

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 limits on speeches for the motion debates. The movers of the motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on amendment. The mover of an amendment will have up to 10 minutes to speak. Other Members will each have up to seven minutes for their speeches.

First motion: Legal problems associated with the millennium bug.

LEGAL PROBLEMS ASSOCIATED WITH THE MILLENNIUM BUG

MR JASPER TSANG (in Cantonese): Madam President, after three days of legislative procedures which have been tense and often exciting, I believe Honourable colleagues have had enough warming-up exercises for this debate, one with no legislative effect, and are ready to devote themselves to this debate. The reason is that this topic may ultimately prove to be more important than all the other things we did in the last three days.

Madam President, I think all of us now know what the millennium bug is. Many people have seen it. Metal-like in colour and with legs similar to those of a robot, it looks like a bug and is quite big in size. This object can be seen everywhere on the posters of our Information Technology and Broadcasting Bureau. According to what I heard, an old lady was cheated when she was told that there was a drug especially for extermination of the millennium bugs.

As a matter of fact, for more than half a year, our Government — let me say a few more words by availing myself of the opportunity that government officials have not arrived yet (*laughter*) — has put in a lot of efforts and done much publicity work. However, with regard to dealing with the so-called Y2K problem, namely, the millennium bug problem, to date it still mainly dwells on how to debug. Government departments, public organizations, and even major business organizations are simply telling us the progress of debugging and the time for the complete resolution of the problem.

We are of course hoping for a full success in the work of debugging and that nothing will go wrong or left undone. Then we can celebrate the millennium on the night preceding Saturday, 1 January 2000. We shall go to bed late that night. Nothing is to go wrong when we get up the next morning.

According to some people, the millennium bug disaster just will not happen. However, it seems that so far nobody is bold enough to give such a guarantee. Even experts responsible for debugging dare not guarantee that nothing will happen. That is to say, they take it that everything is okay so long as nothing goes wrong at the time of testing following the debugging. However, nobody is sure about what is going to happen in 2000. In the event that this so-called millennium bug problem does not get fixed completely, how serious will the situation be by then? Opinions expressed locally as well as internationally present an interesting phenomenon, namely, the presence of two extreme views. That is to say, there are all shades of forecasts. Some hold that nothing will happen — including a legislator from the Democratic Alliance for the Betterment of Hong Kong (DAB) who is not here and whose name I can let you know, namely, Mr CHAN Kwok-keung — and that other people are dismissing it as sheer nonsense; they think that nothing whatsoever will go wrong and that some people are worrying about something that will not happen and trying to create a storm out of a tea cup. However, on the other extreme, there are some who consider it a very big problem, and hold very pessimistic views. Some even think that it is necessary to get ready several months' provisions and camp out in the wilderness in preparation for a brief life like the barbarians. Some people, of course, tend to link this up with certain religious predictions, portraying the whole thing as the end of the world.

Madam President, I do think many people will support such theories of disasters. Here comes the Secretary for Information Technology and Broadcasting. I have to be more serious. Granting that there are people who believe there will be an outbreak of disasters, few will actually put on their rucksacks and camp out in the wilderness. There might be some of them around. However, they will not have much impact on the community, that is, few people will be affected because of them.

On the other hand, there might be problems if we blindly adopt an optimistic view. It is particularly worrying if the Government is blindly optimistic and lacks any sense of crisis. We have learned many lessons over the last two years. When the avian flu first appeared, someone pointed out that

there had been similar cases abroad and that it was necessary to kill many chickens, and wondered if it was necessary for Hong Kong to do likewise. At that time, the Government confidently said that it was not a problem at all.

Some people even considered that to be a joke: Are you kidding, to kill chickens? Unexpectedly, that came true in a few weeks' time. Furthermore, over a million chickens had to be killed in one go. Because of the haste, the Government fumbled awkwardly, giving rise to a public uproar when it was exposed by the media. I can still remember 5 July last year. I was watching TV at home around midnight, proudly witnessing the overnight relocation of the airport as well as the lights-out ceremony officiated by Mrs Anson CHAN for the old airport, and savouring the pride of Hong Kong people for being able to relocate the airport overnight. Unexpectedly, there came the chaos in the next few days. The new airport became the laughing stock of the world. Furthermore, shortly after the outbreak of the Asian financial turmoil, there came the warning urging precautions against international speculators coming here to stir up troubles in a bid to manipulate Hong Kong's financial markets. At that time, the Government just dismissed them all. There was even a report saying that no such sign had been discovered after investigation. However, in less than 10 months or not quite one year, the Government, to resist manipulation by speculators, had to "enter the market" to intervene, thus paying heavily for that.

So the Government and the people of Hong Kong ought to learn from these lessons, ones resulted from having no sense of crisis and being blindly optimistic. Especially when government officials tell the general public "Never mind, set your mind at ease!", we have to ask "Is that true? How do you know?"

Madam President, as we talk and talk, it seems that there has been a swap of positions between us and the Democratic Party. The reason is that Mr Martin LEE this morning said that neither enemies nor friends could be permanent. It appears that we are now playing the role of the opposition party whilst Mr SIN Chung-kai is to play the role of a royalist party later with the Secretary for Information Technology and Broadcasting strongly supporting his amendment.

According to some forecast, millennium-bug-related lawsuits around the world are probably going to involve sums amounting to US\$1,000 billion to

US\$4,000 billion, far exceeding the sums spent all over the world on "debugging". Forecast is, after all, still forecast. However, should such a forecast partially come true, then we just cannot imagine how Hong Kong, a place very much dependent on information technology and having close business links with other parts of the world, can alone go unscathed or emerge intact from the millennium bug squabble.

My motion mainly aims at legal disputes that might crop up from the millennium bug problem. The motion urges the Government to expeditiously assess the scope and gravity of the problem and draw up effective contingency measures, including:

1. Requesting the Government to examine the need to legislate for stipulating the civil and criminal liabilities associated with the millennium bug;
2. Setting up a tribunal dedicated to handling litigation relating to the millennium bug so as to alleviate the pressure on the Judiciary;
3. Encouraging and assisting the public to use methods other than litigation, such as mediation and arbitration for resolution of legal disputes stemming from the millennium bug; and
4. That we are of the view that education and publicity should be strengthened for the public, in addition to depicting the bug on posters, so that the public can understand their rights, legal protection, and recourse to remedies in the event of losses arising from the millennium bug problem.

In fact, by reading a little literature, from both local and foreign sources, we can easily notice that there is already much mention about disputes that might crop up from the millennium bug problem. For instance, the first and foremost party to face the threat of litigation are, of course, suppliers of computer hardware and software. If their products are not Y2K-compliant, then in accordance with their sale and purchase agreements or conditions of leases or servicing contracts, users naturally will hold them responsible.

If a listed company's business performance suffers because of the millennium bug problem, and its share prices drop, shareholders suffering losses

also might sue directors of the company for failure to take precautions in discharging their duties as trustees. This represents another type of disputes.

In a case where two companies have business links with each other, there might also be litigation if one party, because of the impact from the millennium bug, causes loss to the other party. As a matter of fact, according to our information, some organizations are making inquiries with their business partners to find out from them how they are dealing with the millennium bug. Responses to such inquiries might serve as evidence in future lawsuits.

Similarly, because of the millennium bug problem, government departments might be sued by business partners for damages. Furthermore, should the information technology systems of government departments go wrong and, consequently, cause losses to the public as a result of disruptions in public services, the Government might be held liable.

Turning now to insurance companies. The possibility of whether or not liability in respect of compensation claims stemming from the millennium bug problem can be transferred to insurance companies, of course, depends on the terms of the insurance policy. If an organization takes out an insurance policy especially for the millennium bug problem, then the responsibility of the insurance company is certainly very clear. However, there are insurance companies refusing specifically to provide such insurance coverage. Yet there might be dispute as to whether or not general liability insurance covers compensation associated with the millennium bug problem. Lawsuits of this type are in progress abroad.

Madam President, it has come to our notice that many small and medium enterprises (SEMs), ones still quite breathless as a result of the financial turmoil, just have not got the time to consider the threat posed to them by the millennium bug. I am particularly concerned about this. When asked, many an entrepreneur will say that he has asked someone to do the debugging. Some money has been spent, or some resources have been used. Can it be sure that everything will be all right? Not one out of ten can answer. Few people have reflected upon the magnitude of financial damage and the seriousness of the liability for damages that they might have to face in the event of losses arising from computer breakdowns associated with the millennium bug problem. They are not even clear about the protection that they might have.

We have just emerged from the financial turmoil, and are still gasping for breath. According to some reports and comments today, the upturn is about to come and the economic recovery is just round the corner. However, is not the multitude of our SEMs coming under the shadow of another possible disaster? When we consulted different parties on this issue, some people (including the Secretary for Information Technology and Broadcasting) stated that given the fact that disputes stemming from the millennium bug problem are just commercial disputes, they should be resolved by means of ordinary business practices. When a computer develops problems, it is just like the spare parts of your car developing problems. This is correct. Even if it is to be resolved by means of business practices, there must still be a legal basis. Disputes stemming from the millennium bug are very special and unprecedented; they can also be very common and extensive. Should we, on account of these two factors, deal with the issue specifically and should we specifically do something with our existing laws and judicial system? This is my question.

Later on, several colleagues from the DAB will elaborate on the few specific recommendations just put forward by me. I am looking forward to hearing from Honourable colleagues their valuable opinions in the course of the forthcoming debate.

With these remarks, I beg to move.

Mr Jasper TSANG moved the following motion:

"That, as the Y2K problem (the millennium bug) may give rise to a large number of legal disputes, this Council urges the Government to expeditiously assess the scope and gravity of the problem and take effective precautionary and contingency measures, including:

- (1) examining whether there is a need to legislate for stipulating the civil and criminal liabilities associated with the millennium bug;
- (2) setting up a tribunal dedicated to handling small claims litigations relating to the millennium bug, so as to alleviate the pressure on the Judiciary;
- (3) encouraging and assisting the public in resolving legal disputes arising from the millennium bug through mediation and arbitration;

and

- (4) strengthening education and publicity so that the public may have a correct understanding of their rights and the means for claiming compensation when they suffer losses arising from the millennium bug."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Jasper TSANG as set out in the Agenda be passed.

Mr SIN Chung-kai will move an amendment to this motion, as printed on the Agenda. In accordance with the Rules of Procedure, the motion and the amendment will now be debated in a joint debate. I now call upon Mr SIN Chung-kai to speak and move the amendment.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I moved that Mr Jasper TSANG's motion be amended as set out on the Agenda.

Madam President, in reading the newspaper recently, I noted that when the debate on this topic got under way, an employee in Wasakastu, Japan committed suicide on 12 July being unable to bear the pressure from the task of dealing with the millennium bug. Before that he had to spend 15 hours daily to fix the 600 pieces of software of his company. As just mentioned by Mr Jasper TSANG, in the United States there are people who are so scared that they take their rucksacks with them and camp out in the wilderness. Because of the millennium bug problem, I have also had nightmares that scared me out of my dreams in the middle of the night.

First, on learning that Mr Jasper TSANG would be proposing this motion about two or three weeks ago, I asked the Research and Library Services Division of the Secretariat through the House Committee to prepare a report on overseas legislation. The report was distributed to Honourable colleagues last week on 9 July. Listed in the said report is a lot of information on foreign experience, to which we ought to refer when considering legislative matters.

According to the first part of Mr Jasper TSANG's motion, the Government should legislate for stipulating the civil and criminal liabilities associated with the millennium bug. In fact, the said report points out that with the exception of the United States, there is close to nothing with regard to foreign experience in this respect. In the United States, both the House of Representatives and the Senate have had many bills concerning liabilities associated with the millennium bug. Recently, on 1 July, a more comprehensive and more sombre bill was passed by the House of Representatives and the Senate. Passed though it was, it does not necessarily mean that the bill can come into effect ultimately. I have to point out that we can notice from the said report that legislation on the millennium bug problem tends to start with an intention to limit liabilities. Being a representative of the information technology sector, I ought to support Mr Jasper TSANG's proposal for limiting liabilities from the standpoint of the sector. The reason is that to the information technology sector, the millennium bug problem can be a disaster, or an inherent calamity. According to some, lawsuits stemming from the millennium bug problem might plunge the Silicon Valley, now very prosperous, into a state of paralysis or totally cripple it economically. So, if it is seen from this angle, I ought to support the motion so as to limit liabilities. However, I have to explain why I have sought to move the amendment.

When the said bill was first introduced in the United States, the CLINTON Administration objected to it insistently. The reason is that from consumers' standpoint, there is no justification to strip consumers of their right to file lawsuits. For instance, there are, as pointed out by the said report, a requirement for 90 extra days and a compensation ceiling of \$250,000 for the successful litigant. Please refer to that report.

For reasons stated above, the CLINTON Administration was originally against it; so were the Democrats in Congress during the debate. However, when voting came on 1 July, the bill was passed as CLINTON indicated to the Congress through his aides that he was prepared to sign the bill. At present, the bill still awaits CLINTON's signature. According to my forecast, some people are still going to challenge the bill for its unconstitutionality even after CLINTON has signed it as it strips some people of their right to file lawsuits.

Whether or not the United States bill can ultimately come into effect is, in my opinion, still unknown. However, I have to stress that the situation in the United States is different from Hong Kong's. In the United States, it is easier

to file lawsuits, the reason being that their system allows citizens to file lawsuits through attorneys, with whom the successful litigants share their damages. Members are probably quite familiar with that system. It is different in Hong Kong. Under the legal system of Hong Kong, persons wishing to file lawsuits must hire barristers. Those who win their cases will be awarded damages, but those who are defeated will have to pay costs. Given the different systems, it is not possible to know how many people will resort to legal actions.

Turning now to the information technology sector, the standpoint held by members of the sector regarding legal liabilities associated with the millennium bug problem is given in the letter that I sent to Members several days ago. According to them, if there is to be legislation, it is of paramount importance that, first of all, "contracts should be the first point of reference to define parties' rights and obligations in any Y2K dispute." In short, if there is to be legislation, the spirit of the contract must be respected. I hope that the Members representing the legal profession can offer assistance later and let us know whether or not it is possible to file lawsuits without new legislation, and what sort of problems might crop up in the event of litigation.

There is one point that I have to stress, and that is, the fact that if we have no new legislation, we neither add additional obstruction to those wishing to file lawsuits, nor take away any of their rights and privileges. On the contrary, the absence of new legislation also neither increases one's possibility of being sued nor reduces the liabilities of the party being sued.

So generally speaking even if we draw up no new legislation, we can still use the existing mechanism to resolve disputes associated with the millennium bug on the basis of existing contracts.

I totally agree with and fully support the third and fourth points put forward by Mr Jasper TSANG. We should let the public have a clear understanding of the millennium bug problem by means of publicity and education, covering matters like their rights in the event of suffering losses as a result of the said problem, and the means to deal with different disputes. These means to deal with disputes include those mentioned by Mr Jasper TSANG, for example, mediation, arbitration and even litigation. These are all feasible, and can be effected by applying existing methods.

What is the message for the community if we move a motion at the

Legislative Council's last meeting of the current Session to urge the Government to consider legislation? This is, therefore, the question we have to face. The message is that it is going to be very hasty if legislation has indeed to be formulated. The reason is that the Legislative Council is not going to meet again until October. Even if the Government is indeed going to present a bill after that, it must be executive-led. The Government surely will not do that. As a matter of fact, in July 1998 I asked the Government if consideration would be given to legislation in this respect. At that time, the Government already answered in the negative. Since July 1998, The Government has been holding the position that there will be no legislation. I have proposed this amendment not because the Government is not going to legislate. Let us suppose that the Government is bent on legislation. Now come to think about this. Subsequent to the passing of the motion in July 1999, the First Reading will be held at the Legislative Council's first meeting for the next Session, that is, 12 October. Given the fact that in the two months that follow, all chambers of commerce and professional bodies might go to the Legislative Council to express their approval or disapproval of the bill, the whole legislative process will inevitably be extended to the beginning of next year, when the millennium bug appears. By then, all possible lawsuits should have already cropped up. There might be an immediate need to modify some people's rights and obligations. Given this, should we still legislate under such circumstances?

First, I have to stress that not a single nation in the world has legislated in the area concerning liabilities. Even in the case of the one that has legislated, that piece of legislation can still be said to be just for the protection of the rights and interests of technology companies. Granting that we are in a position to pass a piece of legislation protecting the technology companies, is there indeed such a need? The situation in Hong Kong is different from that of the United States, where one is far more prone to the risk of being sued when comparison is made with Hong Kong. The reason is that their legal systems are different.

Therefore, I think that we should not increase restrictions, or limit people's chances to file lawsuits. In short, I am of the view that the Government should step up publicity and education in the days to come to let the public understand the issue, and know how to deal with the situation when running into difficulties or disputes. I fully agree that settlement should be effected by means of mediation and arbitration so as to reduce litigation costs.

I hope Members will carefully consider this issue. I have to thank, in

particular, the Research and Library Services Division for completing this information report within such a short period of time.

With these remarks, I beg to move.

Mr SIN Chung-kai moved the following amendment:

"To delete "a large number of" and substitute with "various"; to delete "expeditiously assess the scope and gravity of the problem and"; to delete ", including:" and substitute with "and"; to delete "(a) examining whether there is a need to legislate for stipulating the civil and criminal liabilities associated with the millennium bug; (b) setting up a tribunal dedicated to handling small claims litigation relating to the millennium bug, so as to alleviate the pressure on the Judiciary; (c) encouraging and assisting the public in resolving legal disputes arising from the millennium bug through mediation and arbitration; and (d) strengthening" and substitute with "strengthen"; to add "the millennium bug problem, including" after "understanding of"; to delete "and the means for claiming compensation"; and to add "and the means for dealing with the various disputes" after "the millennium bug"."

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr SIN Chung-kai be made to Mr Jasper TSANG's motion. We will proceed to the debate.

MISS CHRISTINE LOH: Mr Deputy, before I address the motion and the amendment, I would like to make three general points about the Y2K issue. I think from the two speeches, it is clear that we do recognize that Y2K is a social problem. It is a social problem because the potentially wide consequences could affect every one of us and it is not a time to be complacent. It is timely that the Honourable Jasper TSANG reminded us of the problem that we had with the airport opening. So, again, Mr Deputy, it is not time for this community to be complacent.

I would like to make three points. The first one is that the Government tells us that most government departments and bureaux are already Y2K compliant. But there is no third party verification process. What I would like to propose is for this Council to press the Government to provide some kind of third party audit. Secondly, to minimize any potential panic, it is very important that we have a proper community-wide contingency plan in place. The extent of the damage or inconvenience caused by Y2K will depend on how Hong Kong collectively prepares and responds to it. So, everybody needs to know their roles and what they are supposed to do. My office has been trying to extract this information from the relevant departments but I have had very little joy. I understand that some overall contingency plans will be released to the public sometime in September. My last point is that I call upon this Council again to play its role to make sure that we have adequate contingency plans and that they are revealed to the public as soon as possible. The contingency plans, it would appear, Mr Deputy, are being thought out and put together essentially behind closed doors. I would like to see a more open process in the development of the contingency plans.

Now let me address the motion and the amendment. The motion refers to consideration for legislation and liabilities arising from the Y2K problem. Now, it has been touched upon that the year 2000 will be a bonanza for lawyers because there will be lots of claims. Whilst Hong Kong is not a litigious society, there may well be legal cases arising if things go wrong. However, at this late juncture with less than six months to go, what is the most appropriate thing that this Council and the Government should do to limit the damage from any Y2K problems? I agree with the Honourable SIN Chung-kai that it is not really to think about passing legislation, maybe it is totally appropriate that we should adopt the United States position, where nobody else has in the world. And I think at this stage, we are much better off trying to prepare ourselves for contingency. One positive aspect, however, of the United States law is that it encourages alternative dispute resolution. I would wholeheartedly support the call for mediation and arbitration as Mr SIN Chung-kai has. The Hong Kong Arbitration Centre has a Y2K accord which my office has signed up to. This provides a voluntary commitment for organizations to resolve any Y2K problems through mediation. I would like to see the Government promoting this aspect more in the coming days.

On the final part of the motion, I do not see a substantive difference between the motion and the amendment, except that Mr SIN Chung-kai stresses

the need for publicity on the means for dealing with the disputes, while Mr Jasper TSANG stresses the need for information on the means to claim compensation. I understand that the wording of Mr SIN Chung-kai's part (d) is supposed to reflect the wording of Mr Jasper TSANG's part (c). If that was the case, I do not think that the wording is explicit enough, if Mr SIN Chung-kai had kept part (c), it would have been better. Nevertheless, I prefer his amendment over the motion.

To conclude, firstly, I would like this Council to press the Government to provide independent audit for its Y2K readiness. Secondly, I would like the Government to be more open about how they are preparing the contingency plans and to release them as soon as possible. Lastly, I would like this Council to continue to play a role to ensure that the contingency plans are adequate and well publicized.

MR HOWARD YOUNG: Mr Deputy, the invention and usage of computers and other related technology have greatly benefited our daily lives. It is especially true over the last couple of decades. From office operation to flights by airlines, navigation by shipping, cargo handling, and from customer services to stock control, the use of computers has increased the complexity and enhanced the efficiency of many commercial activities. Computers are so widely used nowadays that it is difficult to live without them in an advanced society such as Hong Kong.

In less than five and a half months from now, or some 4 000 hours away, we will celebrate the turn of a century, which happens to be a new millennium as well. This is something new and exciting to all of us, whether you are going to be camping out in the desert in the middle of nowhere or whether you are going to be in a multi-rise building fixing your computer and preparing for the millennium. But this is something totally new to us and very challenging to the information technology industry, especially those who are dealing with the Y2K problem. I must add here that no one in the past has ever had any experience dealing with the Y2K problem before.

The Liberal Party did look very carefully at the Honourable Jasper TSANG's original motion before there was any discussion about putting forward any amendment to it. We looked at it phrase by phrase, and we came to the conclusion that we could not support the motion in its original form. His

motion in essence is talking about a legal problem associated with the millennium bug. But, our view is that apart from it, it will be almost well nigh impossible to assess the problem. It is very difficult for the business sector if today's original motion is passed, because it would have even less time, less than the 4 000 hours I just mentioned, to adjust the original plan for coping with the Y2K problem in the light of any new legislation or rules and regulations that would be passed at this late stage. If firms and companies are already ready for the date change for the millennium, new legislation would simply be a waste of public funds. And in this respect, the Liberal Party has in fact consulted some people in commercial organizations which actually have had for years now their Y2K problem, and all their sections and managers have been looking at the problem. This is the advice that we got from some firms which were about to be ready or have in fact already declared themselves ready. If individuals have yet to be ready for the change, and there are plenty of those around, the new legislation at this late stage, I think, would only divert their resources and energy from busily coping with and final testing of their Y2K compliance. So, we do not really see how new legislation or bringing up prospective new legislation at this stage would help solve the problem. In fact, we think that it would cause uncertainty and confusion and there is a risk there. Uncertainty is the last thing which businesses need as they make their final operational plans for the millennium date change.

Y2K is primarily a business issue. Responsible businesses have sought to address it in time and in the manner based on existing long-standing legal principles, both in contract and tort, which normally regulate business relationships. It would be wrong in principle, we think, except in exceptional circumstances, to introduce new legislation at this late stage which varies, or is even if perceived as varying, the existing legal principles upon which companies have planned their businesses.

Mr Deputy, the second point is that there might be exceptional circumstance, and I did mention it. An exceptional circumstance in which it may be appropriate to legislate would be infrastructure providers who have an effective monopoly on some aspects of Hong Kong services not addressing the Y2K problem with sufficient urgency. But we have noticed that recently, major suppliers in Hong Kong who have a large share of that particular aspect of any service and industry have, in fact, one after the other, either declared that they are already Y2K compliant or are well along the route to doing so. The underlying purpose of legislation, if there should be an exceptional circumstance, would be to ensure that any lack of action by infrastructure providers is not

influenced by the absence of choice available to their consumers.

We, the Liberal Party, do not want to give the false impression that companies and organizations have not taken the Y2K problem seriously. The Honourable SIN Chung-kai has mentioned in his research that the Americans do have some legislation but that is more on limiting the liability. We have also got a letter from Mr Jasper TSANG which says that when you talk about legislation, there is a limiting aspect, such as limiting period. But we also think that if we have given the false impression that those companies who have not tackled the problem might be rewarded by limitation, that is not satisfactory either.

Thirdly, we should also be careful not to arouse the suspicion that Hong Kong is behind in dealing with the Y2K problem. In fact, I think Hong Kong has been rated green by most international assessment agencies.

So, with all these problems, the Liberal Party felt that it could not support Mr Jasper TSANG's motion in the original form. We could have simply made our speech and vote "no". However, we have noticed that Mr SIN Chung-kai's amendment appears to avoid all the problems that I have brought up. In fact, he almost avoids the whole motion, but he does leave the problem that we do need public education which we do support. Therefore, the amendment is acceptable to the Liberal Party and we will vote for it.

MISS MARGARET NG: Mr Deputy, I have heard it said abroad that the millennium bug is a bonanza for lawyers. A brief consultation with my legal colleagues in Hong Kong shows that no one is counting on that here.

Nevertheless, it is right for the Honourable Jasper TSANG to remind us to look into the problem. However, having looked with some anxiety, my conclusion is to support the amendment of the Honourable SIN Chung-kai.

The chief difference between the original and the amended motions is in the specifics, namely, legislation, special tribunal, and alternative dispute resolution. Let me address these specifics one by one.

Legislation: I am grateful to the Research and Library Services Division for the background research so conveniently set out and summarized. I notice

that, while in some jurisdictions, steps have been taken to legislate to require people to disclose information, the United States is unique in having legislated comprehensively on disclosure, on liability, including the limitation of liability, and on procedure.

I have read through the Year 2000 Readiness and Responsibility Act of the United States with some care. I am convinced that it is not appropriate for Hong Kong to follow suit.

Civil liability arising from the Y2K problem will fall into one or the other sources: contract, negligence or breach of statute. If, for example, due to a Y2K computer failure, your flight schedule is disturbed, or your goods fail to be delivered or received on time, you may suffer loss, and sue for damages. This is no different from suing for damages where flight schedule disturbance or failure of delivery of goods because of any other reason. Generally, whether you will succeed will depend on whether you can prove that the other party has been negligent or has taken all the care it should.

If, say, you have taken out an insurance policy, and an accident has happened for which you want to claim against the insurance company. That would depend on the terms of the policy, that is, what you and the insurance company has contracted to do.

The amount of damages you will receive will depend on the loss you can prove. And this is limited by a number of things. For example, you are expected to have done what you could to mitigate your loss. Another example is that damages will not be awarded for losses which are too "remote" or far-fetched or indirect.

What legislation does is to intervene and alter the normal operation of established legal principles. For example, the United States Act caps the damages a consumer can claim. It also limits punitive damages which, in the American litigation system, can be wholly disproportionate to the loss actually suffered.

In my view, we should be very cautious of intervening, particularly when we have no firm grounds or concrete information as to where injustice may arise

if the legislature does not intervene. Otherwise, intervention to minimize injustice to some may cause gross injustice to others.

One point which merits special mention is the role of the Consumer Council in drawing our attention to any need for consumer protection measures. So far, no concern has been raised.

I can more briefly address the proposals for a Y2K tribunal and encouraging mediation or arbitration.

The United States Act contains provisions on litigation procedure. Perhaps these address problems in the American system. But they are also general, good advice for people to conduct their litigation sensibly. I think that they are useful guidelines, but as legal requirements, they may cause greater confusion than convenience.

It takes time to set up a special tribunal. There is no evidence that there will be a large number of Y2K litigations, or that the amounts of their claims are all going to be small. I am sure that if that situation should arise, the existing small claims tribunal can easily be augmented to cope with it.

Mediation is still a new and less expensive alternative to litigation. Mediators are trained and qualified people. I know that the Hong Kong Mediation Society is doing its best to promote mediation services in any event. On the other hand, arbitration is a well-known procedure. However, whether a case is suitable for mediation or arbitration depends on the case and the parties, and the best advice is to promote an open mind.

Mr Deputy, it would appear that it is at any rate too late to consider the kind of legislation that Mr Jasper TSANG contemplates. But there is a great deal of room for more public education, and for alerting those in the forefront of consumer protection or litigation to alternatives, methods of simplifying the process and keeping down costs. The Administration can do a lot, and it is right that we urge it to do so.

Thank you, Mr Deputy.

MISS CHOY SO-YUK (in Cantonese): Mr Deputy, some people worry that the millennium bug might lead to Russia's nuclear devices running out of control.

There is also the worry that the millennium bug might give rise to runs on banks. There is even the worry that because of the millennium bug, Hong Kong might stage a sequel to the new airport incident. So far, no experts can be sure about the likelihood of all these incidents happening. However, it is possible to foretell that even if none of these happens, there are still bound to be business disputes stemming from the millennium bug, and that these disputes are not going to be few.

The millennium bug, a major issue at the end of the century, has long drawn extensive attention. However, it seems that in the past the Government did not attach much weight to the gravity of the millennium bug, and the work for debugging was relatively late in getting started. Despite all these, the progress made by the Government's working group on debugging has been good so far, which is gratifying. Announced recently are a few contingency measures, for example, the deployment of more policemen on standby duties. This is praiseworthy.

Anyway, it is undeniable that in dealing with the millennium bug, the Government still leaves something to be desired. An example in this respect is the issue on designating 31 December this year as a public holiday for co-ordinated testing of all computers. It was I who first put forward the proposal in the Legislative Council. Negating such a need then, the Government remarked that to specifically designate one day as public holiday might make people doubt Hong Kong's ability to solve the millennium bug problem. However, in the end it was proved that the proposed measure is absolutely essential. Finally the Government adopted the measure. It is indeed commendable that the Government has been so ready to take good advice. However, does this "wavering" attitude somehow reflect tardiness in perception? I am somewhat worried.

At present, economic structures all over the world are actively undergoing computerization. With the development of the Internet, the world is moving more in the direction of becoming one single entity. Being a metropolitan city and a bridge between the East and the West, Hong Kong, with network of links going in all directions, is linked up with Europe, America, Asia and the Oceania, and is maintaining the traffic of activities in business transactions, finance and information round the clock. Given the extensive and complicated entanglement of business ties, the domino effect stemming from the breakdown of one computer can multiply quickly. Disputes in the areas of business, law and interest thus involved are not measurable. Who can guarantee that everything will be all right by then even though the Government has taken

precaution against the millennium bug? I am not trying to kill joy. We probably still remember clearly that at the time of the opening of the new airport, preparation was said to be more than adequate. But we all know what happened in the end.

If the Government does not make timely preparation for the numerous business lawsuits that might crop up as a result of the millennium bug, then how are we to deal with claims for damages that may unfortunately come about and prove to be even more involving or more legally contentious than the new airport incident? Who is to be held responsible for the financial damages thus engendered? It is hoped that the Government can understand that the proposal for studying the issue concerning liabilities in the area of millennium bug problem is something of which a responsible legislator must remind the Government, not just an unwarranted worry. The Government should note that if the study is to be conducted only after the appearance of many lawsuits, it will be already too late. Given the need to designate 31 December as a public holiday, is there not absolute necessity to look into laws relating to the millennium bug? It is further hoped that the Government can reflect upon this.

What is more, it is hoped that the Government and Honourable colleagues can understand that those to suffer most from the rejection of the original motion today are going to be the tens of thousands of small and medium enterprises (SEMs). It is because at present most of the SEMs do not have computer experts, and they have to rely on the information technology sector on debugging. If the work of debugging proves to be successful and the transition to the year 2000 turns out to be smooth, then it is wonderful. But what if debugging proves to be a failure and triggers off computer breakdowns, which then plunge data into great confusion, cause losses to customers, and, consequently, give rise to claims for damages? I think only two options are open to these SEMs — there is, of course, a third option, and that is to declare bankruptcy and close down. One option is to sue the information companies concerned. The other option is to seek compensation from insurance companies. The question as to whether or not insurance companies are prepared to give compensation or even offer the coverage is by itself a complicated issue. To claim compensation from information companies is an even more complicated issue. The reason is that existing laws do not have provisions on the millennium bug, and the Government is not willing to look into it. Information companies are members of the profession whilst SEMs as well as judges are laymen. Given the fact that laymen are suing professionals

in an area with no precedents in law, which side do you think the judges will believe?

To give all SEMs, the information technology sector, and the legal profession a clear legal delineation so as to reduce the numerous legal disputes that might crop up then and protect the tens of thousands of SEMs, including all the information companies, it is therefore necessary for the Government to set up, as soon as possible, a working group to look into the legal problems associated with the millennium bug. The Government and some members of the information technology sector perhaps worry that the legislation concerned might affect them and lead to even more lawsuits in the future. However, I hope that they can understand that it is not right to adopt an ostrich's policy. The reason is that those disputes are bound to come. On the contrary, if the Government can define the relevant legislation earlier, there will be enough time for members of the trade to get prepared well enough so as to be clear about their legal responsibilities and, thus, more effectively reduce the risk of being sued.

Finally, I call upon Members who are present here, especially Members from the Liberal Party who all along claim to care for the business and industry sectors, to carefully consider the situation before making their final decisions on voting.

With these remarks, Mr Deputy I support Mr Jasper TSANG's original motion.

MR GARY CHENG (in Cantonese): Mr Deputy, many software dealers and major enterprises around the world are becoming more inclined to accord the work of "debugging" or contingency plans following "debugging" top priority for attention. Some do so for reasons of spontaneity. Some have been spurred to do so by exaggerated news reports. Some are being required to do so by the laws of the places or nations concerned. Every person knows that failure to take precaution might lead to financial losses later. However, it seems that insofar as business transactions are concerned, there are bound to be lawsuits stemming from the millennium bug problem.

When there is a lawsuit, the parties involved will not be confined to the two sides of a transaction as the two parties might seek to hold their respective

suppliers responsible. In other words, it is almost absolutely certain that a small matter still might lead to a lawsuit requiring attention even if such lawsuits are not going to touch off earth-shaking crises. Quite a few enterprises, according to our information, have been putting in much effort by, for instance, keeping records of transactions, checking old contracts, or reconfirming old agreements in a bid to get hold of some evidence for the purpose of taking up or denying responsibility, or holding others responsible in the event that something happens later.

We have been talking about big companies and big enterprises. Given the current popularity of computers, among those to be involved in the problem in the future are SEMs, including you and me. Common citizens might also be affected. How are their rights and interests to be protected? As just mentioned by Chairman TSANG, according to the estimate of the Hong Kong Productivity Council, the costs to be involved in lawsuits all over the world can be as high as US\$1,000 billion to US\$4,000 billion. Mr SIN Chung-kai and several other Honourable colleagues pointed out that Hong Kong does not have the same litigious culture as the United States. There are, of course, special reasons for this. In the event that their domestic electrical appliances or computers, or instruments relating to computers develop problems, should the people of Hong Kong exercise forbearance, throw away the old ones and buy new ones? Must they do so? Will there be a situation in which they can neither lodge complaints nor hold their suppliers responsible even though they know well that the machines are being affected by the millennium bug? It is necessary for the citizens of Hong Kong to consider these. There are bound to be a huge number of such lawsuits. We can also foresee the pressure to be placed on the Judiciary by those lawsuits. To cope with a possible sudden upsurge in the demand for extra judicial services, it is indeed necessary for the Government to make appropriate arrangements in the deployment of resources and formulate special contingency plans. It seems that besides considering economic operations and social operations, the Government's task force also ought not to neglect this.

It is not without reason for Mr Jasper TSANG to suggest setting up a dedicated tribunal. Cases relating to the millennium bug are bound to involve some more sophisticated professional and technical knowledge. We are not looking down upon Hong Kong's judicial sector. But do those tribunals and

courts have enough personnel in the relevant field to deal with the cases? It is hoped that a dedicated tribunal can be set up so as to effect suitable and reasonable division of labour and thus avoid taking up the trial time of other cases. Some people worry that all those who have defective electrical appliances might approach the tribunal. Will there be abuses? Just as stated by me, if the tribunal has enough professional technological personnel, they should be able to tell those that ought to be dealt with by ordinary judicial bodies from those that ought to be dealt with by the said dedicated tribunal. Furthermore, we have mentioned the point that the new tribunal should handle cases involving small claims only. As pointed out by me right in the beginning, we need not worry about big organizations as they can fend for themselves. We are most concerned about those small enterprises or ordinary citizens. Are there avenues for them to lodge complaints or present claims? Big organizations or big enterprises have sufficient money or resources to hire "millennium bug" experts or lawyers specializing in "millennium bug" problems to deal with relevant cases. However, it is very difficult for ordinary citizens to deal with the issue. So a dedicated tribunal has to take up the responsibility.

As we have such a proposal, we must also remind the Government that if this proposal indeed can alleviate the pressure on the Judiciary, then the Government should immediately equip itself and promptly get ready so as to deploy sufficient judicial personnel well acquainted with knowledge of that field to handle those matters.

With these remarks, Mr Deputy, I support Mr Jasper TSANG's motion and oppose Mr SIN Chung-kai's amendment.

DR RAYMOND HO (in Cantonese): Mr Deputy, as the year 2000 approaches, the millennium bug problem is receiving more and more attention and given more and more weight. With regard to the millennium bug problem, I in fact raised a question in this Chamber early last year. However, at that time there was not much mood for discussing this important issue of the millennium bug. The first and foremost task now is to complete the task of debugging by the eve of the millennium bug outbreak so as not to let the problems seriously affect the Hong Kong economy, our daily life, and normal social operations. In comparison with other advanced countries, Hong Kong's start in such work was relatively late. Anyway, the overall progress made by the Government in rectification has been satisfactory. On the other hand, to deal with legal problems stemming from the millennium bug, a very small number of advanced

countries have gone further to draw up legislation. However, I think it is open to question as to whether or not Hong Kong should follow suit.

In the first place, the millennium bug is an issue very much characterized by the time factor. Dates likely to have Y2K problem are mainly confined to certain days of the current year and a few days in January and February next year, for example, 4 April this year, and 9 September this year. Surely, whether or not computer systems can effect transition to the year 2000 is a problem that draws most of the attention. By doing a little counting, you should be able to see that the year 2000 is less than six months away. Given the fact that this Council will have to go into recess, the time left for normal legislative procedures is very limited.

At the same time, it should be noted that the millennium bug problem, involving many technological issues as well as numerous foreign people and companies, is quite complicated. When it comes to drawing up the relevant legislation, it will be necessary to have much time and a lot of talents in order to perfect the said piece of legislation. If we hastily passed that piece of legislation merely for the sake of legislation, we might run into a blunder while trying to be smart, and, consequently, arouse public fear unnecessarily without achieving any desired effect.

It is beyond doubt that in dealing with the millennium bug problem, the United States has been taking the lead. It is even so in the area of legislation. Insofar as consideration on legislation is concerned, Hong Kong is different from the United States. In the first place, in the United States, many matters are resolved by way of litigation, and verdicts often involve huge amounts of money. In the case of Hong Kong, it is different. In the second place, Hong Kong has had a relatively late start in hi-tech development, and is, therefore using relatively new computer systems, which tend to be more Y2K-compliant. Therefore, I am of the view that it is not definitely necessary for us to follow what the United States has done with regard to millennium bug legislation. As a matter of fact, in the event that members of the public suffer damage or get involved in problems concerning responsibility, they may address the issues or resolve them by application of existing laws.

At present, the most urgent task is to give members of the public a correct understanding of the millennium bug problem, which includes their

responsibilities, rights, and the different ways to deal with various disputes. The Government can step up work in this area through publicity and education. The focus of publicity should be on overcoming the millennium bug problem, not on encouraging the people to resort to lawsuits to claim damages after the outbreak of problems, an approach which might indirectly lead to their relaxation in solving the millennium bug problem.

With these remarks, Mr Deputy, I support Mr SIN Chung-kai's amendment.

MR AMBROSE LAU (in Cantonese): Mr Deputy, the impact of the millennium bug problem can be very extensive, not only affecting professions associated with computers and information, but also government departments, banks, business organizations and communications as well as personal computers and items for daily use, such as fax machines, video cassette recorders and microwave ovens. Though the progress made by Hong Kong in debugging has been good, by 2000 there are still likely to be problems carrying partial impact as well as an outbreak of numerous legal disputes. For all these, the Government should do assessment, and adopt safeguards or contingency measures.

Judging from the progress so far made by Hong Kong in debugging, government departments, the banking system and some 80% of the major enterprises have been making better progress. The likelihood of developing problems at that time is greater in the case of SEMs as, given the fact that they lack in resources and expertise, it is estimated that only about 30% of them do address the millennium bug problem squarely. Moreover, for the reason that the millennium bug problem has no territorial boundaries, places nearby can still affect Hong Kong even if some of the Hong Kong enterprises do manage to have the work of debugging done extraordinarily well. By 2000, many SEMs that have factories in the Mainland might run into operational problems. Because of the chain reaction effect, failure on the part of SEMs to be Y2K-compliant might in turn affect Hong Kong's major enterprises. According to expert assessment, the global total of legal expenses and damages to be generated by lawsuits relating to the millennium bug problem is estimated at over US\$1,000

billion. In the case of Hong Kong, the amounts to be involved in legal disputes stemming from that area are going to be flabbergasting. In order to monitor the progress of bug removal, the Government set up a multi-departmental steering committee in March 1998 composed of representatives from relevant policy bureaux, the Information Technology Services Department, the Electrical and Mechanical Services Department and the Office of the Telecommunications Authority. However, with regard to the large number of legal disputes likely to stem from the millennium bug problem, and the scope and gravity of the problem, researches and assessments have not been adequate.

Mr Deputy, regarding preventive measures, the Government should place emphasis on helping SEMs solve the problem as major enterprises and major organizations have sufficient knowledge and resources to solve the millennium bug problem. Generally speaking, enterprises' concern about the millennium bug is two-fold: Firstly, problems likely to crop up from computers or embedded systems not related with computers, and secondly, external risks involving suppliers of original materials. SEMs have not been giving the first issue sufficient attention; nor do they understand the second one. All in all, there is inadequate awareness of risks. For this reason, the Hong Kong Productivity Council set up a Y2K Service Centre in May last year to help SEMs solve the millennium bug problem. The Service Centre is mainly responsible for providing SEMs with equipment, analysing the effects of the millennium bug problem, and data conversion. In addition, the Centre also holds seminars and training courses to give SEMs instructions on solving the relevant problem. There are, however, numerous small and SEMs in Hong Kong. Many of them have yet to realize the gravity of the problem. So the Government should specifically allocate resources to help draw the attention of SEMs to the millennium bug problem, and give them instructions on solving the problem.

Mr Deputy, in addition to making full efforts to adopt preventive measures, the Government should also prepare contingency measures for the numerous legal disputes likely to stem from the millennium bug problem. As we all know, Hong Kong is a society under the rule of law. The effective operation of every trade or profession and the people's legitimate rights and interests are protected by effective operation of the rule of law. It is possible to visualize the gravity of the consequence if in 2000 there are indeed a lot of legal disputes stemming from the millennium bug problem. So the Hong Kong

Progressive Alliance supports Mr Jasper TSANG's proposals to examine the need to legislate for stipulating the civil and criminal liabilities associated with the millennium bug; set up a tribunal dedicated to handling small claims litigation relating to the millennium bug; encourage the public to resolve relevant legal disputes by way of mediation or arbitration; and strengthen education and publicity for members of the public. Here I must add that publicity and assistance for SEMs should be stepped up so as to protect the large number of SEMs for them to achieve Y2K-compliance.

Mr Deputy, I so submit

MR YEUNG YIU-CHUNG (in Cantonese): Mr Deputy, going on recently in the United States are several millennium-bug-related lawsuits. There are already verdicts for some. A case took place in late 1998, involving a chain grocery store, which, with a "card scanner" not capable of reading credit cards with validity going beyond the year 2000, lost more than 30% of business. The store sued the supplier for damages, won the case and was awarded US\$250,000 in compensation. In such a technology-related compensation case, people might differ in their views as to which party should be held primarily responsible. However, the reality is that people sustaining damages have the right to pursue the matter of responsibility. So the situation does not allow us to be optimistic blindly.

Foreign parliaments and their select committees already have the worry that economic disputes stemming from the millennium bug problem might be like falling dominoes and keep on growing. In late May the Secretary for Justice also called upon the legal profession and all sectors to prepare for the emergence of legal problems associated with the millennium bug, handle contract documents with care, and reduce lawsuits by resolving disputes via mediation or arbitration. However, in this respect, the Government's research and promotion obviously lag behind some foreign countries, and it also neglects the possibility of having a flood of legal cases.

Can Hong Kong afford to shelve the problem and just ignore it? The answer is in the negative. There are several hundred thousand SEMs in Hong

Kong. However, the companies that we have been able to monitor over the past year are limited to public utilities, and those companies and organizations under government supervision. With regard to SEMs not giving sufficient attention to the millennium bug problem, and those not able to solve the millennium bug problem for reasons of limited resources, there is not much monitoring that the Government can effect. Furthermore, how many companies can be 100% sure about the success rate of debugging. In the event that something does go wrong, will their insurance companies pay compensation for millennium bug issues?

I dare not underestimate Hong Kong's chances of getting a flood of legal cases, the reason being that the potential "infectiousness" can be quite alarming. Even one earthshaking precedent-setting claim case is sufficient to attract others who may follow suit.

It is the Government's responsibility to gather information on the possible impact on Hong Kong in the event of a flood of legal cases associated with the millennium bug. My suggestion is, therefore, that even if the Government itself is not going to do the assessment, it should still invite, as soon as possible, consultant firms with experience of forecasting millennium-bug-related lawsuits in the United States to do the same assessment for Hong Kong.

Mr Deputy, I would also like to talk about how people's understanding of legal problems associated with the millennium bug can be enhanced so as to make them understand the importance of their rights and responsibilities. I am going to dwell on two points: Firstly, enhancing peoples awareness of the responsibilities they have to face, and secondly, consumers' rights to pursue claims.

First of all, it is about the management hierarchy of enterprises. The enterprises should understand that failure to solve the millennium bug problem might, in addition to causing them business losses, render them responsible for product liability in the event of deaths of people or damage to properties. Obvious examples may include security system companies, lift companies, goods delivery companies, and management companies looking after building facilities controlled by central computers. There might even be a situation in which investors sue the top management of their companies for causing losses to

the companies as a result of their failure to solve the millennium bug problem.

In early April this year, the Singaporean Government sent a second written reminder on millennium bug to 100 000 registered companies. I think this is a simple measure worthy of consideration by Hong Kong. If the Government now also issues a written reminder, my suggestion to the Government is that the letter must remind them of the liability risks likely to stem from the millennium bug problem.

On the other hand, how much consumer rights protection can consumers of all levels enjoy?

Leaflets published by the Government recently remind the public that before buying any computer hardware or software or electrical appliances, they should check with shopkeepers to find out if the items are Y2K-compliant. Such a reminder is necessary. However, to ordinary consumers, the so-called "checking with" merely means referring to the commodity advertisement to see if there is a remark saying that the product is Y2K-compatible. Consumers who know more might browse the relevant company's website to find out what sort of Y2K test has been conducted. Most of the tests are conducted by the manufacturers. Given the fact that manufacturers have already tried their very best to produce products that "ought" to be Y2K-compliant, but it is later found out that they are not what they are supposed to be, can the Government and the Consumer Council provide consumers with greater protection of their rights and interests? This is going to be a contentious point.

Perhaps there might be some assurance for new electrical appliances. But how about old products? A major computer company in the United States is only prepared to offer warranty for products sold after 7 October 1997 to be Y2K-compliant, making it known that products sold before 7 October are defective and that to them only limited warranty is available. It goes without saying that consumers are not happy with this. Consumers are very keen to know if the public can ask for replacement of products or any defective parts.

Please do not underestimate the potential risk posed to Hong Kong by the legal problems of the millennium bug. Mr SIN's amendment oversimplifies the matter. His emphasis is on the point that time is too short for legislation.

Not to legislate for the sake of legislation is the point stressed by Dr Raymond HO. I am of the view that as the problem is already there, it will not fade away automatically because we do not legislate. If we endorse such a simple motion, we are going to give the community a wrong message, indicating that even the Legislative Council does not care about legal problems associated with the millennium bug and, therefore, there is no need for the public to be edgy.

So the problem is a serious one. I call upon you, Members of a responsible Legislative Council, to support the original motion.

MR JAMES TIEN (in Cantonese): Mr Deputy, with regard to several major agenda items of today, it seems that our three main political parties are playing the role of the royalist party by rotation. In the morning, while debating the bill on alcohol concentration, the Democratic Party and the Democratic Alliance for the Betterment of Hong Kong (DAB) played the role of the royalist party, with the Liberal Party playing the role of the opposition party. In the afternoon, while discussing the Immigration Ordinance, the Liberal Party and DAB played the role of the royalist party, with Democratic Party playing the role of the opposition party. Finally, this evening DAB plays the role of the opposition party, with the Liberal Party supporting the Democratic Party's amendment and playing the role of the royalist party.

Mr Deputy, this motion is on how to deal with legal problems stemming from the millennium bug. With regard to the third and fourth points of Mr Jasper TSANG's motion, I totally agree with Mr SIN Chung-kai's view that 100% support should be given. The reason is that it makes mention of encouraging and assisting the public to resolve legal disputes through mediation and arbitration, and strengthening education and publicity so that the public may have a correct understanding of their rights and the means for claiming compensation when they suffer losses arising from the millennium bug. We fully support this.

However, with regard to the first and second points of the motion, namely, examining whether there is a need to legislate for stipulating the civil and criminal liabilities associated with the millennium bug, and setting up a tribunal dedicated to handling small claims litigation relating to the millennium bug so as to alleviate the pressure on the Judiciary, the Liberal Party holds different views.

Mr Deputy, as a representative of the industrial and business sectors, I believe that to members of the industrial and business sectors, the fewer disputes, the better; the fewer lawsuits, the better; the fewer court actions, the better. Hitherto nobody has had experience on how to deal with the millennium bug problem, including all lawsuits. I also hope that the problem will not turn out to be that serious. In the existing laws of Hong Kong, laws relating to civil litigation, contracts, and sale of products are more closely related with transactions among members of the business sectors. If we legislate for the millennium bug problem, and put in civil and criminal elements, then, as pointed out by Mr Jasper TSANG in the beginning, there will be endless business for lawyers. Now we are left with five and a half months only. If this piece of legislation does not turn out to be flawless, then what can we do? In many cases, we bring in foreign legislation. But in the present case we cannot do so as most foreign countries do not have legislation in this respect.

Both Mr Jasper TSANG and Miss Margaret NG have made mention of the Year 2000 Readiness and Responsibility Act passed by the Congress of the United States on 1 July this year. The said Act just simplifies the American civil litigation proceedings, and basically is not a piece of new legislation. Surely, in the United States the appellant mechanism and the prosecution mechanism are very complicated. They have class action, something that is absent in Hong Kong. However, the purpose of the said Act is just geared to provide for lawsuits, if they should appear in the future, so that they will not drag on for 10 or more years. It is just for that. It is not really drawn up for use in litigation.

Mr Deputy, Miss CHOY So-yuk claimed to be representing the SEMs. I have also made inquiry with the Hong Kong General Chamber of Commerce in a bid to canvass their views. According to the reply from the General Chamber of Commerce, they think that by now it is advisable to adopt, as far as possible, the third and fourth points of Mr Jasper TSANG's motion, and help them solve the problems by approaching, as many as possible, software companies and members of the information technology sector. If, on the one hand, we now get people to do debugging, and, yet on the other hand, draw up legislation to stipulate that in the event that the work of debugging is not done properly or in the event that companies assisting in debugging develop problems themselves,

they will be required to shoulder civil or criminal liabilities, then I believe the immediate response from many bug buster companies is one of fear. They will ask themselves how much they can earn in the end, given the fact that services have been provided and yet they are liable to prosecution should anything go wrong. Why not just refrain from doing anything?

The Hong Kong Productivity Council is an example. The Council is a government-subsidized organization that has set up a department to help SEMs solve problems in that area. It is my belief that they definitely do not want to have legislation stipulating that should debugging develop problems or turn out to be not thorough enough, then they will be liable to prosecution by SEMs. In that eventuality, then how will they deal with the matter?

Mr Deputy, I have another view on the tribunal. Hong Kong has not got personnel experienced in dealing with matters in this respect, nor does the legal profession have such personnel. If the tribunal is to be set up, where can we find so many experts to handle those cases? Given the fact that they do not have experience, what sort of verdicts can they make? It is likely that disputes then arising might drag on even longer. I believe that members of the information technology sector are probably only SEMs. Most of them are not the same as Bill GATES of Microsoft. This is the most important point. That being the case, are we going to encourage these SEMs to sue those small and medium sized companies that are engaged in debugging? If it is so, then is it fair?

Mr Deputy, in fact it is the Liberal Party's hope that the work of debugging can go on, and even progress further and better. We are not looking forward to a situation in which software experts or bug buster companies refrain from putting real efforts into debugging for SEMs for fear of prosecution as a result of legislation made. For this reason, the Liberal Party opposes Mr Jasper TSANG's motion, but supports Mr SIN Chung-kai's amendment.

Thank you, Mr Deputy.

MR ALBERT HO (in Cantonese): Mr Deputy, it seems that the focus of Mr Jasper TSANG's motion today is on lawsuits stemming from the millennium bug

problem, and an attempt to solve the problem. As a matter of fact, one point more worthy of our consideration is whether the Government's current policy is adequate in assisting to solve the millennium bug problem or minimize the impact of the millennium bug problem on the community.

According to Mr Jasper TSANG, we should legislate for matters concerning compensation. However, legislation should not be made solely for that purpose. As pointed out by Honourable colleagues, there is not such a piece of legislation, and that even in the United States there is only a bill. However, there are laws making stipulations on disclosure of information and the exchange of information among relevant companies so as to let the people know better the situation of debugging. Take the United States as example. They have a Year 2000 Information and Readiness Disclosure Act 1998 which mainly covers this aspect. The so-called Good Samaritan Act also talks about such matters and asks for maximum disclosure.

Earlier in the Session we raised an oral question in connection with disclosure made to the community by some public organizations. According to the Secretary for Information Technology and Broadcasting's reply, there are very clear guidelines as well as many indicators, but there is no legal responsibility. I think, conversely, legal responsibility is more significant. Why not legislate for this aspect? To legislate now is very late. We have just talked about the timetable. However, I am still of the view that it is barely possible to draw up legislation to stipulate disclosure. Though time is a bit tight for formulating such a piece of legislation, it is still less complicated in comparison with setting up a tribunal.

In the second place, I fully agree with what Miss Christine LOH said. At present, there is no third party verification process for the debugging procedures of every organization. It is especially true of government departments. I remember that officers from some government departments came to panel meetings to explain their debugging progress. According to the officers responsible, they have some forms to be filled out and signed by relevant officers after checking to acknowledge completion of debugging. But the signing officer in fact knows nothing about debugging, and has to rely on certifying document from the engineer responsible for debugging on the front

line. This being the case, is it necessary for public organizations to have an auditing system, that is, the independent audit mentioned by Miss Christine LOH? This, I think, merits our consideration. I am looking forward to the Secretary for Information Technology and Broadcasting's reply.

Let me go back to the several points raised in the motion moved by Mr Jasper TSANG. Firstly, Mr TSANG brought up the point as to whether or not legislation should be drawn up to limit liabilities. As just pointed out by other Members, it is not fair to legislate at this point of time to limit liabilities arising from tortious acts stemming from the millennium bug problem, the reason being there is a right to claim once there is damage. The millennium bug problem does not come about all of a sudden. We are able to foresee it. Is it fair to legislate now to limit the right to claim compensation?

Secondly, about the cooling-off period. You need have no worry. Given the complexity of our judicial proceedings, a lawsuit relating to the millennium bug problem is bound to take time. Naturally there will be a cooling-off period. Even if it is to be handled by a dedicated tribunal, such a lawsuit still cannot be a simple one. According to my experience, there definitely will be sufficient cooling-off time and it surely is going to be longer than 90 days. Therefore, I think that a cooling-off period is not necessary. Earlier on someone asked whether the current system could solve the problem and whether members of the Judiciary had such professional knowledge. I can tell Members that cases heard by our courts often involve a lot of professional knowledge. Medical cases involve professional knowledge, do they not? Besides, expert witnesses are required to testify in cases involving engineering issues, industrial accidents, mechanical breakdowns, reasons for breakdowns, and reasons for collapses of slopes. Some may want to know the reason for not asking experts to hear those cases. The reason is that also involved are some other legal liabilities. The causal relationship that we talk about in fact involves many legal problems, for example, the foreseeability of the event, the presence or absence of negligence, and the means to calculate compensation. The approach usually adopted by our courts is to get expert witnesses to assist in solving the problems. Therefore, I am of the view that our existing system definitely can solve this problem. If it is said that there is a shortage of manpower, then manpower is still required for the establishment of a dedicated tribunal. Moreover, many experts do not understand law. How can they determine the presence or absence of responsibility, and assess the damages? These are questions which experts are not in a position to answer. To set up a

tribunal is, therefore, not a solution to the problem.

Turning now to the point on saving costs. It is very difficult to save money, unless the tribunal allows no lawyer or expert witness, and the presiding officer is an expert and is allowed to hear the cases himself and conduct his own investigations. But our system is not like that. Our system is a confrontational system under which the plaintiff and the defendant each gives evidence, and has his own representative for the presentation of arguments. The judge does not conduct his own investigations or collect his own evidence. This is not feasible. We indeed have many tribunals now. But they are mostly administrative tribunals seldom using court proceedings. Probably there are a few rare exceptions, for example, the Small Claims Tribunal. However, their proceedings are more simple, not complicated. If it is necessary to collect evidence, then, as just said, it is definitely necessary to set up a confrontational system. Therefore, I do not think that the method proposed by Mr Jasper TSANG is a solution to the problem. If it was indeed otherwise, our system would have to undergo a fundamental change.

In fact, I have the feeling that people are going to wait. They will wait for the conclusion of the biggest lawsuit and then negotiate a settlement with computer companies themselves. This is the situation that is most likely to come about.

With these remarks, I support Mr SIN Chung-kai's amendment. Thank you, Mr Deputy.

MR BERNARD CHAN: Mr Deputy, I appreciate very much the Honourable Jasper TSANG's move to sponsor this motion in order to raise people's awareness of the Y2K problem. We have been so used to automatic systems around us that we are not aware that these computer-controlled systems are not automatic at all. They need our proper attention and maintenance.

I share Mr TSANG's concern that a large volume of millennium-bug-related legal disputes will disrupt our society. The insurance industry is one of the parties involved if litigation arises. The public has shown concern about the extent to which Y2K-related risks will be underwritten and whether the insured will be entitled to compensation if they suffer Y2K damages. I would

like to take this opportunity to clarify some popular misconceptions.

As a matter of principle, insurance policies underwrite risks arising from fortuitous, or unexpected events. Foreseeable damages are out of the scope of insurance coverage. The Y2K problem was not expected at the time computers were invented. But that is not the case now. Any Y2K non-compliant computer system running into trouble at the turn of the millennium is not accidental at all. It is a matter of negligence and improper management.

Whether Y2K risks will be covered by insurance policies or not hinge on the extent of the Y2K exposure and individual company policies.

On statutory requirements like employees compensation and third party motor insurance, the insured enjoys full coverage irrespective of the Y2K problem. An employee who gets hurt during work is entitled to compensation even if the injury is caused by Y2K-vulnerable systems. By the same token, any third party losses caused by a Y2K-non-compliant motor vehicle are subject to insurance coverage.

Holders of personal accident policies are also free from Y2K exclusions. A passenger hurt by a Y2K-non-compliant aircraft is eligible for claims. A cargo owner can recover loss or damage of his cargo caused by "unseaworthiness" of the carrying vessel on the ground of Y2K non-compliance on the part of the ship owner. This rule also applies to burglaries and medical insurance.

Y2K exhibits no impacts on insurance classes like sportsmen and performance bonds. Damages that occur from defined perils like commercial fire insurance, house owners and machinery insurance are subject to partial coverage.

For any loss, damage, expense and liability connected in any way with the failure of a computer, microprocessor or similar device to recognize the correct time or calendar date is very likely to be excluded from insurance coverage. These items include product liability, professional indemnity, director and officers liability, deterioration of stock, machinery breakdown and so on.

The aforesaid are only broad distinctions according to the grossly defined Y2K exposure. The insured public is advised to resort to their insurers for a

clearer interpretation of the insurance policies.

As regards Mr TSANG's suggestion of legislating against civil and criminal liabilities, I do not consider it appropriate. It is very difficult to point to a major responsible party in Y2K-related disputes, as most Y2K damages are results of multiple responsibilities and chain effects. The costly litigation will become a heavy burden for all parties involved. The badly off parties are very likely to end up on the downside. Mediation is surely a more viable and desirable option in dealing with these disputes.

Insurance policies are contracts subject to principles of tort, and contractual terms and conditions. In the event that the Y2K problem is involved in the litigation, relevant experts can be invited for advice. It is not necessary to establish a specialized tribunal for this purpose.

I believe that education and publicity are necessary for promoting people's awareness of the Y2K problem. They should be encouraged to take precautionary actions to deal with the issue. In this regard, I support the amendment and oppose the original motion. Thank you.

MR CHAN WING-CHAN (in Cantonese): Mr Deputy, the year 2000 is just round the corner. However, it seems that members of the public do not quite understand the legal problems stemming from the millennium bug. It is the Government's responsibility to let the public understand the possible impact from the millennium bug so as to draw their attention to their own rights and interests. They will put in efforts to safeguard their rights and interests once they realize the impact from the millennium bug.

Members of the public using computers all know the cause of the millennium bug problem. It is due to the fact that computer data are unable to deal with the Y2K date change. But they probably do not realize that the consequences arising from the date problem can be beyond imagination. People's losses arising from matters ranging from breakdowns of daily appliances to chaos in the financial set-up can be minor as well as serious. In the event that there are disasters on high-risk days of the millennium bug, they might give rise to a lot of lawsuits. For instance, if the computers of stock exchanges or banks develop problems, then investors and depositors will suffer losses. Computer breakdowns might even cost people their lives. Consequently, there might be unprecedented repercussions and lawsuits in

society. In order that they can know how to pursue claims in any eventuality, the public must clearly understand their rights and interests in law.

To enhance the public's ability to deal with the millennium bug, it is necessary to provide them with sufficient and correct legal knowledge about computers and related issues. Now people may download from government websites software to check the date problem of personal computers. Rectified software is also available from websites of software producers. The public at present is, therefore, able to cope with the basic work of inspection and rectification. However, with regard to legal knowledge, there can be accomplishment only if there are vigorous publicity and dissemination on the part of the Government.

The Information Technology and Broadcasting Bureau and the Legal Department should work more on this, instead of just making empty talks on the millennium bug problem in the Consumer Council's *Choice* magazine. What the public needs is in-depth legal advice presented in a way that is easy to understand, not feature articles in a monthly magazine aimed at a limited number of readers. Although the Government has published more "leaflets" to explain to the public the Y2K date problem and its direct impact, it is difficult to let the public understand many of the indirect impact and the complexity through leaflets. In my opinion, a positive measure is to produce more TV programmes similar to "Beyond 2000" to give the public a correct understanding of their rights and the means to claim damages in the future.

Moreover, the best solution is for the aforesaid Information Technology and Broadcasting Bureau and Legal Department to make temporary deployment of staff to solve people's problems or questions so as to provide the public with professional knowledge. The Y2K date problem might, for unforeseeable reasons, lead to problems. So to let the public fully understand the nature and effects of the problem can help to reduce its impact on the community.

Mr Deputy, we must prepare for the worst, strengthen and enhance the awareness of the risk, and make the best preparation.

Mr Deputy, I so submit and support the original motion moved by Mr Jasper TSANG. Thank you.

MR CHAN KAM-LAM (in Cantonese): Mr Deputy, I am of the view that the issue on legal problems associated with the millennium bug raised by Mr Jasper TSANG today is worthy of our attention. The amendment moved by Mr SIN Chung-kai can lead to very serious consequences. The reason is that if his amendment wins Members' support and is passed, then it is most likely that the Government will be required to do nothing. In the event that the millennium bug problem does lead to disaster in the millennium, then the public probably is not going to know how to deal with it. Therefore, I call upon Members to exercise caution when casting their votes. When we suggest ways for the Government to do something, we must understand that there is not much time left. Similarly, many technicians have been fixing computers, and are also working against time. But that does not mean that we should do nothing. We must find ways to do the work. Therefore, today I want to point out some of the legal problems relating to the millennium bug.

In Hong Kong, mediation and arbitration have all along been applied to commercial or civil disputes. The Hong Kong International Arbitration Centre (HKIAC) and Mediation Council has been enjoying good reputation internationally. Many foreign enterprises having business dealings with enterprises in Hong Kong or China opt to use the mediation and arbitration mechanism of Hong Kong to settle business disputes. Under the shadow of possible heavy economic damages to be caused to international business by the millennium bug, some 50 local organizations, for example, the Kowloon Motor Bus Company Limited and the Hongkong Telecommunications Limited, have signed a millennium accord under the arrangement of the Hong Kong Institute of Arbitrators, undertaking to handle millennium-bug-related compensation claims by alternative means of settlement such as mediation, arbitration and so forth. The purpose is to give other parties a friendly message indicating that the enterprises are willing to deal with issues on liabilities stemming from the millennium bug by concurrence. The accord can be linked to the two mediation networks in England and the United States, thus providing a way to mediate international compensation disputes that might appear through overseas organizations. So if the Government gives it a push or some help, or even assist in encouraging public or private enterprises to sign mediation or arbitration accords, then there will be benefit to the further co-operation between

local enterprises and their foreign counterparts.

As a matter of fact, to deal with legal disputes relating to the millennium bug, Singapore, our friendly competitor, has long ago taken the initiative to actively map out ways to resolve possible disputes stemming from the millennium bug by means of mediation so as to maintain a favourable environment to those doing business in Singapore. Early this year, the Singapore Mediation Centre held a ceremony marking the signing of the "Millennium Accord", encouraging various public and private organizations to resolve disputes relating to the millennium bug by means of mediation or negotiation. Though the HKIAC is a signatory to the Accord, it is apparent that the efforts put in by the Singaporean Government to promote settlement of business disputes by conciliatory means have been more positive and spontaneous than those of the Hong Kong Government.

The merit of mediation and arbitration lies in the fact that disputes can be resolved in a more efficient and less expensive way. I believe that to many SEMs or consumers, to resolve disputes by means of mediation, which is less time-consuming, or arbitration, which is less expensive, is better than to spend time in courts to discuss or debate terms of contracts as it can minimize the time or costs required. Given the fact that Hong Kong already has the reputable HKIAC and Mediation Council, the Government should bring into full play its inherent strength to actively encourage the public to try to resolve disputes relating to the millennium bug by methods other than litigation.

Another justification for resolving disputes relating to the millennium bug by mediation or arbitration is the advantage of division of labour. A mediator or arbitrator must have certain type of professional knowledge, and is required to receive appropriate legal training. Mediators or arbitrators assigned to take up the work of mediation or arbitration are persons with the relevant knowledge or background. They are often in a better position to grasp the technicality and crux of the disputes, and be able to give assistance to the disputing parties to resolve the problems. As far as I know, the Mediation Council, anticipating numerous millennium bug-related disputes, is actively training more members of the local information technology sector to be mediators so as to let these professional people help to deal with disputes stemming from the millennium bug problem.

In view of the advantages given above regarding resolving millennium-

bug-related disputes by mediation or arbitration, I call upon Honourable colleagues to support Mr Jasper TSANG's motion.

At the same time, I am also very surprised. There is no need for Mr SIN Chung-kai to delete in his amendment all the proposals of Mr Jasper TSANG as he does support some of the proposals contained in Mr Jasper TSANG's motion.

Thank you, Mr Deputy.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mr Jasper TSANG, you may now speak on Mr SIN Chung-kai's amendment. You have 15 minutes.

MR JASPER TSANG (in Cantonese): Mr Deputy, at the time when I drafted this motion, I well understood that of my four proposals, the first and the second are more controversial. If I were just mindful of how to manoeuvre the motion through the Legislative Council smoothly, I naturally would have deleted from it the parts considered by me to be controversial. If Honourable colleagues later vote in favour of Mr SIN Chung-kai's amendment, then in my opinion, it is really a pity. The reason is that we are going to give the Government a message that even the Legislative Council does not want the Government to consider the idea of legislation, and there is also no need to consider setting up a dedicated tribunal. Surely, we already have a legal system. Quite a few Members have just reminded me that those so-called millennium-bug-related lawsuits are merely business lawsuits, and that in this respect we have law of contract, law of torts and various statutes. However, there is no precedent for matters involving the millennium bug, and the millennium-bug-related problems are going to be very common and extensive.

The information just given to us by Mr Bernard CHAN is very meaty and thought-provoking. According to him, there is already a millennium bug problem in the insurance industry. Members of the insurance industry told us clearly that they are aware that the problem is very likely to come about and that if it does, it is not going to be a surprise. According to him, in the event that

machines run into accidents on account of the millennium bug and, as a result, cause casualties, there will be compensation from insurance. But how about the responsibilities of those who provide the factory premises, those who own the vehicles or those who drive the vehicles? In fact, in the United States an insurance lawsuit is now in progress. The insured is under obligation to take measures to minimize possible losses in the event of an accident. So upon the appearance of the millennium bug problem, the insured deemed it his responsibility to get someone to fix the millennium bug problem. However, the insurer also checked with the insurance company if he could get compensation for the US\$30 million that he spent to fix the millennium bug problem. According to the terms of the insurance policy, compensation was payable for expenses incurred as a result of efforts made to minimize damage. However, the insurance company denied the claim for compensation. But the terms of the contract have already specified the relevant liabilities. There is certainly legal basis for the negligence mentioned by us as well as for the liabilities stated in the contract. But can these laws be applied to the millennium bug problem when there are lawsuits? Given the absence of any precedent case, a very distinctive and interesting case will set the precedent. However, the current issue is really very extensive.

So, involved here is a situation just mentioned by Mr Howard YOUNG. According to him, to hastily legislate now might lead to uncertainty. I think it is just the other way round. I think right now there is uncertainty. Please do not imagine that legislation does a service or disservice to certain people. The purpose of legislation is to ascertain the rules of the game. The reason is that a new problem has cropped up. The problem is never seen in the history of human civilization; it is also one that has never been handled in the history of the legal system. Should we, precisely because of this, start looking into the matter by beginning with legislation? I agree that the time factor is a problem. However, doing something late is still better than doing nothing at all. Here is an example. When C.A. Pacific ran into trouble, we quickly did some patching-up work to the legislation. At present, the American Y2K laws are applicable right up to the year 2003. According to current estimate, the first half of the year 2000 is not bound to be the peak season of litigation. Surely, we do not legislate for the sake of legislation. However, if there is indeed a need, then is it not more advisable to look into the matter earlier? If we wait until next year when there might be a flood of lawsuits stemming from the outbreak of the problem, will it be a bit too late to work on the legislation and then realize that there are numerous legal loopholes to attend to?

I also know that many people worry about the tribunal. However, as this is a highly professional problem having extensive effects, then should we, on the basis of the same reasoning, deal with it in a special way? So, please think it over. Now we are not trying to pass certain law, we have finished the work in the area of legislation. Nor are we trying to force the Government to legislate. We are merely asking the Government to see if it is necessary to conduct some research on legislation. If the Government is not asked to do even that, then are we neglecting our duties? Why should we give the Government an excuse to do nothing?

Thank you.

THE PRESIDENT resumed the Chair.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I would like to thank Mr Jasper TSANG for moving this motion to give us a chance to discuss the Y2K problem, or the millennium bug problem, as it is commonly called. I am even more thankful to various Members who have spoken as well as those who remain in this Chamber. Although they have gone through three days' meetings and more than 35 hours of debate, they were still very enthusiastic in taking part in this discussion.

With the year 2000 drawing close, work has been carried out vigorously to resolve the Y2K problem. Some people are of the opinion that in view of the great diversity and number of computer facilities and embedded systems that might be affected by the Y2K problem as well as the difference in impact because of different designs and the fact that the deadline for solving the problem is not to be changed, the Y2K problem may give rise to a large number of legal disputes. As a matter of fact, the emergence of such a situation bears a close relationship with whether the rectification work is comprehensive and whether comprehensive contingency plans have been put in place. If preparatory work in these two areas have been done properly, we believe many legal proceedings can in fact be avoided.

Judging from the actual preparatory work done by Hong Kong, both the Government and major service providers have made a lot of efforts in dealing with the Y2K problem. The Government has also constantly urged industrial and commercial organizations and the general public to take precautions.

In dealing with the Y2K problem, the Government has all along been taking a cautious and serious attitude. To co-ordinate rectification and contingency work carried out by various parties in Hong Kong, the Government set up a high-level inter-departmental steering committee at the beginning of last year to closely monitor the progress of the Administration itself and major service providers of non-governmental nature. It has also, through publicity, enhanced the public's knowledge of the Y2K problem to ensure the community as a whole can cross over to 2000 in a smooth and orderly manner. We have also kept reporting to the Legislative Council Panel on Information Technology and Broadcasting our work progress. We are pleased to learn that the efforts made by various sectors of the territory have gained recognition even by the international community.

According to the latest assessment made by the "Global 2000 Co-ordinating Group", a group made up of 300 major international financial institutions, of 48 assessed countries or cities around the world, Hong Kong is one of the top three regions which have achieved the most satisfactory results in making overall preparations. These three regions do not include the United States. The assessment working group has taken a full account of the work progress of seven important sectors of each region (namely, financial services, clearing and settlement, telecommunications, public transport, energy supply, water supply and government services) in dealing with the Y2K problem. The assessment results thus arrived are therefore very objective and reliable. Of course, we should not feel complacent as a result. As the scope involved by the Y2K problem is very wide, even if individual institutions have completed their rectification work, they will still need to take effective contingency measures to deal with some unpredictable system failures caused by the Y2K problem. Contingency plans can help reduce the negative impact caused by the Y2K problem to a minimum, thereby avoiding legal disputes arising from improper handling of the Y2K problem.

To put it simply, contingency plans for the Y2K problem can be divided into four levels:

- the lowest level consists of contingency plans formulated for individual major systems. For instance, the Government has formulated contingency plans for individual major systems which have not completed rectification before 30 June 1999.
- the second level refers to overall contingency plans formulated for individual departments or organizations. As for the Government itself, the Information Technology and Broadcasting Bureau issued in May this year a guideline on how to formulate such contingency plans to all government departments and asked various departments to complete the formulation of such plans before the specified date. Various bureaux have also asked major non-governmental organizations under their jurisdiction to formulate comprehensive contingency plans with respect to the Y2K problem to ensure that they can continue to provide essential services on the crucial date.
- the third level refers to contingency plans related to various sectors, which seeks to ensure organizations within the same sector can co-operate in terms of their operation. Even if individual organizations are affected by the Y2K problem, the overall operation of the relevant sector and essential services can still be able to operate in a normal manner as far as possible. Let me cite the financial sector as an example. The Financial Services Bureau is now working with regulators of the financial sector to formulate an all-embracing contingency plan for the whole sector. The plan is expected to be completed by September this year.
- the last level refers to territory-wide contingency plans. The Working Group on Y2K Contingency Planning under the Steering Committee on Year 2000 Compliance is now formulating territory-wide contingency measures on the basis of the existing disastrous contingency plan. The overall plan should be ready by September. We will report to the Panel on Information Technology and Broadcasting our work progress and publish the relevant arrangements in due course.

We cannot solely rely on the Government and individual major service providers if Hong Kong is to cross over to 2000 smoothly. Other institutions, as well the public, need to take preventive measures actively. As the saying goes, "prevention is always better than cure". To have all the preparatory work done in advance is always the best means to safeguard our personal interests. It is far better than making claims through legal means after the occurrence of some accidents.

Since its establishment in April last year, the Information Technology and Broadcasting Bureau has carried out a lot of publicity activities to give the public can a better understanding of the Y2K problem. The relevant publicity activities include:

First, to publish information related to the Y2K problem through dedicated websites set up by the Government for the purpose of tackling the Y2K problem, including problems of legal proceedings possibly caused by the Y2K problem and relevant homepages to help the public understand their legal liabilities and rights;

Second, to distribute more than 1.3 million copies of *The Year 2000 Problem for Computer Systems and Embedded Systems Check-lists* through different channels to introduce to the public the influence the Y2K problem may exert on general household electrical appliances, office and factory equipment and building management systems and installation, as well as providing guidelines on how to deal with systems and equipment not in compliance with the Y2K standard;

Third, to co-operate with the Consumer Council and introduce to the public issues closely related to consumers through the monthly magazine, *Choice*. These issues include the possible impact of the Y2K problem on consumers, how to safeguard the interests of consumers, as well as channels for making claims for losses arising out of the Y2K problem;

Fourth, the Hong Kong Productivity Council has, in order to help small and medium enterprises (SMEs) to formulate Y2K contingency plans and understand the importance of formulating the plans, held a series of workshops and seminars from May to July this year. Recently, it has specially compiled a set of guidelines on formulating contingency plans for SMEs for the reference of

various enterprises.

From now on until 2000, we will further step up our publicity work to give the public a proper understanding of the Y2K problem and the possible impact that may be brought about by this problem. On the other hand, we will actively encourage and assist various important service providers to publish their preparatory work to allay the worries of the general public. Activities under preparation include:

First, Radio Television Hong Kong has, in a television programme entitled "Beyond 2000" shot recently, introduced in great detail the preparatory work done by various major service providers with respect to the Y2K problem. We are now editing the programme into video tapes for broadcasting in public housing estate shopping arcades, elderly hostels and social service centres throughout the territory for the purpose of publicity;

Second, to co-operate with the Hong Kong Productivity Council to organize a large scale seminar in August this year to give an introduction on the preparatory work done by various trades and professions.

Mr Jasper TSANG's original motion has mentioned the point that the Government should examine whether there is a need to legislate for stipulating the civil and criminal liabilities associated with the Y2K problem. We have considered this issue very seriously. We must understand that commercial disputes possibly arising out of the Y2K problem may be, in principle, similar to disputes possibly arising out of other commercial transactions. An American case cited by Mr YEUNG Yiu-chung earlier on precisely illustrated the fact that proceedings related to the Y2K problem could be dealt with properly in accordance with general commercial laws. To enact legislation to specially stipulate the legal liabilities arising out of the Y2K problem might even cause greater uncertainties. For instance, we will need to consider how to define what problems are directly caused by the Y2K problem, what measures are "reasonable preventive measures" in order to determine whether certain people need to or do not need to bear the legal liabilities arising out of the Y2K problem; we also need to define who shall assume the responsibility and what conduct shall be regarded as in breach of the provisions of the new ordinance? How to determine penalties? Should there be protective provisions to prevent the legislation from being abused? It will take a long time for us to study these issues in detail and to express these concepts by means of legal provisions in a

clear and specific manner. It is also impossible to find the answers within a short span of time. Therefore, it will not do anything to help solve the pressing Y2K problem. To wait for the legal problems to be clarified and finalized while the study on legislation is under progress, it is highly probable that the attitude of individual organizations will change from active to having reservations in solving the Y2K problem. As Mr James TIEN said earlier, legal uncertainties might even deter some computer service companies from carrying out work to rectify the Y2K problem for other organizations. This will slow down the progress of the original rectification work and may even prevent individual organizations from disclosing their work progress. Such a development will go against the Government's practice of encouraging various sectors to rectify their information systems expeditiously and disclosing their progress of rectification. Furthermore, if we legislate hastily within the limited time available before 2000, it will very probably boost the legal uncertainty elements with respect to how to deal with the Y2K problem. Summarizing the abovementioned elements, we consider it unnecessary to legislate with respect to the Y2K problem. This conclusion is consistent with the conclusion drawn by most governments in the world.

As I said earlier, civil proceeding arising out of the Y2K problem should, as ordinary civil proceeding, be dealt with in principle in accordance with general legal procedures. Rights and obligations with respect to both contracting parties will depend on the contents of contracts and the relevant legal provisions such as the Sale of Goods Ordinance and the Control of Exemption Clauses Ordinance. In fact, basically, consumers do not need to bother whether their losses are caused by the Y2K problem. What is more important is consumers can lodge claims for compensation in accordance with the contracts between them and suppliers or on the basis of the relevant legislation.

As for the original motion's proposal of setting up a tribunal dedicated to handling small claims litigation relating to the Y2K problem, we consider there is no need for the Government to do so. This is because disputes arising out of computer failures can involve extremely complicated causes. It is not easy to define whether the problems are really caused by the Y2K problem or other causes. Therefore, it is very difficult to stipulate what computer failure problems should be referred to the tribunal specially set up to deal with the Y2K problem by way of specific and clear legal provisions. Under the existing mechanism, consumers suffering from losses can already lodge their claims

through various channels. For instance, they can make their applications through the Small Claims Tribunal for cases involving losses of less than \$15,000. As for cases involving losses of more than \$15,000 but less than \$120,000, claims can be made through the District Court, while losses of more than \$120,000 can be recovered through the High Court. Of course, apart from legal proceedings, both parties can resolve their disputes through mediation, consultation or arbitration. To solve legal problems through these latter means should be encouraged.

Furthermore, as I said right at the beginning, we can say that Hong Kong has been doing quite well with respect to its overall progress of rectifying the Y2K problem. At the present stage, it is in fact immature to talk about the setting up of a special tribunal. If a large number of proceedings related to the Y2K problem really arise, the Government will, depending on the needs, increase manpower for the Judiciary flexibly. It will not take very long for the Government to make preparations for hiring an additional number of judges or holding more courts.

The original motion suggests the Government to consider encouraging and assisting the public in resolving legal disputes arising from the Y2K problem through mediation and arbitration. Members should well understand that it will normally cost a lot of money to resolve legal disputes through proceedings. Moreover, it might take a long time before the whole process can be completed. As for legal disputes that need to be resolved urgently, we can well adopt other more convenient means such as mediation and arbitration. Just now, I have said that these means warrant our encouragement. But as for what channels should be adopted eventually for resolving legal disputes, I think this should be chosen and decided by both contracting parties. It is not appropriate for the Government to intervene or make provision in this respect.

In conclusion, we think the original motion's argument, that is, the Y2K problem may give rise to a large number of legal disputes, fails to truly reflect the overall preparatory work done by Hong Kong. Some precautionary measures and solutions proposed by the motion are not essential or difficult to be put into practice. They are not able to help solve some of the legal disputes possibly arising from the Y2K problem. What is more, to legislate hastily will give rise to uncertainties and that will make the problem even more complicated.

To solve the Y2K problem thoroughly, we cannot rely solely on the Government or individual organizations. The entire society must make joint efforts to achieve the objective. Hong Kong has made definite achievements in solving the Y2K problem. On this sound foundation, the Government will adopt effective precautionary and contingency measures, as well as strengthening publicity and education work to ensure that the whole territory can cross over to 2000 smoothly.

I would like to urge Members to vote against Mr Jasper TSANG's motion and support Mr SIN Chung-kai's amendment. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr SIN Chung-kai to Mr Jasper TSANG's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Jasper TSANG rose to claim a division.

PRESIDENT (in Cantonese): Mr Jasper TSANG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Mr Michael HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU and Mr LAW Chi-kwong voted for the amendment.

Mr HUI Cheung-ching, Mr CHAN Wing-chan, Dr Philip WONG, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Miss Christine LOH, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr HO Sai-chu voted for the amendment.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the amendment.

Mr TAM Yiu-chung and Mr NG Leung-sing abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 18 were in favour of the amendment and five against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, 13 were in favour of the amendment, eight against it and two 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 Jasper TSANG, you may now reply and you still have one minute.

MR JASPER TSANG (in Cantonese): Madam President, I do understand that, with the assistance of the Government, the amendment of Mr SIN Chung-kai will definitely be passed, unless there came an early attack on our computers by the millennium bug.

I am of the view that he who presents well-intended advice in preparation for the worst always has a dilemma, namely, hoping that his prediction will turn out to be wrong. It is hoped that nothing is going to go wrong with us and we have really achieved full compliance as the Secretary for Information Technology and Broadcasting has just remarked that Hong Kong now ranks among the world's three best prepared places in terms of Y2K-readiness.

Here I would like to thank the 10 or more Honourable colleagues who have spoken in this debate. Like Mr SIN Chung-kai, I also thank the colleagues who prepared the research report for us and assisted us in collecting information.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Jasper TSANG, as amended by Mr SIN Chung-kai, 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 each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion

as amended carried.

PRESIDENT (in Cantonese): Second motion: Assisting the development of small and medium enterprises.

ASSISTING THE DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES

MR HUI CHEUNG-CHING (in Cantonese): Madam President, I move the motion as printed on the Agenda.

Why do we have to assist the development of small and medium enterprises (SMEs)? There are several reasons. First, SMEs are full of vigour, which, in most cases, are directly run by their investors who naturally want to do the best they can; for this reason, they can achieve maximum economic efficiency with the least resources. Second, SMEs can respond to changes with flexibility; they can also attain high efficiency at relatively low costs. In a word, they are "economical yet reliable". Studies on SMEs conducted in Japan have long since discovered that SMEs are actually an immense support for big enterprises. Third, small and scattered though they are, the SMEs in Hong Kong, taken as a whole, account for 98% of all Hong Kong enterprises, employ 70% of our total workforce, and occupy proportions ranging from 40% to 90% in the Gross Domestic Product (GDP) generated by a number of important industries. These facts all point to the importance of SMEs in the economy of Hong Kong, telling us that their significance is indeed not at all "small and medium".

In spite of their significance, some surveys have revealed that over just a short span of less than two years since the financial turmoil in 1997, the number of SMEs in Hong Kong has dropped from 288 000 to just about 250 000. I have invited Prof LIU Pak-wai and Prof RYC WONG to write a research report on SMEs and I have also consolidated the views and opinions of many people from among the SMEs. I hope the Government will accept the points made in the motion today, so that more can be done for the SMEs.

Madam President, owing to the gradual social advancement and changes, and also because of the low labour costs offered by our neighbouring places, it is no longer realistic to expect Hong Kong to provide cheap services or produce cheap products by making use of cheap labour. I agree with Mr TUNG Chee-hwa that enterprises must make the best use of information technology to enhance their competitiveness and transform themselves in the direction of high value-added productions.

Many management studies and real-life examples can tell us that the most significant factor determining the outcome of commercial competition nowadays is no longer "size" but "speed". Therefore, we should promptly seek to promote the application of information technology among SMEs, so as to shorten the time they have to spend on information gathering and to enable them to access the biggest possible pool of information with the smallest possible amount of human resources.

I understand that since the promotion of information technology in Hong Kong has had a history of three to four years only, most SMEs still somewhat fear and resist the application of computer technology. In addition, since many salesmen of information technology do not quite understand the needs of SMEs, the softwares they design for these enterprises are merely "impressive" in look but unable to save any costs and manpower in practice. That is why such software cannot possibly assist SMEs in their rapid business expansion. And, since SMEs do not have much resources at their disposal, they will not easily invest in such softwares, which are not at all cheap despite their unknown effectiveness, unless there are any urgent needs.

So, if we are to restructure our economy in the direction of high value-added industries, we must popularize the application of technology. The Government must step up its efforts of training up local students and our working population. It must also implement the recommendation of the Commission on Innovation and Technology by streamlining the vetting and approval procedures, so that more mainland talents in high technology can come to Hong Kong as quickly as possible to assist in the promotion of technology transfer. With an adequate supply of talents, we can upgrade our industries more easily; we can also popularize technological application, maintain our prices at reasonable levels, and enable our high value-added industries to

achieve value for money and to compete in the world market with confidence.

Many SMEs in Hong Kong are export-oriented. Unfortunately, the export volumes of Hong Kong have shrunk considerably in recent years. People usually lay the blame on our high production costs and lack of creativity. But there is also an urgent need for the Government to make more efforts in quite a number of macro-level areas, such as market promotion, negotiation skills and favourable terms of trade in the world market. Under the Budget released in March this year, the Trade Department will only increase its funds allocation for external trade relations by 7.6% and trade support and promotion by 7.7%. And, there is no increase in the funds allocation for trade negotiations and related activities. Why?

The import/export trade is one of the underpinnings of our economy. So, I urge the Government to allocate more resources to assist its development. It must seek more actively to open up more markets both overseas and in the Mainland. It must also review whether its existing efforts are adequate. For example, it must review the work of all our official or quasi-official representatives stationed overseas, so as to see whether the manpower is enough, whether they are doing their job well and whether they can have quick access to the latest information. The forthcoming accession of China to the World Trade Organization is sure to open up its huge markets still further. Over the years, Hong Kong has served as a window of China on the outside world in terms of foreign trade. For this reason, we already possess a geographical advantage which can give us an edge in getting business. The Government must therefore step up its studies on how best to assist SMEs in grasping this opportunity and on enhancing the middleman role of Hong Kong. The Government should even negotiate with the Central Government on whether or not it is possible to give priority to Hong Kong enterprises when opening up its markets. That way, Hong Kong enterprises will be able to establish a foothold in the Mainland ahead of others; this will help Hong Kong a great deal when it competes with foreign enterprises in the future.

Madam President, while the opening up of conventional markets is certainly important to SMEs, we must not, however, ignore the markets on the Internet. Mr Andrew GROVE, President of Intel, once remarked that if companies all over the world do not try to develop their business on the Internet as early as possible, they are sure to close down in five years' time.

I am of the view that in order to tie in with the development of information technology in Hong Kong and the drawing up of Internet trade regulations, including the Electronic Transactions Bill tabled before this Council in this meeting, the Government should conduct further studies on assisting SMEs in opening up markets on the Internet, so as to promote transactions on the Internet. At present, although the Hong Kong Trade Development Council (TDC) and the Hong Kong Productivity Council are already assisting SMEs in designing their homepages, it is still restricted to the "advertising" level. Private sector organizations also provide services on the Internet, however, if the Government can assist in the development of a market on the Internet, one which is designed especially for SMEs, with extensive coverage, systematic and professional classification of industries, credibility and ease of transactions, I am sure that the vigour of SMEs will be effectively increased, and this will certainly facilitate the entry of more SMEs into the world market and their participation in the latest development of trade transcending national boundaries.

Now that Hong Kong is moving along the path of high value-added industries, it is only reasonable to require that all services and products produced or designed in Hong Kong bearing the label of "Made by Hong Kong" should meet certain recognized international standards. Only this can bring out the value for money feature of our products and services and enable them to gain a footing in the world market. But most SMEs are not adequately aware of this point, which is why the Government must step up its publicity and promotion efforts, so as to bring home to SMEs the importance of quality accreditation with respect to market development. Specifically, it should encourage the SMEs belonging to different trades and industries to make the best use of internationally recognized quality accreditation bodies, so as to enhance their quality control, enhance their competitiveness and bring their services or products into compliance with international standards.

Besides quality accreditation for administration and management, quality accreditation for goods is equally important. With the development of high value-added goods, customers have become more and more specialized in their demands. An ordinary piece of garment, for example, may have to pass four to five quality tests. Calculations based on the value of orders received by SMEs indicate that the expenditure on quality accreditation usually accounts for 0.5% of the prices of goods. This is indeed rather high. Therefore, when the Government promotes quality accreditation services among SMEs, it must at the same time conduct studies on making use of market forces to force the relevant

bodies to lower their charges substantially. Only this can popularize quality accreditation.

Financing has always been the greatest problem for SMEs. Now that Hong Kong is promoting high value-added industries, SMEs are finding themselves having to face even heavier pressure from financing. Enterprises wishing to enhance their technological application and move along the path of high value-added activities must have both the "determination" and the "money".

But the only financing scheme which the Government has provided especially for SMEs is the Special Finance Scheme for SMEs. And, it must be noted that this scheme is just meant as an interim and expedient measure adopted to cope with the exceptional circumstances we are now facing. It cannot alleviate the financing difficulties of SMEs in the long term.

At present, financing for SMEs is mostly in the form of bank mortgages on landed properties. Once there is any downturn in the property market, banks will invariably try to reduce the risks arising from property depreciation by squeezing their lending, and under such a situation, even those SMEs with good business, credit and financial track records will be affected. Therefore, the Government should promptly carry out some studies to identify other forms of financing which do not have to rely too heavily on mortgages of landed properties.

The second board market should be able to assist some SMEs with good prospects and second fundamentals in financing. But the beneficiaries are basically still restricted to a relatively small number of elite SMEs.

The Government's improvements to the Special Finance Scheme for SMEs in April this year has received very favourable responses from SMEs. I am of the view that the Government should consider the idea of further developing the Scheme along the lines of the credit guarantee scheme adopted by California of the United States. The credit guarantee scheme in question has been operating in California for more than 30 years. Under this scheme, the State Government serves as a guarantor for SMEs applying for loans, and the amount guaranteed can be as much as 90% of the loan in question. The Government should explore whether it is possible to apply the successful experience of the United States to Hong Kong.

Later at this meeting, other Members belonging to the Hong Kong Progressive Alliance (HKPA) will speak in greater depths on the various problems faced by SMEs. I sincerely hope that other colleagues will also put forward their valuable opinions.

Madam President, as early as the 1970s, Taiwan, one of our major competitors, already started to put in place a comprehensive support system aimed at providing diversified assistance to SMEs. In Singapore, the government there runs as many as 61 assistance schemes for SMEs, covering all aspects of their problems. Even in the United States, Japan and European Common Market member states, many laws have long since been enacted to assist SMEs. All this shows the importance of SMEs in all economies. I understand that in these two or three years, the Government has started to realize the importance of SMEs. So, I now urge the Government to put in place a comprehensive assistance policy for SMEs, so as to enhance their ability to expand, increase their opportunities and create a favourable business environment. That way, the competitiveness of SMEs will increase, and they will be able to enjoy a healthy boom. Finally, I sincerely urge Members to support my motion.

Madam President, I so submit.

Mr HUI Cheung-ching moved the following motion:

"That, as the small and medium enterprises (SMEs) in all sectors are still facing a difficult operating environment, this Council urges the Government to expeditiously formulate a comprehensive policy to support the SMEs in order to increase their capability and opportunities for development, and to strive to create a favourable business environment, particularly by:

- (1) promoting the use of information technology in SMEs and the shifting of SMEs towards high value-added industries, and making efforts to train local talents and attract highly-skilled technologists from the Mainland and overseas;

- (2) providing additional resources to open up the mainland and overseas markets more vigorously;
- (3) actively considering setting up, through various support organizations, an Internet Shopping Mall for SMEs featuring competitive pricing, wide coverage and specialization, with a view to promoting business transactions through the Internet;
- (4) enhancing and promoting quality accreditation services in all sectors to tie in with the shifting of local industries towards high value-added industries; and
- (5) in addition to the Special Finance Scheme for SMEs, developing more financing facilities which do not rely excessively on using property as security, in order to more effectively cater for the SMEs' needs for capital in the long run."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr HUI Cheung-ching as printed on the Agenda be passed. We will now proceed to the debate.

DR RAYMOND HO (in Cantonese): Madam President, SMEs play a rather important role in the Hong Kong economy and have always been the backbone of local industries. SMEs also provide a large number of job opportunities and employ two thirds of Hong Kong's total workforce. Following the dominant trend of the world's economic development, SMEs will play a more and more important role, especially in the creation of employment opportunities. However, at present, SMEs in Hong Kong are faced with a rather difficult business environment. As a result, they fail to utilize their potential to the full and play their part in promoting Hong Kong's economic development. By giving appropriate support to these kinds of enterprises expeditiously, the Government can help promote their future development.

To enhance Hong Kong's competitiveness, it is important to encourage innovation and technological upgrading in local enterprises. This is especially

true for SMEs operating on a smaller scale. Actually, the Hong Kong Government did introduce some well-received schemes in the past, such as setting up the Hong Kong Industrial Technology Centre in 1992 which aims at helping new and smaller enterprises. This scheme also provides low-cost premises for newly established technology-based enterprises, and support in terms of management, personnel training, marketing, finance and technology during the start-up period of the enterprises. This scheme has been quite well-received since its establishment and I support it heartily. Recently, the Government has set up the Innovation and Technology Fund with an injection of \$5 billion to finance specific projects which will contribute to innovation or technological upgrading in the manufacturing and service industries. I also very much approve of this. In the past, especially when I was Chairman of the Technology Committee a few years ago, I had always urged the Government to set up similar funds.

However, the Government still needs to strengthen such support. The support provided to scientific research and development in Hong Kong is still less than that in our neighbouring countries and regions. In Japan, the relevant expenditure amounts to nearly 3% of its Gross National Product (GNP). Taiwan and Singapore spend about 1.8% and 1.2% of their GNP respectively on this, while Hong Kong spends less than 1%. If this gap continues, I fear that it will be hard for the development of high technology in Hong Kong to catch up with other countries. Therefore, the Government really needs to strengthen its support in this respect.

To develop high technology and high value-added enterprises, it is very important to have the necessary human resources. In the long term, we must train our local personnel. At the same time, we can strengthen our human resources by absorbing professionals from outside Hong Kong. Expatriate personnel should not be limited to professionals from the Mainland. Consideration should also be given to people from other regions and countries who can contribute to the development of innovation and technology in Hong Kong.

Insofar as market development is concerned, SMEs are also under the constraints of limited resources and greatly need the Government's support. Apart from providing additional resources, the Government can actively promote local products overseas and especially in the Mainland through the relevant organizations, such as the TDC. Of course, the Government must also

expeditiously develop Internet commerce and enact effective regulatory legislation to enable the growth of Internet commerce in a safe and reliable environment. Internet trade is becoming increasingly popular. It is estimated that the volume of trade via the Internet will amount to US\$220 billion in 2001. Therefore, it will be a considerably enormous market.

With the globalization of the world economy, we must enhance the quality of the various industries in Hong Kong and strengthen the status of local products and services on the international market. SMEs must establish an effective quality management system on the one hand and develop standards of quality accreditation that are internationally recognized on the other. The Government's support in terms of promotion and co-ordination in this respect can be very helpful.

For many SMEs, the greatest problem they are now facing is financing. Following the Asian financial turmoil, banks are quite cautious and conservative in granting loans to SMEs. While the \$2.5 billion Special Finance Scheme for SMEs established by the Government provides an answer to this question, it is still not enough. The Government should adopt other approaches, such as establishing a second board expeditiously so that smaller and new enterprises can be given opportunities to raise capital, to expand and to develop their business.

With these remarks, Madam President, I support Mr HUI Cheung-ching's motion. Thank you.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I have two books here which are related to our debate. I speak on behalf of the Democratic Party in support of Mr HUI Cheung-ching's motion. I will not discuss the contents of this motion in detail because we have debated over such contents for many times. I would like to discuss the effects of information technology on the business world.

Mrs Sophie LEUNG brought a *Fortune* magazine at our last debate and I have brought two books this time. Here is an illustration of the "Portal of the Future", and it is stated that companies such as Yahoo, Excite at home, America on Line, E Trade, Woman.com, Star Bug and SAP People Soft Conquer will be inside the "Portal of the Future" of the World Wide Web. Many of these

companies are related to the Internet.

I would like to discuss with Honourable Members a tendency. Members may know that there is a broker called Merrill Lynch. Its market capitalization is around US\$25 billion but the market capitalization of an on-line stock broking company which engages in on-line speculation in stocks for clients is US\$39 billion, one and a half times that of Merrill Lynch. Members may have heard of Sotheby whose market capitalization is US\$2 billion, but Members may not have heard of a company called E Bay that runs on-line auctions. Can Members guess its market capitalization? It is US\$21 billion, 10 times that of Sotheby. Members who have visited the United States should know that there are many bookstores under Barnes and Noble, and Barnes and Noble definitely sells more books than Amazon.com. Yet, the market capitalization of Amazon.com, an on-line book seller, is nine times more than that of Barnes and Noble. There are certainly many similar examples and I would not name them one by one.

From August 1995 when Netscape (we all know that Netscape is a browser), a risk fund stock, was listed to May this year, 107 companies in the United States have linked up with Internet-related companies, among them, the share prices of 80% have risen while those of 20% have dropped. The market capitalization of these companies is around US\$300.6 billion now. The outstanding ones include America on Line, Yahoo, E Bay and Amazon.com which I have just mentioned.

What is the trend illustrated by this? Mr HUI Cheung-ching has cited the remarks of Mr Andrew GROVE that if companies do not go on-line within five years, they may be eliminated. There are around 100 million to 120 million Internet users in the world by the end of 1998, as estimated, all of them will be browsing on-line in swarms, and there will be the gradual popularization of on-line activities and on-line commercial activities. It can be said there will be a complete change in the entire mode of commercial operation.

The most meaningful part of Mr HUI Cheung-ching's motion is that it urges the Government to promote the use of information technology in SMEs. Most of the 107 companies I just mentioned have developed from small scale

companies. Frankly speaking, some companies are started by a few people, mostly university graduates, who have certain ideas and technologies and set up their venture companies after having worked in one or two large companies for a few years. With the assistance of bodies such as risk funds, their business keeps developing. Many of them have become millionaires now. We may not reckon that some graduates of the University of Science and Technology who recently followed their lecturer to the United States and ventured into business have become millionaires in terms of United States dollars.

Mr HUI Cheung-ching has mentioned financing channels. In fact, Hong Kong people are not out of money. Among the more than \$100 billion risk funds managed in Hong Kong, 3% are invested in Hong Kong while the rest are invested in the Asia-Pacific region. Thus, money can be found everywhere but the problem lies with whether or not a company has ideas that can attract investors. As Prof TIEN Chang-lin has said, the concept of share rights should be separated from that of management rights, and a person should not think that he should stick to a company he has developed forever. When the business of a company needs extension, it must introduce professional management talents.

Recently, a Hong Kong company has been listed as China.com in the NASDAQ in the United States. Its share price was US\$20 when it was just listed but it has now risen to US\$60. So long as people have good ideas and technologies, they need not worry about not having enough funds or that they may have to ask the Government for loans every time. It is most important for companies to have technologies and new ideas, then, funds will flow into their hands naturally.

I hope Members will understand that the world has changed and I agree with Mr HUI Cheung-ching that speed is highly important. Bill GATES has also discussed the speed of thought in his new book. If we want to successfully compete with others in the world market in the new century, we must compete on the basis of new technologies and the highest speed.

With these remarks, I support Mr HUI Cheung-ching's motion.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Democratic Alliance for the Betterment of Hong Kong (DAB) supports the motion moved by

Mr HUI Cheung-ching. We are of the view that the Government of the Special Administrative Region (SAR) must work hard to assist the development of SMEs to increase their competitive edge.

Although we have the TDC, the Industry Department, the Hong Kong Productivity Council, the Small and Medium Enterprises Information Centre and so on to support the SMEs, the SMEs in Hong Kong which number as many as 290 000 and take up more than 90% of the total number of enterprises here do face a lot of problems in operation. Such include for example the relatively low level of applied technology, the lack of research and development of products, the lack of training in personnel and the lack of the ability to open up overseas markets and so on. On the whole, the Government neglects the SMEs and let them fight hard for their survival. There is no policy formulated on the development of the SMEs, nor is there any mechanism which is specifically charged with the task to oversee their development. That even applies to the Special Finance Scheme for SMEs which is regarded as failing to serve those SMEs most badly in need. This makes one doubt whether the kind of assistance given by the Government and the support organizations to these SMEs are really able to help them fight for business opportunities in the fierce competition they face in the international market.

The rendering of assistance to SMEs is a vital policy objective for many countries. Let me give just a few examples. On the assistance given to SMEs in applied technology, the focal point of the SME policy 1999 of Japan is to encourage investment in high value-added production. There are organizations in Japan especially responsible for research in production management technology; institutions of higher learning which provide product support in primary research efforts; and industrial and business organizations which provide services in research and testing. The Japanese Government has also drawn up laws and regulations that encourage SMEs to upgrade their technology. In Taiwan, SME innovation and development centres are set up in various post-secondary institutions where SMEs can station there and where intensive research support is provided. Taiwan also has upgrade loans for SMEs and SMEs are encouraged to introduce advanced technology.

The DAB thinks that the SAR Government should consider formulating a development strategy for SMEs. Objectives should be set out clearly on areas such as the interactive development of information technology and SMEs. The support organizations should work on the incorporation of information

technology and production management skills with a view to devising an efficient production flow and to minimizing stock holding and so on. Besides, fundings for industrial technology research have been regarded as not sufficient, in detriment to the shifting of SMEs towards high value-added production. The Government should increase its research fundings to the tertiary institutions and encourage them to join hands with the industries to undertake technological research.

As for assistance in financing, the motion proposes to develop more financing facilities which do not rely excessively on using property as security. This is precisely the problem with the Special Finance Scheme for SMEs. If we look at the experience of foreign countries, Japan for example launched a venture loan scheme last year under which low-interest loans are made out without any need of security. Recently, Japan has introduced a loan guarantee scheme for small companies with a total value of 20 trillion yen. This will ease the capital flow of SMEs. Taiwan has a multi-purpose development fund for SMEs valued at 8 billion Taiwanese dollars aiming at enhancing the competitive edge of their SMEs. There are also mutual-aid guarantee funds societies for SMEs where they can have financing facilities of their own. Quasi-official development corporations have also been set up and investments have been made to more than 80 SMEs and advice is given to SMEs to seek listing as a means of financing.

The Government should model on other countries and places in opening up different ways of financing assistance and specialized financing such as in productivity enhancement, trade transformation, research and development and so on. Besides, encouragement should be given to setting up more mutual-aid loans in different areas. We should also encourage local venture capital funds in the private sector to make more investment in local enterprises. We are delighted to learn that in recent months a credit institution called the East Asia Heller Limited has launched a new financing scheme called Asset Based Finance to allow SMEs to fully utilize their assets. It is the hope of the DAB that more new financing facilities will be made available.

Madam President, we can see a big difference between the active support given by the Governments of Japan and Taiwan to their SMEs which is so different from that given by our Government. I am not saying that we should have what the other people are having. But the Government should consider whether there are things that we can do more to support the SMEs. Should a

comprehensive policy be devised to support the SMEs, or even a department or organization charged with the specific task of assisting the SMEs be set up?

Lastly, I also notice that Mr HUI Cheung-ching has made a visionary proposal to urge all support organizations to set up an Internet Shopping Mall for SMEs. The industry should make more use of electronic technology such as electronic mail, the Internet and other electronic means to contact overseas buyers and to have access to business information. Recently, overseas buyers are demanding more use of electronics means from local suppliers because this will enable a reduction of stocks, quicker response to market changes and the provision of better supply chain management and so on. It is encouraging to learn that the support organizations are promoting online transactions. The TDC has set up a pilot scheme for electronic commerce and the industries can have a trial use of electronic commerce software. That should be a good start.

In the 1970s and the 1980s, our economy benefited from the eastward movement of the production assembly lines of American industries. With the reforms and opening up of the Mainland in the 1980s and 1990s, our factories relocated northwards into the Mainland. Our property and financial services sectors saw a drastic boom. As we are going into the 21st century, our Government is actively developing numerous knowledge-based economy projects such as the Cyberport, a Chinese medicine port, a biotechnology port and a silicon harbour, should we not also devise some overall development plans for our SMEs?

Madam President, I support the motion.

MR AMBROSE LAU (in Cantonese): Madam President, the motion urges the Government to formulate a comprehensive policy to support SMEs and it especially mentions the need to open up the mainland market more vigorously. Madam President, give that China will accede to the World Trade Organization (WTO) sooner or later, the Government must therefore consider how it can help local SMEs to further improve their competitiveness and develop the mainland market.

The Government must be aware that with China's accession to the WTO

as a demarcation line, our economic development will be divided into two different stages. In the past 20 years before China's accession to the WTO, there was a half-open door between Hong Kong and the Mainland and China was not as open to Western countries as Hong Kong, therefore, Hong Kong got an advantage. It played an intermediary role and took advantage of the inexpensive costs of the Mainland. As a result of this, it has enjoyed abundant commercial opportunities denied to many Western businessmen. This was a memorable stage but it would not last forever. Once China has acceded to the WTO, the main door of China will be opened to Hong Kong and the West. At that time, if Hong Kong still thinks that it is more convenient for it to enter through this door than the West or it can jump the queue and thus responds slowly, it will lose its superiority and witness its economic hinterland and market being snatched by others.

Hong Kong businessmen invest relatively less capital in mainland projects on average because Hong Kong businessmen mainly invest in small labour-intensive projects. This signifies that the investors in the Mainland in the past 20 years were mostly SMEs. They made use of the inexpensive land, raw materials and wages in the Mainland and reaped higher profits. In the past, there was a famous saying among the industrial and commercial sectors in Hong Kong — high-tech, losers; low-tech, winners.

However, this conservative, complacent and protectionist famous saying also reflects that under the circumstances that Hong Kong had the priority of having the main door of the Mainland half opened for it, Hong Kong businessmen did not make use of the profits and capital gained at the first stage to invest in innovation and technology. On the contrary, they brought the capital gained in the Mainland back to Hong Kong and made mutually pernicious speculative investments, very much like "fishing in each other's waters". As a result, they pushed up the prices of assets and business costs in Hong Kong and missed the boat of transformation into high-tech industries.

After 1994, the rate of increase in local investments in the Mainland has gradually slowed down and investment projects and agreement amounts have substantially reduced. It is because the costs in the Pearl River Delta have gradually increased and SMEs in the Mainland have joined the competition among labour-intensive, low-tech industries. The rate of investment profits of local SMEs has dropped and they have less investment opportunities. After the Asian financial turmoil, local SMEs invest even less in mainland projects. This proves that the famous saying — high-tech, losers; low-tech, winners — is not

perpetually true and it only describes a special situation under which Hong Kong had gained advantages during the initial reform and opening up of China.

Madam President, after China's accession to the WTO, as the main door is equally opened to Hong Kong and the West, it will have huge impacts on the investment directions and changes in the industrial structure of SMEs in Hong Kong. The development of our economy, especially the development of SMEs, will enter a different stage. At this new stage, the measures to be adopted by the Government to assist the SMEs should cover three aspects.

First, the Government should expeditiously set up a specialized body to take advantage of the superiority of "one country, two systems" and enhance negotiations with the governments of various provinces and cities concerning economic co-operation, so as to allow local SMEs to develop in an organized and co-ordinated manner mainland industries such as high technology, information, services, business management, freight and retails industries in which Hong Kong SMEs enjoy superiority. The Government should establish a specialized body to help SMEs develop the mainland market, and its function is to grasp opportunities before others through negotiations with the Chinese Government so that the loan arrangements, investment objectives and directions of Hong Kong businessmen will be given support. This is not intervening in a free market. In recent years, the governments of Western countries also took actions to develop the Chinese market for their enterprises. They negotiated with the Chinese Government, collected information on the Chinese market and co-ordinated the realms of investment of their enterprises.

Second, the Government has to help SMEs in technological advancement and solve their financing difficulties. To attain technological advancement, besides enhancing local talents training, it has to implement measures for importing foreign specialists especially mainland specialists to promote the hi-tech and high value-added transformation of SMEs. To help SMEs solve their financing difficulties, the Government should set up a long-term development fund for SMEs to assist them in innovation and technological upgrading. Banks should provide local SMEs with more mortgages on mainland property and factories. If local SMEs can attain technological upgrading and solve their financing problems, they will be more competitive in developing the mainland market.

Third, there is a saturated passenger flow at the boundary between China and Hong Kong, but the SAR Government seems to think that the crowd at the boundary are going to spend money in Shenzhen, therefore, it intends not only

to levy a departure tax, and it even slows down infrastructure construction at the boundary. In fact, most people crossing the boundary are not going to spend money in Shenzhen but they are Hong Kong people who do business in the Mainland and workers who travel to and fro. That the Government has slowed down the passenger and commuter flow between China and Hong Kong is like throwing away the baby together with the bath water. Therefore, it is a pressing task for the Government to make the best use of time, improve the cross-boundary transportation infrastructure and relieve congestion at the crossings.

Madam President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, by the end of 1997, the Asian region was struck by the financial turmoil and the economic activities in Hong Kong were greatly affected. When the financial turmoil began, many people especially the SAR Government thought, on the basis of the prosperity Hong Kong enjoyed in the past, that Hong Kong would soon recover and it would emerge as the first region in Asia on an economic revival. Unfortunately, figures showed that we were only unrealistically optimistic. There was a negative economic growth in the first quarter but other neighbouring Asian countries such as Singapore and Taiwan were faster in turning around their declining economies and they attained positive economic growth. The fact that they have been developing high technology and high value-added industries is one of the reasons behind this.

Looking back at Hong Kong, in the past decade or so, most industries that can generate foreign exchange for Hong Kong have been relocated and the entire economic structure has undergone great changes. In the past, we laid particular emphasis on financial and property services but the social atmosphere has changed enormously in the past decade or so. In particular, in the several years before the financial turmoil, speculation was rife and people almost ignored their proper occupations. More and more people speculated on property and the factors on which Hong Kong relied on for success in the past had changed, for example, people were not as pragmatic and hardworking as before. The British Hong Kong Administration, with its non-intervention policy, turned a blind eye to the lopsided industrial structure. Therefore, with the decline of the financial and property markets after the financial turmoil, Hong Kong was in an unprecedented plight after the War. Many SMEs that had raised mortgages on property were victims in this disaster.

In the past, our diversified industrial and commercial development had gained Hong Kong success but the changes in the past decade or so had also changed our market which used to be flexible, agile, fast-changing and mainly composed of SMEs, and our economy was no longer diversified.

Today, at the beginning of our third economic transformation, the Administration should definitely not overlook the merits of SMEs. They have a due role to play in the future development of hi-tech and high value-added industries, particularly when technological development is going on at a tremendous pace and the product turnover period is becoming shorter and shorter. Agility is the strength of SMEs and they are in a better position than large enterprises in following this trend of development.

In the past, the Hong Kong Government adhered to a non-intervention policy, failing to work out a direction of development for Hong Kong, and mainly relied on the market forces on this. Yet, because of its geographical superiority, Hong Kong continued to develop at different times. Looking back at Hong Kong today, our peripheral environment has obviously changed a lot and Hong Kong has gradually lost the superiority it used to enjoy. Under these circumstances, if the Government still adheres to its non-intervention policy and fails to work out directions of development for Hong Kong during this third transformation period, we may lag far behind a few years from now. Therefore, in the past year or so, the SAR Government has worked out directions for Hong Kong. We find it necessary to do so because the Hong Kong Federation of Trade Unions (FTU) found that when there was an economic change, many workers became unemployed. In the face of intense competition from our neighbouring countries, the SAR Government must formulate policies of support. Bearing in mind that we have lost many opportunities in the past, we think that the SAR Government must now work out directions and plan to set up various centres such as innovative technology, design and fashion, multimedia information and entertainment as well as Chinese medicine centres.

We agree that directions should be pointed under the present circumstances. However, we have to stress in particular that in the development process, the Administration should definitely not give certain large financial group or enterprise an exclusive right of development. The Government should provide SMEs with a favourable environment in respect of land, transportation, environmental protection, technological upgrading and

financing so that they can concentrate more on the development of high value-added industries.

Another point is that the SMEs need more human resources for development. The number of people employed by SMEs accounts for more than 90% of our workforce and they have the most fundamental influence on the employment market. The satisfactory development of SMEs can certainly create more jobs. As compared with large organizations, SMEs give grassroots workers a better chance to put their skills into full play and attain promotion.

In the face of changes, the Government's promotion of the development of high and new technologies in recent years has given Hong Kong people more job opportunities. But the FTU noted that the SAR Government has proposed to import mainland specialists. The FTU does not oppose to the importation of specialists who are not available in Hong Kong, but the problem is: Are these genuine specialists? While we import these specialists, what are we doing with the overall training programme in Hong Kong? If local graduates can take up those posts in future, what will then the overall policy of the Government become? In particular, we have to remind the Government that when it employs specialists, attention should be given to the overall policy of technology transfer? These are questions that must be addressed by the SAR Government.

We have raised the above issues with different Policy Bureaux, but they have not given any specific response. I am worried that while we keep saying that we need to develop high and new technologies and assist the SMEs, if we do not have corresponding policies to assist local people in investing in the future development of Hong Kong, at the end, there will be a greater disparity between the rich and the poor and more people will become unemployed and be subject to a hard time. Therefore, I urge the Government to pay attention to the above issues.

Madam President, the FTU supports the original motion. Thank you.

MISS CHOY SO-YUK (in Cantonese): Madam President, the number of SMEs in Hong Kong has dropped drastically from 288 000 before the financial turmoil in 1997 to 250 000 at present. Putting aside factors like the fall in the number of people who want to start a business, the weakening of people's desire to do the same and the economic losses of the lowering of benefits to outside sectors, if we are to take each SME as employing 4.76 employees, there would be a loss of 180 000 jobs against a 38 000 decrease in the number of SMEs over

the two-year period! The cumulative blow to the economy caused by this collective and chronic failure of SMEs is devastating. Its socio-economic impact is as much as, if not more far-reaching and extensive than the wage cuts, layoff and closures of a handful of large scale enterprises. It makes one shudder to think of it and it is simply distressing.

Madam President, results of some studies show that the economic recovery and growth in the emerging markets rely very much on the performance of the SMEs there. If this view is correct, then in Singapore which has a similar proportion of SMEs in the economic as we do, their greater GNP and the brisker pace of economic recovery would possibly imply that the overall competitiveness of our SMEs lags behind that of Singapore. No wonder the Senior Minister of Singapore, Mr LEE Kuan-yew, stated publicly that his country no longer saw Hong Kong as a rival.

The way out for SMEs in Hong Kong, as the Chief Executive has said, lies in the application of information technology and the shift towards high value-added industries. This is the expectation of the Government as well as that of the market on the SMEs.

As a matter of fact, the SMEs are faced with the problems of a lack of capital, human resources and the ability to open up markets. These may be eased to a certain extent through the application of information technology. Certain giant corporations like Microsoft managed to make a saving in human resources as much as US\$3 million a year in its purchasing department after electronic commerce services are adopted. The cost in processing orders has fallen by more than 90%. Should SMEs decide to make their operations electronic, the benefits so achieved are of course not as obvious as the giant corporations. But the use of information technology in analysing data in purchasing and supply, the negotiation of product prices with suppliers and the handling of information in accounts and so on will help reduce human resource needs, lower administrative costs and raise efficiency in one way or the other.

The question is: the Government has not even offered active assistance to the SMEs to solve the problems in information technology which they face. This will prevent the SMEs from reaping benefits from information technology and they may even in turn become its victims. Take for example the problem of millennium bugs which we have discussed earlier. If a SME which has sustained losses due to the attack of the millennium bug initiates legal action against the information technology company which is responsible for the installation of the computer system, this SME will find it hard to express in court

its grievances and very difficult to defend its rights because it lacks the computer expertise and the technical personnel. Moreover, the judge or the jury may not be well versed in computer technology and they may not be able to tell whether the information technology company is at fault or not. There is certainly a need for the Government to enhance its education and publicity efforts to make the SMEs aware of their rights in an information technology society. The Government should also enhance the ability of the Judiciary and the executive authorities in tackling problems related to information technology. In this way, the needs of the SMEs can be better served.

Of course, if the Government fails to pay sufficient attention to the development of a culture of electronic commerce in society in its efforts in promoting the use of applied information technology in the SMEs, then the opening up of the market for the SMEs will be greatly hindered. Therefore, if we are to develop into a hub of electronic commerce in Asia, not only has the Government to develop Internet platform technology, electronic commercial applications and hardware such as security online, but more importantly, it must enhance the level of awareness, applications and acceptability of the public with regard to information technology.

Madam President, the SMEs are different from other corporate giants in that it is difficult for them to avert unfavourable business environment and effect a change of domicile; all they can do is to close down their business. Quite a number of SMEs here are still at the start-up stage. They do not have modern management expertise, a standardized accounting system, an extensive sales and marketing network, nor capital and skilled personnel. All these show that what the SMEs need is comprehensive and continuous support. It is known that the Government will launch an assistance package designed for SMEs next month. Reportedly, this package will be much more comprehensive and I earnestly hope that it will not be empty words on paper but assistance which is of real and substantive value.

With these remarks, Madam President, I support the motion moved by Mr HUI Cheung-ching.

MRS SELINA CHOW (in Cantonese): Madam President, the SMEs have been the mainstay and lifeline of our economy for many years. More than 90% of the companies are SMEs. As defined by the Government, SMEs in the services industry employ 50 people or less while those in the manufacturing industry employs 100 or less. The number of such enterprises accounts for more than

60% of all enterprises. However, it is not easy at all to assist SMEs because they face various structural difficulties and it is fairly difficult for the Government or the community to give them orientation or assistance. A very big problem is that there are many kinds of SMEs. Although I have not done any calculation, I believe Members just need to think about this and they will know that there are many industries. Just take the Wholesale and Retail Functional Constituency I represent as an example. This functional constituency comprises SMEs in 38 industries. If we take a look at other functional constituencies and the industries they represent, as there are many sub-sectors, it is hardly possible to estimate the number of industries involved. Besides, there are actually few people in a unit. As I have just said, among 90% of such enterprises, 60% are in-service practitioners and 40% are the so-called "tiny" companies. According to my definition, a "tiny" company employs less than 10 people.

These SMEs are found in different industries and their employees do not only take up one job type but many job types, and they take up various posts. SMEs are different from large companies that are divided into departments responsible for different work. Yet, SMEs cannot afford to do so. Therefore, in many SMEs, a person is both the employer and the employee. Even in a company that has employees, an employee has to perform various duties. Therefore, employees in these companies have arduous tasks and they can hardly manage to formulate longer-term plans or take up other duties concurrently.

Can the Government provide these SMEs with assistance? As far as we know, there is a Small and Medium Enterprises Committee under the Industry Department, can this Committee however really contact all SMEs or give all of them assistance? At present, there are thousands of SMEs in Hong Kong, can the Industry Department know their problems well and play a liaison role? There is certainly a disjointment. Another more serious problem is that the Government lacks overall planning that covers different policy areas, and it fails to attend to SMEs. In fact, every policy area of the Government may involve certain SMEs or have effects on SMEs in a certain industry.

We all know that we are very much concerned about environmental protection and we often make environmental impact assessments. Has the Government, however, conducted an assessment on the effects on SMEs when it

formulates policies? No. Therefore, many existing policies, be they labour polices or regulatory legislation, have not considered the short-term or long-term effects on SMEs, or the heavier financial burden of SMEs. Whenever Members say at the meetings of the committees of the Legislative Council that legislation should be enacted, why do we only hear Members give sufficient reasons as to how personal safety and social development can be ensured? Yet, nobody mentions that prices have to be paid by SMEs.

In our debate today, we keep saying that we have to do something for SMEs, but have we imagined that what we do every day has actually put burden on many SMEs? For instance, what burden will ineffective combat against piracy activities put on SMEs that sell intellectual property products? In respect of the Government's charging policy, if the "user pays" principle is always followed, what burden will we put on small food establishments? The Government really has to consider this carefully.

We often say that "high-tech, winners; low-tech, losers" but I think that SMEs are in the middle, they are neither high nor low. Therefore, even if they want improvements, if the Government or this Council unintentionally put constraints on SMEs, they cannot develop freely. We aspire to develop a Chinese medicine port and high value-added industries, but can we achieve these aims? I believe we should be pragmatic because SMEs are pragmatic. We should always look after the SMEs and give them real support.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Selina CHOW, your time is up, please sit down.

DR TANG SIU-TONG (in Cantonese): Madam President, the Special Finance Scheme for SMEs is the only official and formal funding scheme exclusively devised for SMEs. The Scheme has been introduced for almost a year and some 2 600 applications have been approved. The Government has provided some 2 200 enterprises with guarantees for loans and the \$2.5 billion has almost been exhausted. When the Council debated "the competitiveness of our manufacturing industry", the Secretary for Trade and Industry said that around 60% of benefitted enterprises came from the manufacturing industry and almost

\$1.35 billion loans were involved. As the Secretary for Trade and Industry has said, these sums can really help factories in financing. But from another perspective, these figures also reveal the shortcomings of the loan scheme.

Madam President, the information provided by the Government in early June shows that most enterprises that have successfully taken part in the Special Finance Scheme for SMEs come from the manufacturing industry, 20% come from the import and export industry while other enterprises together account for less than 20%. The loan scheme is basically only utilized by the SMEs in individual industries. The total number of benefitted SMEs only accounts for less than 1% of the 250 000 existing SMEs. Evidently, the loan scheme is an utterly inadequate measure for alleviating the financing difficulties of SMEs.

Actually, we seldom find banks promoting the Special Finance Scheme for SMEs because it will benefit only a limited number of enterprises. It is not hard to understand this phenomenon. If banks find that clients have low repayment abilities, even if they bear only 30% of the risk, they will not bear the risk of accounting for bad debts and mercifully encourage clients to take part in the loan scheme. On the other hand, if clients have good performance and financial records in the past, and have high chances of repaying loans, banks will gladly offer loan schemes to attract them, not having to share with the Government the profits from loan interests. In other words, banks are most willing to refer some clients who have moderate risks and have co-operated well with banks in the past to the Special Finance Scheme for SMEs.

Madam President, banks are not charitable organizations but commercial organizations seeking the highest profits. Banks will only choose to extend loans to clients who have repayment abilities, but they are not willing to tide over difficulties with problematic clients. This is only natural and rational. Banks will do so more obviously amid an economic slump, poor business and reduced profits. This is a limitation of the Special Finance Scheme for SMEs, and that is why it has failed to fully assist SMEs in financing.

A more important problem is that the Special Finance Scheme for SMEs basically only attends to the cash flow problems of SMEs in the production,

sales and operation stages that run in a prosperity cycle. It seems that the Scheme fails to attend to the capital needs of venturing and developing SMEs. After all, the Scheme is only a short-term expedient measure targeted at a special situation and it fails to alleviate the financing difficulties of SMEs in the longer term.

Madam President, the SMEs meet financing difficulties in at least three areas. First, the SMEs often encounter financing problems as a result of their transaction practices, production patterns or small scale. Second, they encounter periodic financing problems as a result of an economic slump and a credit squeeze by banks. Third, SEMs face additional capital pressures as a result of the Government's promotion of information technology application and high value-added transformation.

To alleviate the financing problems of the SMEs in the longer term, Mr HUI Cheung-ching has suggested that the Government should further develop the Special Finance Scheme for SMEs in a similar way to The California Loan Guarantee Program. The Government should consider this suggestion positively.

The California Loan Guarantee Program has been implemented for more than 30 years and the state government offers a guarantee up to 90% on loans for SMEs. Studies show that the scheme can effectively urge SMEs to establish new production lines, import new technologies, develop markets or renew equipment. On the basis of a conservative estimation, from 1990 to 1996, over 1 100 small enterprises so subsidized have maintained some 1 200 jobs and created some 7 000 new jobs. The taxes collected by the state government also increased by more than US\$25 million. The SAR Government should make reference to the successful experience of the United States.

Madam President, the Government may worry that lending public money to private enterprises will violate the free market principle. Now that the United States, which has always upheld a free market economy, offers government loans to assist congenitally deficient SMEs and allow them to participate in market competition, why does Hong Kong not consider adopting such a scheme? So long as all private SMEs that want to start business, develop and relieve poor capital turnover have equal opportunities to apply for

government loans, the loans should not be regarded as measures intervening into the market, but rather catalysts that stimulate market operation.

Mr SIN Chung-kai has just said that many risk funds are willing to invest in SMEs, and that is true. I hope that local SMEs will positively improve their performance, put forward venture ideas and attract foreign capital to strengthen their industries.

With these remarks, Madam President, I support Mr HUI Cheung-ching's motion.

MR ALBERT HO (in Cantonese): Madam President, the Democratic Party supports the five policies set out in Mr HUI Cheung-ching's motion for adoption by the Government to provide SMEs with assistance. Mr SIN Chung-kai of the Democratic Party has discussed how we can help SMEs further apply information technology as well as the importance of on-line transactions and entering the on-line market. I will focus my discussion on the problems encountered by the support framework of the Government. The matters of my concern are actually very similar to those mentioned by Mrs Selina CHOW.

There are now six loan financing schemes for industries and the service industry, involving more than \$5 billion. Besides, there are several statutory bodies and support bodies and the total amount exceeds \$3 billion. There are three SME service centres, and we have the Vocational Training Council and a new technology training programme as far as human resources are concerned. As for the enterprise training centre in Israel that is held in high esteem by the Chief Executive, we have a similar body within the Industrial Technology Centre. Moreover, we have the Hong Kong Industrial Estates Corporation, the Hong Kong Institute of Biotechnology and the Special Finance Scheme for SMEs. But the problem, it appears, is that what we have done is not good enough. The Government used to formulate no comprehensive strategies to support the SMEs actively other than some responsive programmes lacking in co-ordinated support.

Madam President, the Government established a SMEs Committee in 1996 comprising the representatives of business associations, support bodies and the Government. The original objective of the Committee is to make up for deficiencies of the abovesaid programmes. The specific responsibility of the Committee is to explore matters affecting the development of SMEs such as human resources and market development, and assist the Government in formulating suitable support policies for SMEs. But since the establishment of the Committee, its members have been criticizing the Government for a lack of enthusiasm. Having held few meetings, it has therefore achieved limited effects.

Actually, the Government has spent almost \$10 million on this Committee within three years to specially create two executive support posts and raise funds for the activities organized by the Committee. Money has been spent, but the effects are questionable. As far as I understand, there are three working groups under the Committee responsible for considering matters in respect of human resources, enterprise financing and information technology application. However, the Government should have consulted the Committee before establishing a \$500 million export credit guarantee scheme last year and injecting \$2.5 billion into the Special Finance Scheme for SMEs later. Still, the industry made strong criticisms against the policies after they were introduced, hence the Committee has totally failed to perform its due functions. We are not sure about the progress of the work of other working groups. As far as I understand, the Committee holds some activities such as a SME week from time to time to promote existing support services and facilities for SMEs. However, the transparency of the Committee is extremely low, and there is only a 200-word introduction on its work progress, activities and discussions on the home page of the Industry Department, and the information disclosed is inadequate. The Legislative Council often holds discussions on SMEs but it seems that the Council knows not much about the Committee, too.

The Democratic Party thinks that the Government should review again the operation and functions of the SME Committee and specify the focus and plans of its work, enhance its terms of reference in policy formulation, expand the scope of its representative composition to include representatives of the industrial, financial and technology sectors as well as academics. The Committee should be more transparent. More information on the Committee should be disclosed on the Internet to allow those in the industry to know more about its work. This way, the Committee can play a better role as a bridge of communication between the industry and the Government and better assist the Government in formulating comprehensive development strategies for assisting

SMEs.

Apart from improving the operation of the SME Committee, the Democratic Party thinks that the Government should enhance the co-ordination of the existing support bodies. For example, it should provide a "one-stop" service to SMEs and refer SMEs to support bodies specific to their needs in order to make better use of the existing resources and give SMEs the greatest help. In fact, the three SME service centres of the Hong Kong Productivity Council, TDC and Vocational Training Council play an intermediary role to a certain extent. The SME office soon to be set up by the Government should also review the operation of the three SME service centres and examine how their intermediary roles can be enhanced.

In addition, there is much room for improving government participation in the support bodies. At present, these bodies are operating independently without much government intervention and this is definitely a merit. However, the demerit is that the functions of the bodies may be overlapping, and we believe that this is the case, and the directions of their work may not necessarily tally with the policies adopted or to be adopted by the Government. Therefore, the Trade and Industry Bureau can consider co-ordinating the directions of work and key projects of these bodies more actively to achieve more effective co-ordination and complementation between the Government and these bodies and promote plans and policies that will effectively assist SMEs.

With these remarks, I support Mr HUI Cheung-ching's motion.

MR FUNG CHI-KIN (in Cantonese): Madam President, we have held a series of discussions on the operation of SMEs. Firstly, we discussed the promotion of the financial industry, and then we discussed about the manufacturing industry. This time around, we have Mr HUI Cheung-ching's motion on SMEs.

After the financial turmoil, the bubble of the property and stock markets in Hong Kong burst and there was a credit squeeze. It is stated in a recent report published by the Hong Kong Monetary Authority (HKMA) that the business of banks in the first half of 1999 is relatively poor, thus reflecting that the adverse situation has not fully disappeared. Against this economic slump, Members of this Council have reflected their views to the Government on behalf of various trades and industries in Hong Kong, and we hope that the

Government will promote various trades and industries policy-wise if it deems it feasible to do so. Mr SIN Chung-kai has stressed the application of information technology and he has cited many examples of the successful application of information technology. I wish Mr SIN Chung-kai who represents the information technology sector success.

Mr HUI Cheung-ching's motion focuses on three aspects: talents, money and technology. Talents refer to information technology talents and management talents in particular. Money refers to capital and financial capacity, and I will focus on financing later. Technology refers to advanced technology including advanced information technology which can enhance productivity. Mr HUI Cheung-ching has also touched upon the market. We should promote the mainland market to create more business opportunities and also participate in the "on-line market". We should compete on the Internet and extend our business to every part of the world. There are very successful examples of blue chip companies which started as small scale SMEs.

As regards financing, why did enterprises secure mortgages on landed properties? This is certainly closely linked with the history of the development of the property market in Hong Kong. For many years, the property prices have basically been rising, and entrepreneurs or investors have invested more or less in property and obtained from banks mortgages on property. However, mortgages on property were under great pressure after the financial turmoil and many banks found that clients had repayments overdue, interest payments in arrears and compounding problems and the banking sector was adversely affected. Even so, if clients do not place mortgages on "bricks", what else can they place mortgages on? It will be more difficult for clients to obtain financing from banks merely on the basis of their credit worthiness. Therefore, we cannot refrain from discussing financing realistically. It seems that gold can be struck everywhere in Hong Kong, as Mr SIN Chung-kai has said, and there are many funds and capital in the market. But the problem is: Do we have the ability to get them? Capital cannot be found everywhere and it depends on the skill of venturing individuals to secure capital. As regards financing, it is not so easy to obtain financing through banks, the relatively conventional channel. Especially when there is a credit squeeze, it will be very difficult for banks to boldly extend loans to clients in a relieved manner. However, I note that the Hong Kong Monetary Authority and the trade have actually started considering how information on enterprises can be collected so that banks will find these enterprises more transparent. When a bank considers

the loan application of a client, it does not have to worry about the prospective client's banking creditors, and even if the client is highly credit worthy, it does not have to worry if he will use the loan to repay debts he owed other banks in which case a bank will step backward instead of forward because it will then be carrying another bank's burden. We cannot criticize banks for their own interests in the first place.

Therefore, I suggest that apart from mortgages on property, enterprises should seek other credit and export lending and increase their transparency. Banks have been doing so in respect of their credit card business, and many people especially young people hold many credit cards. What about enterprises? This merits our consideration. If our enterprises are suitably transparent and provide certain information to the banking sector for assessing their business risks and background, I believe the banking sector will not just act like pawn shops, willing to provide mortgages only on property. I strongly advocate that enterprises should do so. They should also co-operate with the financial sector and make proper preparations in respect of credit rating.

Many Members have talked about the venture board. For many years, the Stock Exchange of Hong Kong has been exploring the venture board issue and it intends to launch it onto the market in the fourth quarter. But I hope enterprises will understand that they cannot get capital in the market freely for they have to prove to the market and convince investors to invest in them instead of other enterprises. Great efforts must be made and enterprises must make themselves more attractive to capitalists. Therefore, I often tell people that the venture board does not promise that gold can be struck everywhere and it will not be considered by every person who wants to make more money. On the contrary, funds have strict requirements, and investment returns and risks will be prudently considered. I believe there are many examples of success though there are also many examples of failure. Therefore, it is very important to consider the risk of the venture board. Yet, it merits promotion by the Government so that we need not rely on foreign capital and we can rely on local venture capital and capital that dares take the risk. I know that some large enterprises have done so. However, with government promotion, there will be a venture fund in the market for investment in new enterprises, obviating the need to consider their performance in past years or whether they have profits. This will give our enterprises encouragement and it should be a way out. I so submit. Thank you, Madam President.

MRS SOPHIE LEUNG (in Cantonese): Madam President, it is now 10.30 pm and I believe we can go home for sleep very soon.

I would like to share with Members my experience especially in respect of SMEs. I ran a small scale company, a "tiny" company as mentioned by Mrs Selina CHOW. When I set up the company, it only comprised three people. I had all sorts of ups and downs, a capital shortage, of course. But the company continued to develop until now. Even if a person ran a conventional business at that time, it would not be easy for his business to develop merely on the basis of innovative ideas (an innovative enterprise in the new age) just like what Mr SIN Chung-kai has said. A person cannot just set up a venture company with capital, ideas and investments. In fact, ideas only do one third of the work.

First, I would like to discuss the situation of our age. We are discussing SMEs in the industrial or business sector. It is very late and most people from the media have left this Council. With the absence of the media, Members can calmly listen to me for I will elaborate on the bitter plight of SMEs and I hope that Members will not consider SMEs from the angle of the labour sector or other angles.

I would like to relay a recent experience. One day, Miss CHAN Yuen-han, a few Members and I visited the WONG's company in the Tseung Kwan O Industrial Estate. It is a large scale company but when we visited the factory, we found that it was like a beautiful lady past her prime who could hardly sustain. I am not saying that it has operational problems, it is just an ordinary factory in Hong Kong but the workers lack vitality. Why? The company produces high-grade circuit boards made up by dozens of layers and the investment values of the machines amount to several million dollars. Why did I say that it was like a beautiful lady past her prime? Regardless of how advanced the machines, certain working procedures need manual examination. There are very big magnifiers in the factory that allow workers to examine the products with their naked eye, however, the workers are in no way younger than I. With my eyesight, I cannot read clearly the words on a document, and I need to enlarge it or put on presbyopic glasses. Although there are magnifiers in the factory, workers have to examine fine and meticulous things. What should they do? Workers are not unwilling to work, yet, I hope Members will understand the

actual situation in Hong Kong. The manpower distribution in Hong Kong is entirely different from that more than 20 years ago. More than 20 years ago, secondary school graduates or workers who had finished secondary school only accounted for 20% of the labour force. Nowadays, we have injected a lot of resources into education and more than 80% of the workers in the labour market has secondary school level or above. We do not want to humbug young people who have received the baptism of culture and nurtured by huge education funding to join the blue collar class at a lower level because they should develop at a higher level. Yet, how are we going to supplement lower level workers?

A Member has just said that most industries including SMEs and the manufacturing industries have relocated out of the territory. When we say this, we have to make an introspection conscientiously. In the past decade or so, what have our community done? Have these industries abandoned Hong Kong or have we abandoned them? Have we noticed if they have enough room for development? In fact, I can say that in the past 10 to 20 years, the Government has abandoned and smothered these industries unawares, I am sorry that I have to say this, but this is the truth. However, have we taken any remedial actions? We are similarly smothering them. I hope Members will note that this is a fact.

As regards the outward relocation of industries, we read in newspapers earlier on that some industries wanted to return to Hong Kong. I would like to say that besides the shoe making industry, if circumstances permit, many industries including the watch and clock industry and the electronic watch industry would like to return to Hong Kong. They earnestly wish to return to Hong Kong because there will be no room for their survival in foreign countries. If they want to affix "made in Hong Kong" on products or state that "Hong Kong" is the "country of origin", they must return to Hong Kong and flaunt the "made in Hong Kong" label. If we do not regard highly the "made in Hong Kong" label, I can tell Members that a few years later, the "capital" we have laboriously cultivated will disappear. Why do I speak so agitatedly today? Do I worry that there will be no workers in Hong Kong? I can tell the trade unions that I am not worried because the manufacturing industry I participated in has extended to every part of the world and I can set up factories anywhere. I am only worried that we are going to smother the "made in Hong Kong" label. As we cannot smother it anymore now, some people criticize that the banking sector is not right, and some criticize the Government and ask it to provide subsidies. The industrial sector is not asking for subsidies, and they only want to continue to carry out production gloriously. This is a fact.

I certainly understand that we have to apply new management knowledge but if they fail to deal with the basic daily needs, how can we expect that they will consider applying new knowledge? It seems to me that those who ask them to do so are only gloating. I am also worried about the unemployment problem in Hong Kong, but this is a two-way affair. As we have not paid attention to industrial development in the past decade or so, many people are unemployed now. If we have paid attention to industrial development and investors have considered innovation and improving the working environment, our industries will go on developing. Yet, we have a succession problem, even at the middle management level.

Madam President, I do not want to drag on because the timer is flashing. I hope that these words from the bottom of my heart will urge Honourable Members to make observations more attentively. I hope that Members will not believe in me but in their own observations.

Thank you, Madam President.

MR AMBROSE CHEUNG (in Cantonese): Madam President, Mrs Sophie LEUNG has just said that we will soon be able to go home for sleep and I think that if the Government and Members continue to provide SMEs no assistance, they can go home for sleep very soon indeed.

It is not true that the Government has not made efforts, in fact, the Government has done a lot but fragmented work. Other than this, as a few Members have said, we still need comprehensive support schemes and a sound co-ordinating framework. Besides, as stated in Mr HUI Chueng-ching's motion, a favourable business environment is of paramount importance. In respect of creating a favourable business environment, Mr HUI Cheung-ching has clearly presented the difficulties faced by SMEs in his five proposals.

These difficulties can basically be divided into three areas: revenues, expenditures and operating capital or financing.

In regard to revenues, Mr HUI Cheung-ching has made a few proposals as

to how new markets can be developed and business turnover can be increased, so I will not elaborate on them.

Concerning expenditures and costs, Mr HUI Cheung-ching has discussed how financing can be made but he has neglected the question of interests. In fact, many SMEs face the problem of high costs which are related to interests. Interests are mainly affected by our monetary policy — the pegged exchange rate policy, and we only defend the linked exchange rate by using a high interest rate to maintain the exchange rate of Hong Kong dollars. When interest rate is high or unstable, the banking sector will be more careful in making credit arrangements and they will be more prudent in making risk appraisals. Therefore, SMEs will encounter a lot of difficulties in they make credit arrangements. As banks mainly offer mortgages on property or shares, when the property and share prices drop sharply and the values of the collaterals in the hands of banks depreciate from \$10 to \$5, SMEs will face a credit squeeze of at least 50%.

When any enterprise lacks operating fund, it will encounter a lot of difficulties. As regards lending, I agree that we must develop new financing facilities. When banks make risk appraisals, I hope that they will not only offer mortgages on property or shares but consider taking the performance or turnover of companies as guarantees for loans. Financing can even be made through the venture board, yet these can work only in the medium or longer term. I am more realistic and I hope that the Government will stabilize the property market and the credit squeeze by banks. So long as banks are willing to extend loans and the interest rates remain stable, SMEs will be able to revive when they have enough operating capital.

Actually, a few proposals made by Mr HUI Cheung-ching, the fifth one in particular, seek to make it easier for SMEs to obtain capital. However, it is most difficult to maintain a stable interest rate and to make banks more open towards lending. This depends on the operation of the linked exchange rate after all.

Furthermore, as there is a linked exchange rate, the interest rate will be unstable or stay high and it will affect the competitiveness of SMEs, thereby directly affecting their revenues. It proves that this cycle goes on and on. In

other words, a favourable business environment has not emerged yet.

SMEs are definitely closely linked with labour because more than 80% of the enterprises in Hong Kong are SMEs. If SMEs encounter difficulties, they will have only three options: First, wage reduction; second, layoff; third, closing down. These three options are actually directly linked with our employment situation. We have been hoping that the Government will implement specific policies to lower the unemployment rate and boost employment. But the Government actually finds this very difficult and it does not have direct solutions. When a favourable business environment emerges again, costs remain at a reasonable level and banks are willing to lend SMEs operating capital, and when these enterprises can get capital and remain in operation, our employment rate will rise and the unemployment rate drop.

Madam President, I speak in support of Mr HUI Cheung-ching's motion and I suggest that Mr HUI Cheung-ching should take costs, interests, financial services and the linked exchange rate into consideration and see how improvements can be made.

Thank you, Madam President.

PROF NG CHING-FAI (in Cantonese): Madam President, I support Mr HUI Cheung-ching's motion on assisting the development of SMEs.

The Commission on Innovation and Technology has just published its final report. Following the announcement on the Cyberport project, it is expected that other large technological development projects such as the Chinese medicine, silicon and biotechnology ports will be launched one after another. When Hong Kong is immersed in heated discussions over these large technological construction, we should not forget that SMEs are still a major component of our industrial structure. These enterprises still occupy leading positions in the world market in some conventional export manufacturing industries such as watch and clock, electronics and fashion industries. They played an important role in our economic development in the past decades and created many job opportunities for Hong Kong people. Even though most of them have moved their production base to the Mainland along with the opening up of China, these enterprises still employ around 400 000 management,

marketing, technical personnel in Hong Kong and they help other services industries such as the transportation, finance and insurance industries generate huge direct earnings.

If these conventional SMEs that have been enjoying on edge over their competitors want to maintain their leading position, they must upgrade their production technologies and take corresponding reforms in production management. For example, they can develop global information networks and parallel design projects in order to develop high value-added products. Otherwise, with the speedy development and application of technologies, these enterprise will lag behind the producers or sellers in other countries.

However, it is impractical for these SMEs that are generally lacking in talents, capital and technologies to invest huge sums in research and development without government subsidy. In the past, although the Government established the Hong Kong Productivity Council and the Industrial Technology Centre to provide them with assistance, the assistance provided was piece-meal and inadequate. Therefore, I agree to Mr HUI Cheung-ching's proposal that the Government should conduct a review again and formulate a comprehensive policy to support the SMEs. In particular, it should provide them with assistance in upgrading production technologies by applying technologies and it should consider giving tax concessions to encourage SMEs to upgrade their technologies.

Regarding the training of local talents by the Government, tertiary institutions including universities and technical colleges should consult the industries in respect of course design so that the talents so trained can better meet the actual needs of the community. Furthermore, I agree to the proposal of the Commission on Innovation and Technology concerning attracting mainland scientific and technological specialists to work in Hong Kong. As our economy used to lay particular emphasis on the service industry, we lack experienced scientific and technological talents and the Government has largely increased the number of university places only in recent years. Allowing mainland scientific and technological talents to work in Hong Kong can really make up for the insufficient scientific and technological talents in certain areas.

If we carefully analyse the proposals of the Commission on Innovation and Technology, it is actually unnecessary to worry that the rice bowls of local workers may be snatched. We should know that the economy as a whole is not

a zero-sum game. Although importing talents will bring about the "work replacement effect", that is, the rice bowls of workers being snatched, it will also bring about the more important "work creating effect". Introducing mainland scientific and technological talents can make up for the deficiency of Hong Kong in a certain area, boost investments in new trades such as Chinese medicine, biotechnology, software and electronic trade. Such investments will definitely create job opportunities in respect of management and sales that tally with the superiority of local people. The reason is just simple as that as the criteria for the importation of talents as proposed by the Commission on Innovation and Technology are extremely stringent, the mainland specialists to be absorbed must in general be holders of doctoral degrees from famous overseas or mainland tertiary institutions, have relevant experiences and are talents needed by Hong Kong. Therefore, the job opportunities that will be created will surely exceed the rice bowls snatched, and it will be favourable to our economy as a whole to do so.

I have reservations about Mr HUI's proposal that the Government should set up an Internet Shopping Mall for SMEs. In my opinion, an Internet Shopping Mall should be organized by the industries but not set up by the Government. The Government should pace up the progress of electronic document processing by government departments so that the applications by enterprises can be handled more quickly.

Lastly, I would like to talk a little about the question of financing. Hong Kong is called an international financial centre, and our financial and monetary officials often boast of the soundness of the local banking system abroad. However, the financial turmoil has exposed the weakness of the local banking system, that is, it relies excessively on mortgages on property. In the past, when banks examined and approved loan applications by enterprises, they weighed the values of the property to be mortgaged in a short-sighted manner instead of carefully analysing and considering the potentials of the enterprises and the prospects of the industries. As a result, it created the difficult situation whereby the assets of the banking system rely excessively on property and most SMEs encounter financing problems after the financial turmoil because property prices have fallen substantially and property become negative assets. Therefore, banks should thoroughly change this unhealthy practice and review again the mechanisms and criteria for examination and approval of loans in order to avoid excessive reliance on mortgages on property for financing as they did in the past.

With these remarks, Madam President, I support Mr HUI Cheung-ching's motion.

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

(No Member responded)

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I would like to thank Mr HUI Cheung-ching for moving this motion today as well as a number of Members who have spoken earlier. I would also like to take this opportunity to respond to Mr HUI's motion and some of the views put forward by Members. In addition, I will explain the Government's policies with respect to supporting SMEs.

First, I wish to stress that the Government fully recognizes the importance of SMEs. Accounting for more than 90% of the total number of companies in Hong Kong, SMEs employ approximately 60% of the local workforce. The fact that Hong Kong occupies a dominant position in the world market for its flexibility and adaptability is inseparable from the contribution made by our numerous SMEs. They have served not only as an important pillar of our economy, but also an important source of energy for improving the economy and creating job opportunities.

In view of these, the Government set up a Small and Medium Enterprises Committee in 1996 to consult various sectors on the development of SMEs. Of course, as pointed out by Mrs Selina CHOW just now, in view of the great number of SMEs, it may not be possible for members of the Committee to handle the problems possibly encountered by all SMEs. Therefore, the Government hopes that people having contacts with SMEs and chambers of commerce which are non-members can reflect to the Committee and the Government the situation of SMEs and their views in respect of government support.

Recently, the Industry Department has set up a Small and Medium Enterprises Office. Preparation is also underway to set up an information centre to provide SMEs with one-stop information services, such as releasing information related to services provided by various support bodies. The Office

has also taken up a co-ordination role to strengthen co-ordination of policies. Furthermore, the Industry Department is preparing to publish an outline which will cover all services provided by all SMEs in the hope of giving SMEs more comprehensive information. Just now, Members have put forward a lot of opinions with respect to facilitating business, application of technology, human resources training, market development, quality accreditation as well as pooling capitals. I hope I can explain, one after another, existing support given by the Government to SMEs in these areas.

To start with, the Government has been striving hard to create an environment conducive to business and remove obstacles to the market as far as possible. The Government fully understands that undue regulation of the market and bureaucracy, the biggest obstacles to enterprise development, are particularly detrimental to SMEs, which are noted for their low-cost operation and flexibility. It is for these reasons that we have endeavoured to sustain a simple and clear taxation system and allow enterprises to retain their capitals for further development and enhancing competitiveness as far as possible. As the Secretary, Mr CHAU Tak-hay, pointed out in this Council last week, the Government has endeavoured to keep many public charges affecting the operating costs of enterprises at a low level. This represents a great help to SMEs, which are, relatively speaking, lack of capitals. On the other hand, the Government is, through the Business and Services Promotion Unit, working closely with private organizations to try its very best to streamline cumbersome government procedures, reduce the cost burdens arising out of regulation with a view to providing the commercial sector with better services. The Business Licence Information Centre under the Industry Department has provided enterprises with a comprehensive business licensing service. I am very pleased to learn that enterprises are satisfied, having used the service.

We are also actively promoting the application of technology and transformation in the direction of high value-added industries among the enterprises. In the coming century, that is, the knowledge-based economy era, the local enterprises must upgrade the value of our products and services before we can stand out from the rest. High added value is not a franchise for multinational enterprises. SMEs can achieve high added value too. In fact, many American high value-added industries running in the technological front line started off as small scale enterprises. With their flexibility and adaptability, small enterprises are, more often than not, better able to master the ever-changing commercial trend. The Government is now implementing a number

of measures to promote the application of technology and high value-added commercial activities. Major beneficiaries are SMEs. These measures include:

- (1) setting up a \$750 million Applied Research Fund (ARF) to directly provide equity capital to technology-based companies. The ARF is managed by three private venture capital firms. Close to the market, these firms can advise the funded companies on strategic planning, commercial management, retail networks and support work for marketing promotion.
- (2) setting up a \$5 billion Innovation and Technology Fund (ITF) to finance projects contributing to innovation and technology upgrading. One of the items, the Small Entrepreneur Research Assistance Programme, provides financial assistance of up to \$2 million for applicants in undertaking research and development work of commercial nature.
- (3) setting up a SME Centre through the Hong Kong Productivity Council (HKPC) to provide SMEs with one-stop support services such as organizing seminars and workshops, undertaking research on special industrial topics, providing consultancy service and so on.
- (4) organizing a business nurturing scheme through the Hong Kong Industrial Technology Centre to provide low-cost workplace for newly-established technology firms, as well as rendering assistance in such areas as management, marketing, finance, infrastructures and skills to tide these firms over the first few years of the venture period. Since the implementation of the scheme, we have nurtured a total of 70-odd technology firms, with 26 of them having reached a stage where they can "survive on their own".

Madam President, with the approach of the digital era, the role played by the Internet market has become increasingly important. The Government attaches great importance to the business opportunities brought about by

electronic trade to SMEs. Capable of reducing substantial rents and operating costs, electronic trade has a special significance for SMEs with comparatively small capital. To give various trades and professions a better understanding of the merits of electronic trade, the Information Technology and Broadcasting Bureau has organized a series of activities together with various bodies to promote the application of electronic trade. Furthermore, the Government has embarked on an Electronic Service Delivery Scheme in order to demonstrate to private bodies as well as playing a leading role in the application of electronic trade. We also co-operate with private bodies to implement a free electronic mail service to provide the public with free electronic mail accounts with a view to encouraging various sectors of the community to make use of electronic communication. Apart from these, we have also joined hands with a number of organizations to prepare information kits on electronic trade for distribution to SMEs.

Other industrial support bodies have also assisted SMEs to operate their business on the Internet. For instance, the HKPC has set up an Internet shopping avenue called "Hong Kong Product On-line"; the TDC has set up an electronic magazine called *Hong Kong Enterprise Internet*. They provide an economical means to enable SMEs to contact buyers all over the world through the Internet. The Information Technology and Broadcasting Bureau is now working closely with these two organizations in examining the possibility of merging various electronic trade services into a complete set of comprehensive and convenient electronic trade programmes for the use of SMEs.

Apart from various support facilities mentioned above, human resources training is an integral part in raising the value of industries and enhancing the application of technology. With the advance in information technology (IT), we must strengthen human resources training in various aspects. As far as basic education is concerned, we will inject resources amounting to several billion dollars to implement a five-year IT education strategy to prepare more than a million primary and secondary students to rise to the challenges of the information era.

As for universities, we have at present about 16 000 students taking courses on "computer science and information" and "engineering and technology". Moreover, various institutions have provided all students with IT training in the form of compulsory or elective subjects. Some institutions even consider giving off-site tests to ensure that the IT knowledge and application

ability of their graduates reach a specified standard. As for technical education and vocational training, the Vocational Training Council (VTC) is providing comprehensive courses to cater for the needs of enterprises. Furthermore, the HKPC and various universities are actively providing training opportunities for employees in different areas of technology. These training courses can ensure a constant supply of excellent IT new forces for Hong Kong's SMEs. Following the development of Hong Kong into a knowledge-led and technology-intensive economy, the Government will ensure that various tertiary institutions and training institutions will take corresponding measures to cope with the change by training the necessary human resources locally.

Madam President, in a knowledge-based economy, intellectual capital and monetary capital are both important production elements. Sometimes, intellectual capital is even more important than monetary capital. The introduction of intellectual capital will enhance Hong Kong's economic growth as well as creating more job opportunities, much in the same way as foreign capital has promoted Hong Kong's economic development. Therefore, apart from training local talents, we also need to endeavour to absorb talented people from places all over the world, including those from the Mainland. The Government has set up an ad hoc group to review the existing immigration policies to enable us to introduce talented people whom Hong Kong lacks from various places in the world, including the Mainland. In doing so, we can enhance our competitive edge as a manufacturing and services centre.

We also understand that market development is very important for enterprises to grow and prosper. Hong Kong is an open economy. Our local market is small while competition is rife. With the gradual integration of the global economy and trade, there is an increasing urgency for the Government to help enterprises actively opening up external markets. To this end, the TDC has allocated additional resources this year to strengthen its work on expanding trade so as to secure more market opportunities for Hong Kong businessmen. A number of the activities organized are specially designed for SMEs. These include:

- (1) to publish a monthly magazine entitled *SME Newsletter* to provide SMEs with information on the market;
- (2) to set up a "TDC-Link" system through the Internet to introduce overseas buyers to SMEs, identify government procurement

contracts and contracting information;

- (3) to launch the *Business Alert - China* to give brief introductions on the latest mainland business rules, various business practices and on trade development, as well as inviting mainland officials and experts to come to Hong Kong to brief SEMs on special topics so as to help them understand the trading situation in the Mainland; and
- (4) to provide individual advisory services through the Small and Medium Enterprises Office as well as inviting experts to answer SMEs' specific questions with respect to finance, export risks and rules of the mainland market.

Just now, both Mr HUI Cheung-ching and Mr Ambrose LAU raised the point that the Government should step up securing mainland markets for SMEs. In this respect, the Financial Secretary set up a working group in April to examine the possible impact on and trade opportunities for Hong Kong businessmen, particularly SMEs, as a result of China's accession to the World Trade Organization (WTO). In exploring the matter with the Central Government and relevant departments, we have stressed the importance of local SMEs to our economy as well as their strengths. We aim at providing Hong Kong businessmen, including SMEs, the latest situation on the China's accession to the WTO as well as assisting them to consider how to enter the mainland markets expeditiously.

Members have, in the debate, mentioned quality accreditation. Hong Kong needs to strengthen and promote products testing and certification services in order to open up more overseas markets. To provide technical support for the industrial sector, the Government has implemented a number of measures. One of the measures is the setting up of a Hong Kong Accreditation Service. The main goal of the Service is to raise the testing standards of laboratories, upgrade their management, as well as promoting the acceptance of the testing results of accredited laboratories by local and overseas institutions. To date, the Service has accredited 80 laboratories and signed a number of reciprocal agreements to enable 23 economies to accept the testing results of Hong Kong's accredited laboratories.

Apart from these, the Government has all along endeavoured to promote comprehensive quality control, vigorously publicized the ISO9000 series and accreditation services for the environmental management system and so on.

Since as early as in 1990, we have embarked on large scale publicity activities on quality to promote this comparatively new concept to the commercial sector. The Government has also set up the Hong Kong Quality Assurance Agency to issue qualified enterprises with various quality accreditation. Through the efforts made by us over so many years, the local commercial sector has generally recognized the importance of ISO9000 quality accreditation. Organizations and consultancy services for providing such quality accreditation service have also been set up one after another. Our current focus of work is to ensure the standards of these organizations through our accreditation service.

Members are also greatly concerned with SMEs' financing from local banks. The Hong Kong Monetary Authority has stipulated that lending institutions must, in granting loans, take effective measures to assess the credit risks, take full consideration of the borrowers' financial stability, business prospects, repayment ability, relevant trading situation and other credit records. Generally speaking, it is a cautious approach for the banks to, in a certain form, use valuable assets as collateral for part of the loans or credit facilities. Nevertheless, the banks should not purely make their lending decisions in accordance with the value of certain collateral. But we must stress that, on the premise of upholding a free economy, the Government should not interfere with the banks' commercial lending activities.

I also agree with a point raised by some Members earlier that to make it easier for SMEs to secure finance from the banks, the enterprises themselves should actively enhance their operation transparency and professionalism, as well as providing information in a more comprehensive manner, including audited accounting reports, business blueprints, the situation of liquid capital and so on. In doing so, the banks will have more information for reference in assessing loan risks.

Of course, the Government understands that during this economic adjustment period, many enterprises are faced with financial difficulties. To prevent such short-term fluctuations from affecting the development of SMEs, the Government set up a \$2.5 billion "Special Finance Scheme for Small and Medium Enterprises" in August last year to help SMEs resolve their problems pertaining to shortage of liquid capital. Since the implementation of the Scheme, more than 3 000 applications have been approved, thereby providing credit guarantees for more than 2 500 enterprises. The amount of the accumulated loans involved has now exceeded \$2.9 billion. According to the latest economic forecast, our economy is expected to revive gradually in the

latter half of this year. With the emergence of positive messages, we believe a more generous lending policy will be adopted by the banks. This is because the credit crunch brought about by the economic adjustment will also be relieved.

Just now, both Mr HUI Cheung-ching and Mr FUNG Chi-kin mentioned the issue pertaining to the Venture Board. In his policy address published in 1997, the Chief Executive has already expressed his support for the Stock Exchange of Hong Kong to study the setting up of a Venture Board to help small enterprises in Hong Kong and the region to raise capital. After that, the Stock Exchange conducted a consultation exercise and the responses received from enterprises and the public were generally good. Now the Venture Board has officially named as the "Growth Enterprises Market". The Stock Exchange has also set up a working group to prepare various details for setting up the Venture Board, including the listing rules of the Venture Board. Relevant work in this area has now neared the completion stage. The Stock Exchange will later start accepting applications for listing on the Venture Board. As regards the various longer-term measures proposed by Members in the debate, the Government will take them into reference.

Madam President, under the free economy principle, the SAR Government will try its very best to provide maximum support for SMEs and help them to give full play to their existing edge, as well as supplementing their limitations in terms of scale, resource, skill, manpower and market. I deeply believe the abovementioned support services can render a lot of assistance to SMEs in different areas. Therefore, I cannot agree with the remark made by some Members that the Government's policy towards SMEs is to let them survive on their own or abandon them. Nevertheless, I must stress that the Government's role is not to interfere with the normal growth of the market and, what is more, not to replace the function of the market. Its role is rather to create the best business environment to allow active SMEs to give play to their maximum potentials. We will continue to actively strengthen our support on the existing basis, and encourage SMEs to bring greater impetus to our economy which is now heading for the new century.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr HUI Cheung-ching, you may now reply. You have two minutes 16 seconds out of your original 15 minutes.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, Members must have been extremely tired after taking part in a three-day meeting, which is indeed a long period. Nevertheless, they still appeared enthusiastic in giving support to my original motion. (*Laughter*) I must whole heartedly thank the 13 Members who have spoken.

Madam President, I am very glad to learn that the Government has been carrying out a number of plans to assist the SMEs. The Director-General of Industry, Mr Francis HO, told me at a seminar that the Government would be launching a more comprehensive scheme for SEMs later this year. I hope today's motion and speeches from Members may help the Government to understand what SMEs need. The Government should formulate a comprehensive policy as soon as possible to enhance the competitiveness of SMEs to help their steady onward movement. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr HUI Cheung-ching, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

END OF SESSION

PRESIDENT (in Cantonese): I thank Members for their endurance to this point. I wish Members a happy summer vacation. I hope Members can take the opportunity to get more rest in the next few weeks to relax and unwind. The next Session will begin at a date to be appointed by the Chief Executive, which is expected to be 6 October, 1999. I now adjourn the Council until that date.

Adjourned accordingly at thirteen minutes past Eleven o'clock.

INSURANCE COMPANIES (AMENDMENT) BILL 1999

COMMITTEE STAGEAmendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 50 -</p> <p>(i) by deleting "and its members" and substituting ", a member of Lloyd's and the members of Lloyd's taken together";</p> <p>(ii) by adding "relevant" before "requirements".</p> <p>(b) By deleting the proposed section 50B(4) and substituting -</p> <p>"(4) Where a person has been appointed as the authorized representative and the Insurance Authority believes that he is no longer a fit and proper person to be so and desires his removal, the procedures described in section 13A(5) to (8) shall apply with the necessary changes as provided in subsection (3), and in addition to those changes, a reference to a notice of objection and the person proposed to be appointed shall be read as a reference to a notice of removal and the person appointed respectively.</p> <p>(4A) After the notice of removal has been served, the authorized representative shall be removed on the date specified in the notice and the lodging of an appeal to the Financial Secretary shall not prevent the notice from taking effect.</p>

ClauseAmendment Proposed

(4B) If the Financial Secretary, on appeal, decides that the notice of removal should not have been served, the notice of removal shall thereupon be cancelled and the authorized representative who has been served the notice may be reinstated by Lloyd's."

- (c) In the proposed section 50E(a), (b) and (c), by deleting "Lloyd's members" and substituting "a member of Lloyd's".
- (d) By deleting the proposed section 50F(1) and substituting -

"(1) The provisions of Part V, except section 40, apply to one or more of the following, as the context may require -

- (a) Lloyd's;
- (b) a member of Lloyd's who carries on insurance business in Hong Kong;
- (c) the members of Lloyd's taken together who carry on insurance business in Hong Kong,

and a reference in those provisions to an insurer shall be deemed for this purpose to be a reference to one or more of Lloyd's, such member and such group of members."

FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
2(c)	In the proposed definition of "container handling", by deleting ", keeping or maintaining" and substituting "or maintaining (including repairing)".
3	By deleting the proposed section 6BA and substituting - "6BA. Proprietor of relevant industrial undertaking not to employ, etc. relevant person who does not have relevant certificate (1) In this section - "appointed day" (指定日期) means the day appointed under subsection (17); "certificate" (證明書) means a certificate referred to in subsection (2); "relevant certificate" (有關證明書), in relation to a relevant person employed at a relevant industrial undertaking, means the certificate issued to the person in respect of his attendance at the relevant safety training course which relates to that undertaking;

ClauseAmendment Proposed

"relevant industrial undertaking" (有關工業經營) means an industrial undertaking the subject of a notice under subsection (2);

"relevant person" (有關人士), in relation to a relevant industrial undertaking, means a person the subject of a notice under subsection (2) in the case of that undertaking;

"relevant safety training course" (有關安全訓練課程), in relation to a relevant person, means the safety training course the subject of a notice under subsection (2) in the case of the class of persons to which that person belongs.

(2) The Commissioner may, by notice in the Gazette, or by notice in writing published in such other manner as the Commissioner thinks fit, recognize a safety training course -

(a) for a class of persons -

(i) employed at an industrial undertaking specified in column 1 of the Fourth Schedule; and

(ii) belonging to the persons specified opposite the undertaking in column 2 of that Schedule; and

(b) in respect of which a certificate is issued to a person who attends the course.

ClauseAmendment Proposed

(3) A certificate issued to a person who attends a safety training course which is subsequently recognized under subsection (2) shall, unless otherwise provided in the notice under that subsection recognizing the course, for the purposes of this Ordinance have the same effect as a certificate issued to a person who attends the course on or after the day on which the course is so recognized.

(4) Where the Commissioner is satisfied that a relevant person has undergone training -

- (a) equivalent to the training provided by a relevant safety training course; and
- (b) of a standard not less than the standard of the training provided by that course,

then -

- (i) the Commissioner may issue or cause to be issued to the person a certificate in the same terms as the certificate that would have been issued to the person if he had attended that course; and
- (ii) the certificate so issued shall, for the purposes of this Ordinance, have the same effect as a certificate issued to a person who has attended that course.

ClauseAmendment Proposed

(5) On and after the appointed day, every proprietor of a relevant industrial undertaking -

(a) shall not employ at the undertaking a relevant person who has not been issued a relevant certificate or whose relevant certificate has expired;

(b) in the case of a relevant person employed at the undertaking -

(i) immediately before that day who has not been issued a relevant certificate or whose relevant certificate has expired, shall cease to continue to employ the person at the undertaking on the expiration of 1 month after that day unless, before that expiration, the person has been issued a relevant certificate;

(ii) on or after that day whose relevant certificate expires during the course of his employment, shall cease to continue to employ the person at the undertaking on the expiration of 1 month after the expiration of the certificate unless, before the expiration of that month, the person has been issued a relevant certificate.

ClauseAmendment Proposed

(6) A certificate shall expire on -

- (a) the day specified in the certificate, being a day not less than 1 year, and not more than 3 years, after the day on which the certificate was issued;
- (b) if no such day is specified, on the expiration of 3 years after the day on which the certificate was issued.

(7) On and after the appointed day, it shall be the duty of every relevant person employed at a relevant industrial undertaking who has been issued a relevant certificate which has not expired to -

- (a) carry the certificate with him while at work at the undertaking;
- (b) produce the certificate upon demand by -
 - (i) subject to paragraph (c), the proprietor of the undertaking or an agent of the proprietor authorized by the proprietor for the purpose; or
 - (ii) subject to paragraph (d), an occupational safety officer;
- (c) if unable to comply with a demand under paragraph (b)(i), make a statement -

ClauseAmendment Proposed

- (i) subject to subparagraph (ii), in a register kept by the proprietor of the undertaking under subsection (8), that he has been issued the certificate and the certificate has not expired and containing such other particulars as are required by the register; and
 - (ii) if and only if he has not made a like statement in that register on the day immediately preceding the day on which that demand is made;
- (d) if unable to comply with a demand under paragraph (b)(ii), produce the certificate at a place and within a period -
- (i) specified by the occupational safety officer who made the demand; and
 - (ii) which are reasonable in all the circumstances.
- (8) On and after the appointed day, every proprietor of a relevant industrial undertaking shall -
- (a) establish and maintain a register or registers for the purposes of subsection (7)(c) in such form as is

ClauseAmendment Proposed

specified by the Commissioner;

- (b) not cause or permit any statement referred to in subsection (7)(c) made in any such register to be removed therefrom at any time before the expiration of 18 months from the date on which the statement was made in the register.

(9) Where a relevant certificate which has not expired has been lost, defaced or destroyed, the relevant person to whom it was issued shall, unless he has ceased to be employed at a relevant industrial undertaking, as soon as is reasonably practicable make an application to the Commissioner to be issued a replacement relevant certificate in the same terms (and any such application may consist of, or require the accompaniment of, a statutory declaration made by the person as to the loss, defacement or destruction of the certificate).

(10) The Commissioner shall issue or cause to be issued a replacement relevant certificate pursuant to an application under subsection (9) upon being satisfied that the relevant certificate which it will replace has in fact been lost, defaced or destroyed.

(11) A replacement relevant certificate issued pursuant to an application under subsection (9) shall, for the purposes of this Ordinance, have the same effect as the relevant certificate which it replaces.

(12) Subject to subsection (13), a proprietor who contravenes subsection (5) commits an offence and is liable to a fine at level 5.

ClauseAmendment Proposed

(13) It shall be a defence to a prosecution for an offence under subsection (12) for the proprietor to show that he believed, and that it was reasonable for him to believe, that the relevant person to whom the offence relates had been issued with a relevant certificate and that the certificate had not expired.

(14) A relevant person employed at a relevant industrial undertaking who -

- (a) makes a statement referred to in subsection (7)(c); and
- (b) is not a person who has been issued a relevant certificate which has not expired at the time of making that statement,

commits an offence and is liable to a fine at level 3.

(15) A relevant person who, without reasonable excuse, contravenes subsection (7)(d) commits an offence and is liable to a fine at level 3.

(16) A proprietor who contravenes subsection (8) commits an offence and is liable to a fine at level 3.

(17) The Secretary for Education and Manpower may, by notice in the Gazette, appoint a day for the purposes of subsections (5), (7) and (8).

(18) A notice under subsection (17) is subsidiary legislation.

ClauseAmendment Proposed

(19) For the avoidance of doubt, it is hereby declared that subsection (5)(b) shall not operate to entitle an employer to terminate the contract of employment of an employee otherwise than in accordance with the provisions of the Employment Ordinance (Cap. 57) in the case of an employee within the meaning of section 2(1) of that Ordinance."

- 5
- (a) In the proposed paragraph (oa)(iii), by deleting "keep under".
 - (b) In the proposed paragraph (oc), by adding "by the Commissioner" after "assessing".
 - (c) In the proposed paragraph (od)(ii), by adding ", the imposition of a fine not exceeding \$10,000" after "suspension of registration".

6 By deleting the clause and substituting -

"6. Commissioner may amend the Schedules

Section 8 is amended -

- (a) by renumbering it as section 8(1);
- (b) by adding -

"(2) The Commissioner may, by notice in the Gazette and subject to the approval of the Legislative Council, amend the

ClauseAmendment Proposed

Fourth Schedule. ". ".

7 By deleting "6BA(12)" and substituting "6BA(15)".

9 By deleting the proposed Fourth Schedule and substituting -

"FOURTH SCHEDULE [ss. 6BA & 8]

SPECIFIED INDUSTRIAL UNDERTAKINGS
AND PERSONS EMPLOYED AT
THE UNDERTAKINGS

Column 1

Column 2

Industrial
undertaking

Persons employed at
industrial undertaking

1. Construction work

Every person carrying out
construction work

2. Container handling

Every person carrying out
container handling".

16 By deleting "堆疊的貨物或貨品的移去" and substituting "使堆疊的貨物或貨品不再堆疊".

17(a) By deleting "堆疊的貨櫃的移去" and substituting "使堆疊的貨櫃不再堆疊".

Annex VII

LINGNAN UNIVERSITY BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
9(1)	(a) In paragraph (d), by deleting "1 member" and substituting "2 members". (b) By deleting paragraph (f).
9(5)	By deleting ", (f)".
9(7)	By deleting ", (f)".
9(8)	By deleting ", (e) or (f)" and substituting "or (e)".
12(1)	(a) In paragraph (d), by deleting "2" and substituting "3". (b) By deleting paragraph (f).
12(6)	By deleting ", (e) or (f)" and substituting "or (e)".
12(8)	By deleting ", (e) or (f)" and substituting "or (e)".
12(9)	By deleting ", (e) or (f)" and substituting "or (e)".

<u>Clause</u>	<u>Amendment Proposed</u>
14(2)	By deleting "並可視其認為合適而就或不" and substituting "如校董會認為合適，並可".
16(1)	By deleting "並可視其認為合適而就或不" and substituting "如校董會認為合適，並可".
17(1)	By deleting "並可視其認為合適而就或不" and substituting "如校長認為合適，並可".
23(1)(g)	By deleting ", (e) or (f)" where it twice appears and substituting "or (e)".
37	By deleting the clause.
38	By adding "to the Legislative Council Ordinance (Cap. 542)" after "Schedule 2".
New	By adding -

**"Legislative Council (Amendment)
Ordinance 1999**

40. Sections added

Section 13 of the Legislative Council (Amendment) Ordinance 1999 (of 1999) is amended by repealing the new section 20E(b)(xi) and substituting -

"(xi) Council of Lingnan University;".

ClauseAmendment Proposed

Schedule 1,
paragraph 7 By deleting ", (e) or (f)" and substituting "or (e)".

Schedule 2,
paragraph 6 By deleting ", (e) or (f)" and substituting "or (e)".

Annex VIII

ADAPTATION OF LAWS (NO. 4) BILL 1999

COMMITTEE STAGEAmendments to be moved by the Secretary for Works

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 4, sections 1, 5(a), 12 and 22	By deleting "in Council".
Schedule 10, section 12	By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".
Schedule 11, section 1	By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".
Schedule 12, section 1	By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".
Schedule 13, section 1	By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".

ClauseAmendment Proposed

Schedule 14, section 1, By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".

Schedule 15, section 1, By deleting everything after "Central" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws".

Annex IX**DISCIPLINED SERVICES WELFARE FUNDS LEGISLATION
(AMENDMENT) BILL 1999****COMMITTEE STAGE**Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

- 10(1) By deleting "property, whether real or personal and" and substituting "real property,".