that it was the good intention of the Government to groom political talents, who may become accountable Bureau Secretaries in future. However, the Government has not followed the normal procedures, but chosen to groom talents on a circuitous path. Following this path, it is initially the recruitment of people from the community to work in the Government for a period of time, who will then run for the Legislative Council Election. After being elected to the Legislative Council, it is hoped that they can assume the posts as Principal Officials under the Accountability System. This path is punctuated with twists and turns. However, the problem is how it can be guaranteed that these groomed candidates can be elected to the Legislative Council. As we all know, it is very difficult to win in the Legislative Council Election, regardless of the channels through which they are returned. Furthermore, the Government should see that there are already plenty of talents in the Legislative Council, so why has it chosen not to groom these publicly spirited talents so that they can serve as Principal Officials under the Accountability System in future? Why has it chosen to nurture those young people to become Principal Officials? This is rather odd.*

**PRESIDENT** (in Cantonese): Dr LUI, what is your supplementary question then?

**DR LUI MING-WAH** (in Cantonese): *Why has the Government chosen to groom talents in a circuitous way than nurturing talents in the Legislative Council? (Laughter)*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I have in fact outlined the three-stage political path in my main reply. First of all, persons who are publicly spirited can take up government positions at the middle ranking level, and will then stand for election when suitable occasions arise. Depending on whether he is successfully elected, we then come to the third step, which is the final stage, where he may return to the Government to join the political tier by serving as Principal Officials under the Accountability System, such as Directors of Bureaux. Everyone has a different

political career path, for example, Dr LUI is a Legislative Council Member right from the start, whereas I used to be a civil servant, but now I am a Director of Bureau. I believe that our future paths will also be different. It is not necessary for everyone to go through all the three stages, we just want to brief Honourable Members on the broad direction of the preliminary idea. The background and political career can vary from one individual to another, and yet we just hope that the opportunities for political participation can be expanded on the whole, so that everyone can strive to become a Principal Official under the Accountability System or Legislative Council Member, and to serve the community. Furthermore, there were similar arrangements in the past. For example, Mr Henry TANG was a Legislative Council Member with political party background before assuming the office as a Secretary of Department. Therefore, there are precedents to follow and to refer to. I hope that from now on, we will walk on the same path, and that it will become wider and wider as we proceed further. Thank you, Madam President.

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

### **Migratory Birds Spreading Avian Flu**

6. **MR VINCENT FANG** (in Cantonese): *Madam President, in the past few months, there have been cases in which wild birds and poultry in farms in the Mainland and some Southeast Asian countries collectively died of avian flu. In this connection, will the Government inform this Council:*

- (a) *of the approximate number of migratory birds staying at or passing by the Mai Po Nature Reserve each year and the places from which the birds mainly come;*
- (b) *how the Administration monitors the health of the migratory birds and how it can tell whether they carry avian flu virus; and*
- (c) *of the measures taken to prevent the migratory birds from passing avian flu virus to visitors at the Mai Po Nature Reserve and the Hong Kong Wetland Park, and to the poultry kept in farms?*

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

- (a) At present, some 100 000 migratory birds winter at or pass through Mai Po every year, of which most are waterbirds. Migratory waterbirds may be divided into three types:

Winter visitors: These are mainly ducks, gulls, cormorants and egrets. They breed in the Russian Far East and then head south to spend the winter along the coast of China (including Mai Po). They usually arrive in Hong Kong in late October and fly back north in next February or March.

Passage migrants: They are mainly waders such as sandpipers and plovers, which breed mostly in Russian Far East as well as northern China before flying south to winter in Southeast Asia and Australia. In spring (between late March and May), some 20 000 to 30 000 waders fly north enroute Mai Po for breeding. In autumn (between July and September), they also pass through Mai Po on their flight to the south to their winter habitat.

Summer visitors: Only a small number of waterbirds migrate to Hong Kong in summer to breed. One such example is Yellow Bittern which comes to Hong Kong to breed between April and September.

- (b) At present, staff of Agriculture, Fisheries and Conservation Department (AFCD) monitors the wild birds at Mai Po Nature Reserve to look out for unusual signs every day. When any dead, sick or injured bird is found, it would be sent to the laboratory for testing immediately. During winter, the AFCD would collect samples of wild bird droppings at the gathering places of wild birds to test for H5 and other highly pathogenic avian influenza (HPAI) viruses every day. As for summer when there is a significant drop in wild bird population, the AFCD would collect samples as and when appropriate. In addition, the University of Hong Kong also regularly collects wild bird droppings at Mai Po Nature Reserve and ecological compensation area of the Kowloon-Canton Railway

Corporation's Sheung Shui to Lok Ma Chau Spur Line at Lok Ma Chau for the above tests.

- (c) Nearly 100 000 migratory wild birds pass through Hong Kong on their migration between north and south. Whilst most migratory waterbirds that winter in Hong Kong congregate at the mudflats at Deep Bay, other migratory birds choose to make their brief stopover at less populated rural areas to rest and feed. Therefore there is little chance for people to come in close contact with migratory waterbirds and birds in their daily lives. In fact, none of the wild bird samples taken from Mai Po Nature Reserve and the Wetland Park under the current wild bird surveillance programme has tested positive for H5 or other HPAI viruses.

To prevent migratory birds that may harbour avian influenza viruses from spreading the virus in poultry farms, all local poultry farms have now installed bird-proof facilities and local poultry has been vaccinated to reduce the risk of contracting avian influenza viruses from migratory birds.

To prevent humans from contracting avian influenza, the Government has focused on public education. During the annual peak season for migratory birds, the AFCD would keep a close eye on the migratory birds congregating in Hong Kong and step up publicity and education efforts, such as putting up posters and notices at the entrance and visitors centres of Mai Po and Hong Kong Wetland Park and to remind people to avoid direct contact with wild birds, their feathers and droppings. On the webpage about prevention of avian influenza, people are also advised to avoid contact with birds and poultry as well as their droppings; avoid going to bird parks and farms; refrain from feeding pigeons in parks, and so on. With these measures of the Government and the co-operation of the public, the risk of avian influenza spread by migratory birds and being contracted by humans may be minimized.

**MR VINCENT FANG** (in Cantonese): *Madam President, wild birds are the natural carriers of avian flu virus. However, it appears that the Government is*

*not worried about the possibility of wild birds spreading the virus to members of the public. On the other hand, all live chickens available in the markets have been vaccinated. Do live chickens stand a lower chance of becoming carriers of avian flu virus than wild birds? Why are we taking such a lax attitude towards wild birds, while we are so stringent with live chickens?*

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

Madam President, we are not deliberately taking a lax attitude towards wild birds. We simply do not have any control over them, as we cannot treat them with vaccinations. However, I would like to explain why we are putting so much effort on live chickens. Among the reasons, first of all, the regions surrounding Hong Kong are high-risk areas for spreading avian flu virus. Second, unlike live chickens, wild birds rarely congregate in hundreds or thousands. Since there could be a large congregation of live chickens in a very small area, the risk is therefore much higher in comparison. If a live chicken is infected with avian flu virus, the other chickens around it stand a good chance of getting infected as well. Therefore, we have to monitor the live chickens closely for the possibility of spreading avian flu virus, with special attention on the risk of infecting human beings. I do not wish to reiterate the grounds here, because explanations have been given in this Council on several occasions already, but I do hope Mr FANG can understand this: It is not our intention not to exercise control over the wild birds; however, if they can be controlled, they will not be called wild birds.

**DR JOSEPH LEE** (in Cantonese): *Madam President, given that Deep Bay and the vicinity of Mai Po are places where migratory birds congregate, may I ask the Secretary of the number of poultry farms in the vicinity of Mai Po and the special measures to be taken during the peak season of migratory birds congregating to prevent the spread of avian flu virus from the migratory birds to local poultry farms?*

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

Madam President, I do not have detailed figures on poultry farms. And I do not know which areas are being referred to by Dr LEE as the vicinity of Mai Po. Generally speaking, migratory birds can travel very long distances and they

would stop at places where there is food and water. Therefore, our measures target not only at poultry farms in the vicinity of Mai Po but also all the poultry farms throughout Hong Kong. All poultry farms have adopted isolation measures to prevent live chickens from coming into contact with migratory birds or wild birds. Therefore, all poultry farms in Hong Kong must observe a series of guidelines and conditions. We will keep conducting sample avian flu tests for live chickens being raised in the farms and in other places to ensure we have taken adequate preventive measures in this regard in Hong Kong.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, some information shows that there are 440 different species of birds in Hong Kong, of which over 300 species have been spotted in Mai Po. Of those migratory birds ever spotted in Mai Po, 20% of them usually stay in Hong Kong without leaving, whereas 80% of them make a brief visit to Hong Kong annually and stay here for two to three weeks. Under such circumstances, are there any good methods or plans by the Government for monitoring those birds that usually stay in Hong Kong? For birds that stay in Hong Kong only briefly, the Government has no way of monitoring and controlling them. But for some of the birds that stay in Hong Kong for a long period of time, are there any better ways for the authorities to cope?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as I have said just now, we keep monitoring the situation on a regular basis. In winter in particular, when there are more birds, we will keep a close watch on the conditions of the birds in the Mai Po area on a daily basis to see whether there are any ill birds. Furthermore, samples of wild bird droppings will be collected to test for H5 and other highly pathogenic avian flu viruses. Over the past year, that is, in 2004, 14 000 samples had been tested, among which only three were found positive for H5 virus. We have been keeping a close watch, but there is no sign indicating a trend that the problem would affect any specific type or specie of wild birds in particular. The three relevant samples were taken from three different species of wild birds.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, we all know that recently in Qinghai ..... I am aware of that ..... I just want to .....*

**PRESIDENT** (in Cantonese): Mr WONG, you only need to point out the part of your supplementary question that has not been answered.

**MR WONG YUNG-KAN** (in Cantonese): *The part that has not been answered is — the Secretary has answered the part in relation to Mai Po, but my supplementary question is about the 20% of those migratory birds which would stay in Hong Kong for a long period of time. As far as I know, there are migratory birds congregating in some scarcely populated areas such as Tai Po and some other coastal areas. Now that the Secretary just takes care of Mai Po, whereas other areas are ignored. It is not right.*

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, you may only ask the Secretary to reply the part of your supplementary question that has not been answered, which is — what measures the Government has in stock for finding out whether those 20% long-staying migratory birds in Hong Kong are infected with avian flu virus. Right? Secretary, do you have anything to add?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Let me reiterate that we will keep a close watch on their conditions, look out for ill birds and collect samples of bird droppings. Meanwhile, if any dead bird is found in either the city or the suburbs, the AFCD will be informed and they would collect samples for testing.

**MR JEFFREY LAM** (in Cantonese): *Madam President, earlier on Dr SZETO Wing-hong from the Infection Control Unit of Queen Mary Hospital said the odds of avian flu virus infecting human beings through birds is lower than that of other types of influenza virus, yet in the Southeast Asian countries, there have been cases of human infection of the avian flu virus. According to them, the infections were probably due to the consumption of chickens infected with avian flu virus. May I ask the Secretary whether any studies have been conducted on this matter?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, of course there are such studies, but I do not know how detailed Mr LAM would like to know about these studies. In my opinion, Hong Kong ranks first in the world insofar as studies on the avian flu are concerned. We have a lot of academic literature on this subject too. Dr SZETO, whom Mr LAM mentioned just now, and other doctors have made enormous contribution in this area. We believe the most important thing now is to determine whether there has been any genetic change in the avian flu viruses that emerged during the past few years in the Southeast Asia and the neighbouring regions. If there has been no genetic change, then the level of susceptibility or the risk to human beings will remain the same as it was in the past. However, if there has been genetic change in the viruses, then we shall have to study how it will affect the chickens and other animals. In this respect, we will continue to monitor the situation closely, work closely with the Department of Health and the laboratories of the universities, and conduct studies with scientists from the Mainland and the neighbouring regions as well as scientists from the World Health Organization.

**MR JEFFREY LAM** (in Cantonese): *Madam President, have the authorities conducted any studies on the reactions of human beings who have eaten avian flu infected chickens but developed no symptoms?*

**PRESIDENT** (in Cantonese): Sorry, Mr LAM, but this is not part of your supplementary question just now.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, Mr Vincent FANG said "Mai Pu", which means a rice store, and there are not many of them left these days. We do have a Mai Po here in Hong Kong. My supplementary question is: Many people would visit Mai Po for bird watching, and I believe some of these bird watching activities are conducted in close proximity to the migratory birds, has the Government ever assessed the risk of such activities? This is in fact self-contradictory, because Hong Kong people are fond of bird watching, and the World Wide Fund also conducts fund-raising functions through bird watching activities. So, is it necessary to reduce the number of bird watching activities in order to reduce the risk? In fact, many people love bird watching. I love it too.*



**PRESIDENT** (in Cantonese): Secretary, I know you are anxious to give a reply. But next time please do wait for my signal before proceeding to give your answer.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Generally speaking, bird watching is not a high-risk activity. First of all, even if one stays close to the birds, he stays close to the birds just for a brief period of time; after all, he is not in close proximity of a large flock of birds. If a large flock of birds are infected with the virus, that is, when the viral load is high, then of course the risk is high. However, if only one or two birds are sick, I believe the risk of bird watching should be fairly low as long as we do not stay too close to them and refrain from touching them.

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

## **WRITTEN ANSWERS TO QUESTIONS**

### **Construction of Landing Facility in Lei Yue Mun**

7. **MR WONG YUNG-KAN** (in Chinese): *Madam President, the Government is planning to construct a landing facility, a pier or landing steps, in Lei Yue Mun to facilitate tourists in travelling by boat to the seafood restaurants in the district, and the locations under consideration include the seawall about 90 m east of the lighthouse by the Lei Yue Mun Fairway. In this connection, will the Government inform this Council whether:*

- (a) *it has consulted the fishing community and fishermen operating in nearby waters on the location of the facility; if so, of the results of the consultation; if not, the reasons for that, and whether these people will be consulted; if no consultation will be conducted, of the reasons for that; and*
- (b) *the construction of the landing facility near the lighthouse will narrow the Lei Yue Mun Fairway; if so, of the measures it will take to avoid the collision of vessels on the fairway?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, the Tourism Commission (TC) has since 2000 implemented a Tourist District Enhancement Programme in key tourist spots. As Lei Yue Mun is a very popular tourist destination for both visitors and local residents, the TC completed a number of minor improvement works there in 2003 to enhance its streetscape and tourist facilities.

To further leverage on Lei Yue Mun's strengths including its scenic waterfront and famous seafood cuisine, the TC is planning a number of improvement works to further enhance the tourist facilities in Lei Yue Mun's waterfront area. One of the proposals is to provide a new public landing facility to facilitate visitors' access by sea to the seafood restaurants in Lei Yue Mun and the nearby attractions such as the Tin Hau Temple. The new landing facility needs to be able to accommodate sightseeing vessels, convenient to visitors and near to the seafood restaurants and tourism attractions. As the existing landing facility at Sam Ka Tsuen in Kwun Tong is located some distance away from the seafood restaurants, it has seldom been used by visitors or sightseeing vessels.

As regards the proposed landing facility's impact on the fairway of Lei Yue Mun Channel, the Civil Engineering and Development Department in conjunction with the Marine Department have considered all factors carefully, the most important one being marine safety. The proposed site near the lighthouse is located outside the fairway of Lei Yue Mun Channel. It will not obstruct or affect the fairway, or reduce the fairway's navigational width. On the contrary, to facilitate navigation and berthing of sightseeing vessels, the construction works concerned will involve dredging in the foreshore and seabed area in the vicinity of the proposed landing facility, so that the navigational width in its vicinity will be extended by about 30 m.

Enhancement of the Lei Yue Mun Waterfront is a tourism project. The proposed landing facility is a part of the entire project which is at a preliminary planning stage. As Lei Yue Mun is a major attraction in Kwun Tong, we submitted the framework of the proposal to the Kwun Tong District Council (KTDC) in May this year for its initial views. The KTDC has expressed its support for the proposal and agreed that the most suitable location for constructing the proposed landing facility is to the east of the lighthouse. Relevant departments are at present looking into the technical feasibility of the proposal. If the proposal is confirmed to be technically feasible, we will proceed with the detailed design, marine traffic impact assessment and public

consultation. Funding approval from the Legislative Council will be required for the project to proceed.

### **Impact of Magnetic Fields on Human Health**

8. **MR PATRICK LAU** (in Chinese): *Madam President, some members of the public have complained to me that the magnetic fields inside their flats are strong enough to divert the needle of a compass to a particular direction. They suspect that this phenomenon may be attributable to the reinforcement bars inside the walls or the high voltage power lines in the vicinity of their buildings. In addition, some medical experts have suggested that magnetic fields generated by high voltage power lines are hazardous to health. It has also been reported that, according to a study by a cancer research group of the Oxford University in the United Kingdom, the incidence of leukemia among children living within 200 m of pylons is 70% higher than ordinary children. In this connection, will the Government inform this Council whether it knows if:*

- (a) any studies have been carried out in Hong Kong or other countries on the impact on human health of magnetic fields generated by reinforcement bars inside the walls of buildings, high voltage power lines in the vicinity of residential buildings or other environmental factors; if so, of the study results;*
- (b) there are any stipulations regarding the minimum distance between high voltage power lines and residential buildings in Hong Kong or other countries; and*
- (c) there is a set of monitoring indicators in Hong Kong or other countries for assessing whether the levels of magnetic fields in the living environment meet the safety standards and for regulatory control purposes; if so, of the details; if not, the reasons for that?*

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

- (a) As far as the Administration is aware, no local study has been conducted on the impact on human health of magnetic fields

generated by reinforcement bars inside the walls of buildings, high voltage power lines in the vicinity of residential buildings or other environmental factors. The Administration however notes that the link between cancer development and the electromagnetic fields generated by overhead high-voltage power lines has been a subject of scientific studies worldwide. As far as we understand, the studies have not provided conclusive evidence that electromagnetic field exposures would increase leukaemia risks. As regards reinforcement bars in building structures, they do not produce any magnetic fields and we are not aware that any studies has been conducted in other places about the link between cancer development and such reinforcement bars.

We are aware that some United Kingdom researchers have recently conducted the largest study of childhood cancer and power lines to date. While the study has identified, *inter alia*, greater leukaemia risks for children born close to pylons, the authors of the study consider that the relation may be due to chance and may not be supported by scientific explanations. They also do not regard their findings as establishing a definite causal association between childhood leukaemia and exposures to electromagnetic fields from power lines. Moreover, the Health Protection Agency of the United Kingdom considered that studies conducted so far, including the one in question, were unable to establish a conclusive link between childhood leukaemia and exposure to electromagnetic fields as they failed to address other possible factors that might affect the study outcomes, like representativeness of the control groups, and demographic factors that differ between those who live near pylons and those who live further away, and so on.

- (b) With advice from the Electrical and Mechanical Services Department (EMSD) and other relevant departments, Chapter 7 of the Hong Kong Planning Standards and Guidelines (HKPSG) issued by the Planning Department require, on electrical safety considerations, that minimum safety clearance be provided between conductors (including overhead power lines) and adjacent buildings/structures. The respective minimum safety clearances for various voltage levels of conductors are set out below:

<i>Voltage Level (kV)</i>	<i>Minimum Safety Clearance (m)</i>
400	5.5
132	3.7
66	3.2
33	2.9
11	2.9

The HKPSG also require that, for electrical safety considerations, adequate vertical ground clearance be provided in the design of overhead power lines. In determining the minimum vertical ground clearance, reference should be made to the relevant statutory requirements as laid down in the Electricity Supply Regulations (Cap. 406A). The specific requirements, as set out in the HKPSG, are as follows:

<i>Voltage Level (kV)</i>	<i>Minimum Vertical Ground Clearance (m)</i>
400	7.6
132	6.7
66	6.1
33	6.1
11	6.1

In setting the above clearance requirements, reference has been made to relevant standards and guidelines in other places, particularly those in the United Kingdom.

Apart from the electrical safety considerations, the HKPSG also set out the environmental and health considerations with regard to the overhead power lines. Although there is no conclusive scientific evidence to date to support the hypothesis of adverse health effects arising from exposure to power frequency electric and magnetic fields (EMF), the EMF exposure limit promulgated in the guidelines issued by the International Commission on Non-ionizing Radiation Protection (ICNIRP) in 1998 are adopted by the EMSD as a prudent avoidance against the influence of power frequency EMF.

In line with the guidelines issued by the ICNIRP, the following standards on the continuous public exposure limits for power

frequency EMF are recommended to the power companies by the EMSD when the erection of permanent overhead power lines is planned:

- (i) electrical field strength not exceeding 5 kV per metre; and
- (ii) magnetic flux density not exceeding 0.1 millitesla.

The power companies should seek further advice from the EMSD at the design and planning stages of the overhead power lines.

A preferred working corridor for overhead power lines which provides the physical separation and makes allowance for environmental, safety and health considerations has been set. The preferred working corridor for 400 kV and 132 kV overhead power lines on pylons are 50 m and 36 m wide respectively. At the early planning stage of the overhead power lines, the power company concerned should provide the necessary information to the EMSD for consideration.

- (c) The EMF emanating from overhead power lines, known as power frequency EMF, are at extremely low frequency. That said, in the interest of public health, and to protect citizens from the influence of power frequency EMF, we have adopted the relevant EMF exposure limits promulgated in the guidelines issued by the ICNIRP. In planning permanent overhead power lines, the two power companies in Hong Kong must comply with relevant standards set out in the HKPSG regarding the continuous public exposure limits for power frequency EMF.

The EMSD carries out regular on-site measurement of EMF near overhead power lines throughout the territory. So far, the EMF levels measured are below the exposure limits promulgated in the ICNIRP guidelines. In addition, the EMSD will also carry out on-site inspection and measurement of EMF near overhead power lines if requested by the public.

As mentioned in part (a), reinforcement bars in building structures do not produce any magnetic fields, and monitoring indicators are

therefore not developed in Hong Kong. We are also not aware of such indicators being adopted in other places.

### **Property Management Advisory Centres**

9. **MRS SELINA CHOW** (in Chinese): *Madam President, in order to implement the Building Management and Maintenance Scheme (the Scheme), the Hong Kong Housing Society (HS) has set up Property Management Advisory Centres (PMACs) at Sham Shui Po, Central and Western District of the Hong Kong Island and Tsuen Wan, and will establish similar centres respectively at Yau Tsim Mong, To Kwa Wan and Hong Kong East soon, to provide free guidance and professional advice to the public. However, among these six PMACs, only one of them is designated to serve the entire New Territories, where many dilapidated buildings are located. For example, in Tsuen Wan and Kwai Tsing of the New Territories West, which have been developed for over 30 years, many dilapidated buildings need repair. In this connection, will the Government inform this Council whether it knows:*

- (a) *if the above PMACs will handle requests for assistance and enquiries from other districts; for example, whether owners of private buildings in North West of the New Territories can seek assistance from PMACs apart from the one in Tsuen Wan; and*
- (b) *if the HS has assessed if the distribution of the above PMACs will result in uneven allocation of resources; if so, of the assessment results, and whether the HS has plans to allocate more resources to the New Territories so as to assist owners of the dilapidated buildings there to repair their properties?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, it is the owners' responsibility to properly maintain and manage their buildings. The Scheme launched early this year by the HS aims at providing "one-stop" technical and financial support to owners in need so as to encourage and assist them to properly manage and maintain their buildings with a view to improving their living environment and enhancing building condition in the territory.

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

- (a) The HS welcomes owners of private buildings (including those in northwestern New Territories) to make enquiries or seek professional advice regarding building management and maintenance either by phone or in person at any of its PMACs. PMAC staff will try their best to assist regardless of whether the enquiries come from another district.
- (b) The HS plans to set up six PMACs within this year. Four of these centres are in Shum Shui Po, Central and Western District, Tsuen Wan and Yau Tsim Mong respectively and they have already commenced operation. The remaining two centres are scheduled to be opened in Kowloon City and the Eastern District in the second half of the year.

The HS has already taken into account the distribution of the target buildings as well as owners' demand in selecting the locations of PMACs to ensure easy access by the Scheme's target owners. In this regard, the HS has made reference to the relevant information of all buildings in Hong Kong maintained by the Rating and Valuation Department to ascertain the distribution of buildings which are over 20 years' old and within the rateable value limits of the Scheme. Currently about 2 400 HS's target buildings are located in Tsuen Wan, Kwai Tsing and the New Territories, accounting for about 16% of all the target buildings of the Scheme. About 11 500 target buildings are located in Hong Kong Island, Sham Shui Po, Yau Tsim Mong and Kowloon City, accounting for about 74% of all the target buildings. The remaining target buildings are scattered throughout other districts in the territory.

The HS will closely monitor the provision of service by the PMACs and consider allocating more resources to individual districts according to actual needs.

### **Renovation Works for Hunghom Peninsula**

10. **MR RONNY TONG** (in Chinese): *Madam President, it has been reported that the developer which purchased Hunghom Peninsula has recently drawn up a*



*renovation plan for that estate, and is prepared to make substantial alterations to its original fitting-out. On the other hand, according to the sale and purchase agreement signed by the Government and that developer, the latter should obtain the Government's permission before conducting any major renovation and alteration. In this connection, will the Government inform this Council:*

- (a) of the details of the above renovation plan, and whether it has been approved by the Government; if so, whether the authorities have required the developer to pay extra premium; if so, of the amount involved; and*
- (b) given that renovation works of buildings will generate substantial construction waste, whether the authorities have assessed the impact of the waste generated by the renovation works of Hunghom Peninsula on the environment, and how they will tackle the problem?*

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

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

- (a) The developer of Hunghom Peninsula submitted for the Building Authority's approval the relevant building plans concerning the alteration and addition works to the residential and non-residential portions on 12 May 2005 and on 13 June 2005 respectively. The proposed alteration and addition works include the addition of lifts, combination of flats and revision to internal layout, renovation of external walls, and alterations to carpark and emergency vehicular access. The plans are still under processing.

Up to now, the Lands Department has not received any application for lease modification from the developer. Under the established practice, when such an application is received and approved, premium will be assessed by the Lands Department.

- (b) Similar to other construction projects, alteration works of Hunghom Peninsula should comply with all the relevant statutory environmental requirements. The Environmental Protection

Department is very concerned about the environmental impact due to the construction waste generated in the alteration works and has requested the developer to submit a comprehensive waste management plan. This is to ensure that measures are undertaken to reduce the generation of construction wastes requiring disposal, to manage construction waste properly and to reuse and recycle useful materials. The developer has committed to submit the plan after the details of the alteration works are finalized.

### **Vote Canvassing by Candidate**

11. **MR JAMES TO** (in Chinese): *Madam President, will the Government inform this Council whether, during the campaign period of the Legislative Council Election in September last year, the then Chief Secretary for Administration requested the Food and Environmental Hygiene Department (FEHD), the restaurant licence issuing authority, to provide him with the addresses of eateries operated by electors of the Legislative Council catering functional constituency; if so,*

- (a) of the reasons for doing so, and whether they include facilitating a certain candidate in approaching these owners to canvass their votes; and*
- (b) whether the FEHD provided the relevant information, and the legal basis for that decision?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, the then Chief Secretary for Administration, had approached the FEHD to see whether the latter could provide to all candidates of the catering functional constituency more contact information of the concerned constituents to facilitate their liaison. Since the FEHD only provided the business names and addresses of the licensed food premises for public inspection, the information concerning the catering functional constituents had not been disclosed for privacy reasons. The then Chief Secretary was so informed and he did not take the issue further.

**Promoting Use of e-Certs**

12. **DR DAVID LI:** *Madam President, in reply to my question at the Council meeting on 2 June 2004, the Secretary for Commerce, Industry and Technology said that, as at 15 May 2004, 310 000 smart identity (ID) cards with the digital certificates (e-Certs) embedded had been issued. In reply to another question on 25 May 2005, he had advised that the Government would strengthen its promotion efforts to encourage the business community and the general public to use and adopt the e-Certs. In this connection, will the Government inform this Council:*

- (a) among the aforesaid 310 000 holders of smart ID cards embedded with e-Certs, of the number of those who paid the prescribed fee of \$50 to renew the e-Certs upon expiry of the one-year free period;*
- (b) whether the strengthening of its promotion efforts will incur additional expenditure and manpower resources; if so, of the details;*
- (c) of the projected and actual up-to-date acquisition cost per paid e-Cert subscriber incurred by the Hongkong Post of e-Certs under the smart ID card replacement exercise; and*
- (d) whether it has conducted regular reviews on the competitive edge, as far as ID authentication is concerned, of the embedded e-Certs over other new and competing technologies and commercial applications; if so, of the results of such reviews; if not, the reasons for that?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:**  
Madam President, my reply to Dr the Honourable David LI's question is as follows:

- (a) Following the launch of the e-Certs embedded in smart ID card programme in June 2003, a critical mass of e-Cert holders is being created, and more e-business applications which make use of

e-Certs have been or are being developed. To enable more e-Cert holders to benefit from the new e-business applications and services, in particular the use of e-Certs for two-factor authentication in e-banking, we decided in June 2004 to extend the period of free use of e-Certs embedded in smart ID cards for a second year. Those who benefited from this offer include the 310 000 holders of e-Certs in smart ID cards issued between 23 June 2003 and 15 May 2004. Subsequently, we decided to launch a new promotion programme in June 2005 to promote the use of e-Certs in e-banking and other e-commerce applications. To enable all existing holders of e-Certs in smart ID cards to benefit from this promotion programme, we decided to further extend the period of free use of their e-Certs up to 31 March 2006. In other words, the need for the 310 000 e-Cert holders referred to in the question to pay the \$50 fee to renew the e-Certs embedded in their smart ID cards will not arise until the end of the free use period on 31 March 2006.

- (b) The new e-Certs usage promotion programme, launched in June 2005, is estimated to cost about \$10 million. The expenditure covers mainly the purchase of smart card readers and cash coupons, which will be offered to e-Cert holders as incentives to encourage them to use their e-Certs in e-banking and other e-commerce applications. The Hong Kong Post Certification Authority (HKPCA) will not recruit additional staff to implement the programme.
- (c) Since the period of free use of e-Certs embedded in smart ID cards has been extended to March 2006, there are at present no fee-paying holders of e-Certs embedded in smart ID cards. It is thus not possible to calculate the acquisition cost per fee-paying e-Cert subscriber incurred by the HKPCA under the smart ID card replacement exercise at this stage. For Members' reference, we have spent a total of about \$64 million so far on the e-Certs embedded in smart ID card programme (including the costs of system upgrading, establishment of user interface, promotional activities and operation of service counters in smart ID card centres); and 944 000 e-Certs have been issued under this programme as at 31 May 2005. As the abovementioned

expenditure is largely a fixed cost, the acquisition cost per fee-paying e-Cert holder under the smart ID card replacement programme will to a large extent depend on the number of smart ID card holders renewing their e-Certs upon expiry of the free use period in March 2006.

- (d) The Government has been closely monitoring the industry and the technological developments in respect of ID management and electronic authentication. While other authentication applications are available in the market, the public key technology deployed in the production and use of e-Certs remains the most mature technology available which can address all the security issues concerning authentication, confidentiality, integrity and non-repudiation. We will continue to monitor the developments on this front.

### Employment Statistics

13. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, regarding the employment statistics for 2004 compiled by the Census and Statistics Department, will the Government inform this Council of the number of employed persons (excluding unpaid family workers, foreign domestic helpers and employed persons who worked less than 35 hours during the seven days before enumeration due to vacation), broken down by the groupings in the form appended below?*

<i>Number of employed persons</i>						
<i>Monthly employment earnings</i>						
<i>Gender/Hours of work during the seven days before enumeration</i>	<i>Less than \$3,000</i>	<i>\$3,000 to \$4,999</i>	<i>\$5,000 to \$7,499</i>	<i>\$7,500 to \$9,999</i>	<i>\$10,000 or above</i>	<i>Total</i>
<i>Female</i>						
<i>Less than 35 hours</i>						
<i>35 to 49 hours</i>						
<i>50 to 59 hours</i>						
<i>60 hours or above</i>						
<i>Sub-total</i>						

<i>Gender/Hours of work during the seven days before enumeration</i>	<i>Less than \$3,000</i>	<i>\$3,000 to \$4,999</i>	<i>\$5,000 to \$7,499</i>	<i>\$7,500 to \$9,999</i>	<i>\$10,000 or above</i>	<i>Total</i>
<i>Male</i>						
<i>Less than 35 hours</i>						
<i>35 to 49 hours</i>						
<i>50 to 59 hours</i>						
<i>60 hours or above</i>						
<i>Sub-total</i>						
<i>Female and male</i>						
<i>Less than 35 hours</i>						
<i>35 to 49 hours</i>						
<i>50 to 59 hours</i>						
<i>60 hours or above</i>						
<i>Total</i>						

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): Madam President, the relevant statistical table compiled from the results of the General Household Survey conducted by the Census and Statistics Department during the first quarter of 2004 to the fourth quarter of 2004 is attached for reference.

Number of employed persons (excluding unpaid family workers, foreign domestic helpers and employed persons working less than 35 hours owing to vacation/holidays during the seven days before enumeration) by sex, hours of work during the seven days before enumeration and monthly employment earnings in 2004

<i>Sex</i>	<i>Hours of work during the seven days before enumeration</i>	<i>Monthly employment earnings (HK\$)</i>					<i>Total</i>
		<i>&lt; 3,000</i>	<i>3,000 to 4,999</i>	<i>5,000 to 7,499</i>	<i>7,500 to 9,999</i>	<i>10,000 or over</i>	
Female	< 35	63 600	33 300	13 100	4 800	12 000	126 700
	35-49	12 000	55 400	130 200	121 600	369 500	688 700
	50-59	1 500	14 900	49 900	35 000	96 400	197 800
	60 or over	3 400	19 200	74 300	30 800	49 100	176 700
	Sub-total	80 500	122 700	267 500	192 200	527 000	1 190 000

Sex	Hours of work during the seven days before enumeration	Monthly employment earnings (HK\$)					
		< 3,000	3,000 to 4,999	5,000 to 7,499	7,500 to 9,999	10,000 or over	Total
Male	< 35	31 600	28 000	28 700	14 200	15 200	117 800
	35-49	12 700	32 500	121 700	148 500	541 100	856 400
	50-59	2 100	8 900	45 100	63 400	211 100	330 700
	60 or over	5 600	12 800	99 300	84 200	214 100	416 000
	Sub-total	52 000	82 200	294 800	310 300	981 500	1 720 800
Both sexes	< 35	95 200	61 300	41 800	19 000	27 200	244 500
	35-49	24 600	87 900	251 900	270 100	910 500	1 545 000
	50-59	3 600	23 900	95 000	98 400	307 600	528 500
	60 or over	9 000	31 900	173 600	115 000	263 200	592 700
	Total	132 500	204 900	562 400	502 500	1 508 500	2 910 700

Note: Numbers may not add up to the totals owing to rounding.

Source: General Household Survey for 1st quarter to 4th quarter 2004.

### **Inadequate Public Out-patient Service**

14. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, it has been reported that as public out-patient services are seriously inadequate, some elderly patients have to go to public hospitals or clinics well before dawn on the day of consultation and wait there for up to eight hours in order to secure a consultation chip. In this connection, will the Government inform this Council whether it knows:*

- (a) *if the Hospital Authority (HA) has looked into the situation of patients queuing up for consultation chips before the opening hours of public clinics in various districts in the past year; if so, of the findings; if not, whether the HA will do so; and*
- (b) *the HA will assist those chronically ill patients who have finished the medicines prescribed at the last consultation, but are not able to seek follow-up consultation and obtain the required medicines in time because the supply of public out-patient service cannot meet the demand for it?*

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

- (a) As of now, the HA operates a total of 74 General Out-patient Clinics (GOPCs) throughout the territory, which include 18 on Hong Kong Island, eight in Kowloon East, six in Kowloon Central, 23 in Kowloon West, 11 in New Territories East and eight in New Territories West. The take-up rate for the total number of attendance quota made available varies from 70.8% to 99.3%. The figures show that our public out-patient services still have spare capacity to cope with the demand for different sessions in different clinics.

The HA has been monitoring the take-up rate and patients queuing up for "discs" of each GOPC, and would redeploy manpower and resources as and when necessary in order to enhance both the level and quality of the GOPC services.

The GOPCs operate on a system of "disc" allocation for patients on a first-come-first-serve basis and the disc that a patient obtained determines his/her consultation priority. The discs for the morning, afternoon and evening sessions are generally allocated at different times of the day.

We note that there has been media coverage on patients queuing up at the GOPC of Our Lady of Maryknoll Hospital (OLMH). It came to our knowledge that the hospital conducted a survey at the end of last year which indicated that 74% of the responding patients were in favour of changing the practice of distributing the discs for the morning, afternoon and evening sessions at different times of the day to distributing the discs for all three sessions in one go in the morning. As a result of the change, patients of this GOPC have since arrived noticeably earlier and waited longer for a "disc".

In order to find out why patients have to queue up at the GOPC in the early morning, the HA conducted a survey outside the GOPC of OLMH between 7 June and 9 June this year. A total of 449 people were successfully interviewed, representing about 95% of the



queuers. 43% of the respondents were 70 of age or above. According to the findings, around 10% of the respondents arrived at the GOPC between 6.30 am and 7 am. By 7 am, 65% of the queuers had arrived at the GOPC of OLMH.

The survey findings revealed that there were different reasons, including some rather personal ones, as to why patients queued up at the clinic early. Some respondents for example, said that finishing the consultation earlier in the morning would allow them time to attend to other businesses such as household chores. Others said they came early because they could not sleep or were used to getting up early. Some respondents indicated that they queued up early so that they could take up a more comfortable seat inside the clinic while waiting after the clinic opened. Some said that they could not obtain a "disc" for the morning session last time so they had to come earlier; and some expressed that they had finished the medication prescribed in the previous consultation and needed to obtain medicine again for treatment.

In response to the different needs of different patients, the HA has since put forward six measures to reduce their waiting time. These include:

- (1) Distributing "discs" for different sessions at different times;
  - (2) Informing the patients of clinics with spare capacity;
  - (3) Redeploying resources more flexibly;
  - (4) Giving stabilized chronic patients drugs for a longer duration;
  - (5) Allocating appointments after consultation; and
  - (6) Introducing a Pilot Interactive Voice Response System.
- (b) Measures (4) and (5) above are targeted specifically at the needs of chronic patients in the light of their circumstances.

The HA will carefully examine the possibility of giving stabilized chronic patients drugs for a longer duration to reduce the number of their visits. Moreover, at present about 60% of the patients visiting the GOPCs are chronic patients, of whom about one third are given an appointment after each consultation. GOPCs will also consider allocating an appointment time immediately after each consultation for chronic patients who require follow-up consultations to obviate the need for them to queue up again for an appointment within a short time.

### **Financial Support for Single-Parent Families**

15. **MR WONG KWOK-HING** (in Chinese): *Madam President, regarding financial support for single-parent families, will the Government inform this Council:*

- (a) *of the number of single-parent families in Hong Kong and the number of children in these families in each of the past three years (as at 31 May of each year);*
- (b) *of the number of single-parent families receiving Comprehensive Social Security Assistance (CSSA) in each of the past three years (as at 31 May of each year), together with a breakdown by gender of the single parent (that is, father or mother), number of children and area of residence;*
- (c) *among the single-parent families receiving CSSA in each of the past three years (as at 31 May of each year), of the number of those in which the children are eligible for CSSA but their fathers or mothers are not because they have resided in Hong Kong for less than seven years, together with a breakdown by gender of the parents (that is, father or mother), number of children and area of residence; and*
- (d) *whether the authorities have any plans to offer assistance in such areas as finance, employment, housing, after-school care services for children, and so on, to those single-parent families in which the fathers or mothers have resided in Hong Kong for less than seven years and are therefore not eligible for CSSA; if so, of the details?*

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

- (a) The yearly number of single-parent families in Hong Kong and the number of children aged below 18 in these families can be retrieved from the General Household Survey conducted by the Census and Statistics Department. The figures between 2002 and 2004 are listed in the table below:

	<i>Year</i>		
	<i>2002</i>	<i>2003</i>	<i>2004</i>
Number of single parents	65 900	68 900	74 200
Number of children aged below 18 who live with their single parents	90 700	91 900	96 100

Note: The above figures are compiled on the basis of the data of the quarterly General Household Surveys for the corresponding quarters of the year and the data for 2005 is not yet available.

- (b) Single-parent cases are defined as those cases where the single parent is living with at least one child, and all members are eligible for CSSA. Relevant statistics in respect of single-parent CSSA cases in the past three years are listed below:

Table 1: Number of single-parent CSSA cases

	<i>May 2003</i>	<i>May 2004</i>	<i>May 2005</i>
Number of Cases	35 176	38 369	40 027

Table 2: Percentage breakdown of single-parent recipients by gender

<i>Gender</i>	<i>May 2003</i>	<i>May 2004</i>	<i>May 2005</i>
Male	19%	19%	18%
Female	81%	81%	82%

Table 3: Percentage breakdown of single-parent CSSA recipients by number of recipients

<i>Number of Recipients (including the single parent and children)</i>	<i>May 2003</i>	<i>May 2004</i>	<i>May 2005</i>
2	43%	45%	46%
3	40%	40%	39%
4	13%	12%	12%
5	3%	3%	3%
6 or above	1%	1%	1%

Table 4: Percentage breakdown of single-parent CSSA cases by geographical district

<i>District</i>	<i>May 2003</i>	<i>May 2004</i>	<i>May 2005</i>
Central and Western	1%	1%	1%
Eastern	5%	5%	5%
Islands	1%	1%	2%
Kowloon City	5%	5%	5%
Kwai Tsing	7%	8%	8%
Kwun Tong	10%	10%	11%
Mong Kok	3%	3%	3%
North	6%	6%	6%
Sai Kung	4%	5%	5%
Sha Tin	7%	7%	7%
Sham Shui Po	8%	7%	8%
Southern	2%	2%	2%
Tai Po	5%	5%	4%
Tsuen Wan	3%	3%	3%
Tuen Mun	10%	9%	9%
Wan Chai	1%	1%	1%
Wong Tai Sin	8%	8%	8%
Yau Tsim	1%	1%	1%
Yuen Long	12%	13%	14%

Note: Due to rounding, the sum of the percentages may not add up to 100%.

- (c) As for the number of CSSA cases in which the children are eligible for CSSA but their single fathers or mothers are not because they

have resided in Hong Kong for less than seven years, since single-parent CSSA cases are defined as cases where the single parent is already eligible for CSSA, such cases would not be classified as single-parent CSSA cases. As the Social Welfare Department (SWD) does not have information on family members who are not eligible for CSSA, there is insufficient information to compile the relevant figures requested.

- (d) The Administration has always attached importance to the service needs of the disadvantaged groups, including the single parents who have resided in Hong Kong for less than seven years. For those who do not meet the seven years residence requirement but demonstrating real financial difficulty, the Director of Social Welfare could exercise his discretion to waive the residence requirement under CSSA scheme in granting financial assistance. There are also a wide range of services and programmes to cater for their needs, which are categorized as follows:

#### *Financial Support*

For single parents who are in need of assistance, they may apply to the SWD for charitable trust funds through the service units of the SWD or the non-government organizations to help tide over their short-term financial difficulties.

#### *Employment Assistance and Support*

There is no residence requirement for the various employment services provided by the Labour Department. The vocational training and retraining programmes subsidized by the Government or statutory levy (for example, Vocational Training Council, Construction Industry Training Authority, Clothing Industry Training Authority and Employees Retraining Board), Skills Upgrading Schemes and Continuing Education Fund do not have any residence requirement.

#### *Housing Need*

For single parents who have resided in Hong Kong for less than seven years but are unable to meet their urgent need of long-term

housing due to exceptional difficulties or health problems, they may seek for compassionate rehousing by the Housing Department upon the SWD's recommendation for immediate allocation of public housing flats that suit their needs. On the other hand, single parents who are public housing tenants with short-term financial difficulties but are not receiving CSSA may apply for a 50% rental reduction.

#### *Care Services for Children*

Any families in need, including single parents who have resided in Hong Kong for less than seven years, may use the services of the full-time day child care centres/kindergartens for their children aged zero to six. In addition, fee assistance/remission schemes are available. Some child care centres/kindergartens also offer extended hours service and/or occasional child care services. Moreover, the single parents in need may arrange their children aged six to 12 to attend the after school care programme.

#### *Other Services*

On top of the services and support mentioned above, it should be noted that there is in general no residence requirement for the social services provided by the SWD and non-governmental organizations.

### **Education for Ethnic Minorities**

16. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, regarding education for the ethnic minorities, will the Government inform this Council of the following:*

- (a) *the estimated number of school-age ethnic minorities in each of the coming five years, with a breakdown by age groups;*
- (b) *the respective numbers, in each of the past three years, of ethnic minorities attending schools (with a breakdown by learning stages), having completed a learning stage and having dropped out of school, and their respective percentages in the ethnic minority population of the relevant ages;*

- (c) *the channels through which the Administration releases information about school enrolment to the ethnic minorities; and*
- (d) *whether children of the ethnic minorities are eligible for assistance under the Kindergarten Fee Remission Scheme and Child Care Centre Fee Assistance Scheme; if so, of the relevant numbers of applications in the past three years and the amounts of assistance involved; if not, whether the Government will include these children in the Schemes to encourage them to receive pre-primary education?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, first of all, I would like to point out that people in the community may have different ideas as to who should be regarded as "ethnic minorities". For the Education and Manpower Bureau, ethnic minority children generally refer to South Asian (mainly Indian/Pakistani/Nepalese) children who are residing in Hong Kong. The replies should be read in this context.

- (a) Our planning for schools is premised on our projection of the overall student population. Moreover, a child's racial origin/nationality does not affect his/her eligibility for school admission. The Administration therefore, does not keep separate statistics on the number of school-age ethnic minority children for the coming five years.
- (b) For the same reason as stated in (a), the Education and Manpower Bureau does not keep the statistics referred to in part (b) of the question.
- (c) The Education and Manpower Bureau, in collaboration with the Home Affairs Bureau, publishes leaflets in English and several ethnic minority languages on various education and support services available for ethnic minority children. The ethnic minorities may obtain such information leaflets from relevant non-governmental organizations, the Education and Manpower Bureau's Regional Education Offices and the Public Enquiry Service Centres of the Home Affairs Department. The Home Affairs Bureau would also disseminate such information direct to the ethnic minority groups. In addition, information on education and placement services is

available on the Education and Manpower Bureau's website for parents' easy access.

For the arrangements for admission to Primary One and Secondary One, the Education and Manpower Bureau organizes briefings and provides relevant materials in several ethnic minority languages to help ethnic minority parents better understand the allocation arrangements and the application procedures.

- (d) Under the existing Kindergarten Fee Remission Scheme and Child Care Centre Fee Assistance Scheme, all eligible applicants, including ethnic minority children, may apply for assistance. Since the racial origin/nationality does not affect the eligibility of the applicants, the Administration does not keep separate statistics on the applications from and the amounts of assistance for ethnic minority children.

### **Reform Proposals Regarding Medical Complaints Mechanism**

17. **MR ANDREW CHENG** (in Chinese): *Madam President, will the Administration inform this Council whether the reform proposals regarding the medical complaints mechanism, made by the Medical Council of Hong Kong (the Medical Council) in 2001, which included:*

- (i) increasing the number of lay members in the Preliminary Investigation Committee (PIC) from one to three;*
- (ii) stipulating that no complaint should be rejected at the initial screening stage unless there is unanimous agreement among the PIC chairman, deputy chairman and a lay member;*
- (iii) setting up a Disciplinary Committee to conduct inquiries; and*
- (iv) setting up a Complaint Receiving Division,*

*have been implemented; if not, of the reasons for that, and whether there is a timetable for implementing these recommendations?*



**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, the Administration notes that in 1999, some patient groups expressed concern about the credibility, transparency and user-friendliness of the complaint handling mechanism of the Medical Council. In May 2001, the Medical Council formed a Working Group on the Reform of the Medical Council to review the Council's structure, composition and functions aiming to strengthen its accountability, transparency and fairness. The Medical Council submitted its recommendations to the then Health and Welfare Bureau in December 2001.

We note that over the past few years, the Medical Council has been making a lot of efforts in addressing the public concern about its complaint handling mechanism. These administrative efforts, together with some prevailing features of the mechanism, in respect of the four areas highlighted in the questions, are set out below:

- (i) On the lay element in the PIC, the fundamental consideration is that there should be an element of lay participation in the work of the Committee. At present, the arrangement is that the quorum must include one lay member. Such arrangement has worked smoothly.
- (ii) On the dismissal of complaints at the initial screening stage, under the current administrative arrangement, consent from a lay member has to be obtained before a complaint can be dismissed by the Chairman and the Deputy Chairman of the PIC of the Medical Council. Layman participation is hence ensured.
- (iii) As regards the proposal of setting up a seven-person Disciplinary Committee, the present arrangement of constituting a Panel of at least one lay member has worked well, and there is no imminent need for changes. It should also be noted that inquiries are conducted in public to ensure transparency of the Panel's proceedings.
- (iv) The purpose of proposing the establishment of a Complaints Receiving Division was to facilitate members of the public to better understand the channels and procedures of lodging complaints with the Medical Council and the remits of the Council's complaint handling mechanism. Towards this end, a booklet entitled *How the*

*Medical Council deals with the complaints* has been published by the Medical Council to clarify the remit of the Medical Council and to help complainants put together relevant evidence. The booklet is widely distributed to public hospitals, general out-patient clinics, district offices and the Government Publication Centre for public collection. The booklet is also uploaded on the Medical Council's website. In addition, a system is instituted to ensure that for complaints that are rejected, the complainants are given detailed explanation on the reasons for the decision. With enhanced publicity and public education, the need of setting up a Complaints Receiving Division has largely fallen away.

The proposals from the Medical Council as highlighted in the question would require amendments to the Medical Registration Ordinance. Given the Medical Council's complaint handling mechanism has been working well with the introduction of the abovementioned measures, the Administration does not see an immediate need to take forward the proposals. We will keep in view of the situation and will work closely with the Medical Council to ensure that the mechanism will continue to meet the aspirations of the community.

### **Complaints About Remuneration by Contractors' Workers of Housing Department**

18. **MR FRED LI** (in Chinese): *Madam President, it has been reported that the contractors of government outsourced services for Pak Tin Estate, Shun On Estate and Lung Hang Estate were alleged to have wrongfully deducted the pay and vacation leave of about 90 workers, and even used forged attendance records to deceive the Housing Department (HD). The trade unions concerned reported such cases to the HD in January this year, but it was not until May that the HD referred the cases which might involve criminal offences to the police. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the HD not referring the cases to the police in the first instance;*
- (b) *of the number of complaints the HD has received from its contractors' workers about their remuneration since January this year, and the outcome of such complaints; and*

- (c) *whether the HD will consider conducting undercover operations by deploying staff to take up employment with the contractors under complaint in order to collect evidence of breaches of the terms of outsourced service contracts or labour legislation?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, through service outsourcing, the HD aims to enhance cost-effectiveness and provide efficient estate management service to residents. Apart from requiring strict compliance with the Employment Ordinance by contractors, the HD also incorporates as contract terms the committed wages and working hours of cleansing workers in order to plug all loopholes as far as possible. To protect the interests of workers employed by outsourced contractors, a series of measures is also adopted to monitor compliance with contract terms, such as checking the employment contracts and salary statements as well as interviewing workers through random sampling to verify their take-home wages and numbers of working hours. If there is *prima facie* evidence suggesting possible breach of the Employment Ordinance, the HD will without delay refer the case to the relevant enforcement departments for follow-up action and prosecution. If there is a breach of contract terms, the case will be handled according to the penalty clauses stipulated in the contract, such as deduction of monthly contract payment, and termination of contract together with recovery of the costs incurred.

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

- (a) In late January and February this year, the HD received reports from trade unions about suspected wrongful deduction of pay and vacation leave of the cleansing workers in Pak Tin Estate, Shun On Estate and Lung Hang Estate. The HD carried out investigations immediately, including interviewing the workers and checking the records of attendance, wages and vacation leave in order to ascertain the grounds of complaint.

After interviewing the workers and understanding the details of the incidents, the HD considered that there might be breaches of the Employment Ordinance. The cases were promptly referred to the Labour Department and the police in February and March for follow-up action and investigation. After investigation, the Labour

Department has initiated prosecution in nine cases. The cleansing service contractor for Shun On Estate was convicted and fined in June by the Labour Tribunal. Accordingly, the HD asked the property management agency of Shun On Estate to terminate the cleansing service contract in accordance with contract terms.

After dealing with suspected breaches of the Employment Ordinance, the HD continued to conduct in-depth investigation into the working hour and wage records submitted by the contractors to find out whether falsified records and fraudulent acts to deceive the HD had also been involved. Having examined the details of the cases and sought legal advice, the HD considered that there was sufficient evidence to ask the police to follow up possible fraud against the HD. The cases were referred to the police in May and June.

Before referring reports of suspected breaches or frauds to enforcement departments, the HD has a responsibility to clarify the facts of the incidents and gather basic evidence to facilitate follow-up actions. Under normal circumstances, complaints will not be automatically referred without first understanding the issues involved.

- (b) Between January and end of May this year, there were 114 complaints about remuneration matters from workers employed by outsourced cleansing service contractors in eight public housing estates. The follow-up actions are detailed at the Annex.
- (c) Exploitation of workers' wages and work-related benefits by cleansing service contractors will inevitably affect the quality of service and estate management. Hence, the HD will adopt proactive and stringent measures to monitor its outsourced contractors. Deterrent penalties will be imposed on contractors for breaching the Employment Ordinance and contract terms. At this stage, the Housing Authority has no plan to conduct undercover operations. Instead, it will continue to co-operate fully with the enforcement departments and explore other practicable ways for more effective investigation and evidence collection so as to bring non-compliant contractors to justice.

## Annex

Follow-up Actions for Complaints about Remuneration Matters from Workers of Outsourced Cleansing Service Contractors from January to End of May 2005

## A. Summary of Follow-up Actions

<i>Follow-up action</i>	<i>No. of cases</i>
Prosecution initiated by the Labour Department, hearings pending	7
Prosecution initiated by the Labour Department, contractor convicted	2
Investigation underway	12
Cases not involving worker exploitation	7
Complaints withdrawn	14
Complaints settled upon mediation	72
<b>Total</b>	<b>114</b>

## B. Details of the Cases

<i>Name of Estate</i>	<i>No. of complaints</i>	<i>Follow-up action in detail</i>
Lung Hang Estate	7	The cases were referred to the Labour Department and the police. Prosecution has been initiated against the contractor.
Shun On Estate	2	The cases were referred to the Labour Department and the police. The contractor was convicted. The property management agency of Shun On Estate has terminated the contract at the request of the HD.
Pak Tin Estate	12	The cases have been referred to the Labour Department and the police. Investigation is in progress.
Lower Wong Tai Sin Estate	7	Upon investigation, it is confirmed that the cases do not involve worker exploitation.
Lok Fu Estate	13	The workers withdrew their complaints after understanding the provisions of the Employment Ordinance.

<i>Name of Estate</i>	<i>No. of complaints</i>	<i>Follow-up action in detail</i>
Lai On Estate	1	The worker withdrew the complaint after understanding the provisions of the Employment Ordinance.
Choi Hung Estate	32	The cleansing service contractor paid the arrears upon mediation by the Labour Department.
Tsui Ping (South) Estate	40	The contractor paid the arrears upon mediation by the HD.
Total	114	

### **Feasibility Study on Electronic Road Pricing**

19. **DR KWOK KA-KI:** *Madam President, will the Government inform this Council:*

- (a) of the length of time taken by the consultant commissioned by the Government in March 1997 to conduct the Feasibility Study on Electronic Road Pricing (the Study);*
- (b) of the details of the submissions, information and materials (other than the study findings) given to the Administration by the consultant regarding the Study above; and*
- (c) whether the amount paid to the consultant for the entire Study was in the region of \$90 million; if not, of the amount involved?*

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

*Madam President,*

- (a) The Study was commissioned in March 1997 and the Final Report of the Study was released in April 2001.
- (b) The consultants assessed the need for Electronic Road Pricing (ERP) in Hong Kong, considered alternatives to ERP to manage

traffic growth, developed transport models, carried out field trials of the preferred technology options, investigated conceptual and system design issues, and made recommendations on the implementation of ERP.

- (c) The total expenditure for the Study, including the field trials, was \$75 million.

### **Concessions on Ticket Prices for Hongkong Disneyland**

20. **MR CHEUNG HOK-MING** (in Chinese): *Madam President, according to the ticket types and prices announced by the Hong Kong Disneyland (HKD), elderly people aged 65 or above may purchase senior tickets and children under three years old may be admitted free of charge. Moreover, ticket prices for "peak days" (including weekends, Hong Kong public holidays, summer school holidays (July and August) and the Mainland Golden Weeks (1 to 7 May and 1 to 7 October every year)) are higher than those for "regular days". In this connection, will the Government inform this Council whether it will appeal to the HKD for:*

- (a) *offering concessions on ticket prices to the elderly of Hong Kong, including lowering the age restriction for senior tickets to 60 or above, allowing elderly people over 75 years old to purchase senior tickets at half price and granting free admission once for the elderly born in the same year as the Mickey Mouse;*
- (b) *altering the age restriction for free admission to under four years old; and*
- (c) *exempting Hong Kong residents from being charged the higher ticket prices for "peak days", so that they can be admitted all year round by holding tickets at "regular days" prices?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, Hongkong International Theme Parks Limited (HKITP), the Management Company of the HKD, is responsible for the

operational management of the theme park. Ticketing strategy is a commercial decision for HKITP. The current pricing strategy of the HKD provides senior patrons with preferential admission rates, which are about 43% lower than the adult rate, whereas admission for children is 28% lower. Children under three enjoy free admission. The HKD is also the first Disney theme park to offer two-tier pricing for normal calendar days versus holidays and peak days. This provides consumers of all ages the option of enjoying lower admission prices on non-peak days.

We have reflected the Honourable CHEUNG Hok-ming's suggestions to HKITP. According to HKITP, it has considered carefully local market conditions and carried out market research before arriving at the current pricing strategy.

## **BILLS**

### **First Reading of Bills**

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

### **ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS BILL**

### **REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS) BILL 2005**

### **DENTISTS REGISTRATION (AMENDMENT) BILL 2005**

**CLERK** (in Cantonese): Accreditation of Academic and Vocational Qualifications Bill  
Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005  
Dentists Registration (Amendment) Bill 2005.

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



**Second Reading of Bills**

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

**ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS BILL**

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I move the Second Reading of the Accreditation of Academic and Vocational Qualifications Bill (the Bill).

To help upgrade the quality, productivity and competitiveness of Hong Kong's manpower, the Executive Council approved in 2004 the establishment of a cross-sectoral Qualification Framework (QF) to integrate the qualifications in the academic, vocational and continuing education sectors, so as to provide for a diversified progression pathway and to promote lifelong learning among members of the public with a view to updating their skills and knowledge on a continual basis in order to cope with the social and economic changes and the many challenges ahead.

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

Currently, there are various kinds of education and training programmes available in the market leading to the award of different qualifications. However, there has been no standard for assessing the quality of those qualifications. Neither the learners nor members of the trades could be certain of the effectiveness of these programmes. And it is unclear as to whether learners can learn to master the skills necessary for their trades through these programmes. Therefore, we have to develop a mechanism for the accreditation of academic and vocational qualifications to assure the quality of these qualifications and the credibility of qualifications awarded by a wide range of education and training operators under the QF. The gradual implementation of the QF is conducive to the improvement of the quality and competitiveness of the overall working population of Hong Kong. Insofar as the employees are concerned, the QF helps to break the academic-oriented qualification barriers in

the past and facilitates their development of personal careers through vocational qualifications accepted by trades and industries.

The purpose of moving the Second Reading of the Bill today is to provide for a simple but necessary legal framework for the implementation of the quality assurance mechanism under the QF, with the primary objectives of providing legal protection for the Quality Register (QR) under the QF and the accreditation authority, the appointment of assessment agencies for the implementation of the Recognition of Prior Learning (RPL) mechanism, as well as upholding the integrity of the QF. In other words, the aim of the Bill is to ensure the establishment of a quality assurance mechanism which is fair, impartial and credible to entrench the QF. The QF aims not to establish a mandatory regime or a mandatory "licence for employment" system.

The Accreditation Authority under the Bill should develop and implement the standards and mechanism for academic and vocational accreditation according to the instructions of the Secretary for Education and Manpower to entrench the QF. In view of its experience in quality assurance and independent status as a statutory body, the Hong Kong Council for Academic Accreditation (HKCAA) has been designated as the Accreditation Authority in the Bill.

In addition, the Education and Manpower Bureau will establish a QR and the HKCAA is designated as the QR Authority in the Bill to maintain the QR on behalf of the Bureau. The QR will function as a central databank of information on accredited qualifications under the QF to provide clear guidance and directions to learners so that they can build up their qualifications by taking courses of assured quality. The QR will be web-based for reference by the general public as well as the local and international communities.

I understand the primary concern of serving workers about the QF is how their existing and acquired qualifications will be recognized. I would like to reiterate that the QF recognizes not only qualifications attained from education and training, but also the skills, knowledge and work-related experience that have been accumulated through practical experience, including even the insights from "masters" of a particular trade. As long as the skills have reached the prescribed trade standards, recognition can be given through the trade-specific RPL mechanism. Insofar as the employees are concerned, it represents a breakthrough in the confine of academic-dominance. As far as the employers are concerned, the qualifications awarded to employees under the QF will enable

them to appreciate the level of abilities of their employees as well as their training needs.

To implement the RPL mechanism, the Secretary for Education and Manpower shall appoint assessment agencies in accordance with the stipulations of the Bill to assess the skills, knowledge or experience acquired by individuals for the purposes of the QF. To assure the integrity, credibility and authority of the mechanism, the assessment agency must be accredited by the Accreditation Authority before it is considered for appointment by the Secretary for Education and Manpower.

In the interest of fairness, any educational or training operator or assessment agency who is aggrieved by any decision of the Accreditation Authority or the QR Authority in relation to the outcome of an accreditation test, the entry of a qualification into the QR or its subsequent removal, may apply for a review of the relevant decision.

To assure the credibility and integrity of the QF and the QR, it is necessary to introduce provisions regulating advertisements relating to the QF and the QR. Any person who wrongly claims that a qualification is recognized under the QF, or that a person or body is an appointed assessment agency commits an offence and is liable on conviction to a fine of \$50,000.

With the specification of HKCAA as the Accreditation Authority and the QR Authority in the Bill, it is necessary to introduce consequential and related amendments to the Hong Kong Council for Academic Accreditation Ordinance to enable the HKCAA to discharge its duties in the accreditation of academic and vocational qualifications and in maintaining the QR.

The HKCAA will be renamed as The Hong Kong Council for Academic and Vocational Accreditation to reflect its expanded scope of activities under the QF. To cater for the need of a wider education and training market under the implementation of the QF, the composition of the Council should achieve a better balance of academics and non-academics. Therefore, we shall remove the restriction on the number of appointed members who are academics and appoint members from other associated sectors.

The implementation of the QF will help to promote the robust development of the education and training market, so as to expeditiously meet the needs of

society and the various trades and industries, thereby enabling learners to upgrade their abilities through further education and training and to better utilize their talents and potentials. The QF will help everyone to make progress on the road leading to success and to boost his abilities and confidence in coping with any unforeseen changes and challenges that may emerge in future.

Madam Deputy, the establishment and implementation of the QF is an important and complex task, whereas the quality assurance mechanism is an indispensable part of the QF. The Bill tabled to this Council today represents a starting point for this very important task. Therefore, I hope Members can support the Bill. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Accreditation of Academic and Vocational Qualifications Bill be read the Second time.

**DEPUTY PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

**REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS)  
BILL 2005**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:** Madam Deputy, I move that the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill) be read the Second time.

The objective of the Bill is to amend the Inland Revenue Ordinance to implement the proposal to exempt offshore funds from profits tax.

The financial services industry is playing an increasingly important role in our economy, contributing to over 13% of our GDP. We must maintain and further strengthen our competitiveness as an international financial centre. According to the Securities and Futures Commission, 63%, or \$1,860 billion of the total assets in the fund management business in 2003 were sourced from overseas investors.

However, Hong Kong is facing keen competition from other major international financial centres in attracting foreign investments. In terms of tax treatment for offshore funds, major financial centres including New York and London as well as the other major player in the region, Singapore, all exempt offshore funds from taxation. While in Hong Kong, currently under the Inland Revenue Ordinance, any person deriving trading profits from securities transactions carried out in Hong Kong is liable to pay profits tax regardless of his residence. The industry has expressed the view that due to keen international competition, it is vital for Hong Kong to provide profits tax exemption to offshore funds as with other major financial centres, as otherwise some of the offshore funds may relocate away from Hong Kong, leading to loss of market liquidity and a negative read-across impact on the other financial services, including downstream services such as those provided by brokers, accountants, bankers and lawyers.

To reinforce the status of Hong Kong as an international financial centre and enhance our competitiveness *vis-a-vis* other international financial centres, the Government proposed in the 2003-04 Budget to exempt offshore funds from profits tax.

Under the proposal in the Bill, offshore funds, which can be non-resident individuals, partnerships, trustees of trust estates or corporations administering a fund, are exempt from tax in respect of profits derived from dealings in securities, dealings in futures contracts and leveraged foreign exchange trading in Hong Kong which are carried out by specified persons such as corporations and authorized financial institutions licensed or registered under the Securities and Futures Ordinance.

To prevent abuse or round-tripping by local funds disguised as offshore funds seeking to take advantage of the exemption, we propose to introduce, as a deterrent measure, specific anti-avoidance provisions to deem a resident holding a beneficial interest in a tax-exempt offshore fund to have derived assessable profits in respect of profits earned by such offshore fund in Hong Kong. These deeming provisions will not apply if the offshore fund is *bona fide* widely held. Considering that a resident may have difficulty in obtaining information from an offshore fund in which he only holds a small percentage of the beneficial interest, the deeming provisions would also not apply if the resident, alone or with his associates, holds less than 30% of the offshore fund unless such offshore fund is his associate. The effect of the deeming provisions is merely to recoup the tax

amount in the hands of residents holding substantial interests in the offshore funds which would become tax-exempt under the proposal.

We have conducted two rounds of consultation with the industry, interested parties and the public in 2004 and 2005 on the approach to effecting the proposed profits tax exemption for offshore funds. Respondents generally consider that our proposed approach is the correct one.

We propose that the exemption provisions should apply with retrospective effect to the year of assessment commencing on 1 April 1996. The retrospective effect is required to provide legal certainty on the tax liability of offshore funds in respect of past years, which is much called for by the industry, while not having much adverse effect on the revenue position. We understand from the market that, in the absence of the retrospective provisions, there would be huge problems for offshore funds to finalize their tax liabilities for past years. There have been precedents in which legislative amendments for implementing tax concession measures have taken retrospective effect.

On the other hand, the deeming provisions would apply upon enactment of the Bill.

If the proposal is implemented, Hong Kong's tax treatment for offshore funds will be on a par with, or even more favourable than, other international financial centres such as the United States, the United Kingdom and Singapore. The proposed exemption would help to attract new offshore funds to Hong Kong and to encourage existing ones too to invest here. Anchoring offshore funds in Hong Kong markets could also help maintain international expertise, promote new products, and further develop the local fund management industry. The proposal would lead to an increase in market liquidity and employment opportunities in the financial services and related sectors.

I hope Members will support the Bill.

Thank you, Madam Deputy.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 be read the Second time.

**DEPUTY PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

### **DENTISTS REGISTRATION (AMENDMENT) BILL 2005**

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Deputy, I move the Second Reading of the Dentists Registration (Amendment) Bill 2005 (the Bill).

The Dentists Registration Ordinance provides for a legislative framework for the registration of dental practitioners in Hong Kong as well as the administration and governing of their professional practice and conduct. The Dental Council of Hong Kong (DCHK) was set up under the Ordinance to regulate and govern registered dentists.

At present, qualified registered dentists are granted specialist titles through administrative arrangements. Since this administrative arrangement is not provided for under the current Dentists Registration Ordinance, it therefore lacks legal backing and fails to provide clarity and certainty on the requirements and procedures to become specialists.

At the moment, unauthorized use of specialist titles by registered dentists, according to the Code of Professional Discipline promulgated by the DCHK, may amount to unprofessional conduct and may lead to removal of the dentists' names from the current register of dentists. However, unlike the case of medical practitioners, the Dentists Registration Ordinance does not make this kind of improper conduct a criminal offence.

The main aim of the Bill is to better protect members of the public who use the services of dental specialists and enhance public confidence in the professional standard of dentists.

The Bill proposes to add to the Dentists Registration Ordinance provisions for the establishment of a statutory Specialist Register and to prescribe in detail the procedures of entering names of specialists in the Specialist Register or removal of names from the Specialist Register, the manner in which such

application shall be made and approved, as well as the review mechanism for refusal decision. An Education and Accreditation Committee (EAC) will be set up under the DCHK to handle matters relating to the Specialist Register and specialists. The EAC will recommend to the DCHK the specialties to be included in the Specialist Register, vet specialists registration applications and make recommendations to the DCHK for decision on whether the applications should be approved or not.

Unauthorized use of specialist titles is analogous to misleading the public and may result in serious health consequences. We consider that more stringent sanction on such act is warranted. The Bill proposes to make the act a criminal offence. Anyone who uses the title of a specialist without authority is liable upon conviction to a fine of \$100,000 and imprisonment for three years.

The introduction of a Specialist Register can provide useful information to the public to the effect that a dentist whose name has been included in the Register under a specialty means that he has completed his postgraduate dental training in a given field to the satisfaction of the DCHK, so that he would be fully competent to make independent judgement and discharge responsibility in practising in that speciality.

In sum, the proposed legislative amendments would give better protection to the public and help to facilitate development of specialist practice in the dental profession.

The Bureau has worked very closely with the DCHK in putting together the Bill. In January 2005, the Bureau consulted the dental profession, including the Hong Kong Dental Association, the Dental Committee of Government Doctors Association, the Hong Kong Academy of Medicine and the College of Dental Surgeons of Hong Kong. They were supportive of the introduction of the Specialist Register in the Dentists Registration Ordinance. In March 2005, the Bureau also consulted the Panel on Health Services of the Legislative Council on the main points of the Bill and its members expressed support for the proposed amendments.

With these remarks, I hope Members will support the Bill. Thank you, Madam Deputy.



**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Dentists Registration (Amendment) Bill 2005 be read the Second time.

**DEPUTY PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, the debate is now adjourned and the Bill is referred to the House Committee.

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

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

### **BANKRUPTCY (AMENDMENT) BILL 2004**

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

**DEPUTY PRESIDENT** (in Cantonese): Miss TAM Heung-man, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MISS TAM HEUNG-MAN:** Madam Deputy, in my capacity as Chairperson of the Bills Committee on Bankruptcy (Amendment) Bill 2004 (the Bills Committee), I now address the Council on the major issues deliberated by the Bills Committee.

The Bankruptcy (Amendment) Bill 2004 (the Bill) seeks to empower the Official Receiver to outsource bankruptcy cases to private-sector insolvency practitioners (PIPs) when he considers that the value of the property of the bankrupt is unlikely to exceed \$200,000 (that is, summary bankruptcy cases). While the Bills Committee has no objection in principle to this proposal, it stresses the importance for the Administration to ensure the quality of service to be provided by PIPs and that the outsourcing scheme is financially viable, cost-effective and transparent. In this connection, the Bills Committee has

examined the Bill and the relevant policy issues in detail. I shall now focus my speech on the major issues.

On the scope of the outsourcing scheme, the Bills Committee considers it necessary for the Administration to set out clearly its policy intent that the Bill will enable only the outsourcing of debtor-petition summary bankruptcy cases (and not creditor-petition summary bankruptcy cases) to PIPs. The Administration accepts the Bills Committee's view and agrees to move a Committee stage amendment (CSA) to clause 3 accordingly.

The Bills Committee notes that the Administration intends to outsource summary bankruptcy cases to PIPs by way of open tender, and initially offer a one-year contract to the successful tenderers. The cases will be allocated in batches so that PIPs can achieve economies of scale. PIPs must meet a number of pre-qualification criteria before they are able to be qualified as a tenderer. The criteria will be similar to those adopted for the current scheme for outsourcing summary liquidation cases, including the criteria that they should have a certain number of years of post-qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work, and that they should be a member of the specified professional body, that is, Hong Kong Institute of Certified Public Accountants, The Law Society of Hong Kong or Hong Kong Institute of Company Secretaries (HKICS). Having met the pre-qualification requirements, tenders would be assessed primarily on the basis of tender prices, subject to other considerations such as the track record of the tenderers in providing the services.

To ensure the quality of service of PIPs and enhance the transparency of the outsourcing scheme, the Bills Committee considers that the detailed qualification criteria for appointment as provisional trustees for summary bankruptcy cases should be set out in the tender documents, and the basic qualification criteria in subsidiary legislation. The Administration accepts the Bills Committee's view and proposes CSAs to clause 3 and a CSA to add the new clause 46A. The major change is the addition of the new Schedule 3 to the Bankruptcy Ordinance to provide that to qualify for appointment as provisional trustee under section 12(1A) of the Ordinance, a person shall:

- (a) be either a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance; a solicitor within the

meaning of section 2(1) of the Legal Practitioners Ordinance; or a current member of HKICS; and

- (b) satisfy any reasonable conditions that the Official Receiver may impose and has made accessible to the public.

(THE PRESIDENT resumed the Chair)

Members support the proposed CSAs but express concern about the scope of the term "reasonable conditions" referred to in the proposed new Schedule 3. To address this concern, the Administration undertakes that the Secretary for Financial Services and the Treasury (the Secretary) will highlight in his speech during the resumption of the Second Reading debate on the Bill it is the Administration's policy intent that the "reasonable conditions" which the Official Receiver may impose on a person for appointment as a provisional trustee are those conditions to be set out in the tender document for outsourcing summary bankruptcy cases, including the detailed qualification criteria that the person should have a certain number of years of post-qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work.

The Bills Committee also considers it essential for the Administration to put in place appropriate measures to ensure that PIPs will perform their duties and exercise their powers in a reasonable and consistent manner and to strengthen the monitoring of PIPs' performance. The Administration points out that statutory and non-statutory measures are in place for this purpose. Moreover, in order to assist PIPs in handling the outsourced bankruptcy case, the Official Receiver's Office (ORO) will conduct briefings for the successful tenderers and provide them with the ORO's relevant forms and guidelines. To further strengthen the monitoring of the work of PIPs, members put forward two suggestions. First, it should be specified in the outsourced contract that PIPs, in handling outsourced summary bankruptcy cases, are required to observe the statutory and non-statutory requirements, including the requirements that they should avoid conflict of interests with, and should not accept advantages from, the bankrupt. Secondly, random audit on a fixed percentage of the outsourced cases should be conducted. The Administration accepts these two suggestions and agrees that these undertakings will be included in the Secretary's speech

during the resumption of the Second Reading debate on the Bill. The Secretary will also specify in his speech the expected percentage of the outsourced cases in respect of which random audit is to be conducted.

On the remuneration of PIPs, the Bill provides that the remuneration of PIPs acting as provisional trustees and first trustees for summary bankruptcy cases shall be fixed by the Official Receiver in accordance with a scale of fees or on such other basis as the Official Receiver may from time to time approve in writing. Given that this proposed arrangement would give rise to uncertainty of the level of remuneration of PIPs, members suggest that consideration be given to set a fixed level of remuneration for provisional trustees or trustees so as to encourage competent PIPs to participate in the outsourcing scheme. The Administration however does not consider it appropriate to set any fixed level of remuneration for all PIPs, as there are no comparable benchmarks. In the Administration's view, this option may also hinder market competition, thus undermining the benefits of outsourcing.

The Bills Committee has deliberated at length the proposed amendments to the priority of payment of costs and charges out of a bankrupt's assets set out in section 37(1) of the Bankruptcy Ordinance. Members express grave concern that among the nine items set out in the proposed section 37(1), the necessary disbursements and remuneration of PIPs are accorded almost the lowest priority for payment. Given that in the great majority of self-petition bankruptcy cases, the bankrupts have very little assets and incomes, or no assets and no income at all, the debtor-deposit of \$8,650 may be the only sum of money available for payment of the costs and charges under the proposed section 37(1). The Bills Committee and some organizations which have submitted views on the Bill are concerned that under the proposed order of priority of payment, there is little chance for PIPs to be paid their remunerations and recover their necessary disbursements. This may discourage competent PIPs from participating in the outsourcing scheme or result in a situation where the quality of service provided by PIPs in handling the outsourced cases would be compromised because of insufficient funding.

The Administration however points out that some of the items in the proposed section 37(1) would not or would rarely be applicable to summary debtor-petition bankruptcy cases. It estimates that in a typical bankruptcy case, between \$4,150 and \$5,750 from the debtor-deposit would be available for payment of PIP's remuneration and the costs of the person properly employed by

PIP, even without additional asset realized and without income contribution made by the bankrupt. The Administration believes that there would be sufficient interest from PIPs in participating in the outsourcing scheme.

The Bills Committee considers that the Administration's estimate may be too optimistic and urges that the priority of payment of the necessary disbursements, costs and remuneration of PIPs for summary bankruptcy cases be elevated. The Administration explains that the proposed order of priority is consistent with that under Rule 179(1) of the Companies (Winding-up) Rules for payments in liquidation cases, which is applicable to both summary and non-summary cases. This Rule has been operating smoothly and is considered to have struck a proper balance among the interests of relevant stakeholders. The Administration considers it appropriate to adopt the same approach for bankruptcy cases. However, given that bankruptcy cases and company liquidation cases are different in nature, and that some of the items in the proposed section 37(1) would not or would rarely be applicable to summary debtor-petition bankruptcy cases, the Bills Committee requests the Administration to review whether it is appropriate to maintain its original proposal of bringing the order of priority in section 37(1) of the Bankruptcy Ordinance in line with Rule 179(1) of the Companies (Winding-up) Rules. Upon review, the Administration considers that its original proposal should be maintained for ensuring a consistent approach in the whole insolvency regime.

Nevertheless, to address the Bills Committee's concern, the Administration proposes to amend the proposed new section 85A(3) of the Bankruptcy Ordinance to the effect that in an outsourced bankruptcy case, where the PIP concerned "acts without remuneration", he or the Official Receiver may make an application to the Court and the Court may approve the necessary disbursements incurred by the PIP in the course of the administration of the estate to be paid out of the bankrupt's estate. In this case, the order of priority set out in section 37(1) would be subject to any court order in this regard. While members have no objection to the Administration's proposal, they are concerned that the proposed formulation "acts without remuneration" is unclear and may be subject to different interpretation by the Court. The Administration accepts members' suggestion of replacing the proposed formulation by "has not received any remuneration".

The Bills Committee has also examined the staffing implications of the outsourcing proposal. Members noted that after the implementation of the

outsourcing proposal, there would be up to 45 posts of the ORO for possible redeployment or deletion. Out of the 45 posts, 17 are planned for deletion. While some staff will be redeployed to take up the role of monitoring PIPs in the outsourced cases, some will be redeployed to deal with other duties, such as enhancing the role of the ORO as a regulator of the insolvency scheme. To facilitate the redeployment plan, the ORO will provide necessary training for the staff concerned. The Administration confirms that staff in the ORO has been informed about the outsourcing proposal, and that the Association of Insolvency Officers welcomes the proposal.

At the request of the Bills Committee, the Administration undertakes that it will review the outsourcing scheme after the implementation of the scheme and report the outcome of the review to the Legislative Council. The Secretary will indicate, in his speech during the resumption of the Second Reading debate on the Bill, when the review will be conducted.

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

Thank you.

**MR ALBERT HO** (in Cantonese): Madam President, the purpose of the Bill is to give the ORO powers to outsource certain personal summary bankruptcy cases as necessary. This is to provide the ORO with an alternative to handle the cyclic emergence of large numbers of cases without having to expand its establishment while maintaining its service quality. The Democratic Party supports this major principle. However, I raised several issues about which I was greatly concerned as soon as I had participated in deliberating the Bill.

First, is it suitable to outsource the processing of personal bankruptcy cases? I raised this point then because a bankruptcy case usually involves household expenses that may entail a lot of personal discretion. For example, officers of the ORO may allow a bankrupt to set aside a certain amount of income for meeting some reasonable household expenses. This often involves a lot of personal discretion as well as consideration of the various aspects of the family such as the lifestyle, the relationship and the way of life of its members. For a very long time, officers of the ORO have been working according to a code

of practice that has been proven and rather consistent. After the implementation of the outsourcing scheme, can such a consistent practice be maintained? Can the authorities ensure that the work can still be handled properly when the powers are transferred from government officers to PIPs? We must bear in mind that this involves the family lives of some people as well as certain issues such as whether the evaluation of household expenses is reasonable. So, this has disturbed me for quite some time.

Secondly, I am concerned about the criteria of outsourcing. Now the Government says that, according to its estimation, an outsourcing contract can achieve economies of scale if about 1 000 cases are covered by it. However, in many an outsourcing consideration, once the basic conditions are met, it is the Government's usual practice to compare the prices. That is, if it is not too difficult to stipulate the minimum conditions, then naturally price comparison will follow. Under such circumstances, will it be easy for the Government to attract really experienced and good PIPs to submit tenders? Please bear in mind that, by our calculation, what the Government can afford to pay is about \$4,000 per case. If no major problems or unexpected issues crop up halfway, then with a fee of \$4,000 per case and a handling time of three to four years, a contract covering 1 000 cases is still profitable if the cases are properly administered. Yet, if the cases were handled by inexperienced PIPs, and should some complications arise in the process, or if some technical problems on legal issues or other unexpected problems emerged, then such a contract might incur a loss. Therefore, if the PIPs are selected on the principle of awarding the tender to the lowest bidder, then some problems may arise.

This leads to the third issue. Members of the Bills Committee have asked repeatedly whether a satisfactory level of professional service can be maintained when cases are outsourced. We must remember that the issue of economies of scale is involved. In consideration of economies of scale, these professional PIPs may handle many cases they consider as standard ones in a summary manner. Alternatively, they may assign their subordinates who do not possess any professional qualification to handle the day-to-day management of such cases. With these persons overseeing the cases, can they do a good job? Will it give rise to some problems? Will they, for the sake of cutting costs, just casually handle documents that actually require in-depth inspection, instead of inspecting them in the same way as officers of the ORO do? For example, will they consider allowing a bankrupt to incur an extra expenditure on a certain

item? Or will they, in order to save time, just allow the bankrupts to spend on whatever they need, such as taking private tuitions and piano lessons as well as buying air conditioners? Of course, I am not saying that we should be mean to bankrupt families. However, it is important that we must be consistent in handling cases. By handling cases consistently, it includes taking care of the different needs of each family reasonably as well as those of creditors fairly.

Madam President, I would like to confine my discussion to these several issues. As for other technical problems such as whether PIPs will eventually be paid for the service delivered, or whether the bidding prices of tender would become so low that they cannot receive their remuneration, and so on, I do not wish to discuss them here.

After several rounds of discussion, I think the answers provided by the Government at the beginning are insufficient. For example, the Government said PIPs handling outsourced cases are qualified professionals. Should there be a problem, affected persons can lodge a complaint against them with their respective professional bodies which will then regulate the PIPs. In addition, even the Court has jurisdiction over them. However, I do not think this is sufficient because the problem will be handled only after a complaint is lodged. Moreover, for a professional body to handle a complaint about professional negligence, it will be a lengthy and complicated process. Therefore, how can we rely on professional bodies to perform comprehensive regulation over them?

Finally, after discussions with us and some careful consideration by the officials, the Government proposed some measures. I think, at this stage, the Government may implement those measures on a trial basis for a period of time. Therefore, in response to the request made by the Chairman of the Bills Committee, the Secretary should make some clarifications or undertakings in his speech to be delivered later on.

Firstly, the Administration should provide clear guidelines to PIPs. From my dealings with various government departments, I fully understand that it is by no means easy to make them release such guidelines. In the case of the Home Affairs Department, the liaison officers have access to a lot of guidelines, including those on ways of handling building management problems. However, they will only keep these guidelines to themselves, instead of sharing them with others. It is because they feel that once they release these guidelines to others,



they no longer possess this professional knowledge exclusively as others will also know what to do. Psychologically, they feel better in a position of tendering advice to others. Yet, we must bear in mind that once the cases are outsourced, we have to ensure that PIPs can handle the cases in a consistent way and their work can meet a certain standard. Thus, such guidelines have to be written in great detail and be handed over to the professionals to facilitate their work of handling the cases. The Government should never think that since these PIPs are professionals, who have studied law and have been trained in accountancy for years, and get paid for their services, they need not be told what to do. The Administration really cannot have this kind of mindset. We must tell them how to do it and how discretion was exercised in the past in order to avoid any inconsistency.

Secondly, I wish to stress that all the ORO officers are all civil servants who are subject to the Prevention of Bribery Ordinance. Very often, they have a very strong awareness in this regard: They know that they cannot accept any interest, nor can they have any conflict of interest, and they even cannot give people an impression that they may have any conflict of interest. However, the operating environments of an accountancy firm or a law firm are very different. If the person involved is a professional, he may have a clearer awareness. But if he authorizes his subordinates to take care of the work, for example, his subordinates could be some paralegals or legal executives who have received only some training, will they have adequate awareness to realize that they are exercising a statutory power? In the past, this statutory power was exercised by civil servants who were used to handling the cases in a most impartial manner without any bias. However, do those paralegals know that, even with the approval from their employers, they cannot accept gifts or special hospitality from others because such acts are unlawful? I think the Administration needs to stipulate this very clearly in the tendering document, or it should be presented in even stronger wordings, or even with a warning, to tell them that (be they the professionals who have accepted the work or his subordinates assisting them to do the work) they must follow this principle very closely; that they must act in an impartial manner without any bias at all; that they cannot make others feel that there is any conflict of interest; and that they must act very carefully so as not to break the law by accepting advantages. I attach very great significance to this point because the identities of the persons who manage the cases have changed, and the power is no longer exercised by civil servants. Sometimes, it is not easy for an ordinary person to detect the traps in law.

During the deliberations on the Bill, as Honourable colleagues are concerned about the future service standard, so I strongly requested the Government to conduct random audit. As it involves several thousands cases, if too many cases are subject to ransom audits, then the entire scheme will become meaningless and a lot of money will be wasted. I suggest that at least 5% of the cases should be subject to random audits. Through random audits, the officials involved will be able to find out whether the work of the PIPs can reach the required standards. If the standards are not met, the Administration will look into the situation to find out the causes of the problems. Of course, if the results are extremely unsatisfactory, the Government will then have no alternative but to repossess the cases in order take follow-up actions. However, once the Government has taken over the cases, it will involve other very complicated legal problems. However, in conducting random audits, the Administration may direct them to make improvement once they have detected any inadequacies. However, if a large number of cases require improvement, for example, it is discovered that inadequacies exist in many cases, then the Government may have to increase the percentage of cases for random audits.

As the Chairman of the Bills Committee said in the last part of her speech, we hope the Administration can conduct a review to assess the effectiveness of the outsourcing scheme after it has been implemented for a period of time, such as two to three years. If the review shows that this is a feasible approach, then we can implement it on a long-term basis. Later on, I expect the Secretary to make clarifications and undertakings in response to our requests. The Democratic Party supports this Bill and all the amendments proposed by the Government.

**MS MIRIAM LAU** (in Cantonese): Madam President, one of the major proposals of the Bankruptcy (Amendment) Bill 2004 is to outsource summary bankruptcy cases to PIPs, who are professionals such as lawyers, accountants and company secretaries, so as to handle the growing number of bankruptcy cases in a speedier and more cost-effective manner. The Liberal Party supports this in principle.

However, with regard to the mode of operation of this outsourcing scheme, we still wish to make some comments.

First of all, the Administration intends to outsource the cases in batches, so that PIPs can achieve economies of scale. However, if tenders are to be conducted in an open manner, then usually they are awarded to the lowest bidders. The crux of the problem is: If a PIP has succeeded in securing the award of a large quantity of cases at an extremely low price, will it have sufficient manpower to handle each and every case meticulously? We must understand that, even if certain bankruptcy cases just involve small amounts of money, it does not mean that they are simple and straightforward, nor should they be handled casually just because the service fees are low. However, if the tenders are conducted on the principle of awarding them to the lowest bidders, large law firms or accountancy firms may not be interested. For smaller firms, they may not have enough manpower to handle a large volume of cases. If they are awarded the tenders, in order to achieve higher cost-effectiveness, they may compromise the quality in consideration of the prices — consequently, they may choose to conclude a large number of cases in a most cursory manner, thereby affecting the quality of service of PIPs in handling the cases.

We have to point out that, this is not a hypothetical problem. Instead, it is supported by facts. Let me quote one example. Before 1997, solicitors charged conveyancing scale fees for property transactions in proportion to the prices of the properties involved. However, since the abolition of the conveyancing scale fees, the competition in the industry has become so keen that people have even heard of cases in which some firms just charged the clients the photocopying charges, while the solicitor's fee was waived completely. While it may not be necessary to probe into the truthfulness of such speculation, it is beyond any doubt that the competition among legal firms is really very keen. Another fact is, since the abolition of the conveyancing scale fees in 1997, the professional indemnity insurance premiums for lawyers have risen substantially, because the number of claims against lawyers has increased significantly, with the majority of them involving property transactions. In a free market economy, it is good to see the emergence of competition, which can bring down prices, thereby benefiting consumers. However, when the competition in professional services is manifested the prices, instead of the quality of services, asked by the contenders, the Liberal Party does have some reservations. It is just wishful thinking to hope that we can maintain high standards of service while the charges are kept low. It is far too idealistic, instead of being practical. Actually, it is very difficult to achieve. Even if it can be achieved, it cannot be maintained in the long run. We think that vicious competition will easily lead to

a decline in service standards, and if that does occur, the ultimate victims are none other than the innocent consumers.

If large numbers of bankruptcy cases are contracted out on the principle of awarding tenders to the lowest bidders, and if the PIPs cannot spend enough time on handling individual cases, then the debtors will not know whether their cases are being handled properly, and when finally some problems do emerge, it will not just affect the individual debtors but also bring the entire outsourcing scheme to a total collapse.

Therefore, we call on the Government to handle the tenders prudently, and not to adopt the principle of awarding the tenders to the lowest bidders. Apart from the price factor, such other factors as experience in handling similar cases and manpower provision should be taken into consideration overall. In the meantime, after the cases have been outsourced, the Government should periodically conduct random audits on the progress of and the quality of service in handling the cases. Besides, we also urge the Administration to conduct a comprehensive review of the outsourcing scheme after it has become effective for a period of time, so as to assess the strengths and weaknesses of the scheme and make necessary adjustments accordingly.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): 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, first of all, I would like to express my heartfelt gratitude to Miss TAM Heung-man, Chairman of the Bills Committee on Bankruptcy (Amendment) Bill 2004 (the Bills Committee) and its members for their great efforts in the Bills Committee in the past few months, and for

examining the proposals and provisions of the Bankruptcy (Amendment) Bill 2004 (the Bill) carefully. I am also grateful to those people and deputations who have made representations to the Bills Committee. Their views have facilitated the discussions of the Bills Committee and some of these views have served to perfect the proposals in the Bill.

I will move amendments to some of the provisions in the Bill at the Committee stage. I would like to first give a brief account on the major proposals and the amendments to the Bill and respond to some relevant issues discussed in the Bills Committee.

The aim of the Bill is to enable the ORO to outsource summary bankruptcy cases, that is, cases where the value of the property of the bankrupt is estimated to be not exceeding \$200,000, to private-sector insolvency practitioners (PIPs), and to make other miscellaneous amendments. The outsourcing is not mandatory and will apply only to debtor-petition cases. Not only will the proposal enable the ORO to be more flexible in handling the fluctuating number of bankruptcy cases, thus focusing resources on its supervisory role, it will also provide more business opportunities to PIPs. Moreover, it will be beneficial to both bankrupts and creditors if the efficiency of the ORO in handling bankruptcy cases can be enhanced.

The proposed outsourcing arrangement will be based on the outsourcing arrangement that has already been put in place for summary liquidation of companies. The ORO intends to outsource the summary bankruptcy cases in batches by way of open tender. Not only will the open tender arrangement help introduce competition into the market, it will also ensure the transparency of the scheme.

To ensure the quality of service, PIPs must meet a number of pre-qualification criteria before they can qualify as a tenderer. First of all, they must be members of the specified professional bodies. At the request of the Bills Committee, the basic qualification criteria will be set out in the new Schedule 3 of the Bankruptcy Ordinance (BO). Also, they should have a certain number of years of post-qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work. The ORO will set out these detailed qualification criteria in the tender documents which will also be made available for public inspection. The proposed arrangement will

ensure that the PIPs have certain professional qualifications and at the same time make the outsourcing scheme sufficiently transparent to the public, as well as flexible enough to cope with market developments.

In the Bills Committee's discussions and today's debate, some Members have expressed concern about the quality of the services provided by PIPs in handling outsourced bankruptcy cases. Mr Albert HO and Ms Miriam LAU have already raised this issue. In fact, the Administration entirely agrees that there must be a well-developed system to monitor PIPs. In this regard, PIPs, as fiduciaries and officers of the Court, should undertake any duties and obligations in accordance with the provisions of the BO and the contract executed with the ORO. At the same time, the authorities concerned will put in place checking measures to ensure the standard of services provided by PIPs. These measures can be classified into two categories:

- (a) **Statutory measures:** PIPs will be subject to various statutory control measures in the BO. For example, according to section 84 of the BO, in the event of any complaint being made to the Court by any creditor, the bankrupt, the Official Receiver or any other person in regard to the performance of the trustee, the Court shall inquire into the matter and take appropriate action.
- (b) **Non-statutory measures:** The contract of appointment issued by the ORO will specify the duties and obligations, as well as all the statutory and non-statutory regulations that the PIPs are required to comply with. The ORO will also closely monitor the performance of the PIPs under the terms of the contract. For instance, a PIP may be required to submit a case progress report. We also had suggestion from Members that the Administration should conduct random review and audit on some of the cases in the initial stage of outsourcing. We have taken on board this suggestion. Just now, Mr Albert HO suggested that we should conduct random check on 5% of the cases. I would suggest 10%, which has surpassed his expectations. Moreover, the contract will remind PIPs that they should avoid any conflict of interest, and should not accept advantages from the bankrupt because such acts may violate the Prevention of Bribery Ordinance. Therefore, I wish to remind them that they should maintain an impartial attitude in handling cases.

Mr Albert HO has just now raised the issue of the criteria adopted by PIPs in assessing the amount of contribution to be made by the bankrupt. In fact, this point has been discussed in the Bills Committee. The ORO will explain to the appointed PIPs the criteria that it is currently using. Moreover, according to the BO, only the Court has the power to make orders on the amount of contribution to be made by the bankrupt and on other arrangements.

Of course, apart from the ORO, other relevant organizations also have their roles to play in ensuring the service standard of the PIPs. For example, on drawing up the codes of conduct for members and mechanism for disciplinary actions, the professional bodies to which the PIPs belong can study the need to further enhance the existing codes and mechanisms.

Another point of concern to the Bills Committee is whether the PIPs appointed as provisional trustees will receive sufficient funds to pay for their necessary expenses, staff expenses and their own remuneration. Miss TAM Heung-man also mentioned this point in her speech just now. In fact, the Administration has repeatedly indicated that since the administrative work of summary bankruptcy cases was generally less complicated in nature and the Administration would also outsource summary cases in batches, we believe that PIPs will be interested in the tender. Nevertheless, in response to the Bills Committee's concern, at the Committee stage, I will propose an amendment to section 85A(3) to the effect that in the event that the trustee has not received the remuneration, the trustee or the ORO may make an application to the Court and the Court may issue an order approving the necessary disbursements incurred by the PIP in the course of the administration of an estate, to be paid out of the bankrupt's estate.

In addition, during the deliberation by the Bills Committee, the Administration also received some views and suggestions concerning some technical matters. As a result, we will propose some other amendments later on.

The ORO will conduct a review after the outsourcing arrangement has been implemented for some time. Just now, some Members also suggested that we should conduct reviews. We will also follow this piece of advice. I now intend to conduct a review 24 months later and will consult the Services Advisory Committee of the ORO, as well as members of the Committee, including representatives from the Consumer Council, the Hong Kong

Association of Banks, as well as the related professional bodies. The Administration will report the results of the review to the Legislative Council. Thank you, Madam President.

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

Council went into Committee.

### **Committee Stage**

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

### **BANKRUPTCY (AMENDMENT) BILL 2004**

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

**CLERK** (in Cantonese): Clauses 1, 4, 6 to 10, 12, 13, 14, 16, 18 to 23, 25, 26, 29 to 35 and 37 to 48.



**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, 3, 5, 11, 15, 17, 24, 27, 28 and 36.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move that clauses 2, 3, 5, 11, 15, 17, 24, 27, 28 and 36 be amended as set out in the paper circularized to Members. I shall now give Members a brief account on the main contents of the Bill.

The amendment proposed in clause 3 seeks to specify that the power of the Official Receiver to appoint a provisional trustee shall be limited to debtor-petition cases. A provisional trustee must possess the professional qualifications prescribed in new Schedule 3, which may be amended by the Secretary for Financial Services and the Treasury by way of Gazette Notices.

Clause 11 amends section 37 of the Bankruptcy Ordinance which provides for the order of priority of payment of costs and charges out of a bankrupt's estate. The amendment to section 37(1)(a) seeks to specify that the fees and charges under this section shall be the fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order. The amendment also makes some minor textual changes.

We propose to introduce two amendments to clause 17. The first one responds to the advice of the legal adviser of the Bills Committee, empowering the Official Receiver to take into his custody or under his control all the property

to which the bankrupt is or appears to be entitled. The second amendment seeks to clarify the powers that may be exercised by the provisional trustee, including the power to monitor the conduct of the bankrupt and ensure his discharge of obligations. It also clarifies that the provisional trustee shall have the power to manage the bankrupt's property.

Regarding clause 27, we propose to amend section 85A(3). When I spoke just now, I already gave the reasons for this amendment.

We also propose to amend clause 28, the purpose being specifying that the trustee shall have the responsibility to investigate the conduct of the bankrupt and to report to the Court, stating whether he has committed any act which would justify the Court in refusing, suspending or qualifying an order for his discharge. Besides, under the existing arrangement, whenever there is any report of an indictable offence under the Bankruptcy Ordinance, the Official Receiver will initiate the prosecution action, where appropriate. In view of this, we consider it unnecessary to impose a reporting duty on the Official Receiver in relation to any conduct which constitutes an indictable offence under the Bankruptcy Ordinance. Third, the scope of the reporting duty imposed on a trustee other than the Official Receiver should be expanded to cover summary offences.

Clause 36 amends section 98(2), whereby a person lodging an appeal against any orders issued by the Court or the Registrar in bankruptcy proceedings must serve a notice of appeal within the time limit prescribed under Rule 4(1)(b), Order 59 of the Rules of the High Court.

The rest are all minor technical amendments. All these amendments have been discussed and are supported by the Bills Committee. I hope that Members can support the amendments moved by me.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex I)**

**Clause 3 (see Annex I)**

**Clause 5 (see Annex I)**

**Clause 11 (see Annex I)**

**Clause 15 (see Annex I)**

**Clause 17 (see Annex I)**

**Clause 24 (see Annex I)**

**Clause 27 (see Annex I)**

**Clause 28 (see Annex I)**

**Clause 36 (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 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 Member present. I declare the amendments passed.

**CLERK** (in Cantonese): Clauses 2, 3, 5, 11, 15, 17, 24, 27, 28 and 36 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 46A                      Schedule 3 added.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move that new clause 46A be read the Second time. This clause seeks to add new Schedule 3, prescribing the basic professional qualifications and other conditions that must be fulfilled by the provisional trustees appointed by the Official Receiver under the Bankruptcy Ordinance. This new Schedule has already been discussed by the Bills Committee which expressed support for it. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 46A 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 46A.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move that new clause 46A be added to the Bill.

*Proposed addition*

**New clause 46A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 46A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam Chairman, I move an amendment to the Schedule. The amendment is purely technical in nature, the purpose being to introduce a consequential amendment to the definition of "insolvency office-holder" under section 2 of the Clearing and Settlement Systems Ordinance. Thank you.

*Proposed amendment*

**Schedule (see Annex I)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for 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 amendment passed.

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bills**

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

### **BANKRUPTCY (AMENDMENT) BILL 2004**

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

Bankruptcy (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 Bankruptcy (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): Bankruptcy (Amendment) Bill 2004.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Banking (Amendment) Bill 2005.

### **BANKING (AMENDMENT) BILL 2005**

#### **Resumption of debate on Second Reading which was moved on 6 April 2005**

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

**MR JEFFREY LAM:** Madam President, in my capacity as Chairman of the Bills Committee on Banking (Amendment) Bill 2005, I would like to report on the deliberations of the Bills Committee.

The principal object of the Banking (Amendment) Bill 2005 (the Bill) is to amend the Banking Ordinance to provide a framework for incorporating the revised capital adequacy framework under Basel II.

Basel II, or the New Capital Accord, has been on the minds of central bank governors and regulators for several years. It is based on three mutually reinforcing pillars.



The first pillar aligns the minimum capital requirements more closely to banks' actual underlying risks. Qualifying banks will rely partly on their own measures of those risks, a rule that helps to create economic incentives for banks to improve those measures.

The second pillar refers to the supervisory review process. Each bank is required to assess the full range of risks and establish internal processes to assess its own capital adequacy on the basis of a thorough evaluation of all risks to which it is exposed. Banks are expected to hold capital above the regulatory minimum and supervisors must intervene at an early stage if capital levels became insufficient.

The third pillar aims to bolster market discipline through public disclosure. Each bank would be required to disclose publicly key information on its capital, risk exposures and risk assessment and management.

The proposed amendments to the Banking Ordinance for the purpose of implementing Basel II in Hong Kong basically relate to two major areas, namely capital adequacy ratio of authorized institutions and enhancement of the existing financial disclosure regime applicable to authorized institutions. However, the Bill does not contain any substantive rules of Basel II.

We notice that the current framework for regulating and measuring authorized institutions' capital adequacy ratios is embodied in Part 17 of and the Third Schedule to the Banking Ordinance. As the proposed implementation of Basel II would involve a significantly more sophisticated approach to the calculation of capital adequacy ratio as compared with the present regime in the Banking Ordinance, the Hong Kong Monetary Authority proposes to adopt a rule making approach to save the ongoing need to update the regime in keeping up with industry developments and international practices. To this effect, clause 2 of the Bill provides for the Monetary Authority to make rules prescribing public disclosure requirements for authorized institutions on their financial affairs including capital adequacy ratio (Disclosure Rules); and clause 4 of the Bill provides for the Monetary Authority to make rules prescribing the manner of calculation of the capital adequacy ratio of authorized institutions (Capital Rules).

Regarding the Capital Rules and Disclosure Rules to be promulgated, we understand that they are subsidiary legislation subject to negative vetting by the

Legislative Council, although it has not been stated in the Bill. We also note that the Bill also proposes to amend section 7(3) of the Banking Ordinance to allow the Monetary Authority to issue guidelines indicating the manner in which he proposes to exercise functions conferred on him under these Rules. Such guidelines are not subsidiary legislation.

We see the need to put in place a proper check and balance mechanism to ensure the fairness of the system. We therefore take the view that provisions on the mechanism for appeals and other procedural safeguards should be incorporated into the Banking Ordinance with regard to the decisions of the Monetary Authority made under the Capital Rules. To this end, the Administration proposes a two-tier appeals mechanism. At the first tier, under the new section 98A(3), the rules made under section 98A(1) may provide for the Monetary Authority, on application made to him by any person aggrieved by a decision made by the Monetary Authority under those rules, to review his decision. At the second tier, an authorized institution aggrieved by a decision made by the Monetary Authority under those rules can also appeal to the Chief Executive in Council for a review under the existing Banking Ordinance.

On the first-tier appeals mechanism, the Administration's intention is to establish an internal procedure for handling requests for review of the Monetary Authority's decisions. This procedure is in line with the normal approach adopted currently by the Monetary Authority for resolving matters with the banking industry. Hence, proposed section 98A(3) would formalize the existing informal procedure. To reflect the policy intention, the Administration also proposes to move a Committee stage amendment (CSA) to clause 4 to make it clear that an authorized institution, instead of "any person", aggrieved by a decision of the Monetary Authority made in relation to it under the Capital Rules could make an application for review of the Monetary Authority's decision.

We consider that the second-tier mechanism with the Chief Executive in Council being the appellate body, is not suitable for present-day circumstances. Since the Executive Council is primarily a body to assist the Chief Executive in policy making and that the Executive Council may lack the time and expertise required to deal with such appeal cases, the Administration should consider establishing a specific appeal body for handling appeal cases relating to the decisions of the Monetary Authority made under the Banking Ordinance, as in the case of the Securities and Futures Ordinance (Cap. 571), where a Securities

and Futures Appeals Tribunal had been established to handle appeals against the decisions of the Securities and Futures Commission.

The Administration points out that the existing appeals mechanism in the Banking Ordinance, that is, the Chief Executive in Council being the appellate body, has been in place for a long time and its appropriateness has not been questioned by the banking industry. Nevertheless, the Administration sees merit in members' proposal, given the technical nature of appeals under the Capital Rules, and agrees to move the CSAs to the Bill to provide for the establishment of a tribunal that would review certain decisions of the Monetary Authority made under the Capital Rules.

We have also examined the extent to which the decisions of the Monetary Authority in relation to the Capital Rules would be appealable under the proposed amendments in the Bill. The Administration points out that the right of appeal will only lie in respect of the fundamental decision as to which approach to capital adequacy calculation an authorized institution may adopt, which may have a material impact on the authorized institution's capital requirement. The detailed calculation technicalities, which are to be prescribed in accordance with the international standards of Basel II, would not be subject to appeal. The Capital Rules would be made after thorough industry consultation as proposed in clause 4 of the Bill.

At present, the Monetary Authority is empowered under section 101 of the Banking Ordinance to vary, after consultation with the Financial Secretary, the capital adequacy ratio of licensed banks to a maximum of 12% and that of deposit-making companies and restricted licence banks to 16%. Clause 5 recasts section 101(1) to empower the Monetary Authority to vary the capital adequacy ratio of all authorized institutions to a maximum of 16%. We note the Administration's view that such amendment is necessary to enable the Monetary Authority to set a higher capital adequacy ratio if the circumstances so require, for example, a significant increase in risks to which an individual bank or the industry as a whole is exposed.

The Bill also proposes a number of miscellaneous amendments to the Banking Ordinance, including amongst other things, limiting the liability of managers of companies, for some offences under the Banking Ordinance, to instances that are results of an act or omission on the part of the manager personally or of a person under his control. We agree that since a manager is

normally responsible for only one business area of an authorized institution, it is unreasonable that he or she may be prosecuted for a contravention committed outside his or her area of responsibility.

Madam President, the Administration has accepted the Bills Committee's suggestion to move the CSAs to the Bill to provide for the establishment of a tribunal that would review certain decisions of the Monetary Authority made under the Capital Rules. The Administration has also accepted members' suggestion to refine the CSAs to allow the tribunal to publish its determination and the reasons for the determination under certain circumstances.

With these remarks, we support the Bill and the CSAs to be moved by the Administration. Thank you.

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

**MS EMILY LAU:** Madam President, I rise to speak in support of the Second Reading of the Banking (Amendment) Bill 2005. I am not a member of the Bills Committee, but would like to put on record a couple of points on the new powers of the Hong Kong Monetary Authority (HKMA), points which were just made by the Honourable Jeffery LAM.

The proposed implementation of Basel II involves a significantly more sophisticated approach to the calculation of capital adequacy ratio, as compared with the present regime provided for in the Banking Ordinance.

The HKMA proposes to adopt a rule-making approach to obviate the need to constantly update the regime in order to keep pace with industry developments and international practices. Madam President, clause 2 of the Bill provides for the HKMA to make rules prescribing public disclosure requirements for authorized institutions. Clause 4 provides for the HKMA to make rules prescribing the manner of calculation of capital adequacy ratio of authorized institutions. When asked why a rule-making approach is better than amending the third Schedule of the Banking Ordinance, the Administration told the Bills Committee that because the method of calculating capital adequacy ratio under Basel II is considerably more complex than what is currently specified in the

third Schedule, so, putting the revised regime in legislation is neither practical nor cost-effective.

Furthermore, in order to keep pace with the developments in the industry and in international practices, there is a need to constantly revise and update the capital adequacy ratio regime. Thus, a more simple rule-making approach is preferred. The Bills Committee notes that both the capital rules and the disclosure rules to be promulgated are regarded as subsidiary legislation, subject to negative vetting by this Council. However, this is not stated in the Bill. The Bills Committee also notes that the Bill proposes to amend section 7(3) of the Banking Ordinance to allow the HKMA to issue guidelines indicating the manner in which it proposes to exercise the powers conferred on it under the rules. Members of the Bills Committee asked whether it should be spelled out clearly in the Bill that the capital rules and the disclosure rules are subsidiary legislation. The Administration said that this is not necessary because there should not be any doubt that this is so. Madam President, by highlighting this point at this Second Reading debate, I hope to put it beyond doubt that the rules are subsidiary legislation subject to negative vetting by this Council, and I am so pleased that Mr LAM made the same point earlier. I am sure that the Administration is very much aware of this.

The Bills Committee also notes that the HKMA's power to make rules is subject to the statutory duty to consult the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, the Hong Kong Association of Banks, the Deposit-taking Companies Association and the Financial Secretary. As to the guidelines to be issued by the HKMA, they are not subsidiary legislation, but there is a requirement that they should be published by notice in the Gazette.

Madam President, the Bill proposes to give the HKMA under Mr Joseph YAM more power and responsibility, and part of it is subject to the scrutiny of this Council. I hope that the HKMA, led by Mr YAM, will exercise these powers prudently, and will consult this Council and members of the financial community.

I would like to put on record my concern and observation, and hope that the Administration will take them into account. With these remarks, I support the Second Reading of 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:**

Madam President, firstly, I would like to take this opportunity to express my heartfelt gratitude to the Honourable Jeffrey LAM, Chairman of the Bills Committee, and all other Bills Committee members for contributing their time and efforts to the scrutiny of this Bill in the past two months. I would also like to thank the Honourable Emily LAU, even though she was not a member of the Bills Committee, she did raise some very good points. I hope that the Honourable Emily LAU would join any of the banking bills committees in the future. The advice from Bills Committee members and the Honourable Emily LAU has been most helpful in bringing this legislative proposal to its final shape.

The main purpose of this Bill is to amend the Banking Ordinance to put in place a legislative framework for the implementation in Hong Kong of the revised international capital adequacy standards, promulgated by the Basel Committee on Banking Supervision in June 2004 and commonly known as "Basel II". I am most delighted that the Administration's proposal to implement Basel II in Hong Kong as soon as practicable has received the support of the Bills Committee in recognition that this would further consolidate our position as an international financial centre. Well, put it this way, as an international financial centre, we should have legislation that improves the risk-management capability of the banking sector. The Bill also contains a few proposals to enhance the operation of individual provisions of the Banking Ordinance in the light of experience, which also have received support from the Bills Committee.

While the Bills Committee has largely endorsed the policy objectives and detailed proposals of this Bill, some Members have suggested that the Administration should consider establishing a specific appeal body for handling appeal cases relating to the highly technical decisions made by the Monetary Authority under the new capital adequacy framework.

In response to this comment, the Administration has conducted a quick review in consultation with the banking industry. We note that the existing appeals mechanism to the Chief Executive in Council in the Banking Ordinance has been working well and is well received by the banking industry. We believe that this mechanism remains appropriate for the various appealable decisions under the Banking Ordinance which may have substantial implications on Hong Kong's financial stability. Yet, given the technical nature of appeals relating to decisions made under the new capital adequacy standards, we see merit in Members' proposal to set up an independent body with experts to review these cases. Hence we have accepted Members' view and have proposed Committee stage amendments (CSAs) to establish the Capital Adequacy Review Tribunal.

The provisions establishing this new tribunal are mostly modelled on provisions in other ordinances where similar tribunals are established, but they also address the banking industry's concern about confidentiality of sensitive business data. We accept the industry's view that inappropriate disclosure of information about an appeal or of the mere fact that an appeal is being made could undermine public confidence in the authorized institution concerned which may have impact on banking stability. Having consulted the Bills Committee, we have included appropriate provisions in the CSAs to preserve a certain degree of confidentiality of the new Tribunal's work.

Madam President, I will be moving CSAs shortly on the basis of the above consensus reached at the Bills Committee meetings. As the enactment of this Bill is important for the Hong Kong Monetary Authority to proceed with other preparatory work for the implementation of Basel II in Hong Kong, I hope all Members would support the Bill and any CSAs to be moved.

Lastly, I wish to thank all those parties who have provided comments on the Bill, and the Legislative Council Secretariat for the professional advice and efficient support given to us.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Banking (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.

Council went into Committee

### **Committee Stage**

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

### **BANKING (AMENDMENT) BILL 2005**

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

**CLERK** (in Cantonese): Clauses 1, 2, 3, 5 and 7 to 14.

**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 and 6.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**  
Madam Chairman, I move the amendments to the clauses read out just now. Details of the amendments have been set out in the document distributed to Members. These minor amendments are consequential to a new clause, which I am going to move later, for the establishment of the Capital Adequacy Review Tribunal. I hope Members would support the Committee stage amendments. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 4 (see Annex II)**

**Clause 6 (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)



business data during the appeal process. The new clause 5A, therefore, contains a specific provision for hearings of the Capital Adequacy Review Tribunal to be held in private. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 5A 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 5A.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**  
Madam Chairman, I move that new clause 5A be added to the Bill.

*Proposed addition*

**New clause 5A (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 5A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**  
Madam Chairman, I move the amendments to the Schedule which have been set out in the document distributed to Members. The Schedule contains amendments which are consequential to clauses 2 to 5A of the Bill. I would highlight some of the major amendments to the Schedule.

A new section 4A is added to Part 1 of the Schedule, to provide an exception to the official secrecy provision in the Banking Ordinance, allowing the Monetary Authority to disclose information to the Capital Adequacy Review Tribunal.

A new section 10A is added to Part 1 of the Schedule to provide for miscellaneous matters of the Capital Adequacy Review Tribunal, such as the tenure of the Chairman and members, the appointment of acting Chairman and members, and procedural matters.

A new section 1A is added to Part 2 of the Schedule, for a consequential amendment to the Electronic Transactions Ordinance. It stipulates that the Capital Adequacy Review Tribunal is exempted from the application of sections 5 to 8 of the Electronic Transactions Ordinance. There were similar consequential amendments under the Deposit Protection Scheme Ordinance, and the Clearing and Settlement Systems Ordinance passed by the Legislative Council last year, in relation to the tribunals established under these Ordinances. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule (see Annex II)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for 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 amendment passed.

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bills**

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

### **BANKING (AMENDMENT) BILL 2005**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**  
Madam President, the

Banking (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 Banking (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): Banking (Amendment) Bill 2005.

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Road Traffic (Driving-Offence Points) Ordinance.

### **PROPOSED RESOLUTION UNDER THE ROAD TRAFFIC (DRIVING-OFFENCE POINTS) ORDINANCE**

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I move that the resolution under section 4(3) of the Road Traffic (Driving-offence Points) Ordinance be passed.

This motion seeks to increase the driving-offence points for failing to comply with traffic signals from three to five to create a stronger deterrent effect on potential offenders.

Under the Government's proposal, the new penalties will take effect on 1 January next year. From the passage of the resolution to its official implementation, there will be a six-month sanitization period to give drivers sufficient time to adapt to the new rule. Meanwhile, the Government will step up publicity and education efforts to call on the public to avoid red light jumping.

The Government has all along endeavoured to improve road safety, with a view to minimizing accidents involving casualties as a result of traffic offences on roads. Statistical analysis shows that over 100 red light jumping cases are prosecuted every day in Hong Kong, with casualties involved in two cases on average. The rate of casualties and prosecution involving red light jumping is apparently higher than that involving other offences. In view of this, the Government must improve the situation in various ways. Increasing the driving-offence points to achieve a stronger deterrent effect, thereby reducing the number of red light jumping cases and possible casualties, is considered an effective measure by both the public and the Government.

Since October last year, the Government has widely consulted the public on this point deduction proposal. While professional drivers opposed the legislative amendment because they lacked confidence in the enforcement of law, most of them supported imposing severe punishment on red light jumpers. During the past months, the Government held a total of 14 meetings with the industry to listen to their aspirations, including drivers' views on the improvement of road traffic and junction facilities, and also studied the viability of these views. The authorities have explained to them the conclusions of the studies conducted by the Transport Department, and analysed overseas practices as well as their pros and cons.

As regards the public, from what the media has reflected and also from direct daily contacts and opinion polls, the Government has received a clear, consistent message which proves that the public are gravely concerned about red light jumping cases involving casualties and that they are calling on the Government to step up control by, among other things, increasing the driving-offence points.

After discussion and negotiation for eight months or so, the Government has responded to the views expressed by various sectors of the community as follows:

- Five instead of eight points as originally proposed will be deducted.
- Regarding the installation of overhead traffic signals, drivers have reflected to the Government that when they are driving on roads, their visibility is often blocked by large vehicles (such as buses and



container trucks), thus making it difficult for them to notice the existence of traffic signals. The Government has, therefore, squarely addressed the problem and planned to install overhead traffic lights at 40-odd major road junctions. The Government will continue to install overhead traffic lights at other problem junctions. I believe it should not be difficult to solve this problem.

- There are now over 1 700 signalized junctions in Hong Kong, and it is impossible to install cameras at all junctions. Camera-based prosecution already constitutes 80% of red light jumping prosecutions. But at the request of the industry, we will gradually install new cameras and camera housings next year, so that the numbers of cameras and camera housings will be increased to 96 and 131 respectively by the end of next year, and the percentage of camera-based prosecution will hence be increased to 97%.
- With regard to making separate legislation on amber light jumping and red light jumping, drivers' organizations opposed the Government's proposal to also increase the penalty for amber light jumping and that for stopping beyond the stop line in the legislative amendment. However, in the subsidiary legislation of the Road Traffic (Driving-offence Points) Ordinance, these three offences are included in the same provision of "failure to comply with traffic signals" and are not handled separately. Separating the two offences is outside the scope of the amendment to the Schedule and so, the Government cannot table it to the Legislative Council in the form of a resolution. Rather, it will be necessary for the Government to go through the more complicated procedures for amending subsidiary legislation. The Government has already undertaken to conduct a comprehensive review of the issue of whether amber light jumping should be handled as a separate offence and hopefully, the review can be completed by the end of next year. While we do respect the concern of professional drivers and have taken actions accordingly, the review should not delay the progress of legislation considering that the community has tolerated red light jumping for far too long.
- The transport industry has also proposed the installation of vehicular countdown devices or flashing green systems. We consider that

this proposal cannot be implemented rashly. First, some advanced cities have carried out extensive studies on the hesitation period during signal changes and these studies are supported by abundant empirical evidence. In foreign countries, such as the United Kingdom, Australia, Israel and Austria, studies and trials found that such devices or systems would significantly increase the risk of head-rear collision because drivers react differently and the hesitation period is lengthened. Some would choose to rush through the junction while others would stop when the flashing green or countdown begins. The conclusion of these studies is that the most effective way to reduce accident incidence is simply to give drivers no choice and minimize the duration of hesitation. The golden rule for all drivers is "slow down and be prepared to stop" on approaching junctions. Moreover, these devices and flashing green systems are not compatible with the computerized traffic signal system in Hong Kong and involve the operation of the entire intelligent traffic signal system. Therefore, we must study in detail the proposal put forth by the industry of installing vehicular countdown devices or flashing green systems.

- We have reaffirmed to the industry and the Legislative Council the existing policy of not prosecuting amber light jumping. The consent of the Hong Kong Police Force has been sought, and this is also reaffirmed at meetings of the subcommittee of the Legislative Council.
  
- Publicity and education is also a key focus of our work. The theme of road safety publicity campaign of the Road Safety Council in 2005-06 will be "Don't Jump Red Lights", and additional resources have been set aside for this task.

Traffic lights are installed at intersections of roads. Red light jumping may increase not only the risk of collusion of vehicles, but also the risk of collusion between pedestrians and vehicles.

In fact, the public and drivers all have a common wish. They all wish that the roads are safe and casualties reduced, for this is good to themselves and also to their family. Raising the penalties actually targets only at a small

number of black sheep who fail to comply with traffic regulations, because they have not only put themselves and pedestrians or other drivers in danger. A high incidence of accidents has even caused the insurance premium of their fellow drivers to increase, thus imposing an extra burden on other drivers. Take minibuses as an example. The insurance premium for red and green minibuses last year increased by 54% and 37% respectively compared with that in 2003. No doubt this has created an additional burden to the transport sector. Therefore, enhancing the deterrent effect of the legislation is beneficial to all law-abiding citizens.

Some people have suggested that we should first improve the traffic facilities (such as installing red light cameras, overhead traffic signals, and so on) before increasing the driving-offence points. This, I cannot agree. It is because there is no "take two" in life. In view of the continued increase in red light jumping cases, I think a two-pronged approach should be adopted. On the one hand, we must improve traffic facilities and review the relevant legislation on road traffic to enhance drivers' confidence in impartial enforcement. On the other hand, penalties should be increased to create a deterrent effect. In fact, we will make continuous efforts to improve the traffic facilities under various planned projects. This is an ongoing task, and there is no conflict between the two approaches in terms of priorities. I am very glad that the majority of Members of the Legislative Council have expressed support for the Government's proposal to severely punish red light jumping. I hope that Members will continue to support the relevant motion later.

Madam President, I beg to move.

**The Secretary for the Environment, Transport and Works moved the following motion:**

"RESOLVED –

- (a) that the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) be amended, in item 12, in column 4, by repealing "3" and substituting "5"; and
- (b) that this Resolution shall come into operation on 1 January 2006."

**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.

**MR ALAN LEONG** (in Cantonese): Madam President, I shall first speak in my capacity as the Chairman of the Subcommittee on Proposed Resolutions under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240).

The House Committee agreed at its meeting on 3 June 2005 to form a Subcommittee to study two resolutions on road safety, that is, a motion under section 4(3) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and a motion under section 12 of the Fixed Penalty (Criminal Proceedings Ordinance) (Cap. 240).

The Subcommittee has held a total of three meetings to receive views from the 36 associations from the transport trades.

The Subcommittee recognizes that red light jumping is a very serious offence that can bring about grave consequences. For this reason, the Subcommittee agrees that there is a need to combat deliberate red light jumping to enhance road safety.

However, there is much debate about the Government's present proposal to increase the penalties for the offence of failure to comply with traffic signals which cover not only red light jumping but also amber light jumping and other situations such as a vehicle having stopped beyond the stop line when the red light is on. In view of the serious concern expressed by the deputations about the grey area associated with red light and amber light jumping in cases where the enforcement action is taken by observation by police officers, the Subcommittee has reviewed the related prosecution policy and the need for separating red light jumping and amber light jumping into two offences carrying different penalties.

The Administration points out that from the road safety angle, it is important for drivers to stop when the red or amber light is on. This is the spirit of the current legislation. Regarding the prosecution policy, the Administration points out that it has been the police's prosecution policy not to prosecute amber

light jumping unless there is sufficient evidence to prove the offence beyond reasonable doubt. In cases where there are elements of uncertainty, the driver in question will be given the benefit of the doubt.

In view of members' suggestion, the Administration agrees to examine if there are valid grounds to differentiate red light jumping from amber light jumping after the new penalties have come into effect. The Administration aims to complete the review before the end of 2006.

On the implementation programme for expanding red light camera coverage to minimize disputes between drivers and the police on charges of red light jumping, the Subcommittee notes that the Administration will procure 68 additional cameras and install 20 additional camera housings, thus making a total of 96 cameras and 131 camera housings. The Administration plans to seek funding approval from the Finance Committee on 8 July 2005.

Regarding the transport trade's suggestion to install vehicular countdown devices or flashing green systems so that drivers can follow the signals given by the traffic lights, the Administration's view is that it requires careful consideration to ensure that any new measures introduced are effective in enhancing road safety.

Madam President, regarding the suggestion to install more overhead traffic lights, the Subcommittee notes that the Administration has begun to install overhead traffic lights at 40 wider junctions to improve the visibility of traffic signals.

On the suggestion to extend the duration of amber light, so that drivers can stop the cars in time before the stop line, the Administration would consider adjusting the duration of amber light at individual junctions, having regard to the road condition and configuration on a need basis.

Some members take the view that the Administration has adopted double standards in that it has hastened the proposal to raise the penalty for failure to comply with traffic signals but procrastinated on improvements to relevant road facilities. They caution that the Administration's move to increase the penalties for failure to comply with traffic signals prior to the completion of the corresponding improvement to support measures may arouse serious objection from the transport trades, thereby causing social unrest. The Administration

should adopt a conciliating approach to discuss with the transport trades with a view to enhancing road safety which is the common target of all parties.

The Administration clarifies that there is no question of the Administration adopting double standards. It is necessary to take forward the legislative and other measures in parallel to attain the objective of enhancing road safety. The implementation of certain measures requires further study and/or funding approval and thus it takes some time to complete the required procedures and work. The Administration stresses that the issues pertinent to enhancing road safety have already been discussed at different forums over the past eight months. During this period, traffic accidents caused by red light jumping, some of which involved heavy casualties, continued to occur. It would not be desirable to delay the measure of raising the penalty for red light jumping.

Some other members agree that raising the penalty for red light jumping would not affect law-abiding drivers and the proposal would be effective in deterring reckless drivers. To allay the concerns expressed by the transport trades, members urge the Administration to speed up the necessary improvement works as far as practicable. They also call on the Administration to ensure the objectivity of prosecution and review the relevant legislation expeditiously.

Madam President, next I shall speak in my personal capacity.

Madam President, the Secretary for the Environment, Transport and Works proposes to increase the penalties on drivers for failing to comply with traffic signals, and make the three following offences liable to fixed penalties: Using mobile phones in a hand-held manner while driving, driving a motor cycle or motor tricycle without keeping the lamps lighted and failing to drive in the nearside lane of an expressway.

The resolutions propose to increase the driving-offence points for failing to comply with traffic signals from three to five, and the penalty from \$450 to \$600. As we examine the viewpoints of over 30 organizations from the transport industry, we realize that they oppose the immediate amendment to the legislation mainly due to a lack of confidence in law enforcement. But they have no objection to the main objective of punishing the offenders for red light jumping. From this, I feel that members of the industry are not fighting for their selfish ends without any regard for public interests.

Madam President, I can understand that as professional drivers have to spend the whole day on the road to earn a living, it is natural that they would stand a higher chance of being prosecuted for having committed traffic offences. So the new legislation will make them more vulnerable to suspension of driving licences, thereby causing difficulties in maintaining the livelihood of their families. Therefore, I hope the Administration can listen to the worries of drivers with an attentive mind, and respond to their concerns with concrete and efficient policies, and at the same time, give proactive feedbacks to the views of the transport trades, thereby enabling professional drivers to support the new legislation with a relaxed mind.

On the other hand, professional drivers must also understand that, even if the people understand their difficulties in making a living, they will not tolerate the behaviour of certain black sheep of the industry in putting their monetary income above everything, including the safety of the people. Even though there is still room for improvement in the prosecution policies of the Government, the public can no longer tolerate speeding by drivers. While professional drivers are requesting the Government to improve the monitoring facilities and mechanisms, it does not mean that they can request the Government to sit back and relax in the face of an increasing incidence of red light jumping cases, taking no action to increase the fine and penalty to be imposed on offenders.

The Government is now heading in a right direction. First of all, the Government has already reduced the originally proposed points deduction from eight to five, being amenable to good advice, so to speak. Besides, as some drivers have pointed out that some of the traffic lights are not properly installed, so that their visibility is blocked by buses and container trucks, and so on. As a result, they cannot observe the changes in the traffic signals. In this regard, the Government said that it had begun to install overhead traffic lights at 40 wider junctions, and more overhead traffic lights will gradually be installed at other problem junctions.

As for the request made by some drivers for the installation of flashing green systems or vehicular countdown devices, I have some reservation about it. It is because many overseas research studies have shown that, when drivers know beforehand that the traffic signal will soon change, some will decide to rush through the junction, while others may choose to brake immediately. As their reactions may differ, the introduction of new devices may on the contrary

lead to a higher chance of traffic accident incidence. Therefore, instead of bringing in new devices, the Government had better step up education of drivers, so as to educate them to stop immediately at amber lights and not to rush through junctions.

On the other hand, drivers' organizations also oppose the increase in the penalties for amber light jumping and failure to stop behind the stop line in the amendment of the legislation. In fact, all these three kinds of behaviour are grouped under the same provision specifying the offence of "failure to comply with traffic signals", and they are not differentiated for separate enforcement. If we are to take two offences away from them, it will be beyond the scope of amending the schedule, and the Government cannot process the amendment by way of tabling resolutions to this Council. Instead, a more stringent procedure of amending subsidiary legislation will have to be adopted. The Government has already undertaken to conduct a comprehensive review of the issue of whether the offence of amber light jumping should be handled separately, and the review is expected to complete by the end of next year. This can be considered as a corresponding move of respecting the concern of professional drivers. Madam President, in view of the community's tolerance of red light jumping for such a long time, it is really not necessary to delay enacting new legislation just because of the review.

Besides, according to the prosecution policy and figures presented by the police, there has not been any prosecution against amber light jumping during the past three years. But drivers' organizations say that the police have not taken any prosecution actions against amber light jumping simply because many of the amber light jumping cases are already treated as red light jumping cases. In this connection, they request the Government to raise the standard of proof in prosecution and prevent the miscarriage of justice in such cases.

The Government says that it is impossible to install cameras at all the 1 700 junctions. At present, over 80% of prosecutions against red light jumping are supported by photographs, which can only be in red light jumping cases, not in amber light jumping cases. By the end of next year, the numbers of cameras and camera housings will be increased to 96 and 131 respectively, with prosecutions supported by photographs rising to 97%. By then, the number of controversial cases will be reduced substantially, and it will help alleviate the worries of professional drivers.



Madam President, last October, a terrible traffic accident happened in King's Road, North Point. At that time, the scene of victims bleeding incessantly on the spot was most frightening. Last year, there were a total of over 39 000 prosecutions against red light jumping which caused over 600 casualties. Each speeding vehicle which disregards traffic signals is like a time bomb in the city, threatening the safety and the lives of the citizen.

The most fundamental method of removing the bombs from our city is to make all professional drivers comply with traffic legislation, maintain a safe driving speed and stop the vehicles as directed by the traffic signals at all times. We hope they can understand the aversion of the people towards speeding, so that they can do their best to improve their driving habits and become conscientious drivers.

Madam President, as the Government has already responded to the concerns of the transport trades by putting forward many positive and substantive suggestions, I believe Honourable colleagues in the Panel on Transport will definitely continue to follow up the matter, so as to monitor the Government to ensure that it would honour its promises. With these remarks, I support the motion of the Government.

**MR LAU KONG-WAH** (in Cantonese): Madam President, the proposal to increase the penalties for red light jumping has been discussed in both the community and this Council for more than six months. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) finds it regrettable that the Government and members of the industry still have not been able to reach a consensus in this regard. Having said that, I believe one thing is clear: On the issue of curbing red light jumping, the aspiration of the people is to increase the penalties so as to deter the act of red light jumping and to protect public safety. According to the information provided by the authorities, there is a daily average of over 100 prosecutions of red light jumping now. Ensuring road safety is the duty and obligation of every road user. Given that the problem has already developed to a point where we can no longer neglect it, we have to address the problem by adopting some effective measures.

As a matter of fact, subsequent to a series of serious traffic accidents that took place at the end of last year, the Government proposed a number of measures to combat improper driving behaviour, including an increase in

driving-offence points for the offence of red light jumping from three points to eight points. A heated debate ensued as members of the transport trade indicated their opposition to the increase in driving-offence points to be incurred. We agree that raising the driving-offence points from three points to eight points is a fairly drastic increase at the present stage. The authorities made an amendment to the proposal in March this year and revised the penalty to five points, which we think has struck a balance between enhancing road safety and addressing the worries of the sector. It is an acceptable amendment that has also accommodated the aspirations of the general public.

I have listened attentively to the opinions raised by different parties, both in this Council and in meetings with representatives from members of individual trades. I fully appreciate the worries raised by them. Increasing the penalties may not be the only way of addressing the problem. Therefore, in our meetings with the Government, we have discussed issues like other supplementary measures and other ways for road safety enhancement. We have discussed a number of different road safety enhancement measures, including the use of vehicular countdown devices advocated by members of the industry, and measures such as extending the duration of the amber light, and so on. However, after studying the experience of overseas countries such as the United Kingdom, the United States and Singapore, the authorities discovered that, instead of addressing the problem of red light jumping, the installation of such devices might significantly increase the incidence of accidents. We have to consider such experience seriously. With regard to the proposal on the installation of flashing systems to signal the turn of the amber light, though empirical evidences from countries like Austria and Germany suggest that such systems may have negative effects, we may continue exploring this issue because similar systems are commonly used in the Mainland.

In the meetings of the Subcommittee, I proposed to the authorities that there was the need to review some "grey area" situations, about which all the drivers are most concerned. These grey area situations include: first, when part of a car has passed the stop line at a signalled junction; second, when the amber light is on, a car has already passed the stop line, but when the red light turns on, it remains at the road junction, and third, a car has passed the stop line when the amber light is on, but the driver is charged for red light jumping. With regard to these three situations, anyone who has ever driven a car may have run into such embarrassing situations. Therefore, I urge the Administration to take these matters seriously and to conclude a review by the end of next year, so that

drivers' judgement on the conditions of the road will not be compromised by the fear of incurring driving-offence points.

During the several discussions, the authorities also responded positively to some proposals presented by Members of this Council and members of the industry. I think this is very encouraging. This includes the installation of 68 additional red light cameras and 20 additional camera housings at various locations, with the aim of increasing the percentage of camera-based law enforcement efforts to 97% by the latter half of next year in order to step up drivers' risk awareness. The authorities have also undertaken to install overhead traffic lights at 40 road junctions to enable drivers to see the traffic signals more clearly. These are efforts made in response to the demands of the industry.

In addition, in response to the industry's concern about the prosecutions against red light or amber light jumping, the authorities have provided some information. According to such information, over the past three years the police have not recorded any prosecution against amber light jumping. The police also stated that according to the police's prosecution policy, in cases where there were elements of uncertainty, the driver in question would be given the benefit of doubt. Therefore, if a driver has not jumped the amber light on purpose, generally the police will not initiate a prosecution. We hope the authorities will honour their pledges and continue with their existing prosecution policy so as to avoid any unnecessary misunderstanding between drivers and law-enforcement officers after the new penalties have been implemented. In the meantime, this will also minimize the worries of the industry. On the other hand, this Council will continue to monitor the situation closely.

In considering the need to differentiate the offences of red light jumping and amber light jumping for the purpose of imposing different penalties, the authorities initially responded by saying that it would bring about immense enforcement problems to front-line police officers. Yet the authorities have eventually promised to review the relevant legislation after the new penalties have become effective. We will continue with our follow-up discussions in this Council roughly at the end of next year.

Madam President, last Friday I watched a news footage on red light jumping which was taken by a local television station. The reporter re-visited the scene of a major traffic accident in North Point at night. The news footage

left me with a deep impression. From the news footage, I saw minibuses travelling in the midnight as if they were on a race track, with completely no regard for the traffic signals. How could such outrageous events keep on happening? It happens every single night, and why are there no enforcement actions on the part of the police? When red light jumping has become a habit, how can the pedestrians enjoy protection? In many accidents caused by red light jumping, drivers' momentary pleasure of speeding has taken away the precious lives of many innocent people.

The DAB fully appreciates the industry concerns because the profession of drivers is driving on the roads. They demand that the authorities should first provide good matching facilities, that is, they should first improve the existing road safety measures. However, incidents of red light jumping keep on happening every day, and there are drivers jumping the red light on purpose every day. In order to strike a balance between the interests of different parties, the DAB agrees to increasing the penalties, while at the same time, we also suggest that the authorities should implement the abovementioned measures with a view to further enhancing road safety. I hope people from all walks of life can be tolerant and understanding with each other. We also undertake to monitor the situation after the new penalties have become effective, and to conduct a review and to take follow-up actions if necessary. With these remarks, I support the resolution.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam President, I do not support implementing this amendment with effect from 1 January.

As a matter of fact, this effective date is not substantially different from that requested by the industry. The Government can actually deal with the issue more flexibly by simply acceding to the request of the industry, and then everything will be fine. The points expressed in this debate are very straightforward, but they reflect the fact that many political parties and Members of the Legislative Council have accepted favour from several sides. This explains why in all these discussions, they always say that anything is acceptable to them. But in the end, they will always support the Government. I wish to tell these Members that what they have been saying is all nonsense. These Members always say that this argument is right and that viewpoint is also justifiable; that what A has said is correct, and the remark made by B is also accurate. In the end, they will support the Government.

What is the central issue of this motion? Firstly, on the installation of countdown devices or flashing amber signals, the Secretary mentioned in her speech that in places like the United Kingdom, Israel and Austria, the experience had been unsuccessful. But how about the experience in other places? I have no idea. I have never done any studies on this. I do not know whether other Members have done so. It appears that Ms Miriam LAU may have done so — according to her, these signals are red in some places. I do not have any knowledge about this. But I wonder why all these time-tested facilities in the Mainland have turned out to be so ineffective in foreign countries. Maybe, this is due to differences in the respective conditions in these places.

I once lived in Germany, and I noticed that in this country, red light jumping as a result of careless driving was usually not the cause of most fatal traffic accidents, because most drivers drove very slowly. The most common cause of these accidents, as pointed out by Mr LAU Kong-wah just now, is intentional speeding. For example, minibus drivers may intentionally commit speeding because they want to run one more trip. Sometimes, a driver may drive under the effect of alcohol. To sum up, intentional speeding in total disregard of human lives is often the cause of traffic accidents in Germany.

Driving-offence points cannot serve as a real punishment for these drivers. We should not be talking about increasing the number of offence points from three to eight, or from three to five. Instead, these drivers should be prohibited from driving or sentenced to imprisonment. During the time when I was first imprisoned, one of the prisoners in the next cell was a driver sentenced to three months' imprisonment for knocking a pedestrian to death in a traffic accident. I believe he will never again commit careless driving, an offence that may cause the death of others.

The problems raised by the industry are not entirely groundless, only that they have been deliberately depicted as a group of persons with selfish interests. Of course, it is wrong for minibus drivers to jump red lights frequently just because they want to make some more money. They are the black sheep of the industry, and they should even be barred from driving altogether. No one should disregard the lives of others, which is totally wrong. But how can these drivers be prevented from doing so anymore? Of course, if we increase the penalties, then after deducting five offence points for three or four times, they will be barred from driving. But this will only prevent them from driving and it

is unlikely that they would refrain from driving recklessly just because they have incurred offence points more frequently. Instead, they will do it more secretly. I therefore think that heavier penalties, instead of just deducting offence points, should be imposed on the drivers concerned. They should be prohibited from driving immediately or sentenced to imprisonment. I wonder if the Government will consider this.

Secondly, the present debate is actually very "absurd". Both sides are in fact arguing over the inadequacy of overhead traffic lights and it is said that 40 more overhead traffic lights have to be installed. But suppose there are no such facilities, should we then ignore everything? Who should be held responsible in case fatal traffic accidents occur due to the absence of overhead traffic lights? It is also said that more red light cameras will be installed to facilitate electronic prosecution and promote fairness. All the Members have now agreed to installing these cameras, and it is expected that their installation can be completed by the end of 2006, and by then electronic prosecution cases will account for 97% of all prosecutions.

The point in dispute now is: Should we adhere to the effective date of 30 June 2006 as set out in the proposed legislation? Or, should we wait until the Government completes the installation of facilities by the end of the year (assuming that the Government is really capable of doing so in 2006)? Actually, it is just a difference of six months. As long as the Government is willing to speed up the works, and suppose Mr Donald TSANG is really right in saying that the Government is no longer irresolute and can implement a decision once it is made, why should it fail to achieve what it wants to do? The present dispute and conflict are therefore unnecessary.

I have heard many Members argue that without heavier penalties, those drivers will break the law more blatantly. I can tell Members that this is just a psychological problem and some mental therapy is all that is needed to rectify the situation. When a driver jumps a red light just because he wants to run one more trip or because he wants to drive his girlfriend home more quickly, he will not consider the consequence of incurring offence points. Only professional drivers will consider this consequence because they earn their living by driving. This is the crux of the problem. They are certainly different from a playboy driver. Members should have heard of the incident in which someone claimed that he was not the driver or not even the car owner after running into a traffic accident. How can a person say something like that? Therefore, the worries

of professional drivers are not entirely groundless. It is only natural for them to fear that they may become victims of some unfair law-enforcement actions.

The Government has not completed the improvement measures. This is not because the Government is unwilling to proceed with the improvement works. But it just takes some time to do it, and late 2006 is the soonest possible time of completion. As for red light and amber light jumping as well as stopping beyond a stop line, they are now to our amazement categorized as the same offence under the existing legislation. And it will take a longer time for us to make legislative amendments to separate them for different treatment. The Government should of course be held responsible for this because if it needs more time, the implementation will necessarily be delayed. The Government should be capable of proceeding with the work faster, as the Legislative Council has not put up any obstacle in this case. If the Government can put the legislative proposal before us now, we will pass it immediately. We are all ready for passing a large number of bills. We all have good intentions this time. The DAB, the Liberal Party and the Democratic Party are all prepared to pass the bills put before them. This time around, we are literally a rubber-stamp. We will just give our stamp and all can be passed. I really cannot understand why the scrutiny of some bills should take so long.

I have attended many meetings here, and at the three meetings of the Bills Committee, many Members kept on querying and even reprimanding the government officials present. But surprisingly, when it came to the vote, such Members all voted for the Government in the end. I cannot help calling this hypocrisy. When there was television broadcasting of the proceedings of the meetings, they reprimanded the government officials present. Today, however, they fear they may lose the support of voters, fear that voters may think that they pay no heed to cases of drivers knocking pedestrians to death. To be fair, Members will not ignore such cases, and neither will drivers and government officials. The crux of the problem is why the Government finds it impossible to meet the demands of drivers more quickly. The Government is capable of doing so and they have already made concession. They have already been forced to assign the effective date of the legislative amendment as 1 January 2006 and to formally implement the legislative amendment on 30 June 2006. However, to some people, the difference of half a year is still unacceptable.

My point is very simple. I am totally against the idea of imposing heavier penalties as a means of dealing with people with mental problems. These

people should see a doctor and be sent to the prison. Heavier penalties alone cannot prevent them from breaking the law again. I absolutely do not believe that this can achieve the desired objective. This is similar to sentencing a convicted murderer to imprisonment 500 000 times. A serial killer will not stop killing people as a result of such a judgement. These mentally sick people must be arrested. They must be hunted down and arrested by the police. They must be sentenced as criminals.

The Government's mentality of law enactment is extremely outdated. People who break the rules unintentionally or due to oversight are often arrested and brought before the Court as criminals. In ancient times, there was something similar, called "witch hunt". For example, when a child in a certain village died, a woman there would be identified as the witch. She would be interrogated and asked questions like whether she was a witch and at what time she had gone to bed the night before. If she answered that she had not slept the night before, she would be asked what she had done. Then, people would conclude that she was a witch and burn her to death. People at that time thought that this would save the whole village and no more villagers would die. However, I can tell Members that people would continue to die in that village, as the woman, the so-called witch, was just arbitrarily taken away and burnt to death. Of course, this example is somewhat extreme.

However, I hope that the Government can realize that my conclusion on this issue is very simple. First, I hope that the Government and the Secretary will not think that they have lost face over this resolution. They should not think that the Government has been forced to make concession to get the endorsement of the Legislative Council. But even after making such concession, it still cannot implement the improvement measures immediately. In fact, it is just a difference of half a year after all. Why is it impossible? Second, the improvement measures are not really crucial. Mr LAU Kong-wah said just now that people jumping red lights would be deterred by such penalties. I must say that these people simply want to take the chance. If the police spot any persons committing such offences at the black spots, or if Mr LAU Kong-wah or others spot any such offences and report them to the police, police officers on motorbikes will go after the offenders. Only by doing so can they be arrested right on the spot. Why must this always be the case? The reason is that in the past no one had taken any enforcement actions and no one had paid any attention to these cases. The situation was not attributable to light



penalties. I think the Secretary should order the Traffic Wing to deploy more officers at black spots to take enforcement actions. All these people must be arrested, prosecuted and imprisoned. By doing so, they will never commit any offences again.

Many Members are too "middle-of-the-road" in attitude, thinking that things will be all right if everybody can make some concession. I do not think that the present problem should be handled in this way. Therefore, I demand that the Secretary should tell her superior — but, she does not really need to be accountable to her superiors now because there is already a new rule allowing the disobedience of the three Secretaries of Departments and 11 Bureau Directors and even allowing them to be absent from meetings — but the Secretary should tell Mr Raffeal HUI and Mr Donald TSANG that they should make a slight concession. She should first tell them to speed up the legislative process so as to differentiate the three types of offences and put them before the Legislative Council as soon as possible. I believe many Members are prepared to support the bills to be submitted by the Government and pass them quickly like a rubber-stamp. Secondly, flashing traffic lights should be installed, and if this is considered not feasible, reasons should be given to explain why they do not work in the context of Hong Kong. It is only in this way that the Government can convince the public. Third, cameras for electronic prosecution should be installed as soon as practicable and so should overhead traffic signals. The number of additional overhead traffic signals should not be limited to 40. When complaints are received and if the installation of overhead traffic signals is found necessary, such should be installed, and their quantity should be determined by the actual need. This is the only way of saving Hong Kong people.

Therefore, I do not support the motion moved by the Secretary. I urge the Government to complete the work as soon as possible. If the work can be completed by the end of 2006 or a bit earlier, all problems can be solved and Members will not need to engage in arguments anymore.

I hope Members can stop being hypocritical. I hope that they can stop the practice of voting for the Government after criticizing it severely. I hope that Members can stand up for the image of the Legislative Council instead of being so hypocritical, as reflected in their voting for the Government after criticizing it.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, the Government's proposal to increase the penalties for drivers jumping the red light and to amend other relevant legislation has in fact caused a great deal of reaction from members of the transport trades and the public. Insofar as these amendments are concerned, as Mr Alan LEONG has pointed out, what members of the transport trades, the public and representatives of various groups take issue with or are dissatisfied with is not that the Government's proposed increase in the penalties, nor do they think that there is anything wrong in safeguarding drivers and pedestrians, but that throughout the process, the Government has deliberately over-simplified the issue of amending the legislation. At the same time, the Government has not displayed any sincerity in communicating properly with the driver associations affected and solving the problems earnestly. On the contrary, it has been intent on going its own way. Does the Government believe that as long as it can secure enough votes in the Legislative Council, it needs not care about so many other things?

Madam President, when the Government proposed the amendments to increase the penalties, it put forward two arguments. First, the amendments to the legislation are well-intentioned and it is hoped that traffic accidents can be reduced; second, as long as drivers do not break the law while driving, they have nothing to fear even if the penalties are increased. On the face of it, these two arguments sound reasonable, however, I believe that this line of reasoning has in fact over-simplified the issues.

First, if it is simplistically thought that increasing the penalties will enhance the deterrent effect, so that drivers will not jump the red light rashly when driving and traffic accidents will decrease as a result, I think such a claim simply puts all the blame on drivers and has not looked into other factors that may cause traffic accidents. In fact, some Members have already pointed out some problems and I also want to put my queries to the Secretary again: When the Secretary found that there had been an increase in the number of cases involving red light jumping, did she investigate what had led to the increase? Were all cases of red light jumping caused by the rashness of the drivers concerned? Madam President, if you have paid any attention, you should have heard that representatives of the transport trades and our drivers have pointed out all along that there are plenty of traps in the existing road facilities and these traps often oblige drivers to jump the red light. Has the Secretary ever considered the problems in this area? Did she ever investigate it? Did she ever try to understand it?

Just now, many Members have conveyed the fact that many representatives of the industry have come to the Legislative Council to apprise us of their situation. For example, since there is a dearth of overhead traffic lights on the road, drivers often cannot see that the signals have changed to red lights until they are very close to them. However, if they apply the brakes all of a sudden at that point, the likelihood of an accident happening is even greater, so drivers have no choice but to jump the red light.

Madam President, when it comes to this subject matter, I must declare my interest. I am also a motorist but I have never jumped the red light. However, the most common scenario is that there are a lot of vehicles on the road. Not to mention the situation in which the road is swarmed with heavy vehicles, even minibuses can often block the traffic signals from private car drivers completely. These situations will create problems, however, the Secretary has not tried to solve these problems and thinks that by simply increasing the penalties, the situation can be improved. That will not work.

When the Secretary gave her speech just now, she said that she had noted the views of drivers and she would do something by installing overhead traffic lights at 40 major road junctions and the number would increase in the future. However, she also hopes that drivers can keep providing information on black spots or locations where improvements are called for. The Secretary and her officers will then do their best. Is this fair? If the Secretary knows full well that there are problems, but still increases the penalties for red light jumping, which may be the result of problems in actual facilities rather than pure rashness or deliberateness, what does this mean? Even if the penalties are increased, there will not be any deterrent effect because drivers have no choice but to jump the red light. What can they do?

All these problems warrant further consideration, but why does the Secretary not give them any consideration? Madam President, although the Secretary said that something would be done, as I have said, when representatives of the industry came here to express their views, they all asked if the implementation of this Bill could be deferred, for example, the discussions on the Bill could resume when the Legislative Council is in session again after the summer recess. In the meantime, the Secretary can also actively take improvement measures.

Actually, another even more important viewpoint is that at present, it is not the case that there is no legislation regulating red light jumping or amber light jumping, rather, this type of legislation already exists and the existing penalties under the law are not light either. For three points will be deducted and this exerts a great deal of pressure on professional drivers. Therefore, I think it is not increasing the penalties on such behaviour that many professional drivers object to, the point is that the Government should take some complementary measures before increasing the penalties and herein lies the greatest controversy. However, unfortunately, up to now, the Secretary still maintains that she will not do so. From the speech given by her, we know that she considers this request unreasonable because she said that doing so would do other people even greater harm and she did not want to see this happen. This is exactly the point. Secretary, if you understand the rationale, why do you not put the road facilities in order?

Of course, since she does not agree with this point and since she does not agree that problems exist, she is not going to do anything in this regard. She only said that since it was you people who had raised this matter, she would just do what she could, so as to fob you off. This is her logic, her viewpoint. However, in fact, as I have said, she had not really looked into the real causes of red light jumping before she came to her present conclusion. This is how our Secretary deals with matters. She adopted the ancient approach of "taking draconian measures to restore order to a chaotic world". On seeing that so many cases of this kind had occurred, she simply imposed heavier penalties.

In fact, apart from the overhead traffic signals that I have mentioned, someone also mentioned red light video cameras. The Secretary said that there were over 2 700 signal-controlled road junctions throughout Hong Kong and even if it would be undertaken in the discussion on the budget on Friday that the number of such cameras would be increased, the total number would only increase by 200. That is to say, the proportion of such cameras to all signal-controlled road junctions is less than 20%. What about the other junctions then? All that can be done is, as Mr LEUNG Kwok-hung said, to let law-enforcement officers deal with such matters with their naked eyes. However, as some drivers said, such a method is most unfair and does not yield very good results because very often, this method gives rise to a lot of arguments. At present, all drivers, be they professional ones or otherwise, have raised one issue, that is, they are willing to be subjected to punishment that

is imposed fairly but they do not want to be framed. In that case, how can it be guaranteed that they will not be framed? There cannot be any guarantee. The best guarantee is to install such cameras because more scientific evidence will become available. However, before the Secretary has put in place such facilities properly, she wants to increase the penalties high-handedly. Is this fair?

In fact, what we are most concerned about is that the increased penalties will come into force before adequate facilities or other complementary measures have been put in place properly. The most serious consequence is that the average motorists will be subjected to mental pressure and the consequences can be dire. I remember that recently, one taxi driver said to me that he had been a taxi driver for nearly 20 years and had never breached any regulation, nor had he incurred any points. However, on hearing that the Secretary had proposed such penalties, he was very worried and did not know what he should do because he was very concerned about becoming one of those penalized. As a result, this has created mental pressure on him. If a driver, in particular, a professional driver, drives on the road in such a mood, Madam President, what do you think the consequences will be? This is indeed a cause for concern to us.

However, many Honourable colleagues said that no matter how, the amendment should be passed before all else because the Secretary had said that she would certainly get the job in certain areas done properly and that was what the Secretary had undertaken to do. However, I still wish to call on Honourable colleagues who intend to cast their supporting votes to think twice. Why? Members will perhaps remember that more than three years ago, when the Secretary took office, she made a pledge to the general public, saying that she wanted to establish a fare adjustment mechanism for public transport fares that would allow increases as well as decreases. Madam President, these remarks were made over three years ago, but where is the mechanism? What outcome can be seen? The Secretary has not delivered anything so far.

Apart from failing to deliver on the fare adjustment mechanism that allows both increases and decreases, Madam President, I wonder if you still remember that I have moved a total of three motions in three consecutive years to request that the Government offer assistance, so that public transport operators will offer half-fare concessions to disabled people.

I still remember that when the Secretary gave her reply during the first of such motion debates, she was all emotional and tearful, saying that she definitely supported disabled people in campaigning for their rights because she had a friend who had unfortunately died because her friend could not get any assistance. Therefore, she would exert her utmost on this matter. However, Madam President, when this Council is in session again after the forthcoming summer recess, I will take part in the ballot again to get a time slot to move the same motion. Why do I have to do this? Because the Secretary has still failed to deliver so far and no progress whatsoever has been made. We cannot see what achievements she has made after all these years.

Furthermore, there is another thing that I have a deep impression of. Last year, the Secretary said that since Secretary Dr York CHOW had come onto the scene, some of the problems could be handed over to him for his action, that is, the responsibilities were shifted onto Secretary Dr York CHOW. Actually, it does not matter if she shifts her responsibilities as long as someone is really doing something. However, one year has passed and what is the present situation? We have not yet heard of anything.

Therefore, if the Secretary told us today that such and such a thing would be done, can we still believe her? I hope Members seated here can think about this because we have heard far too many promises. Can we continue to believe her? I hope the Government will not let us prove ourselves right, nor will the Secretary give us any chance to belittle her. However, since the Secretary has made one promise after another but time and again allowed her promises to turn out to be empty talk, how can we believe her? In view of this, I very much hope, and I believe many associations, representatives for professional drivers and even drivers in general also hope that the Government can legislate only after doing its work properly. This is our common wish but if the Government does not do so, as I have said, the consequences will be dire.

Therefore, I reiterate that I hope Members can cast their opposing votes so that the Government will realize where the root of the problem lies and then tackle the problem at root. It must not think that the problem can be solved by increasing the penalties. This is an erroneous approach in handling the problem, one that is neither serious nor responsible. I so submit, Madam President.

**MS LI FUNG-YING** (in Cantonese): Madam President, last week, Mr Donald TSANG came to this Council for the first time in his capacity as the Chief Executive. Before fielding questions from Members, he gave a speech on his principle of governance in the future and called on the Legislative Council to follow this principle. What is this principle? It is to adopt the findings of opinion surveys as guidance and both the Government and the Legislative Council should take actions according to public opinion.

I agree that opinion surveys can serve as important reference for governance, however, to govern solely according to the dictates of public opinions does not mean that a society is people-oriented or adopts justice as its guiding principle. At least, insofar as the two resolutions on the Road Traffic (Driving-offence Points) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance tabled by the Government today by capitalizing on public opinion are concerned, I cannot see how they are people-oriented and how they conform to the principle of social justice.

Madam President, I must first of all stress here that I object to driving behaviour that disregards road safety, including the jumping of red lights. I believe that the position of those professional drivers who oppose the resolution today is also the same. I have to make this clear because on a number of occasions, the officials concerned from the Environment, Transport and Works Bureau have conveyed a rather biased message to the public and stressed that as long as they comply with the legislation, they do not have to be afraid of the increased penalty. However, these officials have completely overlooked the fact that there are many pitfalls on the road and some grey areas in law enforcement. Such a biased message gives the wrong impression that people who oppose the resolution all disregard road safety and those professional drivers who object to the resolution are self-serving and that drivers are the prime culprits in accidents caused by red light jumping.

I am not surprised at all if the general public think that motorists have to assume full responsibility for red light jumping. To the general public, to refrain from jumping the red light is just like refraining from stealing and the right and wrong is clear-cut. Therefore, when the Government commissioned the The University of Hong Kong Public Opinion Programme to conduct an opinion survey on red light jumping and the penalties for the offences, nearly 80% of the respondents supported the government proposal to increase the present number of offence points for jumping the red light. I do not find this

surprising. This is just like commissioning an opinion survey company to conduct a survey on whether the salaries tax should be reduced in the coming year, and the result should be all too obvious. I feel most sorry that the Government has used the results of such a survey as the basis of its policy.

Madam President, no one wants to see any traffic accident happen. Traffic accidents that happen as a result of human factors do not bear any relation to whether the people involved are road users or what their occupations are. When professional drivers, who use the roads most often and for the longest periods of time, oppose the resolution, they do so not out of disregard for road safety but out of opposition to the Government's disregard for the pitfalls on the roads, which snare innocent drivers into the web of law with its increasing penalties.

These traps on the road include the Government's reliance on human observation to determine if drivers have jumped the red light, thus leading to many disputes. In the second half of last year, the number of red light jumping cases as determined by human observation averaged 920 cases per month. What drivers want is that the Government uses cameras comprehensively in law enforcement.

Government officials have claimed that the defence mechanism provided by the legislation can serve as a counter-balance to the possibility that drivers are mistakenly prosecuted. This is theoretically correct, however, the majority of the ordinary public are on the one hand afraid of being mired in legal proceedings, while on the other, wage earners who live from hand to mouth have neither the time nor the money to insist on their innocence instead of paying the \$450 fine and getting three points. Therefore, most professional drivers would rather lament their hard luck, pay the fine, get the offence points and settle the matter in this way. I believe that although the conviction rate for non-camera prosecutions was 99.89% last year, this does not mean that there is no problem with manual prosecution. Rather, the 99% conviction rate more likely reflects the fact that members of the public are afraid of being involved in disputes with the Government.

However, should the resolution be passed, then drivers cannot simply lament their hard luck because even if they miraculously manage not to fall into other road traps, they only have to run into hard luck three times to incur the maximum 15 points, have their driving licences suspended and be stripped of their means of living.



In fact, many organizations, including the Federation of Hong Kong and Kowloon Labour Unions to which I belong, have used both text and pictures to present to the Government and the Subcommittee studying the resolution a host of red light jumping pitfalls, including the difficulty of vehicles in making right turns on some roads, where drivers have to make use of the opportunity proffered by the amber phase to make right turns; the dilemma of vehicles stuck in turning pockets; the need of heavy vehicles for more time to cross signal-controlled junctions and their difficulty in braking; the lack of overhead traffic signals on roads which makes drivers prone to fall into red light jumping pitfalls because their view is blocked, and so on. However, the Government's only response is that it will take follow-up actions, but it has turned a deaf ear to the demand made by various groups that such pitfalls involving red lights and the roads be first rectified. We have no idea when the follow-up actions of the Government will solve the problems, however, once the resolution is passed, the new penalties will come into effect. It is just as simple as that.

To the Environment, Transport and Works Bureau, the most convenient thing to do is to impose draconian laws, however, this will also be the laziest way to improve road safety. A government that is truly people-oriented will implement draconian laws only as a last resort, however, the resolution today has turned the last resort into the very first measure and because of this measure, professional drivers are required to shoulder responsibility for things that they should not be held responsible in the first place. For this reason, I cannot support today's resolution. Thank you, Madam President.

**MR ANDREW CHENG** (in Cantonese): Madam President, before scrutinizing this resolution, the Government and the Panel on Transport of this Council have in fact discussed this issue for many times over the past eight months. I believe those Honourable colleagues who support this proposal put forward by the Government and the Government itself have to withstand considerable pressure. Professional drivers have made it known that if today's resolution is passed, they may stage a large-scale vehicle rally on the coming Sunday. I hope the Secretary will understand that even though the day in question is not a work day, the rally will still cause traffic congestion, so I hope the Government will not take it lightly.

We understand that professional drivers will smart like being pricked by a pin whenever issues relating to the Driving Offence Points System are

mentioned. They are more concerned about this issue than other road users. As Members of the Legislative Council, we have discussed this issue in detail many times in panel meetings in the past. If I remember it correctly, the Government originally proposed that eight points be given. Compared with five points and a fine of \$600 under the present proposal, I believe the Government has already made a considerable concession. The reason that I say this is very simple. I remember that in a certain panel meeting, I asked the Government about its general policy on fines. The policy then was that litter bugs would be fined \$1,500, that is, dropping a piece of waste paper onto the ground or spitting would attract a fine of \$1,500. Since jumping the red light will only attract a fine of \$600, I believe the Government has made a considerable concession. However, both the Democratic Party and I believe that life is priceless. As long as professional drivers, drivers in general and other road users all comply with traffic regulations, this Driving Offence Points System will not cause any problem. I have also talked with many professional drivers. They considered that even if eight points were given and a fine of \$1,500 was imposed, this would not cause any problem at all because they comply with traffic regulations.

However, coming back to our present topic, the Government has encountered problems relating to complementary facilities. Of course, the Panel on Transport of the Legislative Council hopes that the Government can address the demands made by the transport trades. We also believe that the Government should expedite its measures such as the installation of red light cameras. We have all along called on the Government to submit papers to the Legislative Council and the Finance Committee will surely approve the funding. This time, the Government will apply for \$58 million this Friday. However, if my conjecture is right, basically, the action taken by the Government this time around is the outcome of the pressure exerted by the Subcommittee studying the resolutions and many members in the transport trades. Of course, the Government has agreed to address both issues at the same time and this is called "walking on both legs". It has also requested us to expedite the funding approval. If the funding application had been submitted to this Council half a year or even a year earlier, the facilities would have been installed by now. In this way, the Government could have avoided the pressure from professional drivers. At least, the drivers would not have been able to claim that complementary facilities have not yet been put in place properly. Since professional drivers kept saying that complementary facilities had not yet been put in place properly, I trust their next move would be to demand that the

Government put in place various complementary facilities properly before increasing the points and the penalties.

The Democratic Party believes that such remarks are most unacceptable. I believe that throughout the world, the needs of professional drivers in respect of the facilities in the transport network may be different from those of ordinary people or motorists in general because professional drivers really spend a lot of time on the road every day. However, even though they have made a lot of requests to the Government, can the Government accede to all of their demands?

Of course, as Members of the Legislative Council, we cannot ask the Government to ignore public opinions. The Democratic Party hopes that the Government will walk on both legs, that is, on the one hand, increasing the penalties, and on the other, reacting faster when professional drivers point out that proper arrangements have to be made regarding some junctions or certain complementary facilities. The reaction of the authorities in charge of transport often makes us think that it gives professional drivers and various groups the excuse to say that various complementing facilities have not yet been put in place properly. I hope Members will understand that, of all types of traffic accidents, the number of accidents caused by red light jumping remains very high, accounting for over 80% of all accidents. The number of prosecutions rose from 22 590 cases in 2003 to 39 376 cases in 2004. The number of lives lost unnecessarily due to accidents stands at 700 each year and the number of people who were disabled is even higher. I believe Members will all agree that accidents caused by red light jumping, which endanger lives, must be reduced by all conceivable means. We must not allow any life to be lost for no reason other than the inappropriate behaviour of motorists.

When scrutinizing this resolution, we were aware that apart from increasing the points incurred by the offences, the Government had also done a lot to enhance road safety. However, as I have pointed out, I hope that the Government can respond more speedily to the requests of the relevant organizations and trades.

Madam President, acts of jumping the red light should not be classified into those committed by professional drivers and those committed by motorists in general, since whoever jumps the red light should be given offence points. We support increasing the offence points because we hope motorists will comply with all traffic regulations. The intention in increasing the offence points is not

to pinpoint or discriminate against anyone, nor will any organization or trade be specifically targeted. Even if the penalties are increased, we believe that professional drivers who comply with the regulations will not be discriminated against.

At the end of last year, we conducted a survey concerning jumping the red light. Among the respondents, about 35% considered that awarding three offence points was reasonable, while nearly 50% believed that the points incurred was unreasonable or too few. In the group of respondents who believed that too few points were given, the respondents were more inclined towards giving five to six points. Therefore, the present proposal made by the Government to give five points is in line with public opinion. In the survey, we also conducted a cross analysis to examine if the respondents would express different opinions in response to the questions if they held a driving licence. We found that no matter if they had a driving licence or not, the changes in the percentages were not marked. Therefore, even respondents holding driving licences supported giving more points and giving five to six points was preferred. In fact, at the time when this survey was conducted, the Government's intention was to give eight points. Therefore, generally speaking, I believe the Government has already made some concession on this issue of offence points. I also hope professional drivers will understand that, irrespective of whether people hold driving licences or whether they are professional drivers, they only have to follow traffic regulations. The resolution proposed by the Government on this occasion is intended to strike home the very clear message that jumping the red light endangers lives and is a serious crime. I hope that road safety can gradually be improved on account of this resolution moved by the Government and that it will install and improve all complementary facilities as soon as possible.

Madam President, I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam President, the resolution proposed by the Secretary now is related to the other resolution that she will move later on, so I am going to comment on both now.

Madam President, on the face of it, in the discussion on increasing the penalties for jumping the red light, professional drivers are one-sidedly against

the proposal while the public are one-sidedly in favour of it and their positions are seemingly polarized. However, we only have to listen patiently to the views of the transport trades to find that this is not the reality. The position of the transport trades is basically the same as that of the general public and the Government. They are very concerned about road safety and supports clamping down on drivers who jump the red light deliberately. While the transport trades support clamping down on red light jumping, the Government is in fact using the guise of targeting red light jumping to include all offences relating to failure to comply with traffic signals in the penalty of increased offence points to be imposed and the offence points will be raised from three points to five points for all offences. The difference between the Government and the transport trades lies in the across-the-board approach adopted by the Government. At the same time, the transport trades have suggested that the complementary transport facilities should first of all be improved and this includes installation of additional red light cameras, before the increased penalties come into effect. However, the Government insisted that the penalties must be implemented first and the provision of complementary facilities should be discussed or made later. This is the second disagreement between the sector and the Government.

Members need only refer to regulation 17 of the Road Traffic (Traffic Control) Regulations (Cap. 374G) on "Significance of light signals" to find that there are in fact 10 types of non-compliance with light signals on which the Government wants to impose heavy penalties in an across-the-board fashion. Mr Alan LEONG has also raised this point a while ago. Proceeding beyond the red light signal, that is, the so-called jumping the red light, is only one of them. Others include proceeding beyond the amber light signal and proceeding beyond the white stop line. In other words, the present proposal of the Government is that a driver who has proceeded beyond the amber light signal or has failed to stop before the white stop line will be treated as having jumped the red light and will be given five points regardless. I cannot accept the Government's claim that technically, it is not possible to separate red light jumping from other types of failure to comply with traffic signals by amending the Schedule, since I already made the suggestion to differentiate this offence from others early this year. If the Government really had wanted to, there definitely would have been enough time to propose amendments to the relevant Regulations. The Government is only trying to find an excuse in saying that it is impossible to do so.

The legislation provides that drivers cannot proceed beyond the amber light signal, nor can they stop beyond the white stop line, however, can drivers always do such an ideal thing under all circumstances on the road? In the meetings of the Panel on Transport and the Subcommittee, professional drivers belonging to various organizations gave many real-life examples to illustrate how drivers have no choice but to proceed beyond the amber light signal and the white line under certain circumstances. I will now try to sum up their personal experience. Firstly, the amber lights are different from the red lights in that the former do not give any advance indication. Drivers have no way of knowing beforehand when the amber light signals will light up. Often, it is when they have reached the traffic lights that the lights change to amber and they cannot stop before the white line for safety reasons even though the amber lights are lit, so they have to drive on all the same. Secondly, heavy vehicles like buses and container trucks are different from lighter vehicles such as private cars in that there is some danger if they brake abruptly in front of traffic lights. Often, drivers cannot brake abruptly and immediately when the lights change to amber out of concern for the safety of the passengers or the goods that they are transporting, and so they have to drive on even though the amber lights have lit up. Thirdly, it is no easy task for drivers to make a right turn. Often, when the green lights are lit, they cannot turn right successfully due to the heavy traffic and they have the opportunity to turn right only when the amber lights light up and the traffic from the opposite direction comes to a stop, so again, they have to drive on even when the amber lights are lit. Fourthly, before a driver enters a junction, the green lights are lit, but before he has exited the junction, the light signals may have turned amber or red because the vehicles ahead have been moving slowly. Fifthly, not all amber lights are lit for three seconds. At some places, the amber lights are lit for less than three seconds. This is the conclusion that I drew after visiting some signalled locations and carrying out actual tests. Sixthly, the light signals at intersections with the light rail can change at any time. Even though a vehicle has entered an intersection, if a light rail train is coming, the light signals will change to red immediately, thus leading to what is called jumping the red light.

All of these are real-life examples which show that more often than not, drivers do not proceed beyond the amber lights and the white line deliberately. This is different from drivers who deliberately jump the red light. Precisely for this reason, the police will exercise discretion when dealing with drivers who have not purposely proceeded beyond the amber light and the white line. According to the prosecution policy of the police, where a vehicle has proceeded

slightly beyond the stop line, but no accident and no injury has been caused, no prosecution action will be instituted under normal circumstances. If one third or half of the vehicle protrudes from the white line, that is, the lights have turned red and the vehicle cannot stop in time but it has not yet entered the junction, the police will decide according to the circumstances and in most cases, no prosecution action will be instituted, though this may not always be the case. The police also said that where a vehicle has legitimately passed the traffic signals but then has to stop at the junction because the traffic ahead does not allow it to exit the junction, no prosecution action will be instituted under normal circumstances, and if there is photographic evidence to prove this, the police will not initiate any prosecution either. However, may I ask the Government, of the over 1 000 road junctions in Hong Kong, at which junctions are such photographs taken?

Although the police had reiterated time and again that no prosecution would be made under certain circumstances, the transport trades also pointed out that there was evidence to prove that prosecutions were often initiated under these circumstances. Even if they tried to defend themselves in Court under these circumstances, the Court would still rule according to the provisions of regulation 17, saying that the law had set it down in black and white and no one was allowed to engage in deceitful arguments, so in the end, they were still convicted. Therefore, it is simply a momentous task for drivers to fight off the charge successfully. In fact, according to the information provided by the Government, the conviction rate of prosecutions based on observations is as high as 99.89%. Ms LI Fung-ying has also mentioned this and Members have in fact cast doubts on this percentage. Since the Government is saying one thing and doing another, the transport trades have proposed that the penalties for jumping the red light should be differentiated from those for proceeding beyond the amber light signal and the white stop line.

However, the Government insisted that the penalties for jumping the red light and those for proceeding beyond the amber light signal are based on the same rationale and in the interest of road safety, drivers must stop when the red lights or amber lights are lit. This is the spirit of the existing legislation, however, I think the Government has a split personality. On the one hand, the Government insists that the penalties should not be differentiated in the belief that jumping the red light and proceeding beyond the amber light signal are both just as serious and both affect public safety, on the other, it allows the police to adopt different prosecution policies for these two types of offences: on jumping

the red light, the police cannot exercise any discretion but on jumping the amber light, the police say that they can exercise discretion. In fact, by exercising discretion on drivers who proceed beyond the amber lights and the white stop line, the police are admitting that there is a difference in seriousness between the offence of jumping the red light and that of proceeding beyond the amber light signal and the white stop line. When giving her speech, the Secretary also admitted that drivers who jump the amber light probably did not do so on purpose and it might not be necessary to impose the heavier penalties. However, the Secretary still insists on imposing uniform and heavy penalties on both red light jumping and proceeding beyond the amber light signal and the white stop line, so it can be seen that the Government's legislative intent is in contradiction with its prosecution policy and this is totally illogical. If this is not a sign of split personality, then what is it?

Meanwhile, the Government has reservations about the proposal to differentiate these two types of offences, saying that if the penalties for these two types of offences differ, drivers who have jumped the red light will be given an incentive to claim that they are only trying to beat the amber light signal in defending their cases. The Government is concerned that this will pose serious problems to front-line police officers in law enforcement. However, since when did we treat lesser crimes as though they were more serious ones merely for the sake of preventing people from defending themselves? Since when did the legal system degenerate into such that would rather overkill than assume people's innocence, in order to make it easy for police officers to enforce the law?

Since the legislative intent must be consistent with the prosecution policy and in view of the spirit of the law that people should be assumed to be innocent until proven otherwise, I call on the Government to actively consider amending regulation 18 of the relevant Regulations and stipulate that motorists who fail to comply with the traffic signals as set out in regulation 17(1)(a), that is, jumping the red light, will incur five offence points and be fined \$600, whereas the penalties for failing to comply with other traffic signals will remain the same. In this way, acts of jumping the red light, which the public is very concerned about and on which the Government wants to impose heavy penalties to curb it, can be pinpointed fair and square. In the long run, the Government should consider following the examples of the United States, Japan and Shenzhen by abolishing the penalties for failing to stop when the lights change to amber or to stop before the white stop line and focus on acts of jumping the red light instead.



In fact, the police said that over the past three years, there has been zero prosecution against jumping the amber light and this prosecution policy will continue. If the police really answer the words with actions, the legislation must also be aligned.

Madam President, apart from the Government's across-the-board approach, the greatest disagreement between the sector and the Government lies in whether the complementary road facilities are adequate. Although the Government has all along stressed that road safety should be enhanced by legislation, law enforcement, putting technology to good use as well as publicity and education, however, if we look at the Government's actions during the greater part of last year, in fact, its primary approach is to enact legislation and other measures are only secondary, whereas the governments in other overseas countries all make using of technologies to improve road facilities their foremost task and enacting legislation and law enforcement are only the last resorts.

The transport trades' request that the Government improve transport facilities is regarded by the Government as a ploy to defer the implementation of the penalties. Members may have noticed that among the measures in the package of measures introduced by the Government in December last year, many of them were proposed by the transport trades on their own initiative, except the proposal to increase the penalties for jumping the red light, with a view to helping the Government improve road safety. However, the Government has still not taken on board all the proposals on improving complementary transport facilities made by the transport trades.

First, the sector requested that electronic prosecution be boosted to replace manual prosecution, so that law enforcement can be more objective, impartial and fair. Professional drivers treasure each point because they make a living by driving and incurring 15 points means that they will become unemployed. Even though they treasure each point, it does not mean that they do not support imposing heavy penalties on those jumping the red light or targeting a small flock of black sheep. They are only worried that law enforcement by the police will be unfair, such that even though they have not jumped any red light, they will still be given five points for no good reason. I have said that the police have made it known no prosecution actions will be instituted under certain circumstances, however, the actual experience of members in the transport trades is that they are mistakenly prosecuted under circumstances that fall into

grey areas. A representative of the transport trades pointed out in the meetings of the Subcommittee that on one occasion, a police officer had intended to take prosecution action against him after mistakenly looking at another set of lights, fortunately, a passenger came forth to testify for him, otherwise, it would be very difficult for the driver to vindicate himself. In view of this and since the approach of the police to enforce the law by observation will raise doubts about fairness, the transport trades strongly support expanding the coverage of red light cameras and requested that such red light cameras be installed at all major road junctions in Hong Kong. However, even if the Government steps up electronic prosecution, only an additional 68 red light cameras will be procured, thus raising the total to 96, whereas there are 816 such cameras in Shenzhen. At most road junctions in Hong Kong, law enforcement still relies on observation. Even if the Government strengthens electronic prosecution and the proportion of camera-based prosecutions to the total number of prosecutions will gradually increase from 80% at present to 97% by the end of 2006, in the interim, there will still be a thousand or several hundred cases of manual prosecution each month. The number now stands at 920 cases and the Government says that in the future, after the additional red light cameras have been installed, there will still be 460 cases of manual prosecution. Can the Secretary guarantee that these cases of manual prosecution will not prosecute anyone mistakenly or lead to any injustice?

Secondly, the transport trades propose that overhead traffic lights be installed at all major road junctions so that even when the view ahead is blocked by large vehicles, the drivers of the vehicles behind can still stop before the light signals change. There are over 1 000 junctions throughout Hong Kong but the Government is willing to install such lights at only 40 road junctions. Moreover, it has shifted the responsibility of proposing the locations for installation to the transport trades. We must understand that it is the Government's duty to improve road safety. The Government should take the initiative to carry out inspections of traffic black spots throughout Hong Kong and install additional overhead traffic lights as far as possible, instead of just calling on the transport trades to provide information.

Thirdly, the transport trades propose that vehicular countdown devices or flashing green systems should be added to traffic lights, or the duration of the amber light phase should be extended to give drivers reasonable time to stop before the white stop line. In fact, these facilities are available in neighbouring

regions and the results have been very satisfactory. The transport trades hope that the Government can at least use such facilities on a trial basis. At present, the duration of the amber phase in Hong Kong is three seconds and the international standard is a minimum of three seconds. According to overseas documents, for every second that the duration of the amber light is extended, incidents of jumping the red light can be reduced by 40%. In this connection, I have looked at the information concerning many overseas countries. In the United States, many states have set the duration of the amber phase at four to five seconds to give drivers a reasonable amount of time to stop. However, the Government has put forward the idea of "hesitation period" as the justification for making the amber phase as short as possible. Of course, I will be happy to examine the Government's justification and asked the Government for more information on this two weeks ago. Although the Government said that it would provide the information, up to now, it has still failed to do so even though I have made enquiries twice. In fact, I do not have any established position. I believe the Government should actively examine and introduce any measure that will make drivers comply with traffic signals and enhance road safety, rather than merely impose heavier penalties. I very much hope that the Government can provide the aforementioned information to me so that I can consider it together with the Government.

At the beginning of my speech, I said that the position of the transport trades is in fact the same as that of the general public and the Government in that they attach great importance to road safety and support clamping down on drivers who deliberately jump the red light. However, the Government has deliberately treated red light jumping and other offences relating to failure to comply with traffic signals as the same and the general public have not been given any opportunity to understand how the entire piece of legislation can be amended to reflect the reality. In fact, public opinions support clamping down on red light jumping, but on the issue of whether public opinions also support imposing heavy penalties on such offences as proceeding beyond the amber light signal or the white stop line, I believe the Government owes the general public, drivers and Members an answer. Moreover, since the Government has only cited public opinions regarding red light jumping, which is not what the present amendments are all about, it has pitted the public against the transport trades. I believe the Government is not being fair to the transport trades.

With these remarks, Madam President, I resolutely oppose these two resolutions.

**MR WONG KWOK-HING** (in Cantonese): Madam President, the Government's proposal to increase the offence points and fixed penalties for driving offences is intended to address the concerns of the public about the serious traffic accidents that occurred in recent years, as well as imposing heavy penalties on drivers who jump lights in total disregard for safety. The FTU supports this initiatives and all measures that serve to protect the public and professional drivers in the transport trades.

However, since the transport trades and trade unions still have a lot of concerns and doubts about the complementary facilities and the criteria of law enforcement, we are of the view that before the Government has addressed these issues satisfactorily, it is not appropriate to approve and put into effect the increase in offence points hastily. We are also concerned that if the offence points and the penalties are increased in a high-handed way, law-abiding professional drivers will be given unwarranted offence points as a result of problems relating to the objectivity and criteria of law enforcement, such that a desirable measure aimed at protecting the public will turn out to be a piece of draconian law fraught with traps and grey areas for the transport sector.

Madam President, all of us have heard the slogan "the road can be dangerous" when we were young, so it can be said that the public are fully aware of the need for road safety. It can also be said that among the public, since professional drivers are on the road and travelling between places all the time, they are particularly at risk. This is because should drivers run into any lapse of concentration, they will endanger not only their own lives but also threaten the safety of other people and passengers. Precisely for this reason, the transport sector attaches great importance to all regulations relating to road traffic safety, since not only do these regulations have a bearing on their means of living, they are also matters of life and death to them.

In fact, after the transport trades had learned of the authorities' proposal to increase the penalties for the offences, they immediately adopted the same stand as that of the public and the Government and supports targeting the black sheep that disregards road safety. However, at the same time, they also hope that the Government can adopt a two-pronged approach by putting into place complementary facilities for the purpose of law enforcement and eliminating pitfalls on the road. For example, members of the transport trades are concerned that the view of traffic lights may be blocked by large vehicles ahead, so they hope that the Government can use flashing green systems on a trial basis

to prompt drivers and install more overhead traffic lights. In addition, members of the sector also believe that manual prosecution carried by the police may give rise to erroneous observations as a result of the position at which observations are made, therefore, they requested that electronic prosecution be adopted on a full scale so that offence points will be given according to a set of objective, fair and impartial criteria and people who abide by the law will not be mistakenly prosecuted. However, the response given by the Government to the transport trades was disappointing. Not only did the authorities refuse to use flashing green systems on a trial basis or to take active steps to install overhead traffic lights while increasing the penalties. What is worse, it will be almost a year after the increased penalties have come into effect that the installation of the additional 68 red light cameras for the purpose of carrying out electronic prosecution will be completed. May I ask how members of the transport trades can possibly accept the Government's mindset of using only draconian laws but not practical measures to solve problems? How can the public find this fair?

Madam President, I must point out that the fundamental cause leading to this confrontation between the Government and professional drivers lies in the fact that the Policy Bureau concerned only consulted the Transport Advisory Committee (TAC), in which labour unions are not represented, but did not collect the views of professional drivers and trade unions. In fact, trade unions and the transport trades have never been represented in the TAC, so before a lot of important policies on transport are rolled out, the exact views of the trades have never taken on board. Yet, after policies have been rolled out, the transport trades and trade unions found that they cannot approve of the policy directions. In this regard, I hope that the Government can introduce changes to the composition of the TAC as soon as possible and include representatives of trade unions and the transport trades in it, so that the TAC can relay more specific and the commonly held views of the sector to the Government, so that the Government can achieve good administration and foster a harmonious society. Only in this way will the crux of the problem be tackled.

Madam President, professional drivers are certainly different from private car owners who get to places in their cars. Professional drivers drive past innumerable traffic lights every day. If there are traps and grey areas in law enforcement, a lot of aggrieved cases, fabricated cases and erroneous cases will occur. Let me give an example to Members. For a bus driver who drives his bus between Shau Kei Wan and Central, he has to drive past more than 50 sets of traffic lights in a single trip. Since he has to make eight trips each day, he will

drive past more than 400 sets of traffic lights. Based on 26 days in a month, he will drive past 10 400 sets of traffic lights and in a year, he will have driven past about 124 800 sets of traffic lights. As for taxi drivers, they have to drive past many traffic lights once they start their work day and the traffic lights that they have to drive past are innumerable. Therefore, if the Government does not solve the problem of putting in place complementary facilities for electronic prosecution and the problem of yardstick in law enforcement, professional drivers will be worried and feel jittery each day and every minute about being mistakenly prosecuted and being stripped of their means of living. If professional drivers are burdened by so many mental and psychological pressure and unnecessary concerns, this will not be conducive to road safety and may even create even greater dangers. Therefore, we very much hope that the Administration can shelve all the relevant proposals for the time being and wait until the all electronic facilities for law enforcement have been installed and the support of the industry and the public has been secured before implementing the proposals and other measures simultaneously. This will create a win-win situation for the Government and the transport trades.

Madam President, I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, today, I will vote against this resolution on behalf of the Hong Kong Confederation of Trade Unions and the trade unions for professional drivers. I think it is a great pity that I have to do so, and I also consider it most unnecessary for the Secretary to pit the Government against professional drivers because both the Secretary and professional drivers have agreed that heavy penalties should be imposed on drivers who deliberately jump the red light. Since both sides have agreed on this, why can they not co-operate? As things now stand, it is not the case that professional drivers are unwilling to co-operate properly but that the Secretary has insisted on going down the wrong path. In fact, when it comes to certain matters, it is impossible not to listen to public opinions, however, the Secretary is bent on refusing to do certain things. Later on, I will explain what the Secretary has refused to do, thus bringing about such a serious confrontation. Therefore, I think that it is a great shame that things have come to this pass.

In fact, there are mainly three reasons for our decision to cast an opposing vote. Firstly, we believe that it is irresponsible of the Government to implement the measure of giving five offence points without providing adequate

complementary facilities to promote road safety. If there are adequate complementary facilities, then all aspects, including drivers, pedestrians and road safety, can be catered to. Secondly, I find it most ridiculous that even though the resolution today is not solely about giving five points to drivers for jumping the red light, and as I have said, everyone believes that heavy penalties should be imposed on deliberate acts of jumping the red light, the other thing that is being targeted today is that apart from giving five points for jumping the red light, acts such as proceeding beyond the amber light signal and the white stop line will also incur five points. Therefore, Members have to get it right that the discussion is not just confined to increasing the penalties for jumping the red light, rather, it also involves proceeding beyond the amber light signal. The Secretary has lumped these two issues together. Thirdly, I believe the Government has not allowed any room or time for the Legislative Council and the transport trades to engage in more communication and examine how road safety can be enhanced. Madam President, in fact, it is unnecessary to table this resolution today. Today is 6 July and the relevant resolution will come into effect only on 1 January next year, so why is it necessary to introduce the resolution today? This is not necessary. For the foregoing three reasons, I have to cast an opposing vote.

Let me elaborate further on each of these reasons. The first reason is that the Government has not put in place enough complementary facilities and the most obvious problem is an inadequate number of roadside cameras. In fact, this problem of cameras has been discussed for many years. Actually, ever since the issue of jumping the red light by professional drivers was raised, it has been said all the time that human observation should not be relied upon to judge if drivers have jumped the red light and cameras should be used instead. I think that using cameras to make judgements is very important for road safety because using cameras to record images can remove one kind of mentality, that is, people sometimes think that they can get away with their acts. Just think of this. If jumping the red light will incur five points, if being caught jumping the red light will attract the heavy penalty of five points, this heavy penalty will have a deterrent effect on drivers. However, to any deliberate red light jumper, an even more effective deterrent is to know that whenever he jumps the red light, pictures will be taken of such acts and there is no chance of getting away. Such a deterrent effect can be even greater than the fear of incurring five points because there is no chance of getting away. Even if only three points would be incurred, if, whenever anyone jumps the red light, pictures will be taken of such

acts, no one will dare to jump the red light anymore. Therefore, in the interest of road safety, I believe the deterrent effect of images recorded by cameras is in fact greater than that of recording offence points.

However, can Members see what the attitude of the Government is? The Government is only moving at a leisurely pace. It is not going to submit papers to the Finance Committee until this Friday to apply for funds to install cameras. If the application is made in this way, when will we get results? The work will not be done until October 2006. The application process will take over a year's time and the Government said that it would be necessary to invite tenders, then carry out the installation in batches. I do not understand why all the cameras cannot be installed at one go. Nor do I understand why the application has not been made until now. The Secretary has portrayed her actions as conforming to public opinion, saying that the issue of road safety must be addressed, that she is very concerned about this and hopes that this motion can be passed as soon as possible. Why did she not speed up the implementation of things under her control, that is, the installation of cameras?

Therefore, I have often said that the Secretary can only see other people's problem but not her own problems. To quote the *Bible*, this is to see the mote in your brother's eye but do not notice the beam in your own eye. I believe that if the Government had really been sincere about improving road safety, then it should have addressed this issue of cameras and installed the cameras long ago, so that deliberate offenders will not stand any chance of trying their luck. Even if only three points will be incurred, the deterrent effect will be very great and if five points are given, the deterrent effect will be even greater, and we will make no bones about this.

In this regard, I am very disappointed that the Government has dragged its feet for such a long time before taking actions. The only explanation that I can think of is that the Government is very hypocritical. Although the Government says all the time that it is very concerned about issues relating to road safety, in the end, it has shunned away from the responsibilities that it should shoulder. However, when it said that the introduction of the relevant piece of legislation should be speeded up, it used road safety as the rallying point, saying that it is the defender of road safety. However, in reality, it is only a hypocrite because it has not shouldered its share of responsibilities.



Secondly, some professional drivers have said that they actually hope that the Government can install certain complementary road facilities, so that they can be better prepared when they come to the amber or red lights. For example, they suggested that it would be best if the amber light phase at certain locations can be extended from three seconds to five seconds, so that they can have more time to prepare to take action and this is particularly the case with long vehicles such as buses and container trucks. If they can be given more time to prepare to take action, this will be conducive to road safety. Why does the Government refuse to fully implement these measures? Some trade unions for drivers also requested that flashing green systems be used, since such systems can give drivers more time to prepare to take action, however, the Government is also unwilling to do so. Of course, the Secretary will surely explain later on that she does not consider this a safe practice. However, these drivers drive every day and they are on the road every day. They are the experts in this area. Since they believe that doing so will promote road safety, why should the Government be so stubborn and refuse to implement this measure? The request concerning flashing green systems is very reasonable and they have been adopted at other places.

Mr Andrew CHENG said just now that drivers were not right in demanding that all complementary facilities be put in place first before they would accept the increased penalties. In fact, this is not exactly the case. If the Government had shown its sincerity in solving the problems concerning complementary facilities throughout the process, driver would not have objected to implementing the measure of giving five points for jumping the red light early. However, the Government simply refuses to provide any complementary facilities and even on the installation of cameras, it is also proceeding at a leisurely pace. So it is only natural that drivers raise their objections. Moreover, I do not understand why the Government is so stubborn and refuses to differentiate between the penalties for proceeding beyond the amber light and those for jumping the red light. If the Government wants to increase the criminal liability for anything, it has to provide the rationale and justifications. We all know that jumping the red light is a serious matter, but in comparison, the police believe that proceeding beyond the amber light under safe circumstances is not a problem. Moreover, this can be cited as a defence. So this shows that driving past the amber light signal under safe circumstances is OK. However, the situations targeted by this resolution do not paint such a picture. If drivers proceed beyond the amber light, the Government can prosecute them at anytime. Of course, drivers can evoke some defences, but if they lose their case, five points will be given.

Madam President, the greatest absurdity is the approach adopted by the Government in respect of these two acts should be otherwise be treated differently. Offences that are serious should carry heavier penalties and there is no reason that the penalties for less serious offences should be increased. Therefore, it is very unreasonable of the Government to treat proceeding beyond the amber light and jumping the red light as the same and give five points to both offences. I find this approach most regrettable.

Moreover, when the police came to the Legislative Council to give an explanation, they said that in the past three years, no prosecution action had been initiated in this regard and their policy is to avoid instituting prosecution as far as possible. If the police will not take any prosecution action and tell us not to worry, then we do not have to be worried. However, in that case, why does the Government not simply amend the legislation properly? In this way, everything will be crystal clear. I believe non-enforcement is not a reason for increasing the penalties. If the Government will not enforce a provision but increases the penalties nonetheless, and if it then explains to people that they need not worry, this is in fact very unreasonable and to say so is to disregard the rule of the law completely. This is because as long as a piece of legislation exists, the Government has the power to enforce it. It is most unreasonable of the Government to ask us to support increasing the penalties but then say that it will not institute any prosecution.

Therefore, another reason for us raising objections is that there is no reason for the Secretary to behave in such a stubborn manner. Of course, the Secretary may say later that the Government will conduct a review at the end of 2006. However, why does it not make the amendment together now rather than waiting until the end of 2006 to conduct the review? If there is anything unreasonable now, then an amendment should be proposed presently rather than waiting until the end of 2006 to do so.

Madam President, the last issue is about the timing of proposing this resolution. Originally, I hoped that this resolution could be proposed when this Council is in session again in October, so that more time would be available for discussing how the complementary facilities could be improved. I very much hope that this motion can be tabled for discussion again in October and all parties can reach a consensus, in that way, the entire Legislative Council can, as Mr

Donald TSANG has said, benefit from the harmony. He once said that the two sides can benefit from a harmonious relationship or both stand to lose if they are in discord with one another. However, the Secretary has now chosen the latter.

Originally, if we can discuss the motions more properly, there is hope that both sides can benefit from the harmony. However, in the end, the Secretary still stubbornly insisted on passing the motion today. The reason offered by the Secretary was that it would take time to examine the table of fixed penalties. However, I found on calculation that 28 days were in fact enough. But then, when the Secretary came to the Legislative Council to explain to the relevant panel, she said that the time required was not 28 days but 28 days plus 21 days because she was concerned that Members might amend the table. Madam President, as you know, such a possibility is very remote. Who would be interested in amending the table? If this piece of legislation has been passed, the fine will be increased from \$450 to \$600 and the punishment will also be to give five points instead of three. In that event, no one would be interested in amending the table anymore. Therefore, if the resolution is tabled before the Legislative Council for final voting in October, there will absolutely be enough time and the resolution can still come into effect on 1 January all the same. Unfortunately, however, the Secretary has chosen to table the resolution before the Legislative Council quickly for discussion now.

Therefore, Madam President, insofar as the approach adopted in the whole issue is concerned, it is the Secretary who forced us to raise our objections. Therefore, we feel most sorry that she is being unreasonable in not providing the complementary facilities and in treating acts of proceeding beyond the amber light signal and jumping the red light as the same and imposing the same penalties on them. Moreover, the timing of the resolution is also unreasonable.

Thank you, Madam President.

**MR CHIM PUI-CHUNG** (in Cantonese): Madam President, since I will cast my vote against today's resolution, it is necessary for me to explain my position.

I always have a great deal of reservations and rather strong views about the Government's disregard for public opinions when enacting legislation. Why? This piece of legislation targets the transport trades, and the next one may target

other sectors as well as the rights and interests of the public. The first reason for me raising objection today is that although the Government always emphasizes that Hong Kong is a city of life in Asia and also a place of high technology, at many places on the Mainland that we have visited, even in very remote cities or places, we can find that when the traffic lights at those places are showing green, it is also shown how much time is left before the lights will change into amber. This is shown very clearly. What do Members think the situation in Hong Kong is like? I have also been to London, where there are no similar systems like that on the Mainland. However, we do not have to imitate what people have not, and if other people have set such a fine example, why do we not follow it? In the last meeting, I asked the Secretary this question. According to the Secretary, problems had probably been detected in Shenzhen and Guangzhou and a review was called for and there might be improvements after review. Therefore, since other people have already said that there is still room for improvement, why do we still have to learn from other people's bad examples? Why do we not learn from good examples?

I am most unhappy that since our Secretary is someone whose origins can be traced back to the general public, rather than one of those so-called British-Hong Kong elements from the British Hong Kong era waving the British flag, she should have a better grasp of public sentiments. However, over the past two to three years, in her post as the Secretary, she has apparently tried hard to defend government interests on many issues. In fact, an accountable Government should ask itself what the meaning of the term general public means. The general public is its master. We can see that the traffic conditions in Hong Kong, when compared to other parts of the world, are in fact not bad. Of course, in some European and American countries, a pedestrian need only set one foot on the road and drivers will stop immediately to let him cross. Drivers would even stop in the middle of the road in order to do so. However, it will never happen in Hong Kong. Yet, when compared with the Mainland or many other places, the traffic conditions in Hong Kong are in fact pretty good.

However, the first criticism that I want to level at the Government anyhow is that it should adopt high technology and be people-oriented by attending to what really needs to be done, rather than saying that there are things that it must do, and then find a lame excuse or offer a plausible explanation. Why is it necessary to give an explanation? It should admit any mistake that it has made. A responsible Government should never say that it is absolutely and 100%

correct. A government that will win the greatest respect from the public is one that admits any mistake that it has made and is brave enough to assume responsibility and what is more, if officials are found to have really made mistakes, they should simply resign. What does that matter?

I believe the Government does not quite respect the Legislative Council nowadays. Usually, when the Legislative Council conducts debates on motions without legal effect, no matter if there are two or three motions and regardless of whether they are passed at the vote, the Government would not in any particular way make it known if it accepts them or not. However, when it comes to debates on bills, the Government often adopts a hard line when introducing bills and Members of this Council are virtually compelled to vote in favour of and accept them. Of course, some political parties, due to mutual benefits, respect and need, would usually declare their positions and support at a very early stage. This is the usual tactic employed by the Government. In future, if the executive-led position becomes even more dominant, a worse scenario in which the Government actually orders the Legislative Council to support certain bills may emerge.

Today, the 18 Panels of the Legislative Council have submitted their respective reports. I have also pointed out before that the Administration had actually preordained the conveners or the Chairpersons of the Panels. Maybe we can call this the outcome of mutual respect among Members or the outcome of a lack of self-respect. However, the Government cannot be blamed for this.

Therefore, we have to understand that it is easy to enact legislation, however, inflexible as the law is, human beings are flexible. In formulating any piece of legislation, it is necessary to provide a door or an exit to give people a way out, so that the law can function as a lubricant. Since the Government has said that it hopes to create a harmonious society in future, I hope that it can apply what it has learnt in real life to this resolution and embark on a course towards a so-called harmonious society. Now, professional drivers have voiced opposition and this is of course for their own interest. However, in the same vein, there will be many other bills that will involve other sectorial interests in future. Under such circumstances, it is necessary for the Government to respect the public. It must not implement oppressive and compulsory measures or resort to other fascist actions, otherwise, how can society possibly become harmonious?

In view of this, since the Government has said that all complementary facilities will be ready only after the review scheduled for the end of next year, I very much hope that even if this resolution is passed today, the Government will adopt a special approach in implementing it, for example, by implementing this piece of legislation but meting out suspended penalties. If any driver or motorist cannot help but breach the resolution (that is, the legislation) passed today, he will only incur temporary offence points and the points will not be recorded immediately. When this piece of legislation on traffic comes into effect and after other complementary facilities have been put in place next year, and provided that the driver concerned did not breach the law again in the interim, then all points incurred will be cancelled.

I hope the Secretary can assist the department concerned in engaging in discussions on this issue so that a proposal can be worked out. This proposal should be consistent with the aspiration of the new Chief Executive to create a harmonious society and acceptable to all parties. Of course, once the resolution is passed into law, it would not be possible not to enforce it and comply with it. However, if the Government can implement the law but mete out suspended penalties, I believe this will definitely win the approval and support of the transport trades and the public. In the meantime, the Government can make use of the interim lasting more than a year to carry out a proper review and improve any inadequacies. In fact, the Government should admit its inadequacies and then strive to do its best in various areas. Since there are calls to defer the implementation of the legislation to next year, that is, to one and a half years later, why does the Government not draw up a specific plan before taking action, so that everyone will be happier, so that it can win the support of all sides?

I must stress again that a responsible government will not only refrain from insisting that it is perfect, it will also change its ways after making mistakes. Only in this way will it be worthy of the support of the public and various sectors in society. Madam President, all these are the reasons for my opposition vote today.

**MRS SELINA CHOW** (in Cantonese): Madam President, I believe that in our society, be it motorists, professional drivers or the general public, there is actually a very strong consensus, that we must take all possible measures to

prevent motorists from jumping the red light and penalize those people who do so. I believe the consensus on this is very strong.

However, why are we having such heated arguments today and why are the transport trades feeling so concerned? I believe this has to do with the approach of treating proceeding beyond the amber light signal in the same way as jumping the red light. Is enforcing the law in this way fair? In addition, since members of the transport trades are on the road for well over 10 hours every day and the pressure they have to face is probably far greater than the average motorist, and such will cause mental stress and anxieties about their livelihood. They are actually very much disturbed by all this.

We in the Liberal Party have met with members of the transport trades and held discussions with them face to face, so we fully understand their feelings. We very much understand their worries. We also think that if we can meet their demands and ensure that those people penalized are only the ones who have jumped the red light, and that the penalties for jumping the red light will not be applied to those who proceed beyond the amber light signal, then their minds will be more at ease.

Of course, all of us know that they have strongly demanded the introduction of the so-called electronic prosecution and the Liberal Party absolutely supports them. Moreover, they told us that they had made representations to Members and the relevant bureau and department. They hope that advance warning facilities can be put in place, that is, flashing green lights or vehicular countdown devices before the red light phase. They now no longer insist on installing vehicular countdown devices and only hope that flashing green lights would be put in place, so that they can be warned in advance of the need to stop their vehicles. In this way, the likelihood that they will drive past amber lights or jump the red light inadvertently will be greatly reduced. I fully understood the scenarios cited by them and I listened very carefully to their views.

We in the Liberal Party also had an internal discussion. I believe Members are aware that we have a representative of the sector and she has a profound understanding of this matter. She also fully appreciates the disturbance that the transport trades are experiencing and knows that the requests made by them are by no means unreasonable. However, in view of the

Government's demands, we in the Liberal Party have also looked at the requests from the viewpoint of the public. There is no denying that the Government's approach can be better. Just think about this: If the Government had already installed red light cameras at traffic black spots, I believe a great deal of opposition would have been silenced, since in that event, electronic prosecution would not have been a problem and the transport trades would have had nothing to say. If cameras are already installed, an approach similar to that with video cameras can be adopted, that is, just as in cases of speeding, if photographs are taken of such instances, I believe there can be no dispute at all.

From another angle, has the Government not given audience to our views or the views of the transport trades at all? This is not the case either. During the consultation period, the Government once proposed that eight points be given but at least an adjustment was made in this regard, that is, the points incurred was reduced to five. This shows that the Administration has listened to people's views to some extent. The Government is now also speeding up the installation of cameras and I hope that the Secretary can carry out the installation within a shorter timeframe than the present one.

Basically, we in the Liberal Party very much hope that, firstly, the process of installing cameras can be speeded up; secondly, more cameras can be installed. We believe that the present number of cameras is by no means enough. Even after installing an additional 68 cameras, there will just be a total of 90-odd cameras. In Shenzhen alone, there are over 800 cameras. Given such hectic traffic in Hong Kong and the large number of black spots, how can one say that the number is enough?

After listening to the views of various political parties and a number of Members on this matter, we are sure that there is little disagreement over electronic prosecution. Therefore, we hope that the Secretary can consider the relevant views and expedite her work, instead of procrastinating until the end of next year. I hope that the Secretary can complete the installation of the cameras already in the works within the shortest time possible.

Later on, it will be necessary to install more new cameras even before the installation of the 68 cameras is completed next year, so as to meet the demand for electronic prosecution. We also understand that the greatest controversy actually centres around drivers' concern about whether there will be problems in



the law enforcement actions taken by the police, leading to interminable and inconclusive arguments between the two sides, with the driver claiming that he has only jumped the amber light but the police asserting that it is an act of jumping the red light. Moreover, if the police institute a prosecution, the driver will have to defend himself in Court. Even if the driver manages to successfully defend his own case, it will still only be a Pyrrhic victory.

Concerning the policy on law enforcement, I hope the Government can genuinely take into account the difficulties and hassles confronting drivers, and professional drivers in particular. On law enforcement, prosecutions should not be initiated indiscriminately whenever vehicles are seen driving past amber lights. I believe that we will monitor the situation closely and I also believe that the panel concerned and the industry will also monitor the issues in this regard closely. If we learn that there are instances of indiscriminate prosecution, I believe Members will also hear about them. Therefore, I hope that such instances will not occur. Moreover, concerning the prosecution policy, I hope the Government can truly focus on drivers who jump the red light deliberately.

The Liberal Party has also considered requesting the Government to defer the implementation of the measures in question until the installation of the cameras has been completed. However, in view of the accidents that happened last year, which are still fresh in our memory, we all understand that such accidents should be avoided as far as possible. In fact, if the penalties with increased points can be implemented as soon as possible, a deterrent effect can be achieved in some measure. Therefore, if this move can indeed prevent unnecessary casualties and accidents, we should not be too hesitant. As the English saying goes, we should "err on the side of caution". That means, in the interest of safety, even though we may be wrong, still, we would rather be more cautious. It may not be plain sailing insofar as acceptance is concerned. However, to some extent, the Government can offer some assistance in this matter, that is, the Government can help in the context of its prosecution policy.

Therefore, the Liberal Party support this resolution moved by the Government. However, we must stress once again that we hope the Government can install flashing green lights on a trial basis as soon as possible. Moreover, in respect of the prosecution policy, it must not prosecute people who drive past the amber light and should only prosecute those who jump the red light deliberately. Thank you, Madam President.

**MR ALBERT CHAN** (in Cantonese): Madam President, the debate on the resolution today is the most misleading and distorted one in the history of the Legislative Council.

In a paper submitted by the Administration to the Legislative Council on 18 March 2005, it is proposed to increase the traffic offence points for red light jumping and raise the fine for this offence from \$450 to \$600 as a road safety measure. And, the same is also set out in the Annex to this paper.

Paragraph 8 of the relevant Subcommittee report states that the Subcommittee also recognizes red light jumping as a very serious offence. Reference is made to the problem of red light jumping in many paragraphs of the entire report.

However, let us study the contents of the resolution objectively. Madam President, many amendments are proposed in the resolution, but the main amendment, or the most controversial one, is about regulation 18. This is supposed to deal with red light jumping, but the amendment only mentions failure to comply with traffic signals. Many Members have already talked about driving past the amber light and this, together with stopping on the white stop line, is also covered by the amendments. It is most unfortunate that the entire debate has only dealt with part of the resolution.

I think this is very unfair to professional drivers who oppose the resolution, because the actual contents of the resolution are not completely consistent with the viewpoints and information presented by the Government on many open occasions and in the relevant paper. Because of such misleading representation, many opinion polls have come up with findings that support the amendments this time around. If the Government's paper is indeed correct in saying that the amendments today are simply about increasing the offence points for red light jumping to five, I will render my total support. I will accept not only five offence points, but even seven offence points, for dangerous, intentional and reckless red light jumping. Even if driving licence suspension is imposed, I will still render my support. However, the resolution is not so cast. I really hate to criticize government officials for confounding right and wrong again.

Actually, the amendments proposed in the resolution are about regulation 18 of the subsidiary legislation, but as I have pointed out on other occasions, this

is simply an attempt to amend the Road Traffic Ordinance in exactly the same way as legislative proposals were put forward to implement Article 23 of the Basic Law. This will rouse strong public outcries and the resistance of professional drivers. Their reactions will certainly be very strong. Many months ago, I warned the Secretary that she must handle this case very cautiously, and that if she adopted a forcible approach, a situation or a traffic standstill far worse than that resulted from the 1984 riot would easily occur. The Government should have learnt a lesson in how it should deal with the sentiments of various organizations and the anger of professional drivers. It must abandon its approach in the Article 23 case and refrain from using any emotional or insulting expressions lest this may provoke the people.

I am a bit puzzled as to why there have not been any strong resistance or attempts to paralyse the traffic of Hong Kong. Maybe, the Secretary has already persuaded some of the trade bodies, or she may have promised that the police would not take any prosecution actions against driving past the amber light. Maybe, professional drivers have thus been pacified.

But I really do not believe the promises of the police too much. I can remember that last year, when we debated the Landlord and Tenant (Consolidation) Bill, many Members mentioned that even when a landlord found that the fixtures and fittings inside his property had been damaged by his tenant upon repossession, the police would only treat that as a civil dispute instead of conducting any criminal investigation. I received a complaint last week. When the amendment bill was being considered, the police undertook that if a landlord lodged a complaint and damage was really found, they would carry out a criminal investigation. It was also said that whether any evidence could be found to support a prosecution would be a separate matter. But at least, the police did promise to accept such complaints. Last week, I received precisely one such complaint: the windows and door of the flat were all damaged and sprayed with paint. But when the landlord reported to the police, they refused to take any actions on the ground that the case was just a civil dispute. We do not have any doubt whatsoever about the undertaking made by the top management of the police in the Legislative Council. But we do doubt whether the instruction can be successfully cascaded to the 20 000 or so front-line officers for strict adherence. Non-adherence is often very common, and I have seen many such cases in the districts. Therefore, I hope that the police can honour their undertaking, at all levels and in all formations and units. One single

conflict will lead to fierce resistance. A sparkle may burn down a whole grassland. Therefore, I think this must be handled very carefully.

I wish to point out that the passage of the resolution today will be totally unfair to professional drivers — it will of course be passed, as the media actually reckon that there will be 41 positive votes. It will be unfair because the contents of the resolution are not the same as what people think, are not simply about red light jumping.

Another point is that if five offence points are deducted each time, the driver's driving licence will be suspended after three deductions. This will seriously affect the livelihood of professional drivers. If all these points are deducted for red light jumping, I too will agree that his driving licence should be suspended. But if the driver is prosecuted and penalized not because of that, and if offence points are thus deducted, his livelihood will be seriously affected.

Some bus drivers have told me that if the resolution is really passed, then they will not know whether they should stop before road junctions. The reason is that many professional drivers (especially bus drivers) will be scared when they see traffic signal changes. If they stop, the great force of braking will send their vehicles rocking. Passengers may thus fall and hurt themselves. Then passengers may lodge complaints, and if a driver receives a warning letter from his employer, he may be dismissed. But if a driver does not stop, he may well be prosecuted, as the light will change from amber to red middle of the way. They really face very heavy pressure. Why have I repeatedly highlighted the anger of professional drivers? The only reason is that their livelihood is at stake. Most professional drivers have been in their trade for one or even two decades. If their licences are suspended all of a sudden, they will lose their jobs and their only income. How can they find other jobs? Are they supposed to apply for Comprehensive Social Security Assistance (CSSA)?

Therefore, professional drivers' livelihood is actually at the centre of the resolution. But regarding the resolution, the Government has all the time flaunted the public interest and public safety as justifications. This is just the same as the case of Article 23 legislation, in which the Government sought to put national security above all else.

It is very unfortunate that professional drivers are in the minority and the functional sector Member representing them cannot persuade even her own

political party to support her opposition. This shows that professional drivers are politically underprivileged. That being the case, I can only say with the utmost regret that all the misleading discussions and distorted voting positions and results are indeed very unfortunate for the Legislative Council. I hope that no bitter clashes will emerge in enforcement.

Furthermore, Madam President, I wish to point out a very serious enforcement problem. The Government says that more red light cameras and red light camera housings will be installed, with some being real, and some others not. But we must realize that the total number will just be some 100 and there are more than 1 000 signal-controlled junctions in Hong Kong. The Government also undertakes that prosecutions using evidence from red light cameras will be increased from 80% of all red light jumping prosecutions to 97%. There is thus a logical fallacy here. There are totally more than 1 000 signal-controlled junctions, but only some 100 of them will be equipped with red light cameras. In other words, 90% of these junctions will not be equipped with red light cameras. But the prosecutions made at these junctions will only amount to 3% of the total number of prosecutions. If all drivers are aware of this and they choose to jump the red light at junctions with no cameras, the number of prosecutions will be very low. The Government's intention is to initiate 97% of all red light jumping prosecutions using evidence from red light cameras, which are installed at only 10% of our signal-controlled junctions. I must say that such an intention runs completely counter to ensuring or improving road safety or traffic safety at road junctions. I therefore think that this may well achieve the opposite result. There will be no improvement to road safety — there will be some improvement at junctions with cameras, but there may be more accidents at junctions without any.

Madam President, filled with helplessness and disappointment, I will cast a negative vote. I too want very much to support measures of improving road safety and increasing the penalties for genuine cases of red light jumping. Unfortunately, due to technical problems and the laziness or passivity of individual career civil servants, my voting position today has been distorted. I think this is most unfortunate for the Legislative Council.

**MR ALBERT CHENG** (in Cantonese): Madam President, today, many colleagues have spoken on this motion. In their speeches, words like "understand", "however", "if", "regret", "difficult" and "helpless" have been

used. What are the difficulties? Being Members of the Legislative Council, we all bear one responsibility, that is, to enact legislation to protect the public. It is our duty to protect the life of each member of the public. As Members of the Legislative Council, when scrutinizing legislation, we have to ensure that the laws enacted must be well formulated. The aim of the resolution under discussion today is obviously designed to ensure road safety, increase the penalties to enhance the deterrent effect, in the hope of protecting the life of each member of the public. This cannot be gainsaid. Therefore, we do not have to use words like "however" or "if".

I believe that when Members vote on this resolution today, their consideration will be whether they represent the interests of the majority of people or sectoral interests. In fact, there is no conflict between the interests of the majority and the interests of a sector because everybody lives only once. If a traffic accident happens on the road, be it the driver or the pedestrian, they all have one life only. You would not have one more life just because you are the driver.

In the past, there were slogans such as "the road is dangerous like a tiger" and "cross the road slowly". In developing countries, car owners belong to a privileged class. Therefore, they can drive rudely and very often, they can sound the horn without reason. However, Hong Kong is an international city. I believe we have to change this kind of attitude. In advanced countries and civilized societies, pedestrians enjoy priority. Whenever someone is crossing the road, all vehicles have to stop, still less jump the red light. Moreover, is it really necessary to install cameras or flashing green lights on the road before drivers will know that they have to stop before the red lights? This is unreasonable. I cannot see why they have to be installed. In that case, we may as well post a police officer at each set of traffic lights and every road junction. Will it not be even better? In this way, more employment opportunities can be created.

However, I will still cast an opposing vote because of the shortcomings in the proposed amendments in this resolution. Besides, as Mr LEE Cheuk-yan has put it very aptly, since the Administration will not implement the relevant measures until January next year, we can vote and pass the resolution in October this year, so that there is no need to rush like this now. If the Secretary were to say that the resolution has to be passed today because it would be implemented tomorrow, then I would support it. If there is still sufficient time for the sector

to express their views fully, it will be better if we can have more communication. The part that I oppose most strongly is that on jumping the amber light. The Government can either punish such acts or not punish them, but it must not say that "we can book such acts". Although the offence is stipulated in the law, if it is not absolutely necessary to enforce it, then law-enforcement officers will be at a loss as to what to do and drivers will also not know if they will be booked if they drive past the amber light. That is to say, it will depend on the mood of the officers enforcing the law. However, this is not the spirit of the legislation. The Government might as well draw up a regulation stipulating that whoever jumps the amber light must be penalized, for example, five offence points will be incurred. One cannot leave it to the discretion of police officers or law-enforcement officers, as this will be the rule of man but not the rule of law. Therefore, in view of the fact that this piece of legislation is still not well formulated and that there is still time for us to further improve on it, I will vote against it.

I so submit. 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 the Environment, Transport and Works to reply.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I am very glad to have listened to the speeches made by many Members in this debate today, which have enabled me to understand Members' views from another angle.

I believe it is utterly important for this motion to be thoroughly debated, for it is of great importance and concerns the safety of all citizens. We in the Government absolutely do not cling obstinately to our views or work behind closed doors. We will not force others to act the rubber-stamp after a piece of legislation is formulated. In fact, apart from raising the penalties, we also have a package of support measures covering publicity and education, better

technology application, legislation and enforcement to combat law-breaching red light jumpers.

First of all, I mentioned in my earlier speech that since November last year, we have had 14 meetings with representatives of the industry on various occasions to listen to their views. So, it is not true that we have discussed the issue only with the Transport Advisory Committee (TAC), as Mr WONG Kwok-hing has claimed. These 14 meetings saw no involvement of the TAC, for those were meetings purely with representatives of the industry, trade unions and trade associations. We have listened to different views in the process. The Transport Department also meets with the industry on a regular basis to exchange views with the latter.

We firmly believe that professional drivers are very concerned about road safety. Meanwhile, they are also concerned about the grey areas in enforcement, which may mislead them into making mistakes and hence incurring loss, something they are most unwilling to see. Having listened to the views of all sides, we have thoroughly explored and studied the feasibility of the proposals, and when a proposal was considered feasible, studies were conducted on its impact on other aspects, because we must give overall consideration to society. We cannot just take on board lopsided views whether in respect of road safety or other issues.

Many Members mentioned earlier the importance of taking into consideration the safety and lives of the citizens at large. We all agree on this, only that we must think about what factors should be taken into account in enforcement and whether the timing is pressing. Having listened to so many views from various sectors of the community and the different views of the industry, we consider it pressing to propose the resolution. Many Members have also expressed different views on the installation of devices or the review of legislation. Views are indeed diverse. Similarly, I have also listened to many different views in the industry. It is impossible for us to take actions only after satisfying each and every side. This divergence of opinions precisely reflects pluralism in our society. We can have different voices, and these voices can be expressed on different occasions. We as the Government have to face this and consider how to balance the demands of all sides and ultimately make a decision.

On electronic prosecution, views are, in general, consistent. We all hope that there could be more electronic prosecution, in order to minimize the grey



areas and disputes over enforcement, because electronic prosecution can provide solid evidence without having to rely on manual prosecution. On the question of how many cameras should be installed, there have been great controversies because there are as many as over 1 700 junctions in Hong Kong, and several camera housings will need to be installed at each of such junction. However, it is still impossible to install camera housings at all junctions in any advanced country in the world.

Different views were also expressed during our discussion earlier. Some Members considered 96 cameras inadequate. They held that more should be installed continuously until cameras are installed at all the junctions because there would be no dispute by that time, for drivers would know that there could be no escape, and only in this way can deterrent effect be achieved. Certainly, it is impossible for us to pass this resolution only after cameras are installed at all junctions. We can only strike a balance after listening to the voices of the industry and the voices of the public, and then make a decision that answers all these voices in some degree. After we have installed 96 electronic cameras plus the 131 camera housings of which the location can be changed, the proportion of electronic prosecution, according to the police, can reach as high as 97%, whereas the remaining 3% of prosecution will rely on manual prosecution. This can, therefore, greatly allay the concern of the industry. In other words, there will be a far greater number of indisputable cases corroborated by solid evidence. In that case, we consider that two objectives can be achieved. On the one hand, deterrent effect can be achieved and on the other, the grey areas in enforcement can be minimized.

Some Members criticized us for not starting to improve the facilities last year. They said that had we started to make improvement last year, there would not be as few as 96 cameras now. I believe our colleagues have made the utmost effort in this respect, because the entire handling process within the Government and the application for funding will take some time, and we must secure an approval within the Government for the financial arrangement. Financial evaluation is necessary and the approval of the Finance Committee is also required. I believe six months are definitely necessary for completion of the procedures.

Secondly, the installation of overhead traffic signals. Hong Kong is a crowded city. Road lighting or traffic lights are designed to be seen at the

roadside. Some people have asked why Hong Kong does not fully switch to overhead traffic signals. There is one point that Members may not have noticed and that is, in this city of Hong Kong, we do not see any overhead power cables. Such design can be found in Tokyo, but not in Hong Kong. It is because, to a crowded city, the cityscape is very important, and the overall feeling is equally important. Therefore, we will not install overhead traffic signals unless we cannot see the traffic lights or there is such a need. I think this decision also has taken account of the overall demands in society in respect of the cityscape.

Yet, after listening to the voices of the industry, we have invited the industry to put forward as many views as possible and point out to us in which districts the view of traffic signals is blocked. I think Members have had the experience of their view of traffic lights being blocked by overgrown trees. Our colleagues have been continuously conducting inspections throughout the territory, and overhead traffic signals will be installed in places where improvement is found impossible. We have begun to make improvement gradually. So far, we have identified about 40 places, and we will follow them up one by one.

As for the amber light duration, the international standard is three to six seconds. We will clearly consider the situation in Hong Kong, such as whether the three-second amber duration is enough for a vehicle to stop completely or whether three seconds can ensure a smooth flow of traffic as a whole. Certainly, it is possible to lengthen the hesitation period (or the amber period), but after lengthening the amber period of each traffic light, the overall traffic throughput is set to be reduced. In Hong Kong, roads are extremely busy with many vehicles. Under what circumstances should this measure be considered? Insofar as urban traffic is concerned, the normal speed limit is 50 km/h, and three seconds should be enough for a vehicle to stop completely. We have discussed this in depth with the industry. They said that it may be difficult to stop a vehicle on major highways or steeper roads or at places where a traffic light is installed round the corner. We have already asked them to describe these situations to us in detail. We will send our staff to conduct inspections there and make improvement. But generally speaking, we hope that each driver will understand that the three-second hesitation period is more practical and allows higher "expectation".

As regards the other installations, it is not true that we have not thought about what should be done and what should not be done over the past months.

Having listened to the views of the industry, we understand the considerations of professional drivers who intuitively consider it desirable to install countdown devices. We have conducted a series of studies after listening to their views. As I mentioned earlier, the countdown device will provide more information to drivers, such as telling the driver that the red light will be on after a countdown from four, three, two, one has finished. But does each person react in the same way to four seconds and three seconds? Some people may think that two seconds are enough for rushing through the traffic light, whereas another person may think that he should stop in front of the traffic light even though there are still three seconds to go. So, the message conveyed will induce different reactions from different drivers. In fact, we did try to use these countdown devices, and we used them not only selectively. We have also made reference to the findings of studies conducted in other cities where countdown devices are used. The findings show that the message has become even more confusing, and this has nevertheless increased the risk of head-rear collusion.

In respect of publicity and education, the road safety publicity campaign in 2005-06 will focus on the theme of red light jumping. We hope that the publicity on compliance with traffic signals will not target at drivers only. We will also put across this message to pedestrians.

Earlier on, Members mentioned the concern of drivers. To professional drivers, driving is what they do to make a living. If five points are deducted each time, their driving licence will be revoked after they have breached the law for three times. In fact, under the existing system, drivers can take a driver improvement course every two years, and a driver completing this course can earn three points. If a driver has 15 points deducted in two years, he can take this course to earn three points, and this can achieve the objective of publicity and education. We also hope to provide some sort of a buffer for drivers in this regard.

Finally, the review of legislation. This resolution is a regulation. On the separation of passing the amber light and jumping the red light into two different offences, we must consider it very carefully. We have given an undertaking to Members that this review will be completed by the end of next year. Insofar as the legislative intent is concerned, the road safety legislation provides that drivers must stop when the red or amber light is on. This is the spirit of the current legislation. If we have to introduce changes to the legislation, we must consider them from all perspectives. We fully appreciate

that drivers may not be passing the amber light on purpose under special circumstances. But under the existing legislation, there is a difference between red light and amber light. Insofar as the amber light is concerned, there is a provision that jumping an amber light does not constitute an offence if a vehicle cannot safely be stopped before passing the stop line or light signals. In cases where there are elements of uncertainty in the prosecution policy of the police, the driver in question will be given the benefit of doubt. So, if there are doubts in a case of amber light jumping, the benefit of doubt will be given to the driver, and there has been zero prosecution on amber light jumping by the police in the past three years, and we will continue to review this policy. Yet, we know that the legislation has aroused anxieties among many people, because they do not know how a judgement is made as to whether the benefit of doubt should be given to the driver. We will specially look into the scenarios mentioned by Members earlier in the review, which include firstly, part of the vehicle has passed the stop line; secondly, the vehicle has already passed the stop line when the amber light is on and it is still at the junction when the traffic light has turned red; and thirdly, the vehicle has already passed the stop line when the amber light is on, but the driver is charged for red light jumping. We will study the experiences in various aspects, the statistics on red light jumping and amber light passing, and also the problems of enforcement. We hope that we can revert to Members by the end of 2006.

On traffic improvement, I hope Members will understand that the improvement measures that we are explaining to Members now concerns only one aspect. However, traffic improvement is a long-term, ongoing task, and it should be reviewed continuously after implementation. Ongoing efforts should also be made to refine the traffic improvement measures. The task cannot be accomplished once and for all. I think this proposal on the driving-offence points for red light jumping has aroused extensive discussion in society. We have made lots of contacts with the industry, and Members of the Legislative Council have also focused their attention on this issue. This will greatly benefit the improvement of road safety as a whole. I, therefore, hope that road safety can be enhanced with this two-pronged approach, so as to better protect the lives of all citizens, whether they be drivers or pedestrians. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, do you have a point of order?

**MR FREDERICK FUNG** (in Cantonese): Madam President, yes, a point of order. I did not speak just now. But having listened to the Secretary's reply, I now wish to .....

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, you should know that what the Secretary delivered just now was her reply. If you intended to speak, you should have indicated your wish before she gave her reply. You are not supposed to make a request now. Anyway, it does not matter, because this resolution and the next are related.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the resolution 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.

(Members raised their hands)

Ms Miriam LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Miriam LAU has claimed a division. This Council will proceed to division after the division bell has been rung for three minutes.

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

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

Mr James TIEN, Dr Raymond HO, Mr Martin LEE, Dr David LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Abraham SHEK, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Patrick LAU and Miss TAM Heung-man voted for the motion.

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Ms Miriam LAU, Ms LI Fung-ying, Mr Albert CHAN, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr CHIM Pui-chung, Mr Albert CHENG and Mr KWONG Chi-kin voted against the motion.

Mr TAM Yiu-chung abstained.

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

THE PRESIDENT announced that there were 51 Members present, 36 were in favour of the motion, 13 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): Proposed resolution under the Fixed Penalty (Criminal Proceedings) Ordinance.

### **PROPOSED RESOLUTION UNDER THE FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE**

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I move that the resolution under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance be passed.

The motion seeks to increase the fixed penalty for failing to comply with traffic signals from \$450 to \$600, and make three common traffic offences as scheduled offences under the Fixed Penalty (Criminal Proceedings) Ordinance. It also rectifies clerical errors in the Schedule to the Ordinance.

At present, a driver who fails to comply with traffic signals may be subject to a fixed penalty of \$450 under the Ordinance. Owing to the high concentration of signal-controlled junctions in Hong Kong, this improper driving behaviour has often led to serious traffic accidents. There is also a rising trend in the number of prosecutions for and casualties resulted from this offence. We propose raising the fixed penalty for failing to comply with traffic signals from \$450 to \$600 for greater deterrent effect.

Apart from failing to comply with traffic signals, we are concerned about three common traffic offences that could lead to severe consequences, namely, using handheld telecommunications equipment while the vehicle is in motion, driving motor cycle or motor tricycle without the necessary lights illuminated, and failing to drive in the nearside lane of an expressway. All the above offences are currently enforced by way of summons. We notice that the number of prosecutions for these offences have increased substantially in the past three years, indicating that they are rather common offences. We therefore propose to simplify the means of prosecution by including these offences in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance, so that prosecution can be done by way of fixed penalty ticket. This could facilitate enforcement and enhance the deterrent effect.

In considering the level of fixed penalty for the three offences, we have taken into account the level of fines set down by the Court as well as the fixed penalty levels for similar offences that are already enforceable by fixed penalty tickets. Currently, for using handheld telecommunications equipment while the vehicle is in motion, the majority of offenders are fined \$400 to \$500. We propose that the fixed penalty should be \$450. Regarding failing to drive in the nearside lane of an expressway, we also propose that the penalty should be \$450, in line with the offence of failing to comply with restrictions in using the offside lane of an expressway. As for driving a motor cycle or motor tricycle without the necessary lights illuminated, we propose to set the fixed penalty level at \$320, which is the current level for a similar offence for motor vehicles.

Subject to Members' approval, the resolution will take effect from 1 January 2006.

Madam President, I beg to move.

**The Secretary for the Environment, Transport and Works moved the following motion:**

"RESOLVED –

(a) that the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) be amended –

(i) in item 10, by repealing "的連續雙白綫" and substituting "的連續白綫";

(ii) in item 14, by repealing "\$450" and substituting "\$600";

(iii) in item 18, by repealing "42(d)" and substituting "42(1)(d)";

(iv) by adding –

"18A. Regulation Using a mobile \$450";  
42(1)(g) telephone or other  
telecommunications  
equipment or an  
accessory to such  
telephone or  
equipment while  
the vehicle is in  
motion

(v) by adding –

"22A. Regulation Driving motor \$320";  
47(1A) cycle or motor  
tricycle without  
keeping obligatory  
lamps lighted



(vi) by adding –

"56A. Regulation Failing to drive in \$450";  
12(1) the nearside lane of and  
the carriageway of  
an expressway

(b) that this Resolution shall come into operation on 1 January 2006."

**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.

**MR FREDERICK FUNG** (in Cantonese): Madam President, this resolution and the previous resolution dealing with failure to comply with traffic signals are basically interrelated. At first, I did not intend to speak on the first resolution because I shared the same position as most of the Members who voted against it. However, having listened to the reply of the Secretary, I changed my mind and wanted to say a few words. Since these two resolutions are interrelated, what I am going to say on the first resolution will also be relevant to the resolution now under debate.

This resolution aims to increase the fines for jumping traffic lights. People may have the impression that there will be increased penalty for red light jumping only, but the truth is that there will be increased penalty for both red and amber light jumpings. Members who have spoken today, including me, and even the representatives of minibus, bus, taxi and container lorry drivers are generally agreeable to increasing the penalty for red light jumping. The only question to them is how fairness can be achieved in the process. In particular, when it comes to driving past the amber light, although the Government maintains that drivers will not be penalized for doing so, the legislation still sets down a penalty for driving past the amber light. Since there are so many doubts and the Government is basically prepared to give drivers the benefit of doubt, how can we possibly include in the legislation the circumstances giving rise to all these doubts? What is more, as mentioned by the Secretary, the previous

resolution and the present one are all intended to convince people that the penalties are both fair and reasonable. And, the 131 red light camera housings, 96 cameras and overhead traffic lights mentioned just now, though all meant to penalize offenders (whether in the form of more offence points or increased fines) can still convince them that the penalties are fair.

I am in fact puzzled by one question. Why does the Government refuse to complete all the above improvement works and make everything fair before implementing this resolution? Given such refusal, people will not be convinced at all. I still think that the Administration should first complete all the above improvements and penalize offenders in a fair, impartial and open manner before increasing the penalties. That way, people will find any increases in offence points and fines fairer and more reasonable. I therefore hope that Members can consider this point and refrain from supporting the Government's proposal. Thank you, Madam President.

**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 give a reply?

(The Secretary for the Environment, Transport and Works shook her head to indicate her wish of not to reply)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the resolution 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.

(Members raised their hands)

Ms Miriam LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Miriam LAU has claimed a division. This Council will proceed to division after the division bell has been rung for three minutes.

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

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

(There was a problem with Ms LI Fung-ying's voting button)

**PRESIDENT** (in Cantonese): Ms LI Fung-ying, do you have a problem with pressing the button?

**MS LI FUNG-YING** (in Cantonese): I have already pressed the button.

**PRESIDENT** (in Cantonese): It is working now. I can see that.

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

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr Martin LEE, Dr David LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr Alan LEONG, Dr

KWOK Ka-ki, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Miss TAM Heung-man voted for the motion.

Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Ms Miriam LAU, Ms LI Fung-ying, Mr Albert CHAN, Mr Frederick FUNG, Mr WONG Kwok-hing, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted against the motion.

Mr CHIM Pui-chung abstained.

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

THE PRESIDENT announced that there were 47 Members present, 36 were in favour of the motion, nine against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): Two proposed resolutions under the Mutual Legal Assistance in Criminal Matters Ordinance.

First motion: To approve the Mutual Legal Assistance in Criminal Matters (Belgium) Order.

### **PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the first motion under my name be passed, that is, the resolution to make the Mutual Legal Assistance in Criminal Matters (Belgium) Order. I shall move another resolution to make the Mutual Legal Assistance in Criminal Matters (Denmark) Order in a short while.

The Hong Kong Special Administrative Region is fully committed to international co-operation in combating serious crimes. In this connection, we

have established a network of bilateral agreements with foreign jurisdictions on mutual legal assistance in criminal matters. These agreements ensure reciprocity between contracting parties in providing assistance in criminal matters and enhance international co-operation in the fight against transnational crimes. We have so far signed bilateral agreements with 18 foreign jurisdictions, namely Australia, France, New Zealand, the United Kingdom, the United States, Italy, South Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium, Denmark and Poland.

The Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance) provides the necessary statutory framework for implementing mutual legal assistance arrangements, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

Pursuant to section 4(2) of the Ordinance, the Chief Executive in Council has made two Orders to implement the bilateral arrangements on mutual legal assistance in criminal matters with Belgium and Denmark respectively. These two Orders apply the arrangements prescribed in the Ordinance between Hong Kong and Belgium, and between Hong Kong and Denmark, thus allowing assistance under the agreements to be provided or obtained in accordance with the procedures set out in the Ordinance. The Orders are substantially in conformity with the provisions in the Ordinance. However, as legislation and arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual negotiation partners. Such modifications are necessary to enable Hong Kong to comply with its obligations in the agreements concerned. The modifications made for the bilateral agreements with Belgium and Denmark are summarized in Schedule 1 to each of the two Orders.

The Legislative Council set up a Subcommittee to scrutinize the two Orders on 29 April 2005. The Subcommittee completed the examination of the Orders at its meeting on 13 June 2005. At the meeting, the Administration had responded in detail to Subcommittee members' questions on a number of provisions in the Orders, including those concerning the scope of assistance,

grounds for refusing assistance, taking of evidence and temporary transfer of persons in custody for purposes of assistance. The Subcommittee subsequently reported to the House Committee on 17 June 2005. I would like to thank the Chairman, the Honourable James TO, and other members of the Subcommittee for their support of my submission of the Orders to the Legislative Council for approval.

To strengthen our co-operation with foreign jurisdictions in respect of criminal justice and international law enforcement, it is important for the two Orders to be made to enable the bilateral agreements to be brought into force.

I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Belgium) Order. I shall in a moment move the resolution to make the Mutual Legal Assistance in Criminal Matters (Denmark) Order.

Thank you, Madam President.

**The Secretary for Security moved the following motion:**

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Belgium) Order, made by the Chief Executive in Council on 12 April 2005, be approved."

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

**MR JAMES TO** (in Cantonese): Madam President, the Secretary has mentioned that relevant Orders have been made regarding a number of jurisdictions. I am the Chairman of the various Subcommittees on these Orders. As for the Mutual Legal Assistance in Criminal Matters (Belgium) Order and the Mutual Legal Assistance in Criminal Matters (Denmark) Order, I am also the Chairman of the relevant Subcommittee. Therefore, I shall speak in this capacity.

These two Orders respectively set out the bilateral agreements in relation to the provision of mutual legal assistance in criminal matters applicable between the Hong Kong Special Administrative Region (SAR) and Belgium on the one

hand and between the SAR and Denmark on the other, and the modifications to the Mutual Legal Assistance in Criminal Matters Ordinance.

In examining the two Orders, the Subcommittee has made an article-by-article comparison of the provisions of each Order with those in the Model Agreement for the SAR on mutual legal assistance in criminal matters. The Subcommittee has been particularly concerned about whether there are enough safeguards for the rights of persons involved in criminal proceedings. Members of the Subcommittee have therefore conducted a detailed study on those provisions that differ from the Model Agreement.

During the scrutiny of the Mutual Assistance in Criminal Matters (Belgium) Order, members have queried why the provision for spontaneous exchange of information has been added, as mutual legal assistance should be rendered only on request.

The Administration has explained that the provision has been included in the Agreement at the request of Belgium. Even without the provision, exchange of information for investigation can be made in accordance with the Interpol practice. Having regard to members' view, the Administration has agreed to consider the necessity of including such a provision in mutual legal assistance agreements in the future.

As for the Mutual Assistance in Criminal Matters (Denmark) Order, the Subcommittee notes that the provision on transmission of urgent requests through Interpol has been added at the request of Denmark. A member is of the view that the relevant internal guidelines of the police should cater for the police's notification to the Secretary for Justice of requests for mutual legal assistance received through Interpol.

Regarding the new clause 8(5), the Administration has explained that under Danish law, a Judge will determine any claim by a witness to decline to give evidence according to Danish law. As it is difficult to generalize different cases, it was agreed that the SAR/Denmark Agreement should include such a provision to enable the Requesting and Requested Parties to consult each other on how to establish a claim for privilege in individual cases.

Madam President, the Subcommittee supports the resolutions moved by the Secretary for Security to make the Mutual Legal Assistance in Criminal

Matters (Belgium) Order and the Mutual Legal Assistance in Criminal Matters (Denmark) Order.

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

(No Member indicated a wish to speak)

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

(The Secretary for Security shook his head, indicating that he saw no need for a reply)

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: To approve the Mutual Legal Assistance in Criminal Matters (Denmark) Order.

## **PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the second resolution under my name, that is, the resolution to make the Mutual



Legal Assistance in Criminal Matters (Denmark) Order, be passed by the Legislative Council.

In moving the resolution to make the Mutual Legal Assistance in Criminal Matters (Belgium) Order earlier, I have explained the purpose and importance of making orders on mutual legal assistance in criminal matters. I now implore Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Denmark) Order.

Thank you, Madam President.

**The Secretary for Security moved the following motion:**

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Denmark) Order, made by the Chief Executive in Council on 12 April 2005, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security 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 Security 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): Member's Bill: Second Reading. We will resume the Second Reading debate on the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill.

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERGER) BILL****Resumption of debate on Second Reading which was moved on 25 May 2005**

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the Government welcomes the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill introduced by Dr David LI.

We have always supported the consolidation, reorganization or merger of the banking sector in Hong Kong. This will not only enhance competitiveness and upgrade the quality of service of banks, but also promote the stable development of our banking system in the long run. We consider the case in the Bill consistent with the abovesaid policy and helpful to maintaining Hong Kong's status as an international financial centre.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Dr David LI to reply.

**DR DAVID LI:** Madam President, Industrial and Commercial Bank of China (Asia) Limited (ICBC (Asia)) has ask me to convey their personal thanks to the President and Members of the Legislative Council for the attention they have given to the Bill.

The Bill is desirable because it will make the progress of the consolidation of the local branch of two banks transparent, open and certain. Belgian Bank and its subsidiaries have been members of ICBC (Asia) Group since 30 April 2004, following ICBC (Asia)'s acquisition of all the outstanding shares of Belgian Bank. The intention of the merger is to allow ICBC (Asia) and Belgian Bank (Hong Kong) to consolidate their operations in order to better serve their customers. The larger institution will also offer improved career prospects for bank staff in Hong Kong.

Belgian Bank's operation in Belgium, which makes up a minor portion of the Bank's business, will be dealt with independently of the current merger exercise. Belgian Bank is prepared to migrate such accounts to an overseas branch of ICBC (Asia) registered in the Cayman Islands, subject to the consent of the affected customers and in consultation with the relevant authority in Belgium. Following the merger and the migration of the off-shore accounts, it is intended that steps would be taken to wind up Belgian Bank. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Industrial and Commercial Bank of China (Asia) Limited (Merger) 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 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): Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill.

Council went into Committee.

### **Committee Stage**

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

### **INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERGER) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill.

**CLERK** (in Cantonese): Clauses 1 to 14, 17, 18 and 19.

**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.

**CLERK** (in Cantonese): Clauses 15 and 16.

**DR DAVID LI:** Madam Chairperson, I move the amendment to clauses 15 and 16 as set out in the paper distributed to Members. These amendments are technical in nature and serve to standardize the Chinese text of the Bill. The amendments were proposed by the Department of Justice, and have the full support of all parties concerned. Thank you.

*Proposed amendments*

**Clause 15 (see Annex III)**

**Clause 16 (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 Dr David LI 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 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 amendments passed.

**CLERK** (in Cantonese): Clauses 15 and 16 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 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): Preamble.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That this be the preamble to the Bill.

**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): Bill: Third Reading.

### **INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERGER) BILL**

**DR DAVID LI**: Madam President, the

Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill

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 Industrial and Commercial Bank of China (Asia) Limited (Merger) 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 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): Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill.

### **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limit on each Member's speech. Since Members are already very familiar with the time limits, I shall make no repetition here. I just wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Reviewing the mode of construction and operation for transport infrastructure.

### **REVIEWING THE MODE OF CONSTRUCTION AND OPERATION FOR TRANSPORT INFRASTRUCTURE**

**MR LAU KONG-WAH** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

It is a goal of the new Administration to better the economy and improve people's livelihood. This year, the greatest livelihood problem in Hong Kong is the tide of price hikes confronting the people. As a matter of fact, this was started by an increase of tunnel tolls. With tunnels raising their tolls one after another, there appear all over Hong Kong successive waves of price hikes.



This year, the Eastern Harbour Crossing (EHC) has raised its tolls by more than 60%, increasing the burden of expenses on the public and, what is more, utterly ruining the function of diverting traffic flows among the three road harbour crossings by "adding fuel to the flames", so to speak. The function of EHC and Western Harbour Crossing (WHC) in diverting traffic has been completely "disabled". Instead they have been turned into dollar-spinners that cannot be stopped, not until the day when enough money has been churned out! It seems that such an image is now deep in the mind of the people. Totally cast aside are the considerations of public interest and social effects while the Government just appears to be so helpless.

The transportation standstill in Kowloon recently appeared to be an act of God, or something attributable to communication breakdown. However, when viewed against the background, it was still a problem caused by ill-balanced traffic flow among the road harbour crossings. What is more, such imbalance is bound to continue. How many times more must Hong Kong people be tortured by such a standstill?

Right on the heels of EHC's toll hike are those of Tai Lam Tunnel (TLT) and Tate's Cairn Tunnel (TCT). For economic reasons, we are just "at their mercy". We can also foresee that more price hikes are coming our way in succession in the days to come.

After the current toll hike, TCT has already announced well in advance the possible need to raise tolls six more times to achieve the estimated Internal Rate of Return (IRR). In other words, there will be about one toll hike every two years. As for TLT, it enjoys practically an automatic toll adjustment mechanism. The reason is that, according to Schedule 4 to the relevant ordinance, the minimum net revenue for the current year has to reach the estimated amount of \$760 million whilst by the year 2012, the minimum figure will have to be \$2.1 billion. This is sheer fantasy. The biggest outcome of such an automatic toll adjustment mechanism is a heavier burden on the people. It can be predicted that upon the completion of the Western Corridor next year, the situation will be a repeat of the road harbour crossings. In the coming days, nobody is going to use those expensive tunnels whilst the toll-free Tuen Mun Road will be heavily congested. Government officials keep saying that such a situation is not going to take place. Who is to be blamed if it does?

It is obvious that there is presently an awfully unreasonable phenomenon in the community. In the final analysis, there is something wrong with the Build-Operate-Transfer (BOT) mode. Surely, in the past there were successful cases. However, there were even more unsuccessful ones.

For years after its opening in 1972, the Cross-Harbour Tunnel (CHT) set its toll at \$5 for every private car. It was raised to \$10 in 1984 when the Government imposed a levy. The tunnel company did apply for a toll hike, but the application was turned down by the then Legislative Council. Anyway, the tunnel company at that time was already "flooded with money".

Let us take a look at the EHC, WHC, TCT and TLT, all of which were similarly delivered through the BOT mode. Their franchise terms differ very little from each other. But the regulatory mechanisms for the Government to monitor toll hikes are, however, totally different. It is actually getting more and more lenient. In the case of EHC and TCT, any toll hike must be approved by the Executive Council but it is nevertheless subject to arbitration. In the case of WHC and TLT which were constructed later on, it went even further to have provisions for automatic toll hikes.

The BOT mode of operation has gone through an evolutionary process, going from a regulatory mechanism by the Legislative Council to an arbitration mechanism and, finally, to an automatic toll adjustment mechanism. Surely, any control that is "too tight" is not ideal. However, total freedom from restriction that allows automatic toll hikes also does not appear to be the best arrangement. It seems that our BOT mode has gone from one extreme to the other, one that is utterly rigid.

In the case of these few tunnels, the latest mode of control is obviously biased in favour of the operators in disregard of public interest. It seems that on this issue the Government does not want to get "involved" at all, and only blames it on the regulation by law and business operation, thus absolving the Government of blame. Should it be really like that?

The reality is: A few investors and the then Legislative Council made traffic forecasts totally on the basis of data obtained from the Government's consultancy reports. An utterly optimistic forecast can cause disastrous consequences. Apparently, at that time, the consultancy reports failed to

project the possibility of different situations happening. As a result, problems now pop up one after another in a situation of ill-balanced traffic flows. What is more, the problem of tunnel toll hikes has become such a bottomless pit.

Madam President, the Government in fact has the duty to enhance the transparency of the financial situation of those tunnels so as to be accountable to the public. Has the Government done so? According to records dug up by the Legislative Council Secretariat in respect of the Legislative Council's examination of the Bill on Tai Lam Tunnel on 24 May 1995, the then Secretary for Transport provided three assurances in response to the concern expressed by Members over toll hikes: "(a) Tabling in the Legislative Council in July each year the franchisee's plan as embodied in its three-year rolling projection of net revenue and its annual budget of operating cost, together with a statement; (b) table in the Legislative Council in October each year the franchisee's annual audited statement of Actual Net Revenue, and will make a statement on that occasion on both the figures and any application for a toll increase; and (c) brief the Legislative Council Transport Panel on the Administration's findings before deciding by the end of October whether a toll increase should be agreed or whether we should proceed to arbitration. Honourable Members will then have the opportunity to debate the findings if they so wish."

Madam President, has the Government honoured these three assurances? The answer is in the negative. Over the past few years, the Government has never tabled in this Council such information. When Members asked for certain financial information regarding this year's toll increase, the company concerned ventured to present it to this Council in the form of confidential documents, making it impossible for Members to quote those confidential figures. As a result, Mr WONG Kwok-hing at that time had to use allegories like "a fat guy wishing to grow fatter" when quoting those information. We just did not know whether to cry or laugh. It is clear that the then Secretary for Transport did provide those assurances. However, this year the officials coming here have been giving us the runaround, saying that such information is business secret not to be disclosed. It is a breach of those promises. It is tantamount to cutting this Council dead. Also, it fails to show accountability to the public. It is, therefore, very much hoped that the Secretary can respond to this point here, and explain why the Government has not honoured its promises.

Madam President, given the present state of affairs, the people may ask "What to do now?" In fact, four years ago, the Panel on Transport already

requested the Government to look into the issue concerning tunnel franchises. The Government then mooted certain proposals, such as extending the franchise terms, setting up an authority or establishing a fund. However, it looked as if nothing had happened after the discussions. That took place four years ago. In 2003, the Panel again asked the Government to conduct a study with reference to overseas and mainland experience. The issue remained pending after that. It remained so until this year when EHC sought to raise its tolls, then the Government again put forward 12 options for improving the distribution of tunnel traffic. However, nobody knows which proposal the Government is in favour of.

Let us refer to overseas experience. In England, there are now at least 14 road projects that are delivered through a mode on the basis of "shadow tolls". Under such a mode, the government pays operators according to the traffic throughput. The returns from such infrastructures may rise if the traffic throughput increases. Of course, the government has to acquire the funding through licence fees, fuel duty, and so on.

When building bridges and tunnels in the 1980s, the Shanghai Municipal Government also adopted BOT contracts, somewhat similar to ours. There was, among other things, a guaranteed 15% annual return. So, all bridges and tunnels charged a toll of RMB 15 yuan. As the exorbitant charge was quite beyond the people's affordability, the utilization rates of the bridges just could not meet the purpose for which they were built. So, before the expiration of the BOT franchises, the Shanghai Municipal Government, acting on the instruction of the Central Government, spent RMB 6.1 billion yuan to buy back all the flyovers and tunnels. Yet at the same time, the Shanghai Municipal Government also increased the tolls payable by vehicles.

The Luoxi Bridge in Guangdong recently repaid the principal and interest of a loan at RMB 1.3 billion yuan, bringing its 17 years of toll-charging history to an end last Sunday (1 July). Henceforth the said bridge is operated by the Guangdong Provincial Government at no charge to those using it. Therefore, Madam President, there are in fact many ways to improve the BOT mode.

In order to enable Members to make adequate preparations, the Panel on Transport has asked the Research and Library Services Division of the Legislative Council to look into overseas and mainland experience. The Government should no longer irresolute. There has got to be actual progress.

Before us is the Western Corridor scheduled to be opened for vehicular use next year. What will happen to the discussions with the TLT company with regard to the BOT arrangements? With the imminent construction of the Hong Kong-Zhuhai-Macao Bridge, should the community still adopt the currently unsuccessful BOT mode for financing? These are urgent issues. It is, therefore, necessary to set a specific deadline for expeditious solutions.

Madam President, the new Administration advocates "strong leadership and people-based governance and the enhancement of welfare of the community". I believe one of the yardsticks to measure the performance of the new Administration is its success or failure in dealing with the issue of BOT. Thank you, Madam President.

**Mr LAU Kong-wah moved the following motion: (Translation)**

"That, in view of the toll increases by the operators of a number of transport infrastructures delivered through the Build-Operate-Transfer (BOT) mode, which not only directly increase the burden of transport expenses on the public and lead to a rise in transportation costs for the business and industrial sectors, but also greatly aggravate the traffic congestion at other lower-toll tunnels or toll-free routes, thereby defeating the intended purpose of diverting traffic flows to various tunnels, this Council urges the Government to put up, in one year's time, specific proposals for improvement regarding the following:

- (a) relieving the pressure on various tunnels to increase their tolls;
- (b) enhancing the various tunnels' function of diverting traffic flows; and
- (c) conducting a comprehensive review of the BOT mode and drawing conclusion from the relevant experience to serve as guidance in the financing, construction and operation, etc, of future transport infrastructures, so as to avoid the above pitfalls and safeguard the interests of the public."

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

**PRESIDENT** (in Cantonese): Ms Miriam LAU and Mr Andrew CHENG will move amendments to this motion respectively. Mr TAM Yiu-chung will also move an amendment to Mr Andrew CHENG's amendment. The motion and the amendments will now be debated together in a joint debate.

I will call upon Ms Miriam LAU to speak first, to be followed by Mr Andrew CHENG and Mr TAM Yiu-chung; but no amendments are to be moved at this stage.

**MS MIRIAM LAU** (in Cantonese): Madam President, in the past three months, the EHC, TLT and TCT announced toll increases one after another. As a result, more vehicles are flocking to lower-toll tunnels and toll-free trunk roads, thus worsening the congestion of tunnels and roads that are already very busy. The toll increases of tunnels bring forth the issue concerning the effective distribution of traffic among the different tunnels as well as the need to comprehensively review the Build-Operate-Transfer (BOT) mode of delivery.

First of all, I would like to point out that members of the public, those of the business and industrial sectors as well as members of the transport industry are being affected by congestion often seen along lower-toll tunnels and toll-free trunk roads. The Liberal Party is, therefore, of the view that the Government cannot afford to further use "delaying tactics". Instead, actual proposals for redistribution of traffic or improvement should be presented as soon as possible. As a matter of fact, this Council's Panel on Transport a few years ago already noticed the problem of traffic congestion arising from the ill-balanced utilization of tunnels, and asked the Government to put forth solutions. However, the Government has yet to deliver even after much delay. In spite of that, the said study ought to have started a few years ago. Now there should be no further delay. In order to solve the problem expeditiously, I therefore propose an amendment on behalf of the Liberal Party, shortening the one-year period proposed in the original motion for putting up proposals for improvement to a period of six months.

With regard to improving the distribution of traffic among the three road harbour crossings, the Environment, Transport and Works Bureau put up 12 options in April this year. The thinking was that if they were practicable, they might be applicable to other tolled tunnels that are built and managed by private operators. However, some of the options are outright not practicable, for

example, the proposal for "toll alignment" by way of an "overall increase in CHT tolls", or the proposal for "surcharge". Although the introduction of toll hikes by the CHT probably may have some effect on traffic distribution, it is bound to increase the burden on the public. So, we are not in favour of it. On the contrary we think that, for any toll revision, the premise must be that the burden on the public should not be increased by all means. So, in the event of adopting the proposal for toll alignment, the approach should be one going for the lowest rate, that is, standardizing all tolls on the basis of today's lowest rates as far as possible. In fact, the differences in tolls among the three road harbour crossings are very large. Take the toll charged on private cars as an example. WHC's toll is double that of CHT's, with a difference of \$20. Take the toll payable by public light buses as another example. After the toll increase scheduled for EHC in October, EHC's toll will be 2.8 times that of CHT, with a difference of \$28.

There is a proposal to buy back in toto the tunnels now owned by private consortia. This is going to involve tremendous public funds, and it is not sure if the tunnel companies are prepared to sell them. We, therefore, must look into it carefully. However, we need not rule out the possibility of buying back the tunnels such as in the special case of Route 3, for instance. For the purpose of effective utilization of public resources and avoiding duplication of investment, we do agree that the Government may enter into negotiations with the company with a view to buying back the franchise for use by motorists at low charges, or free. This may effectively divert traffic from Tuen Mun Road so that the traffic problem in New Territories West will not worsen by the time the Western Corridor is open to vehicular traffic.

Mr Andrew CHENG suggests that negotiations be conducted with the major shareholder of EHC and WHC for common ownership of the three road harbour crossings. This indeed can help to standardize the tolls of the three crossings, and, hence, achieve the effect of diverting traffic. The Liberal Party, however, worries that common ownership alone will not give much room for lowering tolls, the reason being that the tunnel company still has to achieve the specified rates of return within the franchise periods. For effective control of the vehicular traffic flows among the three crossings and also for reducing the burden on the people, a more practicable option is, in the opinion of the Liberal Party, to extend the franchise periods of the relevant tunnels. In this way, the tunnel company may have its reasonable return spread over a longer period of

time. The pressure for toll hikes may thus be eased and there may even be room for toll cuts.

Madam President, on top of the problem concerning redistribution of traffic, the recent tide of tunnel toll increases has really very much troubled the people. However, we in the Liberal Party must point out that we should not give up eating for fear of choking. The BOT mode of delivery ought not to be negated totally just because of tunnel toll hikes. The CHT, which was constructed under the BOT mode, exemplifies a case in which all three parties, namely, the public, the franchisee and the Government, win. The public can cross the harbour directly in cars without much toil. The franchisee was able to make reasonable profits during the franchise period. When the franchise expired in 1999, the Government took back the tunnel, one still capable of "laying golden eggs", and had it included as an item for the issue of bonds secured on the "five tunnels and one bridge." Members of the public then got another chance to make gains by investing in the bonds, while the Government was able to use proceeds from the bonds in other areas of work.

As a matter of fact, the BOT mode of delivery has always been effective in the international community. The most classic example is the Suez Canal built in the last century. A more recent example can be found in the extension project of the Madrid Motorways. This is a 96 km long freeway constructed in Madrid by a private company at a cost of Euro 360 million (about HK\$3.3 billion). The franchise period is as long as 65 years. In South Korea, the Pushan-Kimhae light rail project contract was awarded in 2002. It is scheduled to be completed this year. Its cost is US\$1.1 billion (about HK\$8.58 billion), and it is 23.9 km long. Its franchise period is as long as 30 years. In the United States, the Hudson-Bergen light rail project was launched in 1996. It is scheduled to be completed by 2010. The first phase alone cost US\$1.1 billion (about HK\$8.58 billion). It is also being built by a private consortium. The franchise period is going to be 15 years long.

From this, it can be noted that BOT is probably still one of the popular modes of delivery used to built large-scale infrastructure. Its merit is that it can greatly relieve the Government of the pressure of spending on infrastructure, and bring into play, with better flexibility, the capability of the private sector while providing more opportunities for investment and employment and building some facilities needed by the people. As stated earlier on by the new Chief Executive Donald TSANG in this Council, building the government headquarters on the



Tamar site can be very effective economically. But currently the biggest problem is financing.

Regarding the toll adjustment mechanism under the BOT mode, I think neither Mr Andrew CHENG's amendment nor Mr TAM Yiu-chung's amendment to the amendment seeks to repudiate in toto the contracts concluded with the tunnel companies. They only wish that there can be a review to examine if the existing toll adjustment mechanisms should continue in the event of similar BOT projects being proposed in the future.

Earlier on I cited CHT and overseas cases to show that in concept the BOT mode is in line with public interest, not at all devoid of merit. With regard to the two existing tunnels that are delivered through the BOT mode, in order to study if their toll adjustment mechanisms are in line with public interest, we have to understand why such mechanisms came into being then. Take TLT as an example. The toll adjustment mechanism agreed upon then was a key factor on the part of the bank in determining whether or not to grant a loan to finance the project. If there was a provision for toll adjustment to be approved by the Legislative Council, the tunnel company could not have got funding from the bank for it to undertake the TLT project. In other words, had the Legislative Council at that time passed a provision requiring Legislative Council approval for TLT toll adjustments, I believe TLT could not be here today, and there would not be any need to debate on its toll adjustment today too. Is it in line with public interest for the TLT project not to materialize?

Surely, it is inevitable for the burden on car owners and passengers to grow heavier following the toll increases by TLT and WHC. We have to track down the cause. The crux of the problem lies not in the toll adjustment mechanisms themselves. It lies in the traffic projections made by the Government then. They differ too much from the actual traffic throughput. In the case of TLT, the designed capacity is an average daily throughput of 140 000 vehicles. However, judging from the utilization of the last five years or so, the annual average is just a little over 40 000 vehicles, with the highest utilization rate reaching only 33.19% in April this year. The losses so far suffered by TLT already amounts to \$400 million, its revenue being a far cry from the forecast. The tunnel company, therefore, applied for toll adjustments in accordance with provisions of the legislation, thus increasing the burden on car owners and passengers.

Actually, when the Legislative Council passed the Tai Lam Tunnel Ordinance in 1995, nobody could have foreseen the financial turmoil of 1997, after which Hong Kong had several years of economic recession. There was much impact on cross-boundary freight transport. The development of the Northwest New Territories also slowed down.

However, reference to the past can be a lesson for the present. Thus it is necessary for us to conduct a comprehensive review of the BOT mode and draw conclusion from the relevant experience, especially that of traffic projections, to serve as guidance in the financing, construction and operation of future transport infrastructure.

Madam President, I so submit.

**MR ANDREW CHENG** (in Cantonese): Madam President, ever since the 1980s, the Government has been building, one after another, tunnels and approach roads through the Build-Operate-Transfer (BOT) mode. Among them are the Eastern Harbour Crossing (EHC), Tate's Cairn Tunnel (TCT), Western Harbour Crossing (WHC), Tai Lam Tunnel (TLT) cum Route 3. In recent months, franchisees of those tunnels and routes have successively revised their tolls. The increase rates can be described as "startling". Should the uneven distribution of traffic among the tunnels and routes be attributed to any problem with the BOT mode or to the defects inherent in the toll mechanisms? Today, the Democratic Party believes that it is time for a review.

Reviewing the stand taken by the Democratic Party in the past will show that a decade or so ago we had no objection to delivering tunnels or routes through the BOT mode. When the Legislative Council debated the Western Harbour Crossing Bill in 1993 and the Tai Lam Tunnel and Yuen Long Approach Road Bill in 1995, no matter it was the United Democrats of Hong Kong, the Meeting Point or the eventually established Democratic Party, the emphasis was all placed on the toll mechanisms. At the Third Reading, we all voted against the Bills. The Democratic Party had already been established by the time the bill in respect of TLT was tabled. We sought, through an amendment moved by the Honourable WONG Wai-yin, to include a provision requiring future toll adjustments to be examined by the Legislative Council. However, there was support from neither the Liberal Party nor the Democratic

Alliance for Betterment of Hong Kong (DAB). So, at its Third Reading, we voted against the Bill.

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

We are now into the 21st century. Although no BOT project of any significance is in progress now, in 2002 we first suggested the idea of a Tunnels and Bridges Authority (TBA). The reason is that it had come to our notice that, given the uneven tolls and traffic flows among those tunnels and routes, there would be a potential danger for our traffic and transport unless an early solution was found. We proposed that the Government should buy back those tunnels and routes and apply effective traffic redistribution by means of pricing. Unfortunately, the Government turned down our proposal on the ground that it involved too much public funds.

Madam Deputy, this year, our economy has entered a period of recovery, which is being accompanied by the burgeoning problem of price hikes. First from EHC came an increase in excess of 60%. Then TLT cum Route 3 automatically adjusted their tolls. There is going to be an automatic toll adjustment by TCT next month. In face of this problem concerning tunnels, especially in the case of road harbour crossings, where one single consortium owns two of the three crossings, we have to actively look for solutions. As the Government finds it currently not possible to bring in the TBA mode recommended by us, then the Government should actively explore the idea of common ownership. This represents a change in our thinking in dealing with matters concerning tunnels and routes. Although we have made different proposals at different stages, the central theme is still the worry about tolls and volume of traffic, which is also the main reason why I propose an amendment on behalf of the Democratic Party.

Madam Deputy, with regard to the toll mechanism of existing projects of tunnels and routes delivered through the BOT mode, basically there are two arrangements. The first one was formulated in the middle of or late 1980s. Whenever there is a dispute over tolls, it is referred to a arbitration mechanism for decision. Coming under this is EHC and TCT. The second arrangement was adopted in the early 1990s, franchisees being given the power to adjust tolls automatically. The mechanisms provided by the Tai Lam Tunnel and Yuen

Long Approach Road Ordinance and the Western Harbour Crossing Ordinance specify the estimated lowest and highest net revenues within the franchise periods as well as the dates on which tunnel tolls are expected to increase. Under normal circumstances, if the net revenue in a specified year is less than the highest estimated revenue, the franchisee may apply to adjust the tolls in accordance with the specified increase level. If in any year the franchisee's throughput is too low and, as a result, the said year's actual net revenue is less than the estimated lowest revenue for that year, the franchisee may apply to increase the tolls ahead of schedule. It is precisely this automatic toll adjustment mechanism that has again and again made it possible for franchisees to increase tolls automatically, and ahead of schedule. At the time the two ordinances were passed, we already found the said mechanisms absolutely not practicable, with no protection whatsoever given to the people and benefits all tilted towards the consortia.

Madam Deputy, you earlier on said that had we then brought in pricing control, such as a mechanism requiring Legislative Council approval for toll adjustment, there would be no WHC or TLT. I have to disagree with this. If we do take this Council as a representative body monitoring on behalf of the people the toll adjustment mechanism of tunnels, then such mechanism should not be the reason for not getting WHC nor TLT. The problem, however, is that unfortunately the Council is not working, with many Members representing the interests of the business sector. Under the voting mechanism, our amendment was voted down. At that time, we made a strong demand that the Legislative Council should play a role, the reason being that the Legislative Council represented the masses or the public. There must be a mechanism capable of speaking for the people on matters concerning tolls. Unfortunately, at that time, neither the Liberal Party and the DAB nor Mr TAM Yiu-chung, the representative of the DAB or of the Hong Kong Federation of Trade Unions (FTU) supported our amendment, which would have obliged the Legislative Council to play a role. As a result, the Liberal Party, DAB and FTU are all wondering now why franchisees are allowed to adjust tolls automatically. If so, why did they support the said bill instead of the idea of giving Legislative Council a role to play? It is, therefore, hoped that Members and political parties that at that time supported the said bill and objected to giving Legislative Council a role to play will change their previous stand today. We have to take hold of our power, which, I believe, will not expand indefinitely or grow politicized as some businessmen claimed. Politics and people's livelihood are forever inseparable. So, Madam Deputy, those automatic toll adjustment

mechanisms are bound to give rise to a problem of tilting benefits towards the consortia. That, therefore, must be corrected.

Surely, at present many members of the public and academics are criticizing that the toll adjustment mechanisms of tunnel companies are defective. At that time, we already said that the rate of return was high. For instance, the rate of return for WHC was set at 16.5% on average; that of TLT cum Route 3 was 15.18% on average. These are relatively high even at today's standard. It is, therefore, absolutely wrong to formulate an automatic toll adjustment mechanism for a franchisee to indiscreetly increase tolls without monitoring by a representative assembly. So, it can be noted that the biggest problem with BOT now is the setting of excessively high rates of return and the irrational automatic toll adjustment mechanisms for projects. These are things that most definitely will have to be changed or avoided when dealing with such transport infrastructure to be delivered through the BOT mode in the future.

Furthermore, the uneven distribution of traffic among the three road harbour crossings has always been the focus of our concern. At a time when the toll adjustment of EHC was irreversible, it was disclosed by the Government that negotiations were being held with CITIC Pacific Limited, the owner of EHC and WHC, for common ownership of the three road harbour crossings. We are of the view that if the parties can "get along", then the idea can be a breakthrough leading to a solution to the problem of uneven traffic distribution and excessive tolls. It is, therefore, hoped that the Government can present to this Council progress reports on the matter. It is, of course, not necessary to disclose details of the negotiations nor the Government's bargaining counters. However, with regard to the question as to how receptive the consortium is to the idea, and the progress on key issues, including changes to the pricing policy following the introduction of joint operation, Members and members of the public have the right to be informed further.

Finally, I would like to present my view on the amendment proposed by you, Madam Deputy. We are of the view that both this amendment and the original motion are not in conflict with my amendment. So, we are prepared to support it. As for Mr TAM Yiu-chung's further amendment, on the face of it, it seeks to further broaden the scope of my amendment. However, the words "Build-Operate-Transfer" at the beginning of the original motion cover, in a broad sense, all transport infrastructure projects. However, the reference to the Tai Lam Tunnel and Yuen Long Approach Road Ordinance in my amendment

covers TLT and Route 3. Deleting these words, Mr TAM Yiu-chung just substitutes them with "of all the tunnels delivered through the BOT mode." Our worry is that if the said further amendment is passed, the question concerning the tolls charged by Route 3 will just be one fish allowed to slip through the net. So, on both wording and policy we are not in a position to support Mr TAM Yiu-chung's further amendment.

With these remarks, Madam Deputy, I propose my amendment.

**MR TAM YIU-CHUNG** (in Cantonese): Madam Deputy, I am going to propose an amendment to Mr Andrew CHENG's amendment. Mr CHENG's amendment seeks to review the current toll increase mechanisms under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Western Harbour Crossing Ordinance. The DAB considers the scope of the review too narrow. We wish the Government to comprehensively review the toll increase mechanisms of all the tunnels delivered through the BOT mode. However, Mr Andrew CHENG earlier on expressed the worry that this cannot cover Yuen Long Approach Road beyond TLT. Such a worry is, in my opinion, not warranted. We are of the view that — it is a pity that he has left the Chamber. Originally I wanted to comment on his points one by one, but he has left. I can only send him the comments in writing — it is necessary to draw conclusion from experience so as to introduce mechanisms more in line with public interest for transport infrastructure in the future.

The toll increase mechanisms of existing tunnels delivered through the BOT mode operate according to two arrangements. Under the first one, tolls may be varied by agreement between the Chief Executive in Council and the tunnel company. If an agreement cannot be reached, either party may resort to arbitration. The arbitrator shall be guided by the need to ensure that the company is reasonably but not excessively remunerated. Currently, the Eastern Harbour Crossing (EHC) and Tate's Cairn Tunnel (TCT) use this arrangement. According to the respective ordinances, toll increases of these two tunnels are required to be gazetted. So, the Legislative Council may examine each toll increase proposal.

The other arrangement stipulates that tolls may increase on specified dates. If in any year, the actual net revenue is less than the lowest net revenue specified for that year by the ordinance, the tunnel company may increase tolls

ahead of schedule. On the other hand, if the rate of return is in excess of a certain percentage, all excessive revenue must go to a Toll Stability Fund (TSF) in order that toll increases scheduled for later dates can be deferred. In the case of such a mechanism, the ordinance prescribes, once and for all, the criteria for tolls to increase or not to increase. So, for each toll increase, there is no further need to seek Legislative Council approval. Currently, this toll adjustment mechanism is used by the Western Harbour Crossing (WHC) and TLT.

The arrangement providing for toll increases on specified dates was introduced by the Government in 1993 for the construction of WHC. The most prominent feature is that toll adjustment is exclusively determined by the tunnel's estimated net revenue. So long as the tunnel company's actual revenue is lower than the estimated net revenue specified in the ordinance, the tunnel company may ask for a toll increase. Such an arrangement, exclusively determined by one factor, renders toll increases divorced from the economic situation of society prevailing at the time. Here is an example. In the past few years, our economy was poor and economic growth stagnant. However, WHC could still ask for toll increases for the reason that its revenue was lower than the minimum amount specified in the ordinance.

Its second drawback is that the TSF, an important component of this arrangement of toll adjustment, has failed to bring into play its due function. The function of the TSF is to make it possible for the tunnel company to use the portion of revenue in excess of that specified by agreement to lower toll increases scheduled for the future. In order that there can be payments into the TSF, it is necessary for the number of vehicles using the tunnels to be in excess of the forecast level. However, in the case of WHC and TLT, the throughput has never reached the forecast level since commission. So far, TLT's throughput is only 39% of its capacity, that is, 60% of the forecast level. Consequently, the tunnel company has to increase tolls ahead of schedule. Because of erroneous projection, the tunnel company certainly has to sustain certain losses. But the people also suffer as a result.

With regard to monitoring by the Legislative Council in the case of WHC and TLT, criteria for tolls to rise or not to rise during the entire franchise period were set by the Legislative Council once and for all. Such an approach definitely has something unscientific. According to law and assurances, made by the Government, the Legislative Council, of course, has the right to scrutinize the tunnel company's budget and accounts of expenses and net revenue. If these

accounts are found to be correct, approval has to be given for the tunnel company to increase the tolls. In the past, the Democratic Party did make a strong demand that toll increases should require Legislative Council approval in the form of subsidiary legislation. However, when the bills on EHC and TLT were under discussion, they did not repudiate the automatic toll adjustment mechanism based on estimated net revenue. In other words, the Legislative Council may reject the rate of increase sought by the tunnel company. But with regard to the toll adjustment mechanism, there is absolutely no room for disagreement. Therefore, any objection to subsidiary legislation from the Legislative Council will, paradoxically, bring the subsidiary and principal legislation into conflict with each other. The tunnel company may also reserve the right to sue the Government. This point can be noted from the case of EHC's toll increase for the current year. Although each toll increase by EHC requires Legislative Council's approval, a rejection by the Legislative Council may lead to the tunnel company initiating a lawsuit against the Government.

In addition to the need to review the mode of toll adjustment by WHC and TLT, there is also a need to review that of WHC and TCT. This year EHC had sought to increase tolls. Even though the Government disagreed, the tunnel company was still allowed to effect a raise of 67% because the arbitrator found the changes that happened to our economic situation between 1997 and 2004 to be immaterial, and, thus, ruled in favour of the tunnel company. In the face of such a wrong verdict, described by scholars as "economic illiteracy", the Government can do nothing at all, which is indicative of the fatal defects in the toll adjustment mechanisms of EHC and TCT. Even though there is stipulation that toll adjustment requires approval from this Council, in the end there is still no protection for public interest. The Government should comprehensively review and improve the arbitration mechanism in respect of toll adjustment in order that public interest will not be injured as a result of the disparity between law and professional knowledge.

No matter whether it is the arbitration arrangement or the arrangement for toll increases on specified dates, the crux is how a reasonable rate of return can be determined and whether or not there is a mechanism to effect improvement when it is found to be outdated and not living up to public expectation. To enhance the protection for public interest, in 1993 the DAB ..... (*The buzzer sounded*)

Thank you, Madam Deputy.



**MR LAU CHIN-SHEK** (in Cantonese): Madam Deputy, I believe the Secretary for the Environment, Transport and Works, being the person responsible for the SAR Government's traffic and transport policies, must answer several interrelated core questions in considering the matter under debate today. The questions are: What role should the Government play with regard to policies on public transport? Has the transport infrastructure really improved transport and traffic?

Madam Deputy, to me, the answers to these questions are clear. In my opinion, it is definitely the Government's duty to ensure that there is enough transport infrastructure to meet the needs of people's livelihood as well as the requirements of the community and the economy. It is also the Government's duty to ensure that members of the general public may use public transport services at reasonable prices. These government duties are unshirkable. So, whenever any transport infrastructure project is to be launched, it is necessary for the Government to reserve enough power to regulate traffic flows at various transport trunks and monitor the pricing of public transport services, regardless of the forms of financing, construction and operation adopted.

Unfortunately, with regard to the various existing projects delivered through the Build-Operate-Transfer (BOT) mode, the Government has failed to fully play the role that I just asked of the Government. Just recently, the EHC frantically increased its tolls. The WHC paradoxically, during a time of deflation, has repeatedly increased tolls. There will be toll increases by both TCT and TLT. All these point to the fact that in protecting people's livelihood, the Government "has the will but not the power to do it". Worse still, the Government has also been denied the tool to balance the traffic flows among different transport facilities through toll adjustments. So, it has resulted in traffic congestion on the one hand and waste of resources on the other.

Hong Kong is small in size but dense in population. Its requirement for transport management is stronger than any other cosmopolitan city. Consequently, it is absolutely necessary for the Government to assume a dominant role in policies on traffic and transport. I am of the view that in exploring ways to improve the distribution of traffic among the existing road harbour crossings, in reviewing the existing BOT mode and in mapping out the financing and operation arrangements for future transport infrastructure (such as

the Hong Kong-Zhuhai-Macao Bridge), it is especially necessary for the Government to define clearly its role in policies on traffic and transport.

Madam Deputy, the *Bible* says "Render to Caesar the things that are Caesar's and to God the things that are God's". With regard to the dominant role in transport policies that the Government ought to play, I do not want to see the Government run into obstacles when it is necessary for the Government to regulate transport needs and protect people's livelihood merely on the pretext of adherence to the theory of "big market, small government".

Madam Deputy, I so submit.

**DR RAYMOND HO:** Madam Deputy, there are at present three vehicular harbour crossings in Hong Kong, namely the Cross-Harbour Tunnel, the Eastern Harbour Crossing and the Western Harbour Crossing. While the ownership of the Cross-Harbour Tunnel has been returned to the Government, the Eastern as well as the Western Harbour Crossings remain to be "Build-Operate-Transfer (BOT)" tunnels. In other words, they are owned and managed by franchisees over a franchise period.

Not so long ago, the BOT operator of the Eastern Harbour Crossing raised its toll level at a drastic rate. It resulted in the subsequent serious traffic congestion in Kowloon. This immediately drew people's attention to the issue: Is BOT an appropriate mode to construct and operate transport infrastructure?

The advantages of BOT arrangement include firstly, providing business opportunities to commercial enterprises to participate in the construction and operation of infrastructure projects and alleviating the financial burden of the Government on public works spending. The second advantage is especially important when the Government is in financial difficulties.

The downside of the BOT mode is that during the franchise period, the franchisee enjoys high liberty to raise toll levels and when the toll of one tunnel is raised, there will be serious traffic congestion in another where toll level is lower. This results in uneven distribution of traffic and increases the transport expenses of the public, business as well as industrial sectors.

When infrastructure projects are operated in BOT mode, the Government is in no position to intervene in the operators' pricing policies and business strategies. To strike a balance with this disadvantage, I would suggest the Government to adopt a joint venture mode for future infrastructure projects where the construction costs of these projects are very high and where tolls or fares would be pegged very high in order to arrive at the agreed internal rate of return. This mode of operation can facilitate the Government to scrutinize toll level and increases as well as service quality.

Take West Rail as an example. If this project were 100% funded by the KCRC's own resources, the train fare would have been set at a very high level for sure, but then, it will not be acceptable to the public. The public will simply not use it but use other transport modes. The West Rail would then become a white elephant to be criticized by everybody.

Take the Western Harbour Crossing as another example. The construction cost stood at \$7 billion. If the Government had injected capital into the project in the first place, the tunnel toll would have been set at much lower and acceptable levels to achieve a certain internal rate of return. Harbour traffic would be much better distributed than it is now.

At this juncture, I must point out that I am not saying that BOT cannot be adopted whatsoever. It will still remain as a useful form of private sector participation, but we will have to judge the circumstances and carefully consider all factors concerned.

Currently, the problem of seriously out-of-balanced traffic distribution among the three tunnels in Hong Kong is clearly reflected in the 2004 average daily traffic throughput of the Cross-Harbour Tunnel, the Eastern Harbour Crossing and the Western Harbour Crossing — 121 671, 73 477 and 39 188 respectively. If this trend of distribution persists, the traffic conditions of the Cross-Harbour Tunnel will further worsen in the future. Under these circumstances, it is necessary for the Government to find solutions early. In my opinion, the Government should encourage the public to utilize mass transportation means more often, and promote to the tunnel companies the concept that toll level should not only be determined by internal rate of return, but should also take social responsibility into account.

Hong Kong's economy is recovering, but high toll level will impede it from growing further. I trust that the Government will have to strike a balance between the interests of the public and the franchisees.

Madam Deputy, I so submit. Thank you.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam Deputy, the Eastern Harbour Crossing (EHC), on the strength of the argument that its Internal Rate of Return (IRR) has not reached the level stipulated in the construction agreement concluded with the Government, resorted to arbitration to overturn the Executive Council's decision of rejecting the toll increase by EHC. In May, it raised its tolls frantically by almost 70%. Such a rate of increase startled the people. What is more, it aggravated further the uneven traffic distribution among the three harbour crossings. Apart from calling upon the people to leave their homes earlier, and take public transport whenever possible, our Government has not been able to do anything. This is most ridiculous. With such traffic problems at our throat, the SAR Government, which is running Hong Kong, just spread out two hands as an expression of helplessness. Should we cry or laugh at that? We cannot help asking: What is the problem?

One careful look can lead us to the root of the problem, namely, the construction agreement concluded years ago between the Hong Kong Government and the franchisee of EHC. EHC was delivered through the Build-Operate-Transfer (BOT) mode. Under this arrangement, whenever EHC fails to earn enough profit, it can "open its mouth like a lion" in total disregard of public interest and its social corporate responsibility, and also in total disregard of the Government.

Such a provision is, more or less, like a rope "tying up" the hands and feet of the Government, allowing the tunnel company to do whatever it likes. However, the then Hong Kong Government willingly stretched out its hands and feet to be "tied up". Should a government act like that? The way in which the Government dealt with things then is really unfathomable.

With regard to the unreasonable toll increases by EHC, there is obviously an irrefutable responsibility on the part of the Government. The Government should, as soon as possible, review the arrangements under which transport

infrastructures are constructed. However, in order that there can be a direction for us when we conduct the review, the Government should first answer a few questions that are of concern to Members and the public before the review gets underway. I believe, with regard to the agreement then concluded between EHC and the Government, and the construction agreements of other roads built under similar arrangements, many Members and members of the public, just like me, have a lot of questions. How is the so-called "IRR" calculated? Is it based on a rate of return on assets or is it based on a rate of return on capital? Or is it just a formula coined by imagination and performed behind closed doors? Furthermore, what are the data upon which the level of rate of return is based? Today doubts about "collusion between business and the Government" and "transfer of benefits" are on the mind of the people. As such, has the secret agreement between the Administration and the tunnel company once again instilled the same doubts among the people?

Once it is legal for EHC to increase tolls frantically, other tunnels can also increase tolls for reason of inadequate profits due to poor operation. This is already an irrevocable situation. We can only try to work out fare concessions through consultation with tunnel companies. However, in dealing with problems left over by history, should the Government, one placing emphasis on people-based governance, steadfastly take the course of "drawing conclusions from experience and identifying inadequacies" as stated by President HU Jintao? I strongly call upon the Government to disclose all the financial data of EHC, WHC and TLT, all tunnel projects delivered through the BOT mode, together with relevant information on the provisions and particulars of the construction agreements so that legislators and members of the public can keep a clearer watch on the Government; and with the collective wisdom of the people, prevent the Government from following the same old disastrous route and becoming a prey totally at the mercy of others when building new transport infrastructures.

On the other hand, the present arrangements under which tunnels and transport infrastructures were built just cannot meet the original goals for which the Government built these tunnels. From the perspective of cost-effectiveness, public funds were wasted. Under the existing system, tunnel companies are "licensed" to increase tolls whimsically. As a result, motorists are being scared away. To save some money, they are prepared to endure traffic congestion. A live example is available from a comparison of traffic flows between TLT and Tuen Mun Road. Today, TLT is applying for a toll increase for reason of

inadequate throughput. Tuen Mun Road, however, remains badly congested every day. It goes without saying that the Government's smug plans to divert the traffic in Northwest New Territories have failed. Must there be an in-depth review of a policy falling short of the goal set? Furthermore, to supplement those tunnels, the Government spent a lot of public funds to build road networks around them. Because of ill-balanced traffic distribution, the cost-effectiveness of these roads also drops. Can we afford to waste public funds?

Madam Deputy, there is a saying: "With realization of the stubbornness of the past comes knowledge about what to do in the future." It is really necessary for the Government to let the public know whether there are unfair business provisions embedded in the BOT mode adopted for the construction of roads, whether there are elements of "collusion between business and the Government", and whether the computation of the rate of return is reasonable. Measures should also be put forward to put an end to a situation whereby consortia are allowed to lawfully exploit motorists and the public by controlling traffic lifelines. The Hong Kong-Zhuhai-Macao Bridge and the Shenzhen-Hong Kong Western Corridor will soon be built. We must seize the moment and expeditiously review the policy on transport infrastructures so that the Government will not be cheated and the people will not be victimized. I so submit. Thank you, Madam Deputy.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam Deputy, as Hong Kong was previously a colony, the colonial government made no long-term investments. The Government adopted this attitude till it came to know the date it had to return Hong Kong to China. At present, all important public utilities are also like that. Transport infrastructures are like that; so are the power companies and telecommunications companies.

According to my observation, such a mode prevails because the Government does not want to perform its duties. So, monopolistic public utilities are being operated by big consortia or businessmen. The oft-mentioned "five tunnels and one bridge" are also being operated under such a mode. What are the key features of this mode? So long as the consortia are prepared to foot the bill to build tunnels, railways, and airports, the Government will let them profit from a so-called BOT mode. At the time of construction, a consortium may make arrangements for financing. Interest on the repayment can be

recovered together with revenue in the course of operation. The project will then be transferred back to the Government for operation. If the operation does not go well, there is still room for bargaining with the Government. Under such a mode of operation, consortia are allowed to raise tolls continuously. Those which are poor in their operations may raise tolls; so may those doing well with their operations. This is tantamount to allowing "loan sharks" to charge interest at exorbitant rates far higher than the average market rate.

A very surprising situation can be seen in the operation of the five tunnels. Those which are poor in their operations may increase tolls for reason of losing money. Because according to the agreement on return, tolls may rise continuously when a tunnel company's value of assets rises continuously, which is indisputable. Those doing well with their operations may also increase tolls continuously for reason of rising gains. Not available now is a so-called mechanism allowing fares to increase or decrease.

A mechanism allowing fares to increase or decrease is a fairy tale, a beautiful story for children. The reason is that the ordinances only have provisions on toll increases, and make no mention of toll cuts. So, it is difficult to make tolls go down; unless the whole company went up in flames, and left zero assets, in which case there would be no more revenue. Then, all revenue would be gone, regardless of what percentage to be used for the purpose of computation. However, this can only happen in a fairy tale. Therefore, on this matter, it is just "futile" to have any action plan no matter it is initiated by someone with good intentions in the Administration or the Secretary herself. The reason is that the Government, having signed the "deed of bondage", just cannot get out of the predicament.

We have to remember one point when discussing this issue. It is by different means that big consortia acquire benefits. When their operation is good, revenues derived from developing real estate close to railways or infrastructures can already make the consortia "brimmed with profits". As big consortia are "brimmed with profits," every year we still have to supplement their revenues from real estate. This is a "crazy" system. Why is the "MTRCL" engaged in "real estate"? They are, after all, two different terms, are not they? Well, we are facing a problem now, namely, that the MTRCL, unable to get supplementary revenue from real estate developed along the lines because of the poor property market, is compelled to raise fares. What is more,

because of mistakes in the arrangement originally designed, fares will have to be raised again and again. We do not even have to mention the reckless price increases by public utilities like Hongkong Electric Company Limited and CLP Power Hong Kong Limited. There is going to be a review in this area in 2008. However, the Government can do nothing about it now, just totally helpless in dealing with these "power rogues".

Therefore, I think that, in reviewing this issue, there are only two strategies. One of them is to use people power to force them not to cut prices — sorry, not to raise prices. The other strategy is buying back. Under the system of private ownership, the price will be raised especially high when the Government wants to buy back something. This is the worst part. This has been demonstrated by Mr RONG Zhijian. It is for this reason that the British Labour Party has often lost money to such an extent that, as expressed in quite vulgar terms, "beyond recognition even by Mama."

So, I think we must address this issue. A government wishing to achieve a lot will definitely make use of the power of the several million people to bring to submission monsters under the banner of BOT and will definitely defeat this King Kong. So, I do not think there is going to be a fairy tale of a mechanism allowing fares to increase or decrease. I am being realistic. That is to say, I am asking the people to step forward to curb increases. The Government is engaged in politics — do not tell me that the Government does not do that — a government wishing to achieve a lot will definitely make use of the power of the masses to make such monopolistic consortia feel the pinch, and look after the people's interests. It is hoped that Rafael HUI and Donald TSANG, the two fellows who are swelling with pride, can accomplish this.

**MR WONG KWOK-HING** (in Cantonese): Madam Deputy, an old Chinese saying goes like this: "Those who kill and set fires get gold belts; those who build bridges and roads perish without a trace." This saying ridicules the unfairness in society, where bad guys win the upper hand whilst good guys lose out. However, by now, I think the saying ought to be rewritten. The reason is that in present-day Hong Kong, those who build bridges and tunnels not only will not go broke, but will instantly join the class with "gold belts", provided that they can obtain from the Government a Build-Operate-Transfer (BOT) contract and a franchise lasting several decades. They will just be "brimmed with



profits". The roles of those who "perish without a trace" are left to the common masses who have to endure ruthless exploitation. The reason is that exorbitant tolls chargeable by transport infrastructures are ultimately passed onto the people. As a result, we will be completely drained dry. So, the above old Chinese saying can now be rewritten to read "Those who build bridges and roads get gold belts; common masses just perish without a trace."

In the past few months, the franchisees of transport infrastructures like EHC, TLT of Route 3 and TCT peremptorily introduced toll increases one after another on the ground that they had failed to get the reasonable returns stipulated in the agreements. Just by referring to their operation records, we can easily see that their revenues have been growing year after year. So are the volumes of their traffic flow. The deficits that they talked about in fact just denote that their gains still fall short of contractual stipulations. In other words, these companies are not making no money. They are only complaining about the meagreness or inadequacy of the profits. They do not make known to the public how much money they have made. There is no transparency. This is most improper. The most typical example is TLT.

The above cases of toll increase tell us that in the past when the Government awarded the contracts and franchises of transport infrastructures on the basis of BOT, there was one big problem. In those days, because of strong economy, the Government tended to be generous towards franchisees, assuring them, in a rigid manner, of huge profits in the days to come. On the other hand, the terms of those agreements have no flexibility. Over the past few years, on account of economic depression or errors in operation projections, these agreements have become amulets for the franchisees, enabling them to reap huge profits with reference to those agreements. Their approach is to "raise the knife upon the people." There have been one farce after another in which tunnel franchisees "fatten themselves by feeding on the people." In the face of all these, the Government ultimately can only utter the words "nothing can be done about it", or remark that "it is necessary to respect the spirit of contract". No substantial nor practicable measure whatsoever has been adopted to help the people solve the problem.

Madam Deputy, the Government then built bridges and tunnels with the purpose of redistributing traffic so as to ease the traffic congestion along other transport trunks. However, because of unreasonable tolls currently imposed by

tunnel companies, less and less traffic diversion has been effected. It is especially so in the case of the ill-balanced traffic flows among the three road harbour crossings. If it is not possible to bring into full play the originally designed function of a road on account of pricing difference, please tell me the value of such an infrastructure. We, therefore, are of the view that the Government should, as a matter of urgency, adopt effective means and radical measures to reinstate these infrastructures, delivered through the BOT mode but abandoned by the people due to exorbitant tolls, so as to make it possible to bring into full play their original functions and eventually open up our transport system.

Madam Deputy, earlier on when I spoke in this Council on the toll increase of EHC, I already pointed out that a toll increase by the tunnel company will, as a chain reaction, trigger off waves of fare hikes by operators of public transport services. In order not to let such a chain reaction set in as a result of each toll adjustment by a franchisee, it is, in my opinion, the Government's duty to expeditiously identify and adopt radical effective measures to deal with every transport infrastructure previously delivered through the BOT mode and thus proven to be problematic. This will free the people from the need to pay for unreasonable contracts concluded in the past. At the same time, the Government should learn lessons from this and do not follow the same old disastrous route when awarding new project contracts.

Madam Deputy, I would like to take this opportunity to make an earnest appeal to the Secretary for the Environment, Transport and Works. The Secretary has made mention of a mechanism allowing fares to increase or decrease. At present, the three crossings, however, only revise their tolls upwards, not downwards. Undoubtedly, they are challenging the Secretary's authority and promise. If the three crossings are allowed to strangle our transport lifeline, and are thus able to "introduce hikes, summon winds or rain whenever they so wish", then may I ask the Secretary to explain how she can realize the mechanism allowing fare increases or reductions as promised? I feel anxious and concerned for the Secretary. It is hoped that the Secretary can, during the remainder of her term of office, do it her way to bring before the eyes of the people the realization of the "mechanism allowing fare increases or reductions" as promised so that the people can actually see fare cuts. Whether or not this can come true is very much up to the Secretary herself. Thank you, Madam Deputy.

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, in the previous motion debate on penalty for jumping the red light, I mentioned that the focus of discussion had been twisted. After listening to the speeches delivered by a few Members, I have forgotten the discussion topic for this motion of today. We should be discussing the review of the mode of construction and operation for transport infrastructure. However, quite a few Members again mentioned the mechanism allowing fare increases or reductions. It seems that the focus of discussion has again been shifted.

Madam Deputy, the building and operation of projects can be effected through different arrangements. Some are provided for by legislation. Some are operated by consortia. Some come about as a result of government policies. The arrangements take different forms. Here is the main concept of such arrangements. Private funds or funds raised by statutory bodies are spent on public assets, with infrastructures built on government land by private organizations or statutory bodies. They will then take charge of those facilities for the purpose of making profits. This is the overall basic concept. Therefore, projects delivered through the Build-Operate-Transfer (BOT) mode can come about under different arrangements.

In the case of Hong Kong, such projects mainly fall into two categories. In the first category, private organizations acquire the right of construction and operation by way of tender. The timing of the transfer is governed by contractual terms. Projects undertaken by statutory bodies come under the second category. Of all the projects delivered through such a mode, the most successful case is the Cross-Harbour Tunnel (CHT). The success of CHT turned other consortia "green with envy". As a result, in the days that followed, consortia invariably played dominant roles in investing in several tunnels, which include TCT, TLT, WHC and EHC.

In the 1980s and 1990s, this mode of operation was still supported by the people, the main reason being that in previous decades, with the exception of the last seven years, Hong Kong experienced economic growth and inflation for most of the time. Because of that, the people did not necessarily raise objection or get angry even though tolls gradually went up against a background of rapidly rising profits. Take CHT as an example. When compared with its amount of investment, the total profit that it made in 30 years is outrageous. However, the people did not grumble. However, in the past seven years, there were deflation

and economic recession. Yet the consortia concerned still increased tolls amidst such an economic recession. This antagonized the people, and engendered today's motion debate for reason of the need to review such a mode, which I think is most timely.

With regard to the present situation, the people have the strong feeling that consortia are making use of power given by ordinances to seek profits. The return is so high that it makes people find it absolutely unreasonable. It also gives people the impression that the consortia hold the mentality that money talks, and that they put their own interests above those of the public. As a result, the people not only staged marches to protest, but also showed their resentment by blocking the tunnels. It is very likely, I believe, that some people are going to formally petition the Court next week for a judicial review of the toll increase of EHC by claiming that EHC's toll increase breaches the Eastern Harbour Crossing Ordinance.

With regard to the BOT mode, I think the Government should now conduct a comprehensive review of the approach and mode, and cast aside arrangements allowing consortia to assume a dominant position. As for the long term, I think the BOT mode in fact still has very high financial feasibility. However, the Government absolutely should not allow consortia to seek profits by utilizing the power conferred on them by ordinances in total disregard of public interest, ultimately bringing to the Government political crises as well as political problems. A situation will arise in which the financial gain is utterly not in proportion with the political risk if conflict and contradiction in this respect are still being created while well aware of the possibility of such problems.

To avoid political risks, the best approach is for the Government to take up the construction and operation of the relevant infrastructure via a statutory body. If the infrastructure will have to be transferred in the future, such transfer should be decided entirely by the Government because the body is solely owned by the Government. For projects to be delivered through the BOT mode, it is not necessary for the Government to put in a lot of money immediately. I already raised the suggestion several times in the past. For instance, in 1990, I suggested that the Government should raise money by floating loans or by issuing government bonds. In the United States, many infrastructures are also

financed by bonds. The adoption of such an arrangement also satisfies several principles. On the one hand, the Government need not commit huge sums of capital right away. On the other hand, it dovetails with the concept of trans-generational benefits. It is in fact not justified for the present generation to fully pay for the construction of projects for the enjoyment of people of future generations. The best way is to raise a sum of capital by borrowing or by issuing bonds. The construction cost of the project will then be gradually recovered by charging future users. In this way, the actual construction cost can be paid for by the users of the time. This is also in line with the Government's "user pays" principle.

Moreover, I would like to cite WHC for illustration to point out that consortium-run private operation is in fact politically tainted. In 1993, the Government enacted the Western Harbour Crossing Ordinance. At that time, two consortia bid for the WHC. The two consortia later jointly formed a company to enter into negotiations with the Government. In the end, upon the conclusion of talks between China and Britain on the arrangements for WHC, the Government forced the Legislative Council to enact the Western Harbour Crossing Ordinance. Given the fact that the Legislative Council had neither the power nor ability to make amendment, the move was very political in nature. Because of political factors of that time, the people of Hong Kong now have to suffer badly. It is, therefore, hoped that the Government can comprehensively review this.

Thank you, Madam Deputy.

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

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, months ago EHC announced a toll hike of 66%. As the level of increase is so startling, there has been extensive discontent in the community, which has brought about criticisms calling into question the Build-Operate-Transfer (BOT) mode of development. In fact, the BOT mode is being used all over the world. In the case of Hong Kong, CHT is the first local infrastructure delivered through such a mode and it was started in the late 1960s.

Preparation for the construction of CHT got underway in 1969. Over the years, there have been several economic downturns. However, so far there has been no storm arising from steep toll hikes. The main reason is that the traffic throughput of CHT always exceeds its design capacity. At present, it still has a daily throughput of 120 000 vehicles, which is 50% more than its design capacity of 80 000 vehicles. To the operator, high throughput means high revenue. Under such circumstances, seldom did the CHT operator increase tolls before 1999. Every toll adjustment came only as a result of a raise by the Government in the form of surcharge. Out of the current toll of \$20, \$15 goes to the Government. It can thus be noted that, from the perspective of the "user pays" principle, CHT not only has recovered its capital cost, it is also providing the Government with a steady handsome income. Is CHT's BOT mode of development successful? This is based on fact, and it is evident to all.

How come the BOT arrangement does not appear to be that successful when applied to EHC, WHC, TCT and even Route 3? In identifying the causes, we came to a rough conclusion with the following points:

At present, the franchise period for every development based on the BOT mode has been set at 30 years. Superficially, it appears to be policy uniformity. This, however, is oblivious to the fact that the course of construction of every tunnel has its peculiarity. To the operator, the franchise period is very important in the calculation of the recovery of both construction cost and capital return. The longer the operation period is, the longer the pay-back period is going to be. Naturally, tolls can afford to be lower. Recently, there has been the suggestion that the Government give consideration to the idea of entering into negotiations with EHC and WHC for an extension of their franchise periods in return for lower tolls.

Each tunnel's traffic flow is directly influenced by its individual location as well as by the kind of competition that it faced in the course of construction. Ultimately, there is a huge disparity between its design capacity and actual throughput. Picture this. WHC's design capacity is 180 000 vehicles. We, however, notice that in reality it only has a daily throughput of 37 000 vehicles. Given this, how can we criticize WHC for raising tolls? So, it has to be allowed, though with reluctance, to introduce toll hikes. CHT, however, has basically won the popularity among motorists because of its prime location. This is indisputable. Motorists will not wantonly use other tunnels unless there

is serious congestion or incident beyond control at CHT. Such a habit can almost be described as deep-rooted. On the other hand, we notice that the Wan Chai stretch of Hong Kong Island's Gloucester Road and the flyover stretch of Sheung Wan are also congested during peak hours. As a result, motorists are unwilling to wantonly choose other tunnels.

The other factor is the cost of construction, which, as we all know, determines each tunnel's basic level of tolls. It cost \$0.32 billion to build the CHT. In the case of EHC, it was \$2.214 billion. WHC cost as much as \$7 billion. Basically parallel to each other, the three tunnels are not far from each other. However, with regard to the cost of construction, there is a great disparity among them. They are already being operated in an unfair environment. There is also the additional factor of the traffic throughput falling short of design capacity. So, there inevitably arises a vicious circle, that is to say, toll hike leads to a drop in traffic throughput which, in turn, leads to another request for a further toll hike. TCT is also a good example. In 1995, its traffic throughput reached the peak, with a daily average throughput of 80 000 vehicles. But it has been going downhill gradually over the past 10 years, now coming down to a daily throughput of about 60 000 vehicles. This is also true of the traffic throughput of EHC. During its peak time in 1997, on average it had a daily throughput of 85 000 vehicles but it gradually dropped to about 70 000 vehicles in recent years. I am certain that its traffic throughput will drop further after the toll adjustment.

(THE PRESIDENT resumed the Chair)

One of the significant factors contributing to the high costs of tunnel is the inclusion in BOT contract the construction of approach roads. Included in the contract for the project of WHC were also items having no direct connection with the tunnel. As a result, that directly added to the costs of WHC. I remember that when setting the tolls for Tsing Ma Control Area (TMCA), we noticed that certain road networks leading to New Territories West was also included in the fare zone of TMCA. Ultimately, we managed to get the Government to take away the construction cost of such road networks. In the end, the toll came down to \$30 from \$60. One can thus see how big the difference can be.

For the purpose of developing infrastructures, there is nothing wrong in adopting the BOT mode. The question is whether the Government has suited measures to the situation or considered all objective factors to enhance its feasibility when awarding a development project. Surely, we welcome an early review of the BOT mode by the Government. Thank you, Madam President.

**MR JEFFREY LAM** (in Cantonese): Madam President, to deliver infrastructures through the "Build-Operate-Transfer" (BOT) mode obviates the need for the Government to shoulder hefty spending on infrastructures amounting to billions of dollars. It is being used all over the world. There are quite a few success cases too. The Cross Harbour Tunnel (CHT), our earliest harbour crossing, is a good example of great success. Now, on average, it has a daily throughput of 120 000 vehicles. Another example is the Hong Kong Convention and Exhibition Centre (HKCEC) in Wan Chai. Its planning was done in the early 1980s, when there was political uncertainty whilst the talks on Hong Kong's future were in progress. The contractor borne the cost of \$1.8 billion, and was given the right to operate and manage it for 40 years. With regard to the Government's investment, the Trade Development Council, as the landlord's representative, got from the HKCEC's revenue a prescribed percentage during that period as a return on the investment (ROI). At that time, the real estate market and economic prospects were both caught in uncertainties. With the adoption of the BOT mode by the Government, the HKCEC was built. It not only gave a big boost to the development of the trade fair business, but also sent out a positive message to the business sector as well as to the entire community amidst the unusual political and economic conditions prevailing then. For years the HKCEC has been winning awards. Last year, it was even voted, for the third consecutive year, Asia's Best Conference Centre at the 11th World Travel Awards.

However, in the case of WHC, Route 3 and Tai Lam Tunnel (TLT), also delivered through the BOT mode in the 1990s, the traffic throughput has been low all along. According to some, the BOT mode is out of keeping with the times. I disagree with this. In my opinion, the fact that WHC and TLT do not have enough traffic is mainly due to erroneous calculations made at the start. Because of overestimation in respect of the traffic throughput in the new tunnels, tunnel companies are earning far less than what was predicted. So, according to the agreements, they may increase tolls to make up for the shortfall.



Take TLT as an example, whose contender is the toll-free Tuen Mun Road. The area is also served by the West Rail, which has no congestion. Residents of northwestern New Territories have the option not to travel by car to and from the urban area. On account of all these, TLT, already opened to vehicular traffic for seven years, has a daily throughput of only 46 000 vehicles on average, a far cry from its design capacity of 140 000 vehicles.

In order that there can be solution to the problem of uneven distribution of traffic among tunnels, the Government should, in my opinion, actively consider standardizing the tolls of the various tunnels so as to achieve effective redistribution of traffic among tunnels, and ease the pressure for toll adjustment. Motorists will then decide which of the tunnels to take according to their destinations, instead of according to the tolls charged, as most people now do. Then there can be real options for motorists. At the same time, the Government may consider extending the franchise periods of franchised tunnels. In this way, the tunnel companies concerned can use the revenue thus earned during the extended franchise periods to cover the losses arising from toll cuts. I think this is a practicable and fair arrangement capable of effecting improvement.

With regard to reviewing the toll adjustment mechanisms in the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and Western Harbour Crossing Ordinance, I am of the view that it is not necessary. We have got to respect the spirit of contract, the cornerstone of Hong Kong's success, which we should not touch by all means. Please bear this in mind.

What is more, the relevant toll adjustment mechanism is an important element of the BOT mode. Had there been no well-defined toll adjustment mechanism protecting the tunnel companies, it would have been very difficult to obtain bank financing at the start of the construction. If there were provisions requiring each toll adjustment to be approved by the Legislative Council, the tunnel company might at any moment run into uncertainty about its future. Given this, there would be no bank financing and more obstacles would be created in the course of the investment and construction. This would be a most unwise decision.

Madam President, I so submit.

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

**MRS SELINA CHOW** (in Cantonese): Madam President, I speak only to clarify an old issue mentioned by Mr Andrew CHENG in the speech delivered by him. He seemingly implied that at that time the Liberal Party supported the construction of WHC and TLT in total disregard of public interest. He even described the Democratic Party as very noble, and pointed out that at that time the Democratic Party threatened to object unless the toll adjustment mechanism was made subject to Legislative Council approval. It appears that Mr Andrew CHENG also blames the Liberal Party and DAB for supporting the bills then, that is, giving support to the automatic toll adjustment mechanism.

In fact, I find Mr Andrew CHENG's remarks rather misleading. The reason is that I clearly remember the two scenarios that he referred to earlier on. Our consideration at that time indeed was premised on the interests of the public. From the standpoint of investors, at that time the two consortia which were about to invest in such a huge project costing hundreds or even thousands of million dollars clearly indicated that they would not accept a toll adjustment mechanism to be formulated by the Legislative Council. Why? I do not necessarily accept or agree with their views. However, I find their views understandable. Because if they were required to apply for Legislative Council approval for each and every toll adjustment, factors involving political considerations as well as elements of uncertainty would inevitably find their way in.

Honestly, during my many years of service in the Legislative Council, I have never heard Members agreeing to price increases. However, from the standpoint the consortia making investments, I think they probably did consider this and were aware that there could be practically no chances of increasing tolls so long as toll adjustments were subject to Legislative Council approval. If there could be no chances of increasing tolls, the consortia were likely to run into some difficulty in budgeting. In the case of TLT, even the consortium of the best bid selected by the Government also made it clear that it would be impossible for it to obtain financing if its applications for toll adjustment had to be approved by the Legislative Council as the banks would never accept a situation of doubt and uncertainty. All these were clearly spelt out in black and white by the consortia.

In fact, this also echoes the principles earlier on mentioned by Mr Jeffrey LAM. From the perspective of financing, banks in fact also have to take into account the factor of predictability in considering financial stability. If the

investor says that it is not likely for the whole financial plan to have stability, foreseeability or certainty, it is just impossible for a consortium to obtain any loans under such circumstances. I am very certain that this was also the consideration of the Liberal Party at that time. We took the view that, given this, it would be impossible for the consortia to build WHC.

I am very certain that this was our consideration then. Contrary to what Mr Andrew CHENG just said, we were not acting in total disregard of public interest. At that time, we had to choose between getting WHC and not getting WHC. It can be recalled that in our discussions, Liberal Party also presented points on the issue of tolls by approaching the matter from the standpoint of the public. I remember that under discussion then was an argument over the question as to whether the toll should be \$30 or \$20. We even discussed the possibility of setting it at \$25. However, the consortium made it known that under such circumstances it just would not go ahead with the investment. Just as stated by me earlier on, the option at that time was either getting WHC or not getting WHC. It was not that we raised the knife upon the people or motorists after accepting the view of the consortium. In considering the question of whether or not the tunnel should be built, we also looked at it from the perspective of motorists.

I do not mind repeating myself. Lately, we, for traffic reasons, did express the wish for the Government to earnestly consider the further viability of the said mode with reference to the traffic problems in New Territories West. At present, we have a toll-free Tuen Mun Road, close to which is the toll-charging Route 3 — charging a toll as high as \$30 now. Is it possible to ease the traffic in New Territories West under such circumstances? Moreover, upon the completion of the impending Deep Bay Link and the Hong Kong-Zhuhai-Macao Bridge, commercial drivers and private motorists will all concentrate along Tuen Mun Road, where traffic is likely to be paralysed. Must the Government consider using some more innovative methods to ease the overall traffic situation in New Territories West? The Government should indeed look into this matter earnestly for the sake of motorists. The Government should drop the idea of putting in \$20 billion or \$30 billion to build another road. To adhere to the goal of easing traffic congestion, it had better strike a deal with the consortium to immediately buy back TLT at a reasonable price.

However, as far as the basic concept is concerned, the Liberal Party definitely supports BOT. We consider it to be practicable. Thank you, Madam President.

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

**MR JAMES TIEN** (in Cantonese): Madam President, with regard to the question on Build-Operate-Transfer (BOT) mode, Mrs Selina CHOW has just presented on behalf of the Liberal Party the views all along held by us. I would like to add something. From the standpoint of the business sector or that of consortia making investments, or the trend worldwide, in many places where the government can ill-afford to build a certain big infrastructure, the only way out is to approach the private sector, that is to let consortia build it. However, I note that quite a few Members who spoke just now have failed to notice one point, namely, that a consortium does not put in capital to complete such a big project by solely relying on its own investment. In most cases, the completion of investment items of this type has to rely on bank loans.

Even for bank loans, the construction of these facilities cannot rely totally on loans from local banks (that is, relying on local people depositing money into banks which in turn lend it to the consortia). Generally speaking, many of the banks participating in construction projects are international banks. As far as international banks are concerned, they are also required to safeguard the interests of their depositors. No matter whether they are American banks or European banks, once they are willing to give support to any Hong Kong company for it to take up a BOT project, they will, of course, consider the strength of the prospective borrower, which can be a parent company or any company itself. Does it have the ability to make repayment? Is its security valuable? To put it in another way, where will it derive its revenue? How is its ability to make repayment? Projects delivered through the BOT mode must charge tolls. It has to be so in the case of building roads. It also has to be so in the case of building bridges. If the projection on its revenue-generating ability proves to be wrong, the company will, of course, be held liable, and there will probably be financial trouble for banks lending money to the company for non-recovery of loans. Turning to the toll adjustment mechanism, from the people's standpoint, it makes it impossible for the companies concerned to raise tolls without good reason. However, taking the position of investors or lenders,

the concern is the Internal Rate of Return (IRR). The IRR for many projects around the world is 16% to 17%. If the IRR is too low, those people just will not invest.

If Hong Kong consortia are interested in investing in overseas projects carrying an IRR of 15% to 16%, they basically have a lot of choices. It is so on the Mainland. There are many infrastructure projects on the Mainland that are open to investors. I myself have such experience. I once invested in the construction of a road in Chengdu. At that time, the calculation was also on that basis.

For the protection of the interests of local people, there are two approaches, namely, to restrict the toll adjustment mechanisms or to restrict the mechanism regulating the rate of return. In my opinion, most banks are concerned about the mechanism regulating the rate of return instead of about the mechanism regulating toll adjustment. Thus I believe that a combination of the two, that is, blending the restriction on toll adjustment with the restriction on rate of return, will greatly lower consortia's investment incentive. The chances for consortia to take up the projects concerned with funding from the banks will be even slimmer.

I feel that in Hong Kong, emphasis has always been on the rate of return. Take TCT, the project that I referred to just now, as an example. The rate of return originally projected was 13%. Now it ends up with just 3.8% to 3.9%. Such a rate is far below the original projection. Given this, I think that as it has yet to achieve its rate of return, a toll increase is, from the perspective of investment, acceptable. Surely, I, being a Member returned by direct election, do understand that people of every district will definitely raise objection on learning of a toll increase. The people will not say that as the throughput only adds up to 40 000 vehicles whilst the design capacity is 100 000 vehicles, it is inevitable for tolls to rise. The people will only feel that the company has made a mistake in its investment. However, if it is indeed argued along this line, then in future it will be very difficult to get companies to invest in such projects in Hong Kong. So, the only option is to ask the Government to finance the construction of these projects with public funds. Currently, the concept is one of "sure loss". That is to say, the rate of return due is definitely not forthcoming in undertaking such projects. As such, there are going to be negative impact on the outlook of our overall fiscal reserve and surplus too.

Madam President, these are my remarks. I have spoken on this just from the perspective of business investment. The reason is that to get things done, it is not enough if the business sector alone agrees to do it. If the banks are not willing to provide the loans, projects to be delivered through the BOT mode simply cannot materialize. 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 Mr LAU Kong-wah to speak on the two amendments..... actually, on all the amendments. You have up to five minutes to speak.

**MR LAU KONG-WAH** (in Cantonese): Madam President, first of all, I would like to thank the two Members who seek to amend my original motion. With regard to the amendment proposed by Ms Miriam LAU, the key point is on changing from one year to six months the time limit within which the Government is required to conduct actual review and put up specific proposals. I, of course, agree with this, the reason being that the one-year period that I propose already includes the timeframe of six months. Ms Miriam LAU is more impatient, and wants to get it done sooner. Surely, I also agree that the funding problem in respect of the Western Corridor and Hong Kong-Zhuhai-Macao Bridge is just around the corner. However, judging from my long-term observation of the Secretary, the possibility of getting it done in half a year is lower. Yet I do wish that she can really make it.

Turning now to Mr Andrew CHENG's amendment — it is a pity that the seat of Mr Andrew CHENG is still vacant. Earlier on when Mr TAM Yiu-chung wanted to respond to Mr Andrew CHENG, Mr CHENG had already left. According to my observation, Mr TAM Yiu-chung appeared to be a little disappointed when Mr CHENG was not in sight. As a matter of fact, Mrs Selina CHOW of the Liberal Party has already presented her view on the issue of getting or not getting WHC. Mr TAM Yiu-chung also told me that at that time there was indeed such a consideration. After consideration had been given to

the construction of the airport cum approach roads, that was found to be the most satisfactory arrangement.

To let Mr Andrew CHENG more fully understand the standpoint then held by the DAB, I now read out a paragraph written for his information by Mr TAM Yiu-chung. He wrote this: "To enhance the protection for public interests, at the time when the Legislative Council discussed the Western Harbour Crossing Bill in 1993, the DAB made a proposal to the effect that approval of the executive authorities or the Legislative Council should be sought in the event of the WHC company asking for a toll increase on the ground of the rate of return being below 15%. There was a further request that the Government should stipulate that upon the full repayment of loans by the WHC company, the regulatory mechanism for toll adjustment should be changed immediately so as to subject WHC to stringent supervision." So, Mr Andrew CHENG's allegation that the DAB appeared to be unaware of the importance of monitoring is totally unfounded. At the same time, he is just trying to fish in troubled waters.

Mr Andrew CHENG also criticized the wording of Mr TAM Yiu-chung's amendment for letting one fish slip through the net. However, we may take a closer look at Mr Andrew CHENG's amendment, which reads: "reviewing whether the current toll increase mechanisms under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Western Harbour Crossing Ordinance are in the public interest." Mr Andrew CHENG only mentioned two tunnels, namely, TLT and WHC. Where is TCT? Where is EHC? Are not these two tunnels not delivered through the BOT mode? Are not the operations of these two tunnels very much in public interest? In fact, it is probably the big ones that might be slipping through the so-called net here. Of course, our overall approach is the same. That is to say, it is hoped that the Government can, as soon as possible, conduct a review and put up specific proposals. For this reason, we are going to abstain from voting on Mr Andrew CHENG's amendment. Thank you, Madam President.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Cantonese): Madam President, I believe this motion today has been an issue of extensive discussion in the community in recent days. I would like to take this opportunity to give a clear explanation on the Government's principles on

public transport and traffic control, covering also the principles adopted by the Government in building and operating all infrastructures.

First, we must enhance the function of the overall public transport. Our wish is not just for Hong Kong to have smooth traffic so as to achieve social and economic progress. What is more, we also hope to achieve the goal of becoming the region's transport hub. It is on such a premise that we are trying to provide all citizens with some reasonably-priced public transport services. This reasonable price is determined in the light of the economic situation then prevailing in society. Under this major principle, we have to bring into play the Government's role as the manager in many areas, and appropriately balance the interests of every sector in the community.

With regard to the motion today, I would like to share with Honourable Members information on certain basic principles and major considerations. First, on major principles. The Government's policy on building and operating tunnels is, as far as finance is concerned, based on two major principles. The first one is the principle of "small government, big market". Wherever possible, the Government will encourage private companies to launch new transport infrastructures on the basis of the Build-Operate-Transfer (BOT) mode.

In their speeches, quite a few Honourable Members expressed disagreement with the policy. According to them, the principle of "small government, big market" is not practicable with regard to infrastructures. Such a view is shared by many non-governmental bodies as they believe that for such basic needs, the Government should subsidize the people. We, however, should also take into consideration the point that the people definitely will have to shoulder a heavier tax burden if all the expenses here are covered by tax revenue. This issue calls for in-depth consideration.

Now on the second one. As mentioned earlier on by a few Members, such as Mr James TIEN and Mrs Selina CHOW, insofar as investments in a commercial or market economy are concerned, we must let investors get reasonable returns during franchise periods. No company will be willing to invest or run the risk in business ventures if there can be no reasonable return. The reason is that there are indeed risks. Operating infrastructure is not an undertaking with guaranteed profits. Over the past few years, the operations of a few tunnels, as we can see, have not yet achieved their rates of return.



The above concept is based on the hope of launching projects of major infrastructures, such as tunnels, in an equitable and more socially beneficial way. In fact, this is not limited to the BOT mode. There are also opportunities for co-operation between the public and private sectors. It is because we believe that the operation of the market can be more flexible. It is also believed that the edges of the market in terms of technology and management can be tapped. So, our overall approach is to let the operations of such infrastructures enjoy better efficiency by making use of, as far as possible, the various forms of public private partnerships (PPP), the capital, information and management concepts available in the market.

In this respect, I would like to take this opportunity to explain in detail the mechanisms now available. Currently, Hong Kong has four tunnels that are being operated on the basis of the BOT mode. They are the Eastern Harbour Crossing (EHC), the Western Harbour Crossing (WHC), the Tate's Cairn Tunnel (TCT) and the Tai Lam Tunnel (TLT) (that is, Route 3). Each of the four is different. Broadly speaking, the toll adjustment mechanisms of these four tunnels fall into two categories.

EHC and TCT belong to the same category, the two relevant ordinances being enacted in the 1980s. According to the ordinances, tolls may be varied by agreement between the Chief Executive in Council and the tunnel companies. If an agreement cannot be reached between the two, either party may resort to arbitration. The ordinances have not set out the criteria for determining toll adjustments. They only stipulate that if the matter is submitted for arbitration, the arbitrator shall be guided by the need to ensure that the company concerned is reasonably but not excessively remunerated for its obligation under the ordinance concerned. The process of arbitration is to determine what is meant by reasonable but not excessive remuneration.

Coming under the second category are WHC and Route 3, both using the same toll adjustment mechanism. The two relevant ordinances were enacted in the 1990s. According to the ordinances, if in any year, the actual net revenue of the franchisee concerned is less than the lowest net estimated revenue specified for that year by the ordinance concerned, the franchisee may increase tolls. The ordinances also specify the level of each increase. It has, however, come to our notice that although the ordinances have given WHC and Route 3 the

right to increase tolls, both tunnel companies, in view of the economic recession that Hong Kong experienced in the past few years, did respond to market conditions and offered considerable concessions to suit users' affordability.

The formulation of each of the above mechanisms has its own distinct historical background. The political atmosphere, economic situation, interest rate levels and investment opportunities then prevailing were all different from those of today. It is difficult to justify comments on decisions made 10 or 20 years ago merely on today's standards. Anyway, we must note one point, namely, that all such mechanisms are clearly set out in the ordinances concerned. As an international financial and trade centre, Hong Kong is under obligation to respect the rule of law and the spirit of contract. We must act according to the law, which is of great importance in maintaining investors' continued confidence in Hong Kong as well as in sustaining our competitiveness.

Surely, we also put a premium on public interests. I trust Honourable Members will all agree that to safeguard public interests does not mean that tunnel tolls must be heavily subsidized by the Government and are not to be adjusted. The crux of the problem is how to establish a mechanism capable of striking a balance between business viability and users' affordability. Furthermore, the difference between the tolls charged by these franchised tunnels and those charged by the nearby government-run tunnel has made the issue about toll mechanisms more complicated.

In the case of the three road harbour crossings, the problem of uneven distribution of traffic is very serious. The Cross-Harbour Tunnel (CHT) has a daily throughput of more than 120 000 vehicles. Those of EHC and WHC are 60 000-plus and 40 000-plus respectively. The geographical locations of the three are different; so are their tolls. These are the key factors leading to the uneven distribution of traffic among them. We have been exploring ways to increase the traffic of the under-utilized tunnels.

There are quite a few suggestions from different quarters of the society on how to achieve a more balanced traffic distribution among the three road harbour crossings. On this, quite a few Members have in the debate made a lot of comments too. Earlier on, we submitted to the Legislative Council Panel on Transport 12 options for improving cross-harbour traffic, such as revising CHT tolls, and negotiating with the franchisees of EHC and WHC. Moreover, we

also note that the daily throughput of Route 3 and that of Tuen Mun Road are 100 000-plus vehicles and 40 000-plus vehicles respectively (sic). The traffic distribution is also uneven. It has always been our wish to discuss with the franchisee ways to increase the utilization of Route 3. These include extending the franchise period and lowering the tolls.

The fact is that ever since taking office, I have been listening to Honourable Members' opinions in this Council. Generally speaking, the SAR Government also wishes to open negotiations. However, it is not easy at all to negotiate within the framework of the existing contract. It can go ahead only if the other side also so wishes.

In fact, as mentioned by Ms Miriam LAU earlier on, some of the 12 options are not practicable. We will explore, with an open mind and from different perspectives, the feasibility, cost-effectiveness and limitations of every option. Regardless of the option to be adopted, it must benefit the public as a whole, be fair to taxpayers and eventually effect an even distribution of traffic.

As citizens, we all hope that public resources, such as roads and tunnels, can be put to full use. On the part of tunnel franchisees, the wish is that there can be a fair business environment and predictable prospects. A major consideration not found in the clauses of our current BOT agreements is how to include as one of the terms of operation the target set for transport, such as the traffic throughput of a tunnel. We will actively study overseas experience. Some countries have been using BOT (also known as PPP and PFI) for years. We are also studying the concept of "shadow tolls" of Britain. In the case of "shadow tolls", the government primarily pays tunnel franchisees according to the tunnels' actual traffic throughput and the outcome of the traffic redistribution achieved. In future, consideration in respect of the toll mechanisms of tunnels should be based on our economic situation as well as acceptability and affordability of the public.

In amending Mr LAU Kong-wah's motion, Ms Miriam LAU, too, wants the Government to conclude the negotiations with the tunnel franchisees as soon as possible. As just stated by me, we will try our very best to do that. However, in order that there can be success, it is necessary for the other side to be proactive and fully co-operate with us. We will try our best to get this done without prejudice to the premise of fulfilling agreements.

Some Members requested the Government to provide the Legislative Council with more progress reports on the negotiations. We are happy to do so in due course. We, however, must see to it that the handling of the relevant information and its disclosure will not impede the progress of negotiations.

According to Mr LAU Kong-wah, I am too slow in doing things. While telling me to hurry up, he made it known that he entertains little hope in me. I have a few words to say here. For me to revise some materialized and established agreements or provisions within my term of office is not easy. In fact, it is probably easier to work from "nothing" to "something". It is more difficult to change systems already in existence. When revising existing terms, it is necessary, first of all, to make every person accept the new arrangement. It is then necessary to undo the "knots" one by one. To do so is time-consuming. Take public transport fare mechanisms as examples. We have to act under the terms prescribed in the agreements. What is more, on the premise of upholding the spirit of the rule of law in Hong Kong, we must be a little more patient in dealing with this matter. I would like to view past experience from a positive angle. Past experience, if not forgotten, is a guide for the future. We are able to see clearly the inadequacies of the past, or even mistakes then made, and, therefore, know how to make improvement.

The BOT mode does have merits. However, every mechanism does leave room for improvement, the said mode being no exception. I recently had a reunion with an Australian who had come here in the 1980s to learn things because our CHT was a great success then. He came here recently to be our consultant to find out why we have been so unsuccessful. He also found the situation ridiculous. He is an outstanding lawyer in this field. I also have been to Australia to study the BOT projects recently launched there, thus learning many lessons. The fact is that such modes tend to undergo constant changes under different social and economic conditions. I trust that every one of us has a clear idea as to whether or not these agreements, the ones we concluded under the economic conditions of the 1980s and 1990s, are still suitable now. I believe we all have a clear answer in our minds. The question, however, is how to change these established agreements. It is hoped that I can enter into active negotiations with the operators after considering all matters.

I very much appreciate the opinions presented by Honourable Members today. Views on toll increases expressed by the public over the past few

months will also be given consideration by us. We will seriously study and refer to the relevant experience and Members' opinions when we actively consider the terms of future PPP contracts on the basis of these. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Ms Miriam LAU to move her amendment to the motion.

**MS MIRIAM LAU** (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion be amended.

**Ms Miriam LAU moved the following amendment: (Translation)**

"To add "expeditiously" after "this Council urges the Government to"; to delete "one year's" after "put up, in" and substitute with "six months"; to delete "relieving" before "the pressure on various tunnels" and substitute with "actively exploring with the tunnel companies which own the franchises of the tunnels ways to achieve effective distribution of traffic among various tunnels and to relieve"; to delete ";" after "to increase their tolls" and substitute with ", such as extending the franchise periods, standardizing and reducing the tolls or adopting other feasible measure; and"; to delete "(b) enhancing the various tunnels' function of diverting traffic flows; and"; and to delete the original "(c)" and substitute with "(b)"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ms Miriam LAU to Mr LAU Kong-wah's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Mr Andrew CHENG, as Ms Miriam LAU's amendment has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members on 4 July. In accordance with the House Committee's recommendation which I have also accepted, when you move your revised amendment, you have up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

**MR ANDREW CHENG** (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion, as amended by Ms Miriam LAU, be further amended by my revised amendment.

Madam President, my amendment basically seeks to further amend the wording of Mr LAU Kong-wah's motion, as amended by Ms Miriam LAU, from "urging the Government to expeditiously put up, in six months' time" to "urging the Government to put up, in one year's time". For the sake of retaining the wording of my present amendment, I hope colleagues, particularly those from the Liberal Party, can support the second part of my amendment, that is, the part concerning toll charging. Just now, some colleagues referred to the Legislative Council's history, and even the diverse views expressed by different political parties when motions related to these several ordinances were discussed in this Council and put to the vote.

Madam President, Members unanimously agreed earlier that the Build-Operate-Transfer mode had to be reviewed. Insofar as my present

amendment is concerned, I particularly hope all colleagues, particularly those from the Liberal Party, can join me in requesting the Government to issue a guideline on toll charging. Mrs Selina CHOW of the Liberal Party stated earlier that she had never seen the Democratic Party express support when requests were made for this Council to approve toll increases. However, I believe we, the Democratic Party, did support the request made by the Cross-Harbour Tunnel for toll increase.

Insofar as this subject is concerned, I believe it is definitely not the case that we will oppose every toll increase proposal. Regarding projects of this kind, we just hope that this Council can act as a vehicle and play a special role in discussing circumstances closely related to public interest. It is not true that we will politicize everything. It is just that we hope public interests can be given first priority.

Madam President, I do not wish to repeat what I have covered in my earlier speech. I hope that Members can support this motion, as amended by Ms Miriam LAU. Despite their support for toll increases in the past, colleagues from the Liberal Party, the Hong Kong Federation of Trade Unions and the DAB have argued endlessly today on hearing such a huge increase. At this point in time, it is indeed necessary for us to actively review the part concerning toll charging so that we can effectively play our role as representatives of the public in safeguarding their interests. Thank you, Madam President.

**Mr Andrew CHENG moved the following further amendment to the motion as amended by Ms Miriam LAU: (Translation)**

"To delete "and" after "adopting other feasible measure;"; to add ", toll charging" after "guidance in the financing, construction"; and to add "; (c) reviewing whether the current toll increase mechanisms under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Western Harbour Crossing Ordinance are in the public interest, and avoiding the introduction of similar mechanisms for future transport infrastructures; and (d) negotiating common ownership of the three road harbour crossings with the consortium which owns the franchises of both the Eastern Harbour Crossing and the Western Harbour Crossing, and presenting to this Council reports on the progress of the negotiations" after "interests of the public"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr Andrew CHENG's amendment to Mr LAU Kong-wah's motion as amended by Ms Miriam LAU, be passed.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, you may move your amendment to Mr Andrew CHENG's amendment.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, I move that Mr Andrew CHENG's amendment be amended.

**Mr TAM Yiu-chung moved the following amendment to Mr Andrew CHENG's amendment: (Translation)**

"To delete "whether" after "reviewing"; and to delete "under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Western Harbour Crossing Ordinance are in the public interest, and avoiding the introduction of similar mechanisms" after "current toll increase mechanisms" and substitute with "of all the tunnels delivered through the BOT mode, and introducing mechanisms that better meet the interest of the public". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the revised amendment, moved by Mr TAM Yiu-chung to Mr Andrew CHENG's amendment, be passed.

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

(Members raised their hands)

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

(No hands raised)



Mr Andrew CHENG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew CHENG has claimed a division. This Council will proceed to division after the division bell has been rung for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki and Dr Fernando CHEUNG abstained.

Geographical Constituencies:

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG and Mr CHEUNG Hok-ming voted for the amendment.

Mr James TIEN, Mr Albert HO, Mr Martin LEE, Mrs Selina CHOW, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Mr LEE Wing-tat and Mr LEUNG Kwok-hung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, nine were in favour of the amendment and nine abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, seven were in favour of the amendment and 12 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 negatived.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Mr Andrew CHENG's amendment, to Mr LAU Kong-wah's motion which has been amended by Ms Miriam LAU, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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 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:**

Dr Raymond HO, Dr LUI Ming-wah, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG and Dr Fernando CHEUNG abstained.

**Geographical Constituencies:**

Mr Albert HO, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Frederick FUNG, 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, 18 were present, 11 were in favour of the amendment and seven abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 were in favour of the amendment and eight abstained. 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 LAU Kong-wah, you may now reply and you have three minutes nine seconds.

**MR LAU KONG-WAH** (in Cantonese): Madam President, today is the last meeting of this Session. I can see that Members appear to be a bit exhausted, so my speech will not be exceedingly long. Despite the delivery of speeches by Members from various angles, a unanimous voice can still be heard and that is, the Government is requested to conduct a review and put forward substantial proposals. A time limit for the Secretary has also been proposed in the hope that she can complete this assignment during this summer holiday. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Kong-wah, as amended by Ms Miriam LAU and Mr Andrew CHENG, 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 passed.

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): It is 10.04 pm sharp. I now suspend the Council until 9 am sharp tomorrow morning.

*Suspended accordingly at four minutes past Ten o'clock.*

## Annex I

## BANKRUPTCY (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>   |
|---------------|---|
| 2             | <p>By adding before paragraph (a) -</p> <p>“(aa) in the definition of “trustee”, by adding “,<br/>subject to section 58(1B),” after “means”;</p>  |
| 3(b)          | <p>(a) By deleting the proposed section 12(1A) and substituting -</p> <p>“(1A) In the case of a debtor’s petition, the Official Receiver as the provisional trustee may at any time appoint any person to act as the provisional trustee of the property of the bankrupt in his place if he considers that -</p> <p>(a) the value of the property of the bankrupt is unlikely to exceed \$200,000; and</p> <p>(b) the person has the qualifications prescribed in</p> |

(b) By adding -

"(1C) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 3."

5(b) In the proposed section 15(4) -

(a) in paragraph (a), by deleting "person other than the Official Receiver is appointed as provisional trustee" and substituting "provisional trustee is appointed under section 12(1A)";

(b) in paragraph (b), by deleting "there is a trustee in relation to the bankrupt's estate" and substituting "a trustee is appointed or constituted under section 17, 100D(1), 112(4) or 112A(1)(i) or paragraph 6 of Part II of Schedule 1".

11 In paragraph (a)(ii) -

(a) in the proposed section 37(1)(a), by deleting "remuneration of, fees, commissions, percentages and charges payable to" and substituting "fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and

- payable to the Official Receiver”;
- (b) in the proposed section 37(1)(c), by adding “墊付” before “支出”;
- (c) in the proposed section 37(1)(f), by adding “墊付” before “支出”.
- 15 In the proposed section 58(1B) -
- (a) by deleting “43A, 43B, 43C,”;
- (b) by deleting “60(1)” and substituting “60”.
- 17 (a) In paragraph (b), by adding -
- “(ia) by adding before paragraph (a) -
- “(aa) take into his custody or under his control all the property to which the bankrupt is or appears to be entitled;”;
- (b) In paragraph (c), in the proposed section 60(2)
- (i) in paragraph (c), by deleting the full stop and substituting a semicolon;
- (ii) by adding -
- “(d) exercise any power the capacity to exercise which is vested in the provisional

trustee under this Ordinance  
and execute any powers of  
attorney, deeds and other  
instruments for the purpose of  
carrying into effect the  
provisions of this Ordinance;

- (c) subject to section 61, do all  
such other things as may be  
necessary for administering  
the estate pending the  
appointment of a trustee.”.

24 (a) In the proposed section 80(1), by deleting “shall  
each be regarded as a provisional trustee for the  
purposes of this Ordinance” and substituting “are  
in this Ordinance included under the term  
“provisional trustee””.

- (b) In the proposed section 80(1A), by deleting “shall  
each be regarded as a trustee for the purposes of  
this Ordinance” and substituting “are in this  
Ordinance included under the term “trustee””.

27 In the proposed section 85A(3), by deleting everything  
after “subsection (1)” and substituting “has not  
received any remuneration, the court may, on



application, order the payment out of the bankrupt's estate to him of such amount as the court considers sufficient to reimburse him for any necessary disbursements incurred by him in the course of the administration of the estate. Such application may be made by the trustee or the Official Receiver."

28 By deleting the proposed section 86A and substituting -

**"86A. Duties of trustee as regards the bankrupt's conduct**

- (1) It shall be the duty of the trustee -
  - (a) to investigate the conduct of the bankrupt; and
  - (b) to report to the court on any conduct that justifies the court in refusing, suspending or qualifying an order for the bankrupt's discharge.
- (2) In the case of a trustee other than the Official Receiver, it shall also be the duty of the trustee -
  - (a) to investigate the conduct of the bankrupt and to immediately report to the Official Receiver when there is reason to believe that the bankrupt has committed an act that

constitutes an offence under this Ordinance; and

- (b) to take such part and give such assistance in relation to the prosecution of the bankrupt as the Secretary for Justice or the Official Receiver may direct."

36 By deleting the clause and substituting -

**"36. Review and appeals in bankruptcy**

Section 98(2) is amended by repealing "The appeal shall be commenced within 21 days from the time when the decision appealed against is pronounced or made" and substituting "The notice of appeal shall be served within the time for appealing against an order made in the matter of any bankruptcy as specified in Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A)".

New By adding immediately after clause 46 -

**"46A. Schedule 3 added**

The following is added -

"SCHEDULE 3 [s. 12(1A) & (1C)]

QUALIFICATIONS FOR APPOINTMENT  
UNDER SECTION 12(1A)

To qualify for appointment under section 12(1A) of this Ordinance, a person shall -

(a) be -

(i) a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

(ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or

(iii) a current member of The Hong Kong Institute of Company Secretaries; and

(b) satisfy any reasonable conditions that the Official Receiver may impose and has made accessible to the

public."."

Schedule By adding -

"6. Clearing and Settlement Systems Ordinance (Cap. 584)	In section 2, in the definition of "relevant insolvency office- holder", in paragraph (c), repeal "receiver" and substitute "trustee"."
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## Annex II

## BANKING (AMENDMENT) BILL 2005

## COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services  
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 98A –</p> <p>(a) in subsection (3), by deleting "any person aggrieved by a decision made by the Monetary Authority under those rules" and substituting "an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under those rules";</p> <p>(b) by adding –</p> <p style="padding-left: 40px;">"(3A) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under those rules is a decision to which section 101B(1) applies."</p>

New	<p>By adding –</p> <p><b>"5A. Part XVIIIA added</b></p> <p>The following is added immediately after section 101 –</p>
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"PART XVIIIA  
CAPITAL ADEQUACY REVIEW TRIBUNAL

**101A. Establishment of Capital Adequacy Review Tribunal**

(1) There is established a tribunal to be known as the "Capital Adequacy Review Tribunal" in English and "資本充足事宜覆核審裁處" in Chinese, comprising a chairman and such number of members as may be appointed under subsection (3).

(2) The Chief Executive shall, by notice published in the Gazette, appoint to be the Chairman of the Review Tribunal a person who –

- (a) is qualified for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and
- (b) is not a public officer or, if he is, is a public officer by virtue only of being the chairman of a board or tribunal established under an Ordinance.

(3) The Chief Executive shall, by notice published in the Gazette, appoint as members of the Review Tribunal persons, not being public officers, whom he considers suitable for that appointment, and the number of persons so appointed shall at any one time be not less than 2.

(4) The Chairman and members of the Review Tribunal shall be paid, as a fee for their services, such amounts as the Chief Executive considers appropriate; and

of those amounts the amounts payable to the Chairman shall be a charge on the general revenue, and the amounts payable to members shall be a charge on the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

(5) The Fifteenth Schedule has effect with respect to the Review Tribunal.

(6) Subject to this Part and the Fifteenth Schedule and to rules made under section 1011, the Chairman of the Review Tribunal may determine the procedures and practice of the Review Tribunal.

(7) In this section, "public officer" (公職人員) does not include a person who is a judicial officer for the purpose of section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92) or a judicial officer appointed by the Chief Justice.

#### **101B. Application to Review Tribunal**

(1) An authorized institution that is aggrieved by a decision of the Monetary Authority made in relation to it, being a decision to which this section applies by virtue of section 98A(3A), may, at any time within the period specified in subsection (3), apply to the Review Tribunal for a review of the decision.

(2) An application for review shall be in writing and shall state the grounds for the application for a review.

(3) The period specified for the purposes of subsection (1) is the period ending 30 days after the receipt by the authorized institution of notice in writing given by the Monetary Authority informing it of the decision, or such

later date as the Review Tribunal may, in the circumstances of the particular case, allow.

(4) The making of an application to the Review Tribunal for a review of a decision does not operate to suspend the decision.

**101C. Determination of review by  
Review Tribunal**

(1) The Review Tribunal shall deliver to the Monetary Authority a copy of any application for a review of a decision under section 101B(1) that it has received.

(2) As soon as practicable after receipt of that copy, the Monetary Authority shall forward to the Review Tribunal a copy of the decision together with all other relevant papers in his possession.

(3) In reviewing a decision of the Monetary Authority, the Review Tribunal shall afford both the applicant and the Monetary Authority a reasonable opportunity of being heard.

(4) For the purpose of proceedings before the Review Tribunal, matters of fact are established if they are established on the balance of probabilities.

(5) In determining a review of a decision, the Review Tribunal may –

- (a) affirm, vary or set aside the decision; or
- (b) remit the matter to the Monetary Authority with any direction that it considers appropriate.

(6) As soon as practicable after completing the review, the Review Tribunal shall deliver its determination



and the reasons for that determination.

**101D. Registration of determination  
made by Review Tribunal**

(1) A determination made by the Review Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal.

(2) The Court of First Instance may, on notice in writing given by the Review Tribunal in the manner prescribed by rules made by the Chief Justice under section 101H, register a determination of the Review Tribunal in the Court of First Instance; and a determination so registered shall for all purposes be regarded as an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(3) The determination of the Review Tribunal is final and, except as provided in section 101H, is not subject to appeal.

(4) For the purposes of any proceedings in a court of law, a document purporting to be a record of a determination of the Review Tribunal signed by the Chairman of the Review Tribunal shall, in the absence of evidence to the contrary, be regarded as a determination of the Review Tribunal duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Review Tribunal.

**101E. Powers of Review Tribunal**

(1) For the purposes of any review, the Review

Tribunal may –

- (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
- (b) determine the manner in which any such material is received;
- (c) by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;
- (d) administer oaths;
- (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
- (f) order a witness to provide evidence for the purpose of the review by affidavit;
- (g) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
- (h) order that costs be paid to any party to

the review or any person who is required to attend before it for the purpose of the review;

- (i) hear an application for stay of proceedings for a review at any time before its determination is made; and
- (j) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.

(2) Nothing in subsection (1) empowers the Review Tribunal to require –

- (a) the technical consultant or adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or
- (b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.

(3) For the avoidance of doubt, the rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to proceedings of the Review Tribunal as they apply in relation to civil proceedings in a court and, accordingly, a person may not under subsection (1) be required to give, produce or provide any evidence or document if he could not be required to do so if the proceedings of the Review Tribunal were civil proceedings

in a court.

- (4) No person shall –
  - (a) fail to comply with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) or the Fifteenth Schedule;
  - (b) disrupt any sitting of the Review Tribunal or otherwise misbehave during any such sitting;
  - (c) having been required by the Review Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;
  - (d) hinder or deter any person from attending before the Review Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
  - (e) threaten, insult or cause any loss to be suffered by any person who has attended before the Review Tribunal, on account of such attendance; or
  - (f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Review Tribunal at any time on account of the performance of his functions in that capacity.
- (5) A person who, without reasonable excuse,

contravenes subsection (4) commits an offence and is liable –

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(6) A person is not excused from complying with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

**101F. Sittings of Review Tribunal to be held in private**

(1) The sittings of the Review Tribunal shall be held in private.

(2) A participant in proceedings for a review shall not, at the time of the proceedings or at any other time, publish or otherwise disclose to any person any information about the review or any information that comes to his knowledge in the course of the review.

(3) Subsection (2) does not apply to a disclosure, by a participant in proceedings for a review –

- (a) made to another participant in the same proceedings, where the disclosure is necessary for the proper carrying out of the first-mentioned participant's functions in relation to the review; or
- (b) necessarily made for the purpose of an

appeal to the Court of Appeal under section 101H in relation to the review.

(4) Subsection (2) does not apply to publication by the Review Tribunal under subsection (6) of the reasons for its determination in any proceedings.

(5) A person who contravenes subsection (2) commits an offence and is liable –

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(6) The Review Tribunal may, with the consent of the applicant and the Monetary Authority, for the information of authorized institutions generally, publish the reasons for its determination in any proceedings, or a summary of any part of those reasons, but without disclosing or containing information leading to the disclosure of –

(a) the identity of the applicant or any witness in the proceedings;

(b) any commercially sensitive information relating to the applicant; or

(c) any confidential information obtained from the Monetary Authority.

(7) In this section, "participant" (參與者), in relation to any proceedings for a review, means the Chairman and members of the Review Tribunal, the applicant in the proceedings, and any witness, solicitor, counsel or other person involved in the review but, without

prejudice to section 120(1), does not include the Monetary Authority.

**101G. Use of incriminating evidence given under compulsion**

(1) This section applies to any evidence, answer or information given or provided by a person pursuant to a requirement or order of the Review Tribunal made under section 101E(1)(c), (e), (f) or (j).

(2) Notwithstanding any other provision of this Ordinance, neither the evidence, answer or information given or provided by the person nor the requirement or order made by the Review Tribunal shall be admissible in evidence against the person in criminal proceedings in a court of law, other than proceedings in which the person is charged with an offence under section 101E(4)(a), or with an offence under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

**101H. Appeal to Court of Appeal**

(1) A party to proceedings for a review before the Review Tribunal may, if dissatisfied with a decision of the Review Tribunal in the proceedings or with the determination of the review, appeal to the Court of Appeal against the decision or determination on a point of law.

(2) Where an appeal has been lodged under subsection (1) the Court of Appeal may, on application made to it by any party to the review proceedings, order a stay of the proceedings, or of execution of the

determination of the Review Tribunal, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate; but the lodging of an appeal under subsection (1) does not of itself operate as a stay of the proceedings, or of execution of the determination, of the Tribunal.

(3) The Court of Appeal may affirm, vary or set aside the decision or determination appealed against, or may remit the matter in question to the Review Tribunal, or to the Monetary Authority, with such directions as it considers appropriate.

(4) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to such an appeal to the extent that those Rules are not inconsistent with this Ordinance.

(5) In an appeal under this section, the Court of Appeal may make such order for payment of costs as it considers appropriate.

**101I. Power of Chief Justice to make rules**

The Chief Justice may make rules --

- (a) providing for matters of procedure, or other matters, relating to applications for a review, or reviews, under this Part, which are not provided for in this Part or section 5 of the Fifteenth Schedule;
- (b) providing for the issue or service of any document (however described) for the purposes of this Part or section 5 of the Fifteenth Schedule;



- (c) providing for matters relating to the registration in the Court of First Instance pursuant to section 101D(2) of a determination of the Review Tribunal;
- (d) regulating the procedure for the hearing of appeals under section 101H; or
- (e) prescribing anything required to be prescribed under this Part or section 5 of the Fifteenth Schedule."

6 In the heading, by deleting "5" and substituting "5A".

Schedule In the heading, by deleting "5" and substituting "5A".

Schedule, Part 1 In section 1(2), by adding –  
"Review Tribunal" (覆核審裁處) means the Capital Adequacy Review Tribunal established under section 101A."

Schedule, Part 1 By adding –  
"4A. **Official secrecy**  
Section 120(5) is amended by adding –  
"(da) to the disclosure of information to the Review Tribunal;".

Schedule, Part 1 By deleting section 5.

Schedule, Part 1 In section 6 –

- (a) by renumbering it as section 6(2);
- (b) by adding –

"(1) Section 135(1) is amended by repealing "Seventh or Eighth" and substituting "Seventh, Eighth or Fifteenth"."

Schedule, Part 1 By adding immediately after section 10 –

"10A. **Fifteenth Schedule added**

The following is added –

"FIFTEENTH SCHEDULE [ss. 101A,  
101E, 101I  
& 135]

PROVISIONS RELATING TO  
CAPITAL ADEQUACY  
REVIEW TRIBUNAL

1. **Interpretation**

In this Schedule –

"Chairman" (主席) means Chairman of the Review Tribunal;

"member" (成員) means a member of the Review Tribunal;

"parties" (雙方), in relation to an application to the Review Tribunal for a review of a decision of the Monetary Authority, means the person making the application and the Monetary Authority.

## 2. Tenure of Chairman

(1) The term of appointment of a person as Chairman shall not exceed 3 years.

(2) A person whose term of appointment or reappointment as Chairman has expired may be reappointed.

(3) A person appointed as Chairman may resign his office by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that the person appointed as Chairman –

- (a) has become bankrupt;
- (b) is incapacitated by physical or mental illness;
- (c) is otherwise unable or unfit to perform the functions of Chairman; or
- (d) is no longer qualified for appointment as Chairman under section 101A(2) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the person's appointment as Chairman; and upon such revocation the office becomes vacant.

## 3. Tenure of members

(1) The term of appointment of a member shall not exceed 3 years.

(2) A member whose term of appointment or

reappointment has expired may be reappointed.

(3) A member may resign by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that a member –

- (a) has become bankrupt;
- (b) is incapacitated by physical or mental illness;
- (c) is otherwise unable or unfit to perform the functions of a member; or
- (d) is no longer qualified for appointment as a member under section 101A(3) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the member's appointment.

#### **4. Further provisions relating to Chairman and members**

(1) If the person appointed as Chairman under section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chief Executive may appoint a person who is qualified for appointment as Chairman under that section to act as Chairman, and as such to exercise all the functions of Chairman, for the period during which the first-mentioned person is so precluded.

(2) If a person appointed as a member under

section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from taking part in proceedings of the Review Tribunal, the Chief Executive may appoint a person who is qualified for appointment as a member under that section to act as a member, and as such to take part in proceedings of the Review Tribunal, for the period during which the first-mentioned person is so precluded.

(3) If at the expiry of the term of appointment of the person who is or is acting as Chairman, or of a person who is or is acting as a member, the hearing of a review has begun but the review has not been determined, that person may continue to act as Chairman or as a member (as the case may be) for the purposes of that review until the review has been determined.

(4) If during the hearing of a review there is any change in the person who is or is acting as Chairman or in the persons who are or are acting as members, then –

- (a) if the parties to the review so consent, the hearing may continue notwithstanding that change; or
- (b) in the absence of such consent, the hearing shall not continue but may begin anew.

## 5. Procedure

(1) The Review Tribunal shall convene on such occasions as the Chairman considers necessary to determine a review.

(2) The Chairman may, at any time after an

application for a review of a decision has been made, give directions to the parties to the review concerning –

- (a) procedural matters to be complied with by any of the parties; and
- (b) the time within which such procedural matters are to be complied with.

(3) The quorum for any sitting of the Review Tribunal shall be the Chairman and 2 members.

(4) At a sitting of the Review Tribunal –

- (a) the Chairman shall preside; and
- (b) every question before the Review Tribunal shall be determined by the majority of the votes cast by the Chairman and members present, except that a question of law shall be determined by the Chairman alone.

(5) The right to be heard conferred by section 101C(3) of this Ordinance may be exercised in person or –

- (a) in the case of a corporation, through its officer or employee;
- (b) in the case of the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority,

or may be exercised through a solicitor or counsel or, with the leave of the Review Tribunal, through any other person.

(6) The Chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Review Tribunal, which shall contain such particulars

relating to the proceedings as he considers appropriate.

**6. Privileges and immunities**

Except as otherwise provided in this Ordinance –

- (a) the Review Tribunal, its Chairman and its members; and
- (b) the parties to, and any witness, solicitor, counsel or other person involved in, a review,

shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.".

Schedule, Part 2 By adding immediately after section 1 –

**"Electronic Transactions Ordinance**

**1A. Proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance**

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) (as amended by section 69 of the Construction Workers Registration Ordinance (Cap. 583) and further amended by section 59 of the Clearing and Settlement Systems Ordinance (Cap. 584)) is amended –

- (a) in paragraph (zo), by repealing " ; 或" and substituting a semicolon;
- (b) in paragraph (zp), by repealing the full stop and substituting a semicolon;
- (c) by adding –

"(zq) the Capital Adequacy Review Tribunal established under the Banking Ordinance (Cap. 155)."."



## Annex III

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED  
(MERGER) BILL

## COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable David LI Kwok-po, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
15(2)(d)	By deleting “不可推翻的證據” and substituting “確證”.
16(3)	By deleting “不可推翻的證據” and substituting “確證”.