

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 16 February 2000**

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

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN, G.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE HO SAI-CHU, S.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE MICHAEL HO MUN-KA

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

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE LEE KAI-MING, S.B.S., J.P.

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

THE HONOURABLE NG LEUNG-SING

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE GARY CHENG KAI-NAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE TIMOTHY FOK TSUN-TING, S.B.S., J.P.

THE HONOURABLE LAW CHI-KWONG, J.P.

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

THE HONOURABLE FUNG CHI-KIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

**MEMBERS ABSENT:**

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

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE EDWARD HO SING-TIN, S.B.S., J.P.

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

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

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHRISTINE LOH

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

## **PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.  
THE FINANCIAL SECRETARY

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

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR PLANNING AND LANDS

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR TRANSPORT

MR RAFAEL HUI SI-YAN, G.B.S., J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR KWONG KI-CHI, G.B.S., J.P.  
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MISS DENISE YUE CHUNG-YEE, J.P.  
SECRETARY FOR THE TREASURY

MR DAVID LAN HONG-TSUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

MRS LILY YAM KWAN PUI-YING, J.P.  
SECRETARY FOR THE ENVIRONMENT AND FOOD

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR SECURITY

MR HO WING-HIM  
SECRETARY FOR HEALTH AND WELFARE

### **CLERKS IN ATTENDANCE:**

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

| Subsidiary Legislation/Instruments   | <i>L.N. No.</i> |
|--|-----------------|
| Television (Royalty and Licence Fees)<br>(Amendment) Regulation 2000 .....   | 25/2000         |
| Arbitration (Amendment) Ordinance 2000<br>(2 of 2000) (Commencement) Notice 2000.....  | 26/2000         |
| Merchant Shipping (Safety) (Amendment)<br>Ordinance 2000 (6 of 2000)<br>(Commencement) Notice 2000 .....   | 27/2000         |
| Merchant Shipping (Safety) (Cargo Ship Construction<br>and Survey) (Ships Built Before<br>1 September 1984) (Amendment)<br>Regulation 2000.....      | 32/2000         |
| Merchant Shipping (Safety) (Cargo Ship Construction<br>and Survey) (Ships Built On or After<br>1 September 1984) (Amendment)<br>Regulation 2000..... | 33/2000         |
| Merchant Shipping (Safety) (Cargo Ship Safety<br>Equipment Survey) (Amendment)<br>Regulation 2000.....   | 34/2000         |
| Merchant Shipping (Safety) (Load Line)<br>(Amendment) Regulation 2000 .....  | 35/2000         |
| Merchant Shipping (Safety) (Load Lines)<br>(Length of Ship) (Amendment)<br>Regulation 2000.....  | 36/2000         |

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| Merchant Shipping (Safety) (Passenger Ship<br>Construction and Survey) (Ships Built On<br>or After 1 September 1984) (Amendment)<br>Regulation 2000..... | 37/2000 |
| Merchant Shipping (Safety) (Radio Installations Survey)<br>(Amendment) Regulation 2000 .....   | 38/2000 |
| Road Traffic (Traffic Control) (Amendment)<br>Regulation 2000.....   | 39/2000 |
| Public Health and Municipal Services Ordinance<br>(Civic Centres) (Amendment of Thirteenth<br>Schedule) Order 2000 .....                                 | 40/2000 |
| Tax Reserve Certificates (Rate of Interest)<br>Notice 2000.....  | 41/2000 |
| Air Pollution Control (Motor Vehicle Fuel)<br>(Amendment) Regulation 2000 .....  | 42/2000 |
| Licensing Appeals Board Rules .....  | 43/2000 |
| Import and Export (Strategic Commodities) Regulations<br>(Amendment of Schedule 1) Order 2000<br>(L.N. 2 of 2000) (Commencement)<br>Notice 2000.....     | 44/2000 |

#### Other Papers

- No. 71 — Report by the Commissioner of Correctional Services on the administration of the Prisoners' Welfare Fund for the year ended 31 March 1999
- No. 72 — Audited Statement of Accounts together with the Director of Audit's Report and Trustee's Report on the Administration of the Education Scholarships Fund for the year ended 31 August 1999

No. 73 — The Legislative Council Commission  
Annual Report 1998-1999

No. 74 — Report of the Public Accounts Committee on the Reports  
of the Director of Audit on the Accounts of the  
Government of the Hong Kong Special Administrative  
Region for the year ended 31 March 1999 and the Results  
of Value for Money Audits (Report No. 33)  
(February 2000 - P.A.C. Report No. 33)

No. 75 — Legal Aid Services Council Annual Report 1998-99

Report of the Bills Committee on Elections (Corrupt and Illegal Conduct)  
Bill

**PRESIDENT** (in Cantonese): Honourable Members, this is the first meetings to be held in this Council in the Year of the Dragon. I sincerely wish Members good health and smooth work.

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Mr Eric LI, Chairman of the Public Accounts Committee, will address the Council on the Committee's report on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 1999 and the Results of Value for Money Audits (Report No. 33).

**Report of the Public Accounts Committee on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 1999 and the Results of Value for Money Audits (Report No. 33)**

**MR ERIC LI:** Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 33 today.



According to the Audit Ordinance and the Paper tabled in the Provisional Legislative Council on 11 February 1998 on the Scope of Government Audit in the Hong Kong Special Administrative Region — "Value for Money Audits", the Director of Audit's Report on the Accounts of the Government of the Hong Kong Special Administrative Region for 1998-99 and his Report on the results of value for money audits completed between March and September 1999 were submitted to the President on 29 October 1999 and tabled in the Legislative Council on 17 November 1999.

The PAC Report No. 33 contains three main parts:

- (a) the PAC's assessment of the actions taken by the Administration in response to the recommendations made by the PAC in Report Nos. 30 and 31;
- (b) the observation of the PAC on the Report of the Director of Audit on the accounts of the Government for the year ended 31 March 1999; and
- (c) the conclusions reached by the PAC on the Director of Audit's Report on the results of value for money audits completed between March and September 1999 and tabled in this Council on 17 November 1999.

The PAC has examined in detail the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for 1998-99. We have noted the continuous improvements made to the presentation of the Government's Accounts and would like to express our appreciation of the efforts made by the Administration in this regard.

The PAC has decided to study in detail seven of the subjects raised in the Director of Audit's Report No. 33. The Report tabled today cover our deliberations on four subjects, that is, the use of energy-efficient air-conditioning systems in Hong Kong, the management of on-street parking spaces and parking facilities, the administration of allowances in the Civil Service, and the Government's administration of sale of land by tender.

Examination of the other three subjects has commenced, but the reporting of our deliberations has to be deferred to a later date.

The PAC originally planned to hold a public hearing on "The refuse collection service of the Urban Services Department" in December 1999. We eventually decided to postpone this in view of the then widely anticipated reorganization of the provision of municipal services. As it turned out, the now restructured bureau and department will be in a better position to deal with some of the issues raised in the Director of Audit's Report. The PAC has considered it appropriate to allow them sufficient time to prepare for a proper response.

We also held two public hearings in December 1999 and January 2000 on "Water purchased from Guangdong Province". Because of the complexity of the various issues raised, the need to examine the evidence in detail and the time it takes to analyse the documentary evidence, we still find ourselves not in a position to make a full report on this subject.

As for "Management practices of the Vocational Training Council", the PAC considers that the response given by the Executive Director of the Vocational Training Council in the Director of Audit's Report to be far from adequate to enable us to ascertain the relevant facts and arguments. We are continuing with our inquiries in the light of additional information provided by the witnesses during and subsequent to the public hearing.

We have decided to hold further public hearings, which have been scheduled for the second half of February, to receive further evidence on these three subjects. Notwithstanding the above necessary delays, we are making the best endeavours to finalize our report to the Council at the earliest opportunity.

Turning to the four substantive issues which are covered in this Report, I would like to dwell first on the sale of government land by tender. Land is a very scarce public resource in Hong Kong. The sale of government land represents a significant source of public revenue. Thus, a high degree of integrity in the system of selling government land by tender is crucial in the protection of public revenue.

Seen in this light, the PAC is dismayed to learn that, in conducting the tender of the Kowloon Bay site and Ap Lei Chau site in 1997, though the Government was empowered by the Conditions of Sale to recover all losses from the purchasers, it could not do so because when the successful tenderers defaulted, they did not have any substantial assets against which a claim could be

meaningfully made. As a result of the Government's failure to exercise its right to vet the financial ability of the tenderers and to secure a guarantee from the purchasers' parent or associated company to safeguard the public revenue, the Government suffered a loss of over \$400 million.

The PAC notes that, to forestall the recurrence of such a state of affairs in future for the sale of Private Sector Participation Scheme sites and other sites involving government facilities, the Director of Lands has undertaken to ensure that tenderers will be required to submit their tenders with statements of their financial and technical ability, and a parent or associated company guarantee upon the award of a tender. We consider that it is incumbent upon the Administration to strictly enforce the requirements in the Tender Notice. In order to provide additional safeguards to protect the Government's interests in the long run, we also urge the Administration to conduct a public consultation exercise with a view to identifying the best method for protecting the Government's interests without dampening the market's interests in land sale tenders.

The PAC also examined in detail the sale of the Ma On Shan site for hotel development. This sale was effected in 1997 to 1998, when the Asian financial crisis struck Hong Kong. The adequacy and fairness of the tender price of some \$120 million have been the subject of much public discussion.

The PAC notes that the Ma On Shan site was one of the two sites earmarked in a trial scheme specifically for hotel development. This is part and parcel of the Government's policy to encourage hotel developments to support the tourist industry. Against this background, and having regard to the evidence obtained at the public hearing and the written evidence subsequently provided by the Administration, the PAC has concluded that the sale of the Ma On Shan site should be viewed in perspective and the exceptional circumstances which prevailed at the time. We accept that there was no evidence to suggest that the Administration had departed from its land sale policy. The Administration had followed due process in tendering the site and the award was considered acceptable by the Central Tender Board.

The PAC believes that the crux of the problem lay in the fact that the Administration had not adjusted the valuation of the Ma On Shan site for determining the tender deposit, by taking into account the effects of the Asian financial crisis and the potentially high construction costs due to the presence of cavernous marble. We also believe that the unrealistically high tender deposit required had sent a misleading message to the market and might have deterred

some potential tenderers from participating, thereby dampening competition and missing the opportunity to realize the full potential value of the site.

The PAC expresses serious concern that the Executive Council was not fully informed of the potential loss of revenue in zoning sites for hotel developments. We are also concerned that despite the significant changes in the hotel and tourist industries and the limited interest in the tender exercise, the sale of the Ma On Shan site had not been referred back to the Chief Secretary's Committee for its reconsideration as to whether it was really appropriate to award the tender at that time. The PAC believes that communication within the Administration could have been made more effective among the Central Tender Board, the Secretary for Economic Services, the Secretary for Planning, Environment and Lands and the Chief Secretary's Committee in assessing the outlook of hotel and tourist industries and in dealing with the sale of the site for hotel development. As in the present case, it would have been much more satisfactory if the public can be assured with evidence that all the parties involved in making this important decision are being kept fully informed of the latest policy and financial considerations.

The PAC has examined in some detail the administration of seven types of allowances covered by the Director of Audit's report with a view to ensuring that any allowances to be retained would be well justified and that those which no longer serve a useful purpose would be abolished or adjusted to achieve savings.

We are seriously dismayed that the Administration has failed to abolish outdated allowances although it has long been aware that the allowances have become outmoded and no longer justified in present-day circumstances, and that the Administration has taken limited initiative to review individual allowances and the system of administration of allowances in the Civil Service.

The PAC is also dismayed that the Administration has adhered strictly to the practice of "non-deprivation of existing benefits" where serving officers are allowed the options of retaining the existing benefits and of receiving new benefits. The Administration has adopted the convention of not altering unilaterally the conditions of service without agreement by the staff side, notwithstanding the fact that there are legal grounds on which the Government can modify the terms and conditions of service and that there is a well-established procedure for resolving disputes with the staff associations should those occur.

We urge the Administration to adhere to the established procedure for staff consultation. We believe that the staff associations will act reasonably and positively if the Administration formally puts up the justifications and proposals for altering the allowances through the consultation mechanism, as evidenced in the proposals for altering the Home-to-Office Travelling Allowance and the Furniture and Domestic Appliances Allowance.

I will not go into detail the PAC's observation and recommendation on the allowances covered in the Director of Audit's Report. In sum, we consider that it falls on the Administration to set in motion a programme to review regularly the justifications for individual allowances from a policy level, so as to ensure that the system of allowances continue to serve a useful purpose and does not become ossified. In so doing, we urge the Administration to conduct formal staff consultation with a high degree of transparency in accordance with the established procedure, with a view to working out a timetable for abolishing the outmoded allowances, paying due regard to the Director of Audit's concerns, value-for-money considerations, accountability for public expenditure, prevailing human resource practices in the private sector and, last but not least, the staff reaction. We also hope that the Administration will continue to discuss the review on allowances with this Council and to report regularly on the progress made.

In addressing the issue of on-street parking, the PAC evaluated whether the policy on metering of on-street parking spaces had been implemented faithfully, whether there was room for improvement in administering the contract for the management of parking meters and what would be the appropriate type of electronic parking devices to install.

We note that the policy of metering on-street parking spaces is based on traffic management grounds and that these should not be overridden by revenue-raising considerations. However, we are concerned that the Administration's metering policy, which is predicated on first identifying the need and then exercising control to meet traffic management objectives, may contradict the policy aim stated in the 1981 Executive Council Memorandum, which is to extend metering to all parts of the urban areas and the New Towns. Even if we accept the Administration's claim that the policy in force is based solely on traffic management grounds, we are dissatisfied that for over 30 years, the policy of maintaining a 15% availability rate of on-street parking spaces has not been fully implemented, and for nearly 20 years, the Administration has not conducted comprehensive utilization surveys to ascertain traffic management needs to meter parking spaces in built-up areas.

In view of the above, the PAC has recommended that the Secretary for Transport should clarify the policy with the Executive Council, and that the Administration should conduct periodical surveys to monitor the utilization of non-metered spaces on Sundays and public holidays. A decision on metering should then be made on the basis of these surveys and in consultation with the District Councils.

The PAC's findings and conclusions on the use of energy-efficient air-conditioning systems are detailed in the Report. I would only wish to highlight a few key considerations here. The PAC expresses strong dissatisfaction that the Director of Water Supplies has refused to lift the ban on the use of mains water for air-conditioning purposes after the Water Supplies Department had reviewed the subject in 1995. This decision is surprising in the light of the following facts:

- industrial consumption of fresh water has been declining since the early 1990s;
- there is a steady supply of fresh water from Guangdong; and
- there is a substantial forecast surplus of fresh water supply from 1999 to 2012.

We are dismayed that the Administration still saw the need to embark on a consultancy study in 1998 to assess the feasibility and economic justifications for the wider use of water-cooled air-conditioning systems (WACS). The truth should be plain for all to see. The case for this has already been supported by professionals in the field and the Energy Efficiency and Conservation Subcommittee (EECSC). We concur with the views expressed by some members of the EECSC that it was a waste of time to carry out a feasibility study on the adoption of WACS. We also consider that the consultancy study will cause unnecessary expense and delay in promoting the wider use of WACS.

The PAC acknowledges the Secretary for Planning, Environment and Lands' support for the implementation of more energy-efficient WACS, particularly the sea-water district cooling system. We urge the Administration to expedite its efforts in promoting and facilitating the wider use of WACS in Hong Kong. We consider that, instead of undertaking a feasibility study, the Administration should take the following practical steps, supported by technical advice from professional consultants if necessary, to:

- relax the ban on the use of mains water for air-conditioning purposes, as the Water Supplies Department has already confirmed that there would be sufficient capacity in water treatment works by 2001;
- ensure that a proper system is in place to monitor the design, operation and maintenance of water cooling towers to safeguard public health, in particular the prevention of Legionnaires' Disease; and
- consider the establishment of a registration and licensing system, so as to ensure that the 12 000 cooling towers in existence, and any future ones, will be up to the requisite standards of public safety.

Madam President, in this Report, we have dwelt on a variety of issues ranging from the sale of government land to usage of on-street parking spaces. But one common thread runs through these various themes, and that is the concern which is shared by all, including the Government and this Council, that public resources should be put to the best possible use and that the Government's financial interests is reasonably protected for the benefit of all. Throughout the years, the PAC has approached its mission with the sole aims of raising the standards of the administration of public finance in Hong Kong and safeguarding the public's interests in this regard.

I would like to acknowledge that, pursuant to the PAC's previous report on "Footbridge connections between five commercial buildings in the Central District", the Administration is taking action to implement footbridge connections between various commercial buildings in Central. Construction works for a footbridge across Queen's Road Central commenced in July 1999, and building plans for another footbridge across Wyndham Street have been approved. Both footbridges are expected to be in place to serve the public by 2001. Likewise, following the PAC's deliberations of the Director of Audit's report on "Control of obscene and indecent articles by the Television and Entertainment Licensing Authority", the Television and Entertainment Licensing Authority has compiled a guidance manual for its inspection staff on how to take enforcement action. The Authority has stepped up its work on monitoring pornographic video compact discs in routine surveillance inspections. The PAC welcomes the positive and constructive response on the part of the Administration on these fronts. We would invite the Government to receive this Report in the same spirit.

Madam President, I take this opportunity to record my appreciation of the contributions made by members of the PAC in our deliberations. Our appreciation also goes to the representatives of the Administration who have appeared before the PAC for their input. Last but not least, we are grateful to the Director of Audit and the staff of the Legislative Council Secretariat for their unfailing support and hardwork.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): The Chief Secretary for Administration will address the Council on the Legal Aid Services Council Annual Report 1998-99.

### **Legal Aid Services Council Annual Report 1998-99**

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, the Legal Aid Services Council (the Council) is established under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of the legal aid services provided by the Legal Aid Department. Since its establishment in 1996, the Council has been discharging its statutory functions in a most positive manner, putting forward valuable advice and recommendations in such areas as the establishment of an independent legal aid authority to monitor assigned-out legal aid cases, and the recently completed Legal Aid Policy Review. Members may refer to the Legal Aid Services Council Annual Report 1998-99 being tabled today for details. I would like to take this opportunity to express our appreciation to the Chairman and Members of the Council for their diligence.

I also note that the Council has recently announced its "Vision, Mission and Value" statement, and has undertaken to contribute to upholding and enhancing the rule of law by striving to ensure access to justice and equality before the law by people with limited means. We welcome the Council's initiative and look forward to closer co-operation with the Council in improving the administration of legal aid services in Hong Kong. I hope that the community will continue to fully support the Council.



**ORAL ANSWERS TO QUESTIONS**

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

**Development of Local Professionals**

1. **MR AMBROSE LAU** (in Cantonese): *Madam President, as Hong Kong's economy and society are becoming more knowledge-based, with service industries moving towards specialization, cut-throat price wars have occurred in certain professions, hence giving the public the impression that the service quality of the professions concerned may be deteriorating. In this connection, will the Government inform this Council of the measures in place to:*

- (a) strengthen the pre-employment and on-the-job training for local professionals and upgrade their international status in order to enhance their competitiveness;*
- (b) create more employment opportunities for local professionals; and*
- (c) safeguard the autonomy of professions in formulating their codes of practice, so as to ensure the quality of those professional services?*

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

- (a) The tertiary institutions and training providers in Hong Kong offer pre-service training to professionals. At present, University Grants Committee (UGC)-funded institutions are working on their academic development proposals for the 2001-2004 triennium. We will take into account the manpower requirements of various professions in determining the number of training places to be provided. In terms of curriculum design, advisory committees are set up by the institutions with the participation of relevant professionals so that courses so designed will meet the market needs. As regards in-service training, tertiary institutions and other

professional bodies organize programmes, seminars and so on to enable professionals to exchange ideas and update their knowledge and skills to meet the changing needs of society. The Government is also committed to promoting life-long learning and continuing education among the professionals. As an incentive, all expenses on job-related studies are tax deductible.

- (b) Hong Kong is a free market economy. The Government will not create employment opportunities specifically for any profession. However, it will strive to provide an environment conducive to the development of our professional services. As Hong Kong economy recovers and business sector's demand for professional services increases, there will be more employment opportunities. We also encourage various professions to provide quality services, protect consumer interests and enhance the public confidence in our service standards. Apart from the local market, globalization and economic development in the Asia-Pacific Region have brought about considerable opportunities for the expansion and export of our professional services. The Government will actively participate in the World Trade Organization (WTO) and promote the liberalization of trade in services so as to open up the overseas market for our professional services.
- (c) The Government's policy is that, professional bodies should, as far as possible, be self-regulatory. These bodies may draw up their own codes of conduct as empowered by the relevant ordinances, and take disciplinary actions against non-compliant members. Under normal circumstances, the Government will respect the autonomy of professions in their own development and regulation instead of exercising intervention.

**MR AMBROSE LAU** (in Cantonese): *Madam President, in part (b) of the main reply, it is said that the Government will actively participate in the WTO and promote the liberalization of trade in services so as to open up the overseas market for our professional services. May I ask what concrete measures the Government has in place in this respect?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, under the General Agreement on Tariffs and Trade (GATT), Hong Kong has entered into agreements with many overseas regions and economic systems for the opening of mutual service markets. For instance, as Members may have known, China and the United States have reached an agreement and China might join the WTO soon. A group has been set up under the leadership of the Financial Secretary to study the business opportunities that the entry of China into the WTO will bring, including whether Hong Kong could be benefited in the area of professional services. As led by this group, colleagues in the Department of Justice have recently discussed with mainland judicial departments the difficulties encountered by Hong Kong lawyers in providing legal services in the Mainland, and have also asked mainland legal departments to give their views on the provision of legal services outside the Mainland. This is a more concrete example to show that if the Government is aware of certain business opportunities, it is prepared to explore with the professional bodies concerned on how to open up new opportunities.

**DR RAYMOND HO** (in Cantonese): *In part (a) of the main reply, the Secretary for Education and Manpower mentioned in-service training, life-long learning and continuing education. Will the Government consider issuing guidelines to employers stating that if their professional staff participate in seminars, workshops or go abroad to study for higher degrees, employers may apply for tax deductions for the relevant expenses on further studies?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as I said in the main reply, all expenses of employees on job-related studies are tax deductible. As far as I know, if an employer arranges for employees to undergo training, the relevant expenses may be counted as the company's expenses. If a company incurs additional expenses, it will pay less tax. As for whether the Government will issue guidelines, it is my view that there are already too many government guidelines. We hope that we could convey the message to employers and professional bodies through discussions with the professions and Members, so that they would encourage more employees to acquire continual education.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary pointed out that the Government would not create employment opportunities specifically for any profession. Will the Secretary tell us whether the Government has conducted any studies on the difficulties encountered by professionals in entering the mainland market?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, first, there are more than 30 different categories of such people under the definition of professionals as provided by the Census and Statistics Department. As I said in the main reply, since the Government adheres to the principle of the free market economy, it will not formulate a policy to create employment opportunities specifically for any profession. However, I also explained that as the Government has to provide a favourable business environment and various social services, its policies will create prospective opportunities for many professionals and create new jobs. For instance, in terms of infrastructure, many professional posts for architects and engineers will arise. If we strive to improve the quality of education, the number of teaching posts will naturally increase as well. In my view, such a policy meets the situation and needs of Hong Kong.

**DR TANG SIU-TONG** (in Cantonese): *Since the Government and public bodies are "big users" of professional services, will the Government explain its policy on the selection of contractors for professional services? Earlier, there were reports that the Housing Authority (HA) selected those lawyers who quoted the lowest fees. Is that the Government's guiding policy?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, when the Government considers using certain professional services, there will of course be a definite process of tender. During this process, we will consider the following points: first, the skills and capability of the bidders and second, their past record. In terms of projects, for instance, we will see whether the bidders are in the List of Approved Contractors. If all the technical requirements and requirements for ability are met, we will also consider the question of price. Therefore, in the process of tender, it is not as simple as awarding the contract to the lowest bidder. Regarding the tendering process of the HA, as far as I know, it is conducting a two-month consultation on the quality of buildings. Members can give their views on the relevant tendering processes.

**MR ALBERT HO** (in Cantonese): *Madam President, will the Secretary tell us whether there are any surveys on the percentage of professionals from Hong Kong entering the markets of its major trading partners and the percentage vice versa? Is there an extraordinary lack of balance? If so, why?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the agreement on services in the international trade organization was only signed in recent years. In the past, the world market for professional services was less open. As for whether surveys have been conducted or comparisons been made between the number of our professionals running a business overseas and the number of people from other countries providing services in Hong Kong, I will note down this supplementary question and see if the Trade and Industry Bureau has any information on this. (Annex I)

**DR RAYMOND HO** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said that tertiary institutions would find out directly from employers their manpower needs. Why does the Government fail to play a co-ordinating role? Take engineering as an example, different engineering courses are offered by five institutions. If they consult employers separately, there will be a lack of co-ordination. Could the Government play this role?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in terms of tertiary education, the Government or the Education and Manpower Bureau is actually playing a co-ordinating role. As I said in the main reply, we will work out the academic development proposals for the 2001-2004 triennium with the UGC, including the number of places required for each subject (such as engineering). During this process, we will ask through the UGC what views have been collected from the universities and consult the relevant Policy Bureaux. After reaching a conclusion, we will decide whether to increase or reduce the number of places for different subjects and professions. As to whether co-ordination is needed in cases where the same kind of course is offered by more than one university, we have to discuss it with the UGC later on, as it is not a simple matter. However, in my view, it is a good thing to have competition to a certain extent.

**PRESIDENT** (in Cantonese): We now move on to the second question.

**Mechanism to Ensure Independence of Director of Audit's Work**

2. **MR ERIC LI** (in Cantonese): *Madam President, given that in performing his duties, the Director of Audit has to be directly accountable to the Chief Executive, will the Government inform this Council:*

- (a) *whether an operational mechanism is in place regarding how the Director of Audit should be accountable to the Chief Executive; if so, of the implementation date and details of it; if not, of the reasons for that;*
- (b) *of the number and contents of the meetings held between the Chief Executive and the Director of Audit since the establishment of the Government of the Hong Kong Special Administrative Region (SAR); and*
- (c) *how the independence of the work of the Director of Audit is ensured?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, before answering the question, I would like to state clearly to this Council that the SAR Government places the utmost importance on the independent functioning of the Audit Commission. We fully acknowledge that in order for the Audit Commission to discharge its duties in accordance with the law, its ability to function independently must be preserved.

Part (a) of the question concerns the mechanism under which the Director of Audit is accountable to the Chief Executive. According to Article 58 of the Basic Law, the Audit Commission shall function independently and be accountable to the Chief Executive. The Audit Ordinance has stipulated specific provisions to ensure the independent operation of the Audit Commission. Section 9 of the Audit Ordinance provides that in the performance of his duties and the exercise of his powers under the Ordinance, the Director shall not be

subject to the direction or control of any other person or authority. The Audit Ordinance also sets out the special condition under which the Director of Audit shall be accountable to the Chief Executive. According to section 15 of the Ordinance, the Director of Audit may be authorized in writing by the Chief Executive in the public interest to audit, examine or inquire into the accounts of a person, body corporate or other bodies. If he is so authorized, the Director of Audit shall, in pursuance of section 16 of the Ordinance, submit to the Chief Executive a statement of such accounts duly certified by him and a report as he may think fit.

The Basic Law has come into operation for more than two years now. The Audit Ordinance has been in use for a long time and has been operating smoothly all along. Over the years, the Audit Commission has been operating independently with a high degree of transparency, and performing its functions and duties with professionalism. We consider that at the present stage, there is no need to put in place any operational mechanism regarding how the Director of Audit should be accountable to the Chief Executive.

Regarding part (b) of the question which is about the number and contents of meetings between the Chief Executive and the Director of Audit, I hope Honourable Members would appreciate that it is normal and necessary for the Chief Executive to meet all principal officials (including the Director of Audit) and heads of departments, to understand matters related to their work. We do not keep any statistics on the number of these meetings.

Part (c) of the question is about how the independence of the work of the Director of Audit can be ensured. As explained in detail in my reply to part (a) of the question, we consider the Basic Law and the Audit Ordinance are adequate to ensure the independence of the work of the Director of Audit. The transparency, independence and professionalism of the reports of the Audit Commission can be seen by all.

**MR ERIC LI** (in Cantonese): *Madam President, this question asks only about the number and contents of the meetings held between the Chief Executive and the Director of Audit and does not touch upon the meetings held between the Chief Executive and any other government officials, chiefly because of the*

*independence of the work of the Director of Audit. This question is very clearly worded, but if the Government simply replies to it by saying that the Chief Executive will meet with the Director of Audit in very much the same way as he meets with other principal officials, and that he meets them to acquire an understanding of matters related to their work, we will still be a little bit worried.*

*Madam President, although the Government is unable to tell us the number of meetings held between the Chief Executive and the Director of Audit, can we still be told of the contents of the meetings, so that we or members of the public can know clearly that when the Chief Executive meets with the Director of Audit, he will only try to understand matters related to his work, instead of giving him any direction or imposing any control over him in violation of section 9 of the Audit Ordinance? Is the Chief Executive also bound by section 9 of the Audit Ordinance? I think that it is necessary for the Government to offer members of the public a clear explanation on this point.*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I wish to reiterate that the SAR Government attaches a very great importance to the autonomy of the Audit Commission. The SAR Government is a law-abiding government; the Audit Ordinance is one of the ordinances in force in Hong Kong, and the SAR Government will abide by all the provisions contained in it. Mr LI asked about the contents of the meetings held between the Chief Executive and the Director of Audit. Actually, as I mentioned in the main reply, the contents of the discussions have been confined to matters related to the work of the Director of Audit. The Chief Executive only wants to understand the work of the Audit Commission, and there has been no attempt to infringe on the independent operation of the Director of Audit in violation of section 9 of the Audit Ordinance.

**MR NG LEUNG-SING** (in Cantonese): Madam President, insofar as this question is concerned, we, as members of the Public Accounts Committee, were able to observe that in the past, after the Director of Audit had released his report, he was criticized by some government officials for acting beyond his terms of reference. The Secretary said that the Basic Law had come into operation for more than two years, and that the Audit Ordinance had been in use for a very long time. Faced with an Audit Ordinance that had been in use for



*such a long time, will the Government try to review it in one way or another some time in the future? Although the Secretary has pointed out in her main reply that at the present stage, the Government does not find it necessary to put in place any separate mechanism on how the Director of Audit should be held accountable to the Chief Executive, will the Government review the matter some time in the future, so as to determine whether a separate mechanism should be established?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I believe that there is indeed a need to localize the Audit Ordinance in the foreseeable future. But apart from this, we cannot see any reason for reviewing the various provisions in the existing Audit Ordinance, nor do we see any need to do so.

**MISS EMILY LAU** (in Cantonese): *Madam President, I am a member of the Public Accounts Committee, so, like Mr LI and Mr NG, I am also very concerned about the independent operation of the Director of Audit. We actually discussed this matter for a number of times at the meetings of the Committee, and I very much support the raising of this question by Mr LI. But I am a bit surprised, because the Secretary for the Treasury has even failed to tell this Council the number of the meetings held between the Chief Executive and the Director of Audit. Madam President, I think that you would still remember that I once asked a similar question, a question on the number of meetings between the Chief Executive and the Chief Justice, and the answer I got was four times a year. Can the reply of the Secretary be interpreted to mean that the Chief Executive and the Director of Audit actually meet with one another very frequently, so frequently that she has virtually lost count? Besides, may I know whether the Chief Executive has ever raised with the Director of Audit some of the matters that are of particular concern to civil servants, and asked him to apply leniency during the process of investigation, or simply asked him not to carry out any investigation at all?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, as I stated clearly in the main reply, we do not keep any statistics on the number of meetings held between the Chief Executive and all principal officials, including the Director of Audit. Although we do not keep any comprehensive statistics

on the number of these meetings, I understand that the Chief Executive has held two meetings with the Director of Audit recently. I wish to make it clear to the Legislative Council once again that the SAR Government attaches a very great importance to the independent nature of the Director of Audit's work. This is a point which is very clear to all public servants working in the SAR Government, and they will not try to infringe on such independence.

**PRESIDENT** (in Cantonese): Miss Emily LAU, which part of your supplementary question has not been answered?

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered the second part of my supplementary question, that is, the part on whether the Chief Executive has ever given any such direction. Many civil servants feel that they are under immense pressure, and many of them have indicated that they do not wish to become subjects for investigation. So, may I ask whether the Chief Executive has ever asked the Director of Audit to apply leniency during the process of investigation, or even not to carry out any investigation at all?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, it is stated in section 9 of the Audit Ordinance that in the performance of his duties and the exercise of his powers under the Ordinance, the Director of Audit shall not be subject to the direction or control of any other person or authority.

**MR LEE WING-TAT** (in Cantonese): *Madam President, for the sake of protecting the autonomy of the Director of Audit, will the Government consider the idea of recording the contents of the meetings between the Chief Executive and the Director of Audit, and then following the example of the Executive Council, requiring such records to be disclosed after a specified period of time? Such a measure can avoid an immediate need to disclose the contents of the discussions while ensuring the independence of the Director of Audit's work. Will the Government consider this measure?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the SAR Government has always maintained an open-minded attitude. Hence, we will consider all proposals raised by Members.

**MR FRED LI** (in Cantonese): *Madam President, as a member of the Public Accounts Committee, I too wish to know the mechanism through which the Director of Audit is held accountable to the Chief Executive. Although the Secretary has explained that the accountability in question is nothing but a standard requirement, members of the public may still be worried that this kind of "accountability" may be interpreted as "being provided with advice". I mean, when the Chief Executive tries to understand matters related to the work of the Director of Audit, he may indirectly provide his advice. How is the Government going to allay our worries? If the meetings between the Chief Executive and the Director of Audit are not recorded in writing, how else can we know that the Chief Executive has not provided any advice?*

**SECRETARY FOR THE TREASURY** (in Cantonese): *Madam President, I know that Members may all have their pre-determined positions regarding this question — I would not say "bias", though — but I must make it very clear again, for the fourth time, that the SAR Government does attach a very great importance to the independent operation of the Audit Commission, while the ability of the Audit Commission to operate independently is evidenced to all. Members can all see the independence enjoyed by the Audit Commission from all those accounts it audited in the past, and from the value-for-money audit reports it published. So, apart from stating all these facts, I really do not know how I can possibly give further assurance to Mr LI. We could of course consider the views expressed by Members. But when it comes to the method proposed, we must first give some thoughts to it before we can decide whether it will have more advantages than disadvantages, or the other way round.*

**MR ANDREW WONG** (in Cantonese): *Madam president, I think that the very crux of the problem is caused basically by the comment made by the Secretary in the second part of her main reply, which reads: "it is normal and necessary for the Chief Executive to meet all principal officials (including the Director of Audit) and heads of departments, to understand matters related to their work." The point is that the Director of Audit and the Commissioner, Independent Commission Against Corruption are different from other principal officials, because under the Basic Law, the Audit Commission and the Independent Commission Against Corruption shall operate independently. And, in the case of other principal officials, they are supposed to take instructions. That is why if the Director of Audit is treated in the same way as other principal officials,*

*people may be worried that he too will have to take instructions. I think that this is precisely where the crux of the problem lies.*

*When the Secretary for the Treasury replied to the question on reviewing the Audit Ordinance, she used a new term "localize". I cannot quite understand the meaning of "localize". Does she mean that since the existing Audit Ordinance was drawn up in the colonial past, the system concerned is marked by colonial characteristics? Does she want to point out that the Director of Audit used to be appointed by the British Government? Is she talking about problems of this kind? I hope that the Secretary for the Treasury can offer some explanation on this, because the Constitutional Affairs Panel is going to study this problem.*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I used the term "localize" largely because of a slip of the tongue. I actually wanted to say "adaptation of laws", because the existing Audit Ordinance still contains many terms used in the colonial era, some examples being "Secretary of State", "the Governor" and so on. We of course know that under Article 160 of the Basic Law, all laws previously in force would continue to apply after the reunification on 1 July 1997, and Members will also remember the "midnight bill" we passed that night, under which all those laws not adapted in time can continue to apply after the establishment of the SAR. But we still need to amend the out-dated terms and expressions of these laws. For the Audit Ordinance, the adaptation work has not yet started. I should not have said "localize" just now; I should have said "adaptation" instead.

**PRESIDENT** (in Cantonese): The last supplementary question.

**MR ALBERT HO** (in Cantonese): *Madam President, I think the Secretary will also agree that besides ensuring the independent operation of the Audit Commission and the Independent Commission Against Corruption under the Basic Law, we must at the same time make their operation seen to be so by the wider community. In other words, besides actually being independent in their operation, these bodies must also establish an independent image in the eyes of the community at large. This is a very important point. To build up such an independent image, they must ensure a high degree of transparency for their*

*operation, and some kinds of mechanisms should be put in place to ensure their autonomy. This is very important. Hence, I am of the view that the proposal raised by Mr LEE Wing-tat just now is one of the feasible ways. I mean, it is feasible to record the proceedings of the meetings between the Chief Executive and the Director of Audit, and disclose them after following some specified procedures.*

**PRESIDENT** (in Cantonese): Mr HO, please state your supplementary question directly.

**MR ALBERT HO** (in Cantonese): *I wish to raise one point only. When she replied to our questions just now, the Secretary said that the relevant ordinance would be reviewed. But she did not say how the ordinance would be reviewed. I am of the view that it is actually not necessary to amend the ordinance. The only thing the Secretary needs to do is to relay this proposal or request to the Chief Executive and ask him to give us a definite reply — even a written reply, telling us whether or not he will consider the proposal, will do. And if he will not do so, what are the reasons? What does the Secretary think about this?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I have already undertaken to consider this proposal. Once there is an outcome, we will inform the Legislative Council. (Annex II)

**MR ALBERT HO** (in Cantonese): *The question I asked is this: Will the Secretary relay the proposal to the Chief Executive directly and ask him to make a decision? Will the consideration process also cover this part?*

**PRESIDENT** (in Cantonese): Mr Albert HO, I could hear your supplementary question very clearly just now, and so could the Secretary for the Treasury, I believe. But I must say that the Secretary should be free to decide how she is going to answer your supplementary question.

**MR ALBERT HO** (in Cantonese): *Madam President, does the Secretary have anything to add? (Laughter)*

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

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I have nothing to add.

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

### **Hygiene of Restaurants**

3. **MR LAW CHI-KWONG** (in Cantonese): *Madam President, at present, the Food and Environmental Hygiene Department awards Excellence in Hygiene grading certificates only to restaurants with high hygiene standards. The Department conducts inspections on these restaurants at a six-week interval, and on other restaurants at a two or four-week interval. It was reported that staff of the Department had tipped off a restaurant with a grading of Excellence in Hygiene prior to an inspection on the restaurant following the detection of vibrio cholera in its fish tanks. In this connection, will the Government inform this Council:*

- (a) *of the criteria used in determining the frequency of regular inspections on restaurants, and whether it will consider increasing the frequency of inspections on restaurants with a grading of Excellence in Hygiene to ensure that their hygiene standards meet the requirements of the grade;*
- (b) *whether it has investigated the tipping-off incident; if so, of the outcome of the investigation; and the measures in place to prevent the recurrence of similar incidents; and*
- (c) *whether it will consider reviewing the existing grading system or classifying all restaurants in Hong Kong into five grades according to their hygiene standards, and publishing the grading for consumers' reference?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):  
Madam President,

- (a) The criteria for determining the frequency of restaurant inspections by the Food and Environmental Hygiene Department (FEHD) are set out in a pamphlet copies of which are available to the trade and the public. The frequency of inspections depends mainly on past records of the hygiene conditions of restaurants, including the general cleanliness of the premises, the hygiene standards of food storage, food handling, refuse storage and disposal, the cleanliness of equipment and utensils, and the effectiveness of pest and rodent control and of the ventilation system. Under this inspection system, the hygiene standards of restaurants are classified into three grades. Grade A restaurants are those which generally maintain a high standard of hygiene. They are inspected once every eight weeks. Grade B restaurants are those which maintain a satisfactory standard of hygiene. They are inspected once every three to four weeks. Grade C restaurants are those which only attain an acceptable standard of hygiene. They are inspected much more frequently, that is, every one to two weeks. The classification of restaurants is reviewed annually.

The "Open Categorization Scheme" (which is also known as the "Excellence in Hygiene" grading scheme) was a pilot scheme implemented by the former Provisional Urban Council and Provisional Regional Council. There is no direct relation between the grading under the "Open Categorization Scheme" and the regular inspection system conducted by the FEHD. The grading of restaurants under the "Open Categorization Scheme" was based solely on the results of a series of surprise inspections conducted by the two former municipal services departments from June to September 1999. Restaurants which met certain specified standards were awarded "Excellence in Hygiene" certificates. These certificates are valid for one year. However, even though a restaurant has obtained an "Excellence in Hygiene" certificate, the FEHD continues to determine the frequency of inspections according to the past hygiene standards of that restaurant. Restaurants which only attain an acceptable standard are inspected very frequently, that is, every one to two weeks.

The two former Municipal Councils decided that only when there is a drastic change in the hygiene conditions of a restaurant or when its licence is suspended on account of breaches of the relevant legislation and licensing requirements/conditions would the "Excellence in Hygiene" grading be cancelled immediately. The FEHD is considering the setting up of a better system to ensure that the hygiene standards of the restaurants would reflect the grading.

- (b) The FEHD has referred the allegation that prior notification was given to a restaurant before it was inspected to the Independent Commission Against Corruption for investigation. The Department has also warned all front-line staff that all inspections and enforcement action should be kept strictly confidential and that disciplinary action would be taken against any breach of confidentiality. In addition, the Department would monitor closely the work of its staff in this respect and improve the procedures for conducting inspection operations so as to ensure the confidentiality of such operations.
- (c) The "Open Categorization Scheme" was launched by the two former Municipal Councils as a pilot scheme with the aim of providing an incentive to licensees to upgrade the hygiene standards of their restaurants. The FEHD will assess the effectiveness of the Scheme in raising the hygiene standards of restaurants and in providing information to consumers. The Department will consult the trade concerned and the relevant Legislative Council Panel on the review.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, in the main reply the Government says that under the existing restaurant inspection system, the hygiene standards of restaurants are classified into three grades, that is, Grades A, B and C. And under the Open Categorization Scheme, there is a so-called "five-star" grading system. The two systems are schemes implemented by the former Provisional Municipal Councils and the current FEHD. Why are there restaurants, classified as Grade C with only an acceptable standard of hygiene,*



*also awarded the grading of Excellence in Hygiene or "five-star" restaurants? In addition, how many such restaurants with Excellence in Hygiene have attained only a Grade C standard of hygiene?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):

Madam President, there are indeed some differences between the two schemes, and there are a few reasons for these. First, the grading system, that is the one where grades A, B and C are awarded, is an internal system of the FEHD and the two former municipal services departments and has been in force since 1992. The trade is well aware of the criteria used in this system. The Open Categorization Scheme was a scheme considered by the Municipal Councils last year and implemented in November 1999. In respect of the criteria adopted, namely the frequency and time of inspection, they are all different from the internal grading system used by the municipal services departments. The Open Categorization Scheme is based on no less than five gradings given during inspections within a period of three months. The gradings so obtained are used as a basis to determine the award or otherwise of "Excellence in Hygiene" certificates. So there is a difference between the gradings given under the two schemes.

I believe the Open Categorization Scheme is well-intended. Its purpose is to encourage restaurants to improve their standard of hygiene. Before the scheme was implemented by the former Municipal Councils, consultation was carried out with the trade. In the end the Municipal Councils decided to adopt a less stringent system. The existing so-called "five-star restaurants" certificates are valid for one year. The Municipal Councils decided at that time that only when there was a serious deterioration in the hygiene conditions of a restaurant such as in cases of food poisoning, then would the "five-star restaurant" grading be cancelled. That decision was put down in the minutes of meeting of the Municipal Councils at that time. So the focus of our present review is on the question of checking. It is because any grading system, especially open grading systems, cannot be expected to achieve any desired effect if it is not equipped with a sound checking system.

**MR CHAN WING-CHAN** (in Cantonese): *Madam President, the hygiene standards of restaurants are classified into three grades, that is, A, B and C. Would the Secretary inform this Council of the percentage of restaurants classified as Grade C against the total number of restaurants in Hong Kong and whether the Department of Health has enough staff to undertake restaurant inspections once every week or two weeks?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Sorry, Madam President, I forgot to answer part of the supplementary question raised by Mr LAW because I did not make a note of it. Mr LAW asked how many restaurants belong to the Grade C standard of hygiene among those restaurants with an award of Excellence in Hygiene. I have some figures on that, but for the sake of being fair, I have to say that the internal grading of A, B and C made by the municipal services departments are only given once every year and so there are no results yet for 1999. According to the results of internal grading made at the end of 1998, among the 4 536 restaurants awarded Excellence in Hygiene, there are 751 or 16% which belong to Grade C. I must explain once again, however, that the two schemes do not exactly match with each other in terms of time. The figures on the three grades are up to the end of 1998 and the so-called award of Excellence in Hygiene is based on the results of inspections conducted during the three-month period from June to September last year.

Now I would like to turn to the supplementary question raised by Mr CHAN. Based on the records available, according to statistics on the gradings made at the end of 1998, among the 8 775 restaurants in Hong Kong, Kowloon and the New Territories, 3 336 belong to Grade C, that is, 38% of the total number of restaurants. The FEHD now has about 300 health inspectors responsible for the inspection of all licensed food establishments. I would like to clarify that licensed food establishments include restaurants and food manufacturing factories. The total number of licensed food establishments is around 16 000. I hope this will suffice to answer Mr CHAN's supplementary question.

**MR MICHAEL HO** (in Cantonese): *Madam President, the Administration mentioned the Open Categorization Scheme in the main reply and that the FEHD would assess the effectiveness of the Scheme in raising the hygiene standards of restaurants and in providing information to consumers, and that the Department would consult the trade concerned.*

*Madam President, we may assume that those restaurants with a Grade B or C grading do not have a very high standard of hygiene. In fact, I do not think they would like to have the details of their standard of hygiene disclosed. As far as I know, such details were not disclosed by the municipal services departments because of objections raised by the trade. Madam President, would the Government tell us what it is prepared to do should objections to the disclosure of such information be raised again during the consultation exercise by those not-so-clean restaurants which are unwilling to have their information made public?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, the review which I have mentioned in the main reply will start very soon and I think that Mr HO's worries are well-founded. In fact some changes were made to the Open Categorization Scheme when it was first launched due to the strong views expressed by the trade. Having said that, under the present circumstances, a comprehensive consultation will need to be made before a policy is implemented or a mechanism is set up. In the past when the two Provisional Municipal Councils were still in operation, the views of the trades concerned were taken into serious consideration. I recall during the debate on the reorganization of municipal services, some Honourable Members expressed some worries that after the Government's takeover of some of the responsibilities of the Municipal Councils, the views and responses of the trades may be ignored. Mr HO may also recall that his colleagues also expressed such worries at that time.

As for the difficulties and problems we may encounter when we consult the trade in the course of a review, I think we will have to wait until we have started our studies before we can decide how to balance the views of the trade while providing useful information to consumers. If there is no co-operation from the trade or if the trade thinks that we have not taken their views into

consideration, there will be difficulties in implementing the scheme. I would like to point out here that before our colleagues go out to inspect the restaurants, they will make a list of things to which they should pay particular attention. We have a sound grading system, but the Department will also examine whether the criteria used by the staff in carrying out their duties will suffer any degree of deviation.

**PRESIDENT** (in Cantonese): As time is running out, I can only permit one last supplementary question from Members.

**MR LEE KAI-MING** (in Cantonese): *Madam President, in his main reply, the Secretary mentioned that the Open Categorization Scheme is a pilot scheme, then he said that the FEHD is considering the setting up of a better system to ensure that the hygiene standards of restaurants awarded Excellence in Hygiene would reflect the grading. As the Scheme has only been in force for less than one year and now the authorities are contemplating changes to it, will this create an impression of frequent changes on the trade, and what is the timetable for the setting up of a better system to replace the existing one?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I have repeatedly emphasized earlier that when the two Provisional Municipal Councils decided to implement this Scheme, they made it clear that it was a pilot scheme. As it is by nature a pilot scheme, it is incumbent on us to make a study of it later. On the other hand, some Honourable Members have said just now that there are some inadequacies with the present pilot scheme. In my reply to some of the supplementary questions raised by other Honourable Members, I have talked briefly on what areas should be reviewed and that changes may be made after such a review.

It does not follow that a review would necessarily mean the cancellation of the Scheme. The issue is now under study. Another issue we will be looking into is whether there can be some co-ordination between the Open Categorization Scheme and the existing internal grading system.

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

**Monitoring of Listed Companies Engaging in Technology and Internet Business**

4. **MR NG LEUNG-SING** (in Cantonese): *Madam President, recently, there have been sharp fluctuations in the stock prices of some listed companies engaging in the technology and Internet business. In this connection, will the Government inform this Council whether:*

- (a) *it knows if the Stock Exchange of Hong Kong (SEHK) has encountered any difficulties in supervising the disclosure of price sensitive information by such companies; if it has encountered difficulties, of the relevant details; whether the SEHK has any plan to strengthen supervision over the disclosure of price-sensitive information by such companies, and whether it has made reference to the relevant experience and practices of regulators of overseas stock markets; if reference has been made, of the areas from which experience can be drawn;*
- (b) *it has assessed if the present development of the Hong Kong stock market is healthy and truly reflects the performance of the local economy; if so, of the results of the assessment; and*
- (c) *it knows if there is any plan to introduce a technology stocks index?*

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

- (a) Like any other listed issuers, hi-tech or Internet-related companies are subject to the requirements on disclosure of price-sensitive information. Listed issuers are obliged under their Listing Agreements with the SEHK to release price-sensitive information in a timely manner in order to enable the investing public to assess the return and risks involved in investing in a stock or a company before making their informed decisions. This approach is in line with the "disclosure based" regulatory approach adopted by other leading stock markets in the world.

In recent months, a number of stocks in the hi-tech sector in Hong Kong have seen substantial rises in their share prices and trading volume. At the same time, there have also been fluctuations in the stock prices of some companies following the announcement or plans of investments in technology and Internet-related businesses. In view of this development, the SEHK and the Securities and Futures Commission (SFC) issued a joint announcement on 7 October 1999 to remind the issuers of their obligation in respect of release of price-sensitive information, particularly in respect of plans of investment in technology and Internet-related businesses. At the meeting of the Panel on Financial Affairs of this Council held this Monday (which was the day before), the SFC further warned the investors to exercise care in the investments on such businesses.

While the existing disclosure requirements are in general adequate, the investors may have difficulty evaluating the uprising new businesses, such as the Internet-related businesses. The main reason is that many of these companies are not yet profit-making, it would be difficult to assess and project their performances in the traditional way.

For those Internet-related businesses, the number of web participants and the "hit-rate" in Internet websites are major factors for reference by investors in evaluating these companies. It is important that the listed companies and their sponsors or advisers disclose such information, with as much independent audit or assessment as possible. Where businesses to be acquired are valued, the basis and methodology of valuation should be disclosed. The SEHK would continue to improve the Listing Rules in order to ensure that the investing public could effectively obtain the relevant information for assessment on the businesses of the listed companies.

Improvements had been made to the disclosure standards of listed companies in recent years. The SFC will continue to work with the SEHK and professional accountants on areas such as the SEHK Listing Rules and Growth Enterprise Market Listing Rules to bring us up to best international standards, befitting Hong Kong's status as an international financial centre.

The enhancement of disclosure for protection of investors is one of our main policy objectives enshrined in the Securities and Futures Bill now being drafted. Criminalization of false reporting to the regulators is one of the proposal under the 30-point programme announced earlier by the Administration. We believe that this reform is very important to the regulation of developing market, particularly the hi-tech and growth enterprises. We are now working towards introducing this Legislative Proposal into the Legislative Council within this Legislative Session. I trust that the Legislative Council will support this proposal to protect and improve the transparency and integrity of our financial markets.

- (b) It is the duty of the SEHK to operate and maintain an orderly, efficient and transparent market, enabling willing buyers and sellers to trade stocks at a mutually agreed price. These are also the basic criteria for assessing the healthy development of a market. The transaction prices on a particular stock in the market reflect the buyers' and sellers' assessment on the future economic benefits (and the risks involved) in the investment and the supply and demand of the securities in question. Theoretically, a healthy market should be able to reflect the economic performance in the long term. When the economy is good, there are ample funds for investment and more scope for business development. The investing public would be more confident and interested in investment and the stock market would also tend to be more active. Conversely, a stock market would become sluggish during economic downturn. However, the short-term performance of stock market would be subject to a number of other factors, including market supply and demand, investors' sentiment, and expectation of the performance of particular issuers or economic sectors. The HK-US dollar peg also makes the stock market susceptible to the influences of the interest rate and economic performance data of the United States. Furthermore, with the globalization of international markets, the stock market has been increasingly susceptible to the influences of international flow of capital and other external factors.

Same as many other overseas markets, there have recently been large fluctuations in the hi-tech stocks, reflecting the worldwide upsurge in hi-tech development. The fluctuations of individual stock prices have not, however, affected the normal and efficient operation of the local market.

- (c) The SEHK will continue to monitor the development and needs of the market and would consider introducing new indexes having regard to the availability of similar indexes in the market. We understand that the Hang Seng Index Services Limited (HSISL) is considering launching a High Tech or Internet Stock Index. We would continue to review the development in that respect.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, I believe members of the public also understand that the craze for technology stocks has just started, and that there is very limited information the technology stocks issuers could provide. As such, the Secretary for Financial Services should indeed be commended for giving us such a detailed reply in this Council today. Nevertheless, given the existing euphoria, and that the main reply has also referred to the substantial rises in the trading volume and share prices of a number of stocks, may I ask the Secretary whether the Government would formulate new measures to enhance the listing efficiency of the Growth Enterprise Market, so that there could be more choices on the market and avoid focusing on a few stocks? In addition, could the Secretary also inform this Council whether the Growth Enterprise Market has encountered any difficulties so far, and whether the Government would take this opportunity to give the public some explanations?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, currently there are 10 stocks listed on the Growth Enterprise Market for transaction. Since the market has been launched for only a few months, we would not expect to see any major achievement at this stage. On the part of the SEHK, however, a lot of good efforts have been made before it could obtain the present results. To my understanding, more than a dozen companies are currently waiting to be listed. Just now Mr NG Leung-sing asked whether the



Growth Enterprise Market has encountered any difficulties. As far as I know, there have not been any difficulties. The question remains that since certain stocks listed on this market are dealing with high technology or other emerging industries, investors may have difficulty evaluating them. Apart from that, because the market is a new attempt, we would continuously review the listing and disclosure requirements. This month, for instance, the SEHK has to review in collaboration with the SFC the need to adjust the listing rules and requirements. If they should see the need for so doing, adjustments would be made. As regards the question of enhancing the listing efficiency of the market, it would be dealt with in the review as well. According to the exiting requirements, the vetting period should not last longer than 25 days. And indeed, 25 days should not be considered too long a period. Generally speaking, provided that the necessary information and material are available, the vetting procedure could be completed within 25 days.

**MR FUNG CHI-KIN** (in Cantonese): *Madam President, as referred to by the Secretary, investors may currently have difficulty evaluating the technology-based stocks. As such, there is a strong speculative element in their investments. I welcome very much the continuous efforts made by the Government, the SFC and the SEHK to warn investors to exercise care in making investment. In this connection, could the Secretary inform this Council whether he considers the result of these efforts satisfactory, and whether he believes investors have taken heed of the warning made by the Government?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I believe if the investors in Hong Kong should have taken heed of 100% of our warnings, the market might not have been as active as it is today. But this is my personal speculation only, and I may have guessed it wrong. Apart from giving warnings, naturally the Government would also monitor the market closely. As I have said in my main reply, rather than assessing their performances according to a five-star scale, it is most important for the uprising new businesses to disclose their relevant data and information to investors. Since it is our hope that investors could make their investment decisions in the light of the information disclosed, we would step up the regulatory legislation on disclosure requirements. For this reason, we hope to submit to this Council a

new bill at the beginning of next month, with a view to stepping up the punishment for disclosing inaccurate, misleading or incorrect information, thereby making clear to the issuers concerned their responsibilities and urging them to comply with the exiting disclosure requirements. I believe these arrangements should be of great help in the future.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, now that it is almost the end of the current term of this Council, even if the Government should submit the said bill to this Council, we would not know whether it could be passed within the current Session. I agree very much with what the Secretary said regarding the disclosure of information, but it seems to me that the effort put in by the Government in this connection is far too small. According to the existing Listing Rules, companies listed on the Growth Enterprise Market need to report their business performance once every three months, while those on the main board are required to do so once every six months. This requirement is lagging far behind the times, since the listed companies in the United States are required to report their business performance quarterly. Perhaps this requirement would mean increased costs, but it is a very positive measure and is in line with the policy objective mentioned by the Secretary just now.*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, what is your supplementary question?

**MR SIN CHUNG-KAI** (in Cantonese): *My supplementary question is: Would the Government take any action to require companies listed on the main board to report on their business performance quarterly instead of every six months?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, it is very thoughtful of Mr SIN Chung-kai to bring up the question of costs just now, since we are now seeking to strike a balance between the cost of regulation and the competitiveness of the SEHK. If we are to require the companies to increase the reporting frequency, we would of course need to think about the costs involved. As regards the question of whether we would revise

the reporting requirement from once every six months to once every three months, I cannot dismiss the possibility in this connection. Upon its establishment, I will refer Members' views to the new stock exchange for reference and consideration.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, earlier on the Financial Secretary has predicted that the financial turmoil would come back in a cycle of three years. As a matter of fact, this is the third year since the last financial turmoil. At present, a large amount of capital has rushed into our stock market, in particular in the transaction of stocks in the hi-tech sector. In this connection, may I ask the Government whether it believes there would be another financial turmoil in the future if there should be a downturn of the hi-tech sector? Could the Secretary inform this Council how would the government policy to promote the development of high technology in Hong Kong be affected if the impact should fall particularly on the stocks in the hi-tech sector?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, if the Honourable Member is asking whether the bubble effect has been created, then my personal view is that Hong Kong is not the only place where this bubble effect can be seen. As I said in my main reply, the craze for high technology is universal. As to the question of whether the outcome mentioned by Mr MA Fung-kwok would be resulted, I am afraid I dare not make any casual prediction at this stage. However, the most important point is that having experienced the most serious financial turmoil in these 30 years, the Government, the SEHK, or other regulatory bodies should have learned some lessons. Moreover, not only the Hong Kong Special Administrative Region but also other countries have also drawn lessons from this experience. As such, basing on the experience gathered over the past two years, I believe we have all put in a lot of efforts to exchange market information with regard to system security and to improve the regulatory system. For any open market, fluctuations in stock prices of certain companies would be inevitable. The most important point is that the system as a whole could remain sound and efficient.

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

**MR HO SAI-CHU** (in Cantonese): *Madam President, with regard to the High Tech or Internet Stock Index referred to by the Secretary in the last part of the main reply, I should like to ask the Secretary whether a specific timetable has been made in this respect. If so, could the Secretary inform this Council in how many months does he expect the index would be launched?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the index mentioned by me just now will not be launched by the Government but the private sector. So far we only know that the HSISL is considering launching an index in this respect. As regards the question of whether a timetable is available, my understanding is that the HSISL does not have any timetable in the meantime, since it is still studying the plan concerned. As a matter of fact, relevant statistics, information on how stocks will be defined as hi-tech or Internet-related, the respective number of shares and trading volume of the various listed companies, the transaction level, the price-earnings ratio, and many other data might not be fully available at the present stage. The HSISL must have sufficient data before it could launch any new indexes. For this reason, I believe a specific timetable is not yet available at the moment.

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

### **Regulation of Health Food Products**

5. **MR LEE WING-TAT** (in Cantonese): *Madam President, according to the published results of laboratory tests conducted by the Consumer Council last month on shark liver oil capsules which are claimed to be a health food product, some of the test samples were found containing polychlorinated biphenyls, a carcinogenic substance. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed if the laws for regulating health food are adequate in protecting the right to information and the health of the public; if they are assessed as being adequate, of the rationale for that; if they are assessed as being inadequate, of the follow-up actions it will take; and*
- (b) *of the basis used in classifying various types of health food product as food or medicine, so as to decide on the Policy Bureau and department which should bear the monitoring responsibility in respect of each type of health food product?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):  
Madam President,

- (a) The primary concern of consumers is whether the so-called "health food products" available on the market are safe for consumption, and whether their claims concerning their preventive or curative effects on diseases, health functions or improvement of physiological states are true. At present, all these products, which are commonly referred to as "health food products", are subject to regulation under either of the following Ordinances:
  - (i) Products which contain medicines such as vitamin capsules are regulated under the Pharmacy and Poisons Ordinance. These products have to be registered so as to ensure their safety, quality and efficacy. They should also be labelled with such particulars as the ingredients, dosage and the route of administration. Inspectors of the Department of Health inspect pharmacies and medicine shops frequently. They check the pharmaceutical products sold by these shops to see if there are false descriptions or descriptions which are different from those approved when the products were registered.

- (ii) Other so-called "health food products" are regarded as food and subject to the regulation of the Public Health and Municipal Services Ordinance. The object is to ensure their safety and that their labels do not carry false descriptions or descriptions calculated to mislead in respect of the nature, composition or quality of the product. Health food products should also meet the labelling requirements for prepackaged food set out in the subsidiary legislation made under the Ordinance, including details about the ingredients and instructions for use. The Food and Environmental Hygiene Department is responsible for monitoring the safety of various types of food and checking for non-compliance. If illegal or harmful substances are detected in any food product or false descriptions are found in their labels, prosecution may be instituted.

According to a survey conducted by the Department of Health in 1997, some 70% of the "health food products" available on the market contain Chinese medicines. At present, these products are regulated under the Public Health and Municipal Services Ordinance. In future, these products will have to be registered under the Chinese Medicine Ordinance (Cap. 549) enacted last year, before they can be manufactured or put on sale in Hong Kong. Subsidiary legislation to implement the registration system will be introduced to the Legislative Council within this year. The Ordinance empowers the Chinese Medicine Council of Hong Kong to regulate proprietary Chinese medicines. In approving applications for registration, the Council will examine the safety, quality and efficacy of the medicines. The majority of health food products available in the market will be subject to tighter regulation after the subsidiary legislation is enacted and comes into force.

Moreover, if the advertisements or labels of any products, including any health food products, claim that the products have curative or preventive effects on the diseases or conditions specified in the Undesirable Medical Advertisements Ordinance, such products will be subject to the control of the Ordinance. The Ordinance is enforced by the Department of Health. Besides, in enforcing the Trade Descriptions Ordinance, the Customs and Excise Department will take action against counterfeit products, including fake health food products, to safeguard the interests of trade mark proprietors and consumers.

The above legislation already provides basic control over health food products. Since health food products have become more popular over the past years, consumers would wish to obtain additional and more accurate information about these products. They would also have greater demands on the safety of such products. The Health and Welfare Bureau will set up an interdepartmental task force to study the need to strengthen the regulation of claims carried by health food products.

In the meantime, the Government will step up its work in the following areas:

- (1) firstly, assisting the Chinese Medicine Council to finish drafting the subsidiary legislation to regulate proprietary Chinese medicines as soon as possible;
- (2) secondly, enhancing the sample testing of health food products available in the market to ensure that they do not contain harmful substances which are not suitable for human consumption, so as to protect public safety;

- (3) thirdly, strengthening enforcement action to ensure that health food products conform with the requirements of the Undesirable Medical Advertisements Ordinance; and
  - (4) fourthly, under the Public Health and Municipal Services Ordinance, stepping up investigation, testing and prosecution in respect of health food products which are suspected of carrying false descriptions, including false claims about product composition or accreditation from overseas authorities.
- (b) As mentioned in my answer to part (a) above, as far as product safety is concerned, the so-called "health food products" which contain medicines or Chinese medicines will be classified as pharmaceutical products or proprietary Chinese medicines. Other "health food products" are classified as food. Pharmaceutical products and proprietary Chinese medicines are registered and regulated by the Pharmacy and Poisons Board and the Chinese Medicine Council respectively. The regulation of both types of products are enforced by the Department of Health. The Food and Environmental Hygiene Department is responsible for the safety of other "health food products." As regards the regulation of medicinal and health claims, the Department of Health is the responsible department.

**MR LEE WING-TAT** (in Cantonese): *Madam President, at present, the advertisements of many health food products make great play of their different efficacy, claiming that they can prevent cancer, effect detoxication, reduce the cholesterol level, or nourish the liver and kidneys, and so on. Will the Government inform this Council of the number of investigations, tests or inspections conducted on those health food products with medicinal claims under the Undesirable Medical Advertisements Ordinance in the past year, so as to avoid health food products with medicinal claims from becoming lawless and undisciplined?*



**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the Department of Health examined close to 3 000 advertisements and issued some 90 warning letters against the so-called "health food products", including shark liver oil capsules. The Department of Health has issued warning letters in respect of 12 kinds of shark liver oil capsules.

**DR LEONG CHE-HUNG** (in Cantonese): *Madam President, may I ask the Government whether all health food products must be registered? If not, how can they be regulated effectively under the Public Health and Municipal Services Ordinance? Moreover, how can the claims of these products be classified under the Undesirable Medical Advertisements Ordinance since those claims about beautifying the skin, rectifying health deficiencies and nourishing the kidneys, or even revitalizing the eyes, strengthening body vitality, and so on, are neither of a curative nor preventive nature?*

**PRESIDENT** (in Cantonese): Which Secretary is to give a reply?

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, as I explained in the main reply just now, if the so-called "health food products" available in the market contain medicines, they will be regulated under the Pharmacy and Poisons Ordinance, and the Department of Health is responsible for enforcement action. Before the subsidiary legislation on proprietary Chinese medicines is tabled at the Legislative Council for approval, all health food products which do not contain medicines are classified as food. Since they are regarded as food, they are naturally subject to the Public Health and Municipal Services Ordinance. But as I explained earlier on, this Ordinance primarily aims at monitoring the safety of health food products. Health food products which do not contain medicines are not subject to the legislation on medical advertisements. Yet, the composition of prepackaged food, including health food products, is also regulated under the existing Public Health and Municipal Services Ordinance which provides that the labels of these food products cannot carry any false claims.

**PRESIDENT** (in Cantonese): Dr LEONG Che-hung, which part of your supplementary question has not been answered?

**DR LEONG CHE-HUNG** (in Cantonese): *I beg your pardon. I have a sore throat so my words do not come out clearly. My supplementary question is this: Must all health food products be registered?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, health food products which contain medicines must be registered. Those that do not contain medicines are only subject to the Public Health and Municipal Services Ordinance and do not have to be registered.

**MR FRED LI** (in Cantonese): *Madam President, just now the Secretary mentioned in her reply that the advertisements or labels of health food products are subject to the control of the Undesirable Medical Advertisements Ordinance. However, Madam President, the Consumer Council and I wish to point out that the leaflet inside the packet may contain grossly exaggerating descriptions, claiming that the product can have such effects as strengthening body vitality, prevention of cancer, and so on, and yet, this is not subject to any form of control. Although the labels on the packet may not specify these effects, the description leaflet inside can be a sheer exaggeration. May I ask the Government if it is aware of this problem and the ways to plug such loophole immediately?*

**PRESIDENT** (in Cantonese): Which Secretary is to give a reply?

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as far as we understand it, the tactics used recently for selling shark liver oil capsules are as follows. The efficacy of shark liver oil capsules is printed on pamphlets which are put near to the product on sale, trying to establish a link between them so that people reading the pamphlet will be

convinced that the product will have those effects. If the pamphlet carries claims that the product has a curative effect on the conditions specified in the Schedule of the Undesirable Medical Advertisements Ordinance, it already constitutes a breach of the Undesirable Medical Advertisements Ordinance, whether the product *per se* is a type of medicine or food. As I said just now, the Department of Health issued 89 warning letters last year, among which 12 were issued in respect of 12 kinds of shark liver oil capsules because the publicity pamphlets carry claims that the product has a curative effect on certain diseases.

**MR FRED LI** (in Cantonese): *Madam President, my question is not about shark liver oil capsules. I was referring to a general phenomenon, that is, the description leaflet inside the packet of health food products tends to exaggerate the effectiveness of the product, and yet, this is not subject to any form of regulation. This is the point I wish to make.*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as stated in the main reply just now, we understand that health food products have developed rapidly over the past years. As a matter of fact, the claims about the efficacy of some health food products may not be substantiated. Therefore, as stated in the main reply, the Health and Welfare Bureau plans to set up an interdepartmental task force as soon as possible to conduct studies in this regard with a view to stepping up regulation expeditiously.

**MR MICHAEL HO** (in Cantonese): *Madam President, just now the Secretary for Health and Welfare said that many warning letters were issued. May I ask why the number of prosecutions together with that of successful prosecutions remained low over the past years whilst so many warning letters were issued? Is it the Government's policy to issue warning letters first when undesirable medical advertisements are detected, and institute prosecution afterwards if the warning is ignored?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, Mr HO is right. When undesirable medical advertisements are detected, the Department of Health will normally issue a warning letter in the first instance. If the warning letter has served its purpose, that is to say, if the advertisement in question is withdrawn, no further action will be taken by the Department of Health. In fact, from past experience, the advertisement will be withdrawn whenever a warning letter is issued against it. But if the manufacturers are unco-operative, the Department of Health will discuss with the Department of Justice the next step to take and consider the need to institute prosecution.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, I know that medicines are subject to the Pharmacy and Poisons Ordinance, whereas food is regulated under the Public Health and Municipal Services Ordinance. My question is this: For those substances which are medicines and are also deemed to be food, such as the skin of tangerines, chrysanthemum, and so on, under which ordinance are they regulated?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, the Pharmacy and Poisons Ordinance and the Chinese Medicine Ordinance enacted last year contain clear definitions of medicines, Chinese medicines and proprietary Chinese medicines. All substances which fall outside these definitions are regarded as food and are subject to the Public Health and Municipal Services Ordinance.

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

**MR LEE WING-TAT** (in Cantonese): *Madam President, in fact, the Department of Health and other government departments which oversee health matters and hygiene are aware that we do not need to take vitamin capsules and health food as long as we maintain a balanced diet, have enough sleep and do physical exercises as appropriate. May I ask if the Government has considered stepping up publicity to promote this message? I personally have misgivings*

*about the efficacy of those health food products. But anyhow, many people like to take them. Therefore, I hope that the Government can tell us whether it has made an effort to educate the public that health food products are unnecessary provided that we have appropriate physical exercises, a balanced diet and enough sleep?*

**PRESIDENT** (in Cantonese): Which Secretary is to give a reply?

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I may have to seek medical advice before I can provide Members with a definite answer as to whether health food products have no merits at all. But I wish to point out that in this Chinese society of Hong Kong, people will always evaluate their health and financial conditions before they actually pay for the health food products that they choose to take, whether it be those health food products available in the market only recently or traditional health food, such as bird's nest. However, I admit that in recent years many health food products have indeed been put on sale in the form of manufactured products, and a rather exaggerated approach has been used to promote individual products. It is precisely because of this reason that we plan to set up an interdepartmental task force to address this issue and to consider ways to step up regulation.

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

### **Establishment of the Culture and Heritage Commission**

6. **MRS SELINA CHOW** (in Cantonese): *Madam President, the Government has planned to set up a Culture and Heritage Commission (the Commission) after the dissolution of the Provisional Municipal Councils. In this connection, will the Government inform this Council of:*

- (a) *the planned timetable for setting up the Commission; and*
- (b) *the resources to be allocated to the Commission?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, my reply to Mrs Selina CHOW's question is as follows:

- (a) The Commission is a high-level non-statutory body which advises the Government on the setting of overall policy objectives of arts, heritage and culture; and on the prioritization of resources. The Commission will play a positive role in the overall direction of cultural development in Hong Kong, including the use of resources. Therefore, the appointment of its members requires careful and detailed consideration. We will set up the Commission the soonest possible, that is, early this year.
- (b) Similar to the Education Commission, the Commission is not an executive body. It will play a pivotal advisory role in the co-ordination of the overall policy and in the prioritization of the allocation of resources, but it will not allocate resources itself. The Home Affairs Bureau (HAB) will provide administrative support, such as secretariat support, to the Commission. Besides, the Bureau will earmark some \$2 million in the 2000-2001 Draft Estimates for the administration of the Commission, such as conducting researches, printing reports and so on.

**MRS SELINA CHOW** (in Cantonese): *Madam President, the main reply that we received today contained three pages. This means that the main reply has been revised twice. The original phrase "We will announce very soon" is changed to "We will set up the Commission the soonest possible, that is, early this year" in the revised version. Actually, the Government had decided to dissolve the two Municipal Councils and set up the Commission long ago. It is almost two months after the dissolution of the two Municipal Councils. Will the Secretary tell us why it still requires careful and detailed consideration? The Secretary said the earliest time is "early this year". Is it now overdue?*  
(Laughter)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we mentioned "the soonest possible" or "very soon", as Mrs Selina CHOW pointed out, because we know that the Commission has to be set up as soon as possible. I admit that we did announce that we hoped all the work could be completed in January or before 1 January. However, we could not make it because of two reasons. As I said in the main reply, the Commission is a very important commission. It is responsible for the setting of the overall direction of cultural development and the utilization of resources, as well as the prioritization of the allocation of resources. It plays a pivotal role in the development of Hong Kong's future cultural policy. Thus, we think it is worthwhile to spend more time on it. We will deal with this matter very carefully. I admit that the progress of the work on setting up the Commission has been slower than expected. However, we should not think of the Commission as a replacement for the two Municipal Councils. In this respect, we have not put off the work previously undertaken by the Municipal Councils. The Leisure and Cultural Services Department was set up on 1 January and it has been functioning very smoothly since. I very much thank the public and Members for their support. The Commission is mainly responsible for formulating long-term policies. I also understand that it has to be set up soon. I mentioned "early this year" to let Members know that we hope to set up the Commission soon. I hope this would serve to explain matters to Mrs Selina CHOW.

**MRS SELINA CHOW** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I asked the Secretary whether "early this year" is already overdue. He should have answered whether it was. If not, when will this promise be honoured?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, when I said "early this year", I meant "the early part of this year". There are 12 months in a year. It is now only the first quarter. The day after tomorrow is the 15th day of the first month of lunar calendar, when we will do the dragon

dance. *(Laughter)* In my view, setting up the Commission is an important task. I will deal with each matter personally to make sure that the result is satisfactory. Last year, we did a lot of work, for instance, the District Council elections on 28 November, the appointments afterwards and the activities to celebrate the millennium, as well as the setting up of a new department. The reason I mentioned these tasks is not to explain why the progress of the work on setting up the Commission has been slower than expected, but rather to show that we understand that we have to try our best and do it as quickly as possible.

**MRS SELINA CHOW** (in Cantonese): *Madam President, the Secretary still has not answered my supplementary question. Is "early this year" mentioned by the Secretary overdue? If not, when will it be due?*

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, I will ask the Secretary if he has anything to add. However, the Secretary can choose how to answer this supplementary question. Secretary, do you have anything to add?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, in this connection, I believe that is the best of my rhetoric. I do not know how to explain further. Therefore, I have nothing to add.

**MR AMBROSE LAU** (in Cantonese): *Madam President, in part (b) of the main reply, it is said that the Home Affairs Bureau will earmark some \$2 million "to meet the administration expenses of the Commission", such as conducting researches, printing reports and so on. I believe the Government has certain criteria in drafting the budget, and the Secretary considers the Commission to be very important. I fear that \$2 million is not enough for the Commission to function effectively and properly. Will the Government consider increasing the relevant funding?*



**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we have earmarked \$2 million as funding for the Commission based on the experience of other commissions, such as the funding for the Education Commission. I wish to point out to Mr LAU that the Home Affairs Bureau will make arrangement for resources to meet the expenses of the Commission in terms of personnel, such as the secretariat and its work. Therefore, there is no need to worry about funding. As for the view that \$2 million is not a large sum and might not be enough, if funding is found to be inadequate after the Commission starts operating, we in the Bureau will try to find additional resources from other areas. We will start with \$2 million and as we accumulate experience after work is started, we will have a more accurate estimate. If the funding of the Commission is really not enough, we will try to increase it.

**MR HO SAI-CHU** (in Cantonese): *Madam President, what the public is most concerned about is the importance of the Commission and the amount of resources allocated to the areas that it manages and gives advice on. Will the Secretary tell us what the approximate expenditure on culture, arts and heritage in future will be? Will it be increased compared to the expenditure of the two Municipal Councils in the past? By what percentage will it be increased?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, cultural work is certainly very important. The \$2 million that I mentioned just now is only for expenses on such work as conducting researches and printing reports. As for giving advice, the Commission gives advice on the overall direction of cultural development in Hong Kong, as well as the overall policy on the utilization of resources. For instance, the expenditure on the Arts Development Council is \$150 million, while the expenditure on the Academy for Performing Arts is \$190 million. We estimate that the overall expenditure on culture and heritage will be \$2 billion each year. The Government will certainly listen to the views of the Commission on how to allocate these resources. From this perspective, the Commission is certainly very important.

**PRESIDENT** (in Cantonese): Mr HO Sai-chu, which part of your supplementary question has not been answered?

**MR HO SAI-CHU** (in Cantonese): *Madam President, the Secretary did not answer part of my question. Compared to the expenditure of the two dissolved Municipal Councils, by what percentage have the resources been increased for the cultural work undertaken by the Government itself? What are the approximate figures and can a comparison be made?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, regarding the expenditure on cultural work, we can do better in terms of the allocation of resources. In terms of funding in this area, I can tell Members that it will probably neither be increased nor reduced. We will improve the allocation of resources to gradually enhance efficiency. For instance, since there were two Municipal Councils, some work would be duplicated. Now, the new Department will be responsible for this work. The problem cannot be solved within one day. However, if we can save money this way, resources could be re-allocated to carry out more constructive work.

**MR ANDREW WONG** (in Cantonese): *Madam President, first, I hope that after the Budget is released, the Secretary will consider comparing the figures of the relevant items in next year's budget with those of the two Municipal Councils in the past, to facilitate this Council's deliberation on the Budget.*

*My follow-up question is very simple. I also saw the three versions of the main reply. One is the original version, another is the revised version and the last one is the second revised version. Just now, Mrs Selina CHOW asked a question about part (a) of the second revised version, pointing out that the phrase "the soonest possible, that is, early this year" is very different from the original version. Mr Ambrose LAU read out a phrase from the revised version and not the second revised version, that is, "to meet the administration expenses of the Commission", which is somewhat different from the second revised version. The phrase used in the second revised version in English is "for the*

*administration of the commission". I believe this means that the Commission is only an advisory commission and will not have any expenses of its own. Thus, the funds have only been earmarked for administrative costs. In the translated version, the word "供" is changed to "支付". Can the Secretary confirm if this is correct?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, Mr Andrew WONG's interpretation is correct. I will explain it one more time. We will have special staff to undertake the secretarial and related work of the Commission's secretariat and their salary will not be included in the funding of the Commission.

**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. Although several Members are still waiting for their turn to ask questions, I suggest that Members follow this up through other channels. End of question time.

### **Industrial Accidents**

7. **MR ANDREW CHENG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of a breakdown by trade of the number of industrial accidents and the accident rate in 1999; and*
- (b) *of the number of cases among these industrial accidents which involved a breach of industrial safety legislation by employers or employees; the respective numbers of prosecutions and convicted cases; and whether it has made reference to the safety records of the employers concerned and requested the courts to impose heavier penalties on the employers who had breached the law?*

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

- (a) The Labour Department has at present only statistics of industrial accidents for the first three quarters of 1999. Statistics for the whole year of 1999 are not yet available because many accidents which occurred near the end of the year have yet to be reported to the Department by the employers.

The number of industrial accidents and the accident rate, with breakdown by trades, for the first three quarters of 1999 are as follows:

|   |                   | <i>First Three Quarters<br/>of 1998</i> |                   | <i>First Three Quarters<br/>of 1999</i> |               |                    |               |
|---|-------------------|---|-------------------|---|---------------|--------------------|---------------|
|   |                   | <i>Accident</i>                         |                   | <i>Accident</i>                         |               | <i>Change</i>      | <i>Change</i> |
| <i>Industry</i>   | <i>No. of</i>     | <i>Rates</i>                            | <i>No. of</i>     | <i>Rates</i>                            | <i>of</i>     | <i>of Accident</i> |               |
|   | <i>Industrial</i> | <i>per 1 000</i>                        | <i>Industrial</i> | <i>per 1 000</i>                        | <i>Number</i> | <i>Rate</i>        |               |
|   | <i>Accidents</i>  | <i>Workers</i>                          | <i>Accidents</i>  | <i>Workers</i>                          | <i>(%)</i>    | <i>(%)</i>         |               |
| I. Manufacturing Industry   | 4 950             | 24.5                                    | 4 043 (1)         | 21.7                                    | -18%          | -11%               |               |
| II. Construction Industry   | 15 380 (43)       | 252.4                                   | 10 805 (37)       | 203.9                                   | -30%          | -19%               |               |
| III. Catering Industry  | 10 042            | 75.4                                    | 9 316             | 66.6                                    | -7%           | -12%               |               |
| IV. Others (that is, Mining, Quarrying, Utilities, Transport, Servicing Industries) | 3 192 (8)         | 29.0                                    | 2 906 (2)         | 26.4                                    | -9%           | -9%                |               |
| Total   | 33 564 (51)       | 66.2                                    | 27 070 (40)       | 55.3                                    | -19%          | -17%               |               |

*Notes:* 1. Figures in brackets denote the number of fatalities.

2. Accident Rates per 1 000 Workers are Annualized Rates.

- (b) The Labour Department does not keep specific statistics on breaches of safety legislation by employers and employees in industrial accidents. The Labour Department, however, keeps the number of summonses taken out for breaches of safety legislation according to the year in which their related verdicts were delivered. On this basis, the number of summonses in 1999 related to industrial accident cases and involved breaches of safety legislation was 361. Of these cases, we secured 272 convictions.

The Labour Department will inform the Court, after a defendant has been convicted of breaching industrial safety legislation, of his previous offence record and the maximum and average fine of the charge involved to assist the Court in passing an appropriate sentence.

### **Disposal of Vacant Government Properties**

8. **MR JASPER TSANG** (in Chinese): *Madam President, with regard to the disposal of vacant quarters of the University Grants Committee (UGC)-funded institutions and government properties, will the Government inform this Council:*

- (a) *if it knows the specific measures and timetable proposed by the Task Force for the disposal of the 759 staff quarters which are vacated due to the introduction of the Home Financing Scheme (HFS) for eligible staff of the UGC-funded institutions;*
- (b) *of the total number of vacant government quarters and other properties at present; the duration of these quarters and properties being left vacant and the financial losses thus incurred so far; and*
- (c) *of the specific plans to dispose of these government properties?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President, with regard to part (a) of the question, immediately following the introduction of the HFS for eligible staff of UGC-funded institutions in October 1998, the Administration has set up a Task Force, chaired by the Secretary-General, UGC, to ensure that surplus staff quarters resulting from the HFS are disposed of in ways which yield the greatest public benefits. As at end January 2000, there were 788 surplus staff quarters in the UGC-funded institutions (the number was 759 as at end November 1999). Of these, 81 (10%) were occupied by eligible staff; 362 (46%) were rented out to staff of UGC-institutions (the majority of whom were recipients of Home Financing Allowance and Private Tenancy Allowance); 93 (12%) were occupied by visiting scholars, and so on; 75 (10%) were allocated for other temporary use; and 177 (22%) were vacant. In order to optimize the use of these surplus quarters, the Administration and the institutions have formulated the following short to long-term plans:

- (a) In the short term, some institutions have sought authorization from the Director of Lands to turn some quarters into rentable premises for their staff members and, where appropriate, outsiders; and
- (b) In the medium to long-term, some institutions will convert some of the surplus quarters into student hostels or other academic facilities, and surrender some to the Government either for use as government quarters or for site redevelopment.

Details and the tentative timetable of these plans are at Annex A.

With regard to parts (b) and (c) of the question, insofar as government quarters are concerned, there were, as at January 2000, 22 (1.9%) vacant units out of the existing stock of 1 170 non-departmental quarters, and 799 (3.3%) vacant units out of the existing stock of 24 000 departmental quarters under the direct management of individual departments. These vacant units are held as working stock pending allocation to eligible applicants and to cater for future demands. The majority of them will not remain vacant for more than four months.

In addition, there are 604 quarters currently surplus to the Government's immediate requirements. In the short term, the Government Property Agency (GPA) has offered these units for leasing in the market. As at end January 2000, 518 (86%) of these surplus units have been let and the remaining 86 (14%) are available for leasing. In the long term, the GPA will make appropriate arrangements for the sale of these units.

As regards other vacant government properties, according to the records of the GPA, there are at present 21 vacant government properties. In terms of floor area, they amount to 46 246 sq m, representing only 1.9% of the total floor area of 2 450 000 sq m of all the properties held by the GPA. Of these 21 properties, eight are awaiting disposal by land sale; one is a declared monument whose future use is the subject of a consultancy study; two are under negotiation with potential users; five require extensive maintenance/refurbishment works (for example, asbestos removal or slope works) before they can be put to alternative use; two are small neighbourhood police units (with an area of 22 sq m and 50 sq m respectively) in commercial premises under condition of land grant but no longer required, and alternative use is limited by their small size and legal constraints; and the remaining three have been advertised publicly for expressions of interest, but no suitable bids have been received due to their remote locations. Details of these properties and the duration of their vacancy are at Annex B.

The vacancy situation of most government quarters and other government properties is only transient pending alternative productive use. Only a few properties are vacant without any identified alternative use. These are mainly due to their remote location, small size or other physical constraints. These circumstances do not suggest any quantifiable financial loss.

## Annex A

## Disposal Plans for Surplus Quarters of UGC-funded Institutions

| <i>Name of Institution</i>                   | <i>Disposal Plan</i>  | <i>Tentative Timetable</i>   |
|--|---|--|
| Hong Kong Baptist University                 | Surrender of 45 quarters to the Government for use as government quarters | April/May 2000   |
| Chinese University of Hong Kong              | (i) Conversion of 94 quarters into student hostels                        | June 2000  |
|  | (ii) Conversion of 14 quarters into academic support facilities           | June 2000  |
| Hong Kong Polytechnic University             | Surrender of 155 quarters to the Government for site redevelopment        | July 2001  |
| The University of Hong Kong (HKU)            | Surrender of 100 quarters to the Government for site redevelopment        | To be discussed and agreed in the overall context of the HKU's campus development strategy |
| The Hong Kong Institute of Education (HKIED) | Conversion of some of its 99 quarters into student hostels                | Detailed proposal being developed by HKIED   |



## Annex B

## Current Position of Vacant Government Properties

| <i>Name of Building<br/>(Address)</i>  | <i>Vacant From</i> | <i>Allocation/Disposal<br/>Plan</i>                         |
|--|--------------------|---|
| 1) Ex-Pearl Island<br>Married Quarters<br>(1 440 sq m)                                       | October 1994       | )<br>)<br>)<br>)  |
| 2) Ex-South Lantau Hospital,<br>Cheung Sha,<br>Lantau (five units)<br>(estimated 1 100 sq m) | December 1996      | )<br>)<br>)<br>)<br>)                                       |
| 3) Ex-South Lantau Police HQ,<br>Cheung Sha<br>(estimated 200 sq m)                          | January 1998       | )<br>)<br>)<br>)  |
| 4) Beas Stable,<br>Kam Tsin Chuen,<br>Sheung Shui<br>(1 550 sq m)                            | March 1998         | )<br>)<br>) Pending land disposal<br>) after 1999-2000<br>) |
| 5) 344 Shanghai Street<br>(247 sq m)   | August 1999        | )<br>)<br>)   |
| 6) Lingnan College,<br>Stubbs Road (3 blocks)<br>(9 000 sq m)                                | November 1999      | )<br>)<br>)<br>)  |
| 7) Ex-Pui Yin Juvenile Home,<br>Ma Tau Wai Road<br>(530 sq m)                                | January 2000       | )<br>)<br>)<br>)  |

|     | <i>Name of Building<br/>(Address)</i>   | <i>Vacant From</i> | <i>Allocation/Disposal<br/>Plan</i>   |
|-----|---|--------------------|---|
| 8)  | Hollywood Road ex-Police<br>Married Quarters,<br>35 Aberdeen Street<br>(9 800 sq m)                               | February 2000      | )<br>)<br>)<br>)  |
| 9)  | Ex-Marine Police<br>Headquarter in<br>Tsim Tsa Tsui<br>(4 870 sq m)   | November 1996      | ) Declared monument<br>) undergoing planning<br>) consultancy study<br>)      |
| 10) | Ex-Castle Peak<br>Hospital Quarters,<br>15 Tsing Chung Koon Road,<br>Tuen Mun,<br>New Territories<br>(2 820 sq m) | July 1998          | )<br>)<br>)<br>) Negotiations with<br>) potential users in<br>) progress<br>) |
| 11) | 28 Kennedy Road<br>(560 sq m)   | September 1999     | )<br>)  |
| 12) | Bethanie,<br>139 Pokfulam Road<br>(2 000 sq m)  | January 1997       | )<br>)<br>)<br>)  |
| 13) | Ex-Nethersole Hospital<br>Nursing Quarters,<br>2 Breezy Path<br>(estimated 8 500 sq m)                            | April 1999         | )<br>)<br>)<br>)<br>)   |
| 14) | Old Cottage Hut,<br>180 Kwong Fuk Road<br>(100 sq m)  | June 1999          | ) Extensive renovation/<br>) remedial works<br>) required/in progress<br>)    |

| <i>Name of Building<br/>(Address)</i>   | <i>Vacant From</i> | <i>Allocation/Disposal<br/>Plan</i>  |
|---|--------------------|--|
| 15) Ex-Incinerator Quarters in<br>Yuet Lun Street<br>(1 900 sq m)                                       | January 1992*      | )<br>)<br>)<br>)   |
| 16) 69-75 Man Nin Street<br>(4 shops)<br>(507 sq m)   | October 1998       | )<br>)<br>)  |
| 17) Space formally reserved for<br>a small police unit at Jubilee<br>Gardens, Sha Tin<br>(22 sq m)      | January 1993       | )<br>)<br>) No longer required for<br>) police operation. No<br>) suitable alternative use |
| 18) Space formally reserved for<br>a small police unit at<br>Primeview Garden, Tuen<br>Mun<br>(50 sq m) | November 1998      | ) due to small size<br>) (22 sq m to 55 sq m)<br>) and legal constraints<br>)<br>)         |
| 19) Ex-East Ping Chau<br>Training Camp<br>(550 sq m)  | September 1994     | )<br>)<br>)<br>)   |
| 20) Ex-Pak Nai Training Camp<br>(200 sq m)  | October 1994       | ) Property in remote<br>) locations with no<br>) demand for use                            |
| 21) Ex-Green Island<br>Police Recreation Club<br>(300 sq m)   | April 1998         | )<br>)<br>)  |

\* Note: Responsibility of the site to be transferred to GPA by end February 2000.

### **Guidelines on New Stipulations of CSSA Scheme**

9. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, the Administration implemented the recommendations contained in the Report on Review of the Comprehensive Social Security Assistance (CSSA) Scheme on 1 June last year. In this connection, will the Government inform this Council whether the Social Welfare Department (SWD) has issued to front-line workers working guidelines on various new stipulations of the CSSA Scheme; if so:*

- (a) of the contents of the guidelines;*
- (b) whether the guidelines will be issued to social workers employed in non-governmental social service organizations for reference; if not, of the reasons for that; and*
- (c) whether it plans to publish the guidelines in the form of booklets so that they can be made available to CSSA applicants and the public on request; if not, of the reasons for that?*

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

- (a) The SWD from time to time issues guidelines on the administration of the CSSA Scheme to staff of its Social Security Field Units (SSFUs) to inform them of any new development in the Scheme and to ensure good quality and consistent practices at all SSFUs. Before implementation of the new measures arising from the 1998 CSSA Review on 1 June 1999, the SWD had issued clear and detailed implementation guidelines to the SSFU staff, setting out, amongst other things, the details of the new measures, implementation procedures and case examples illustrating how to implement the new measures. In addition, the SWD had arranged a series of briefing sessions to ensure that the SSFU staff had a thorough understanding of the implementation guidelines.
- (b) The implementation guidelines, which contain much technical

details, are issued for use by social security staff who possess sufficient knowledge of the operation of the social security system. They are not for distribution outside the Administration. However, a leaflet in Chinese and English containing details of the new measures was published for distribution to CSSA recipients and other interested individuals and parties. To keep the non-governmental organizations in the welfare sector informed of the new social security measures, the SWD has also sought the assistance of the Hong Kong Council of Social Service (HKCSS) in distributing copies of the leaflet to all its member agencies. The relevant information is also accessible from the SWD's website on the Internet.

- (c) The SWD has published a booklet called "Guide to CSSA" which contains relevant information about the Scheme that prospective applicants might wish to know. The SWD has revised this booklet to incorporate the details of the new arrangements arising from the 1998 CSSA Review. The revised booklet has been made available to all CSSA recipients and members of the public at SSFUs and other service units of the SWD since December 1999. Sufficient copies of the revised "Guide to CSSA" were also sent to HKCSS in December 1999 for distribution to its member agencies.

### **Operating Residents' Buses Without a Licence**

10. **MRS MIRIAM LAU** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) (i) *the number of residents' bus with passenger service licences operating service at the end of each year, and their percentage in the total number of non-franchised buses at that time;*
- (ii) *the number of such passenger service licences revoked each*

*year on the grounds that the operators had breached the licensing conditions; and*

- (iii) the number of persons prosecuted for operating residents' bus service without a licence and the number of buses involved, as well as the average penalty imposed on the convicted persons*

*in the past three years; and*

- (b) the measures taken to crack down on the operation of a residents' bus service without a licence?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President, residents' service (RS) are non-franchised public bus services which perform a supplementary role in the public transport system. They operate primarily during peak hours to supplement the franchised services. The operation of RS is regulated by the issue of Passenger Service Licences (PSLs). Licensing conditions are stipulated in the PSLs to regulate the number of vehicles to be used, the places at which the vehicles may pick up and set down passengers, and so on.

The number of public buses licensed to operate RS and their proportion in relation to the total number of non-franchised buses in the past three years are given below:

| <i>Year</i> | <i>Number of public buses with RS endorsement</i> | <i>Total number of non-franchised public buses</i> | <i>(A)/(B) (%)</i> |
|-------------|---|--|--------------------|
|             | <i>(A)</i>  | <i>(B)</i>   |                    |
| 1997        | 809   | 5 349  | 15.1 %             |
| 1998        | 841   | 5 526  | 15.2 %             |
| 1999        | 875   | 5 647  | 15.5 %             |

Warning letters would be issued to operators of unauthorized RS and

prosecution action may be taken depending on the circumstances of each case. During 1997-1999, a total of 291 warning letters were issued to operators of unauthorized RS and three persons were prosecuted. Two of them were convicted and were fined \$4,000 each. The case involved two non-franchised buses. During the same period, no PSL was revoked for contravention of the PSL licensing conditions.

Under sections 30 and 31 of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport may authorize the conduct of an inquiry to cancel, vary or suspend the PSL of an operator who has been providing unauthorized passenger services or violating the licensing conditions stipulated in his PSL. Three such inquiries are being conducted at present.

As a further measure to tackle unauthorized RS operation and to improve the traffic condition in the central business districts, the Transport Department has developed with the police and the RS operators a package of measures to rationalize the RS stopping activities in Central and Wan Chai districts. These measures include designating bus clearways on congested roads to ban unauthorized RS stoppings, issuing permits for authorized RS to set down/pick up passengers at authorized stops within the bus clearways, requiring authorized RS operators to display on their buses clear information on routeing and stopping places to facilitate easy identification, and stepping up enforcement against unauthorized RS stoppings in the bus clearways. These measures will be implemented in mid-March 2000.

### **Progress of Construction Works of Lantau North - South Link**

11. **MR WONG YUNG-KAN** (in Chinese): *Madam President, on the 11th last month, a tanker overturned on Tung Chung Road on Lantau Island and the accident led to a traffic gridlock between Northern and Southern Lantau for five hours. In this connection, will the Government inform this Council of:*

(a) *the current progress of the construction works of the Lantau North – South Link between Tai Ho Wan and Mui Wo; and*

(b) *the contingency measures available for alleviating the traffic*

*congestion caused by traffic accidents on Tung Chung Road before the new link is open to traffic.*

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

- (a) We completed the preliminary site investigation, preliminary design, and draft Environmental Impact Assessment (EIA) Report for the proposed Lantau North – South Link between Tai Ho Wan and Mui Wo in late 1999. We are now following the statutory procedures stipulated in the Environmental Impact Assessment Ordinance (Cap. 499) to obtain the approval of the Director of Environmental Protection for the EIA Report.

Subject to the approval of the EIA Report, we intend to gazette the project under the Roads (Works, Use and Compensation) Ordinance (Cap. 370) this year. We hope to start the detailed design in late 2000 with a view to commencing the construction in early 2002 for completion in mid-2004.

- (b) The Transport Department has drawn up a set of contingency plans in consultation with the police and other emergency service departments to deal with incidents on Tung Chung Road. As and when traffic disruptions occur on Tung Chung Road, traffic and transport information will be disseminated to the public through the media. The police will effect appropriate traffic diversions and regulate traffic at all junctions to Tung Chung Road. The Transport Department will maintain close liaison with the police and public transport operators and keep the public informed of developments. Depending on the extent of road closures, ferry services to Mui Wo may need to be strengthened.

On Sundays and public holidays when traffic is heavier, a tow truck



is stationed by the New Lantao Bus Company on Tung Chung Road at Pak Kung Au for providing ready assistance in case of rescue operations.

To enhance road safety and traffic operations, local carriageway improvement works at 24 locations along Tung Chung Road have been completed. These include extension of laybys, provision of turning areas for emergency traffic, pruning of roadside trees to improve the sightline and widening of critical sections. In addition, works for providing an additional lane on Tung Chung Road at Pak Kung Au and the catchwater near Cheung Sha are in progress. The works will be completed by mid-2000.

### **Impact of the Growth of Internet-related Activities on Government Revenue**

12. **MR KENNETH TING** (in Chinese): *Madam President, it has been reported that the increasingly popular activities conducted through the Internet would have an impact on the revenue of the Government in the future. In this connection, will the Government inform this Council whether:*

- (a) *the commercial and trading transactions, share trading and gambling activities conducted through the Internet have resulted in a reduction of the Government's income; if so, of the estimated amount of income foregone each year; and*
- (b) *it has studied the need for amending the relevant laws so as to plug the loopholes in this regard; if so, of the specific approach; if not, of the reasons for it?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President, the taxation-related implications arising from electronic commerce, electronic share trading and electronic gambling and the actions currently taken by the Government are described below.

#### *Electronic Commerce*

Many taxation administrations are considering the implications for their taxation regimes of conducting business by electronic means. Research on the subject is being conducted on a wide front: by international organizations, such as the Organization for Economic Co-operation and Development (OECD), and government authorities of various jurisdictions. No uniform approach to tackling the taxation aspect of electronic commerce has yet emerged. In view of globalization and the disappearance of physical boundaries for businesses conducted electronically, it is important for a consensus approach to be developed and adopted by most taxation administrations. Hong Kong must ensure its approach to taxing profits arising from businesses conducted electronically is consistent with that adopted by our major international counterparts. We are keeping a close watch on discussions and emerging views in the OECD and major taxation administrations. We are also closely monitoring developments in electronic commerce from a taxation perspective, with a view to identifying potential taxation-related problems and studying possible solutions.

For the time being, our assessment is that electronic commerce has not yet resulted in any material reduction of revenue collected from Profits Tax. The Inland Revenue Department will continue to monitor the position closely.

#### *Internet Stock Trading*

Stamp Duty is chargeable on share trading effected through the Internet. A number of stock brokers are offering services for buying and selling Hong Kong stocks through the Internet. Information available shows that the trade orders received by these brokers from their clients through the Internet are relayed to the trading system of the Stock Exchange of Hong Kong Limited (SEHK) for execution. The duty payable is paid by the Stock Exchange to the Inland Revenue Department, as in the case of ordinary orders placed through a brokers' office in person or by telephone.

For the time being, our assessment is that stock trading through the Internet has yet to pose a threat to our revenue from Stamp Duty. The Inland Revenue Department will continue to monitor developments in Internet stock trading and keep under close review the potential consequential revenue implications. We will consider necessary actions where appropriate.

#### *Internet Betting*

Given the numerous websites dedicated to on-line gambling, there is a possibility that this development will have the effect of gradually siphoning betting dollars away from the legalized forms of betting in Hong Kong, hence undercutting the base of our Betting Duty. The Home Affairs Bureau is conducting a comprehensive review on gambling policy in the light of the growing prominence of Internet gambling and other avenues for illegal betting. The question of how best to avert the possible trend of revenue loss arising from Internet gambling will also be addressed in the context of this review.

Our revenue from Betting Duty may be affected by a combination of different factors, such as changes in the prevailing economic conditions or non-electronic illegal bookmaking. It is not possible to estimate the amount of Betting Duty revenue foregone as a result of electronic gambling.

### **Prevention of Spread of Hepatitis E**

13. **MR LEE KAI-MING** (in Chinese): *Madam President, it has been reported that the incidence of hepatitis E in Guangdong Province last year was 10 times higher than that in the preceding year, and hepatitis E virus (HEV) was transmitted via food and physical contact. In this connection, will the Government inform this Council:*

- (a) of the number of confirmed cases of hepatitis E in Hong Kong last year;*
- (b) whether it knows if the various medical institutions have kept reserves of HEV vaccine; if they have, of the details; if they have not, of the reasons for that; and*
- (c) of the measures taken to prevent the spread of the disease?*

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

President,

- (a) There were seven confirmed cases of hepatitis E notified in Hong Kong in 1999.
- (b) An effective vaccine against hepatitis E is yet to be developed.
- (c) Hepatitis E, like hepatitis A, is mainly transmitted via the faecal-oral route. Preventive measures include good personal and food hygiene. As part of its health education activities, the Department of Health has been disseminating messages on the prevention of food-borne illnesses and promoting good personal, food and environmental hygiene among the general public as well as food handlers through the media, health education pamphlets and talks. Moreover, the Food and Environmental Hygiene Department inspects food premises regularly to ensure that they are in satisfactory hygienic conditions.

### **Contract Staff of the Former Provisional Municipal Councils**

14. **MR FRED LI** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the number of contract staff employed by the secretariats of the two former Provisional Municipal Councils and the two former Municipal Services Departments before their dissolution; whether all the contract staff concerned have been employed by the Government upon the dissolution of these organizations; if not, the reasons for that; and*
- (b) *whether the remuneration of the contract staff of these organizations has been adjusted upon their being employed by the Government; if so, of the number of the staff affected and the magnitude of the adjustment?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, on the

basis of the information provided by the Civil Service Bureau, the Environment and Food Bureau, the Food and Environmental Hygiene Department and the Leisure and Cultural Services Department, the answers to the Honourable Fred LI's questions are as follows:

- (a) The number of staff employed on contract terms by the secretariats of the two former Provisional Municipal Councils and the two former Municipal Services Departments before their dissolution was 688. The Food and Environmental Hygiene Department and the Leisure and Cultural Services Department have continued to employ 682 of the 688 contract staff. The remaining six staff left their posts upon the expiry of their contracts on 31 December 1999 as there was no operational need to retain them.
- (b) Upon the dissolution of the Provisional Municipal Councils, there are operational needs to retain the posts of 656 of the 682 contract staff. Their remuneration and conditions of service will remain unchanged during the term of their current contracts. Regarding the remaining 26 staff, although the original functions performed by them are no longer required upon the dissolution of the two Provisional Municipal Councils, the relevant Departments have employed them to meet new operational requirements. Their employment terms will depend on the nature of the new duties.

### **Services Provided by Hospital Authority to Patients**

15. **MR MICHAEL HO** (in Chinese): *Madam President, regarding the services provided by the Hospital Authority (HA) to patients, will the Government inform this Council whether it knows:*

- (a) *the service items for which fees are charged; the chargeable service items added or deleted in each of the past five fiscal years;*
- (b)
  - (i) *the fee payable for and average unit cost of each chargeable service items; and*
  - (ii) *the respective numbers of cases in which fees were paid, not*

*paid and waived, as well as the respective total amount of fees involved in these cases, and a breakdown by the type of services;*

- (c) the basis the HA used in setting the fees for such services, and the categories of persons with fees waived; and*
- (d) if the HA has plans to adjust the fees for such services and add chargeable service items; if it has, of the magnitudes of adjustments to be made and the achievements expected of such adjustments?*

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

- (a) Service items for which fees are charged are listed in the Special Supplement No. 4 to the Hong Kong Government Gazette dated 1 November 1996. Basically, there are three categories of charges — public charges to entitled persons; public charges to non-entitled persons and private charges. While in-patient and out-patient fees for public patients are generally all inclusive, there are additional charges for private patients, such as medical attendance, surgical operations, radiology and oncology services and pathological investigations. Major chargeable service items are provided at Annex A.

The last time there were additions and deletions of chargeable service items took place in 1996. Privately purchased medical items, for which patients will be asked to purchase at their own expenses, were introduced then. With the introduction of the Personal Data (Privacy) Ordinance, charges for copying medical records provided pursuant to a request under the Ordinance were added. There were also additions of new and deletions of obsolete operations and pathological investigations for the list of private charges.

- (b) (i) There are hundreds of chargeable service items listed in the

Gazette. For easy reference, a summary of the fees payable and average unit costs of selected major items in the past five years is provided at Annex A.

- (ii) The respective numbers of cases in which fees were paid, not paid and waived, as well as the respective total amounts, in the past five years are provided at Annex B. Since the HA's information system has not captured the information by type of services, a breakdown in in-patient, out-patient and other medical fees is provided instead.
- (c) The HA adopts historical benchmarks in setting the fees for its services. For example, in-patient and out-patient charges for "entitled persons" are set on the basis of the historical percentage of government subsidy to the cost of the services; while charges for "non-entitled persons" generally reflect the costs of the services provided.

According to the fee waiver policy of the Social Welfare Department, medical fees charged on patients who are in receipt of Comprehensive Social Security Assistance (CSSA) are automatically waived. For non-CSSA patients, they may apply for fee waiver if they are in financial hardship or if there are other justifications, for example, to encourage a psychiatric patient to receive treatment. Medical social workers will grant waiver for non-CSSA patients on a case-by-case basis.

- (d) In the previous fee revision exercises, the HA adjusted the fees for its services to reflect the changes in costs and the general price increases to maintain the historical percentage of government subsidy to the cost of service. We are now studying various long-term financing options in the context of health care review. Future medical fee proposals will be decided pending the results of the review. As a guiding principle, we will continue to ensure that no one would be denied medical treatment due to lack of means.









**Scheme to Switch Taxis Running on Diesel to Liquefied Petroleum Gas**

16. **MR JAMES TIEN** (in Chinese): *Madam President, it was reported that the scheme to switch taxis running on diesel to liquefied petroleum gas (LPG) had received lukewarm response and owners wishing to switch to LPG taxis must obtain a quota from the Environmental Protection Department. In this connection, will the Government inform this Council of:*

- (a) the current number of LPG taxis in service;*
- (b) the current quota for LPG taxis, and whether restrictions are attached to some taxis approved under the quota system, such as they may be refuelled during non-peak hours only; if so, of the details and the reasons for such restrictions;*
- (c) the implementation timetable for providing grants to diesel taxi owners to encourage the switch from diesel to LPG; and*
- (d) the difficulties encountered in implementing the scheme?*

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

- (a) As at 1 February 2000, a total of 425 LPG taxis were licensed for service in Hong Kong.
- (b) Permanent LPG refuelling stations are not due to be in place until later in the year. To meet demand from certain taxis to convert to LPG early, the operators of the four temporary filling stations set up to service the 30 LPG taxis used in the LPG taxi trial scheme have made arrangements to increase the supply so that up to 560 taxis can be refuelled at these four points. Given their limited size, not all taxis can be refuelled at the time most convenient to the operators. They have to make special filling arrangements so as not to overload the capacity of the stations. Later this year, as permanent LPG filling stations begin to come into operation the refueling capacity will increase, making it more convenient for operators to convert to LPG.

- (c) The Administration has consulted the taxi trade on the proposal to provide a one-off grant of \$40,000 to encourage taxi owners to switch to LPG vehicles. We are now finalizing the proposal, taking into account feedback from the trade. We aim to put forward the proposal to the Finance Committee within the current Session and, subject to the Committee's approval, to implement the scheme thereafter.
- (d) Implementation of the LPG taxi scheme depends on the timely provisions of a sufficient LPG filling network to support the large scale introduction of LPG taxis. Tenders for large dedicated LPG service stations will be awarded shortly. These will be put into operation before the end of 2000. The oil companies have also applied for retrofitting a number of their existing petrol filling stations with LPG filling facilities. New LPG filling facilities at these stations are expected to come into operation starting from the middle of this year.

### **Developing West Kowloon Reclamation Area into an Art and Entertainment District**

17. **MR HOWARD YOUNG** (in Chinese): *Madam President, regarding the project to develop the West Kowloon Reclamation (WKR) area into an art and entertainment district, will the Government inform this Council:*

- (a) *of the current progress and timetable of the project;*
- (b) *of the details and timetable for holding an open competition on the planning design for the district; and*
- (c) *whether public consultation on the planning design will be conducted prior to its formal acceptance; if so, when it will be conducted; if not, the reasons for that?*

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

- (a) It is the Government's intention to develop the waterfront of WKR into an integrated arts, culture and entertainment district. To meet this objective, we need firstly to hold an Open Competition for the planning of the area. Upon the conclusion of the Open Competition, the Government will determine the way forward for development and implementation. The whole project involves numerous aspects and it is premature to set a precise timetable for each of the steps. However, the Government will proceed with this project as soon as possible.
- (b) The purpose of the Open Competition is to enlist design concepts and planning proposals for the waterfront of WKR from both local and overseas professionals. All proposed developments on this area must not only have an unique and attractive build form, they should also serve to promote cultural and arts development as well as tourism in accordance with the Government's policies. In addition, all entries of the Competition must demonstrate that their proposals are technically feasible and financially viable. The Government is currently fleshing out details of the Competition. Barring unforeseen circumstances, it is anticipated that the Open Competition would be launched in April, together with the announcement of details of the Competition (such as assessment criteria and the composition of adjudication panels, and so on.).
- (c) The current thinking is that whether the Government will formally accept the winning design as a basis for future development will depend on the extent to which the design concerned could meet the Government's objective. If necessary, the Government may conduct a further study to establish the feasibility of the winning design and may possibly amend the design concerned. Hence, a decision on whether the public would be consulted on the winning design would only be taken after the assessment of the entries to the Competition.

**Provision of Legal Aid to Owners' Corporations**

18. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, will the Government inform this Council whether, in order to assist owners' corporations (OCs) in their work, it has plans to amend the Legal Aid Ordinance (Cap. 91) to allow eligible OCs to apply for legal aid when they are involved in civil proceedings; if it has, of the relevant eligibility requirements and conditions it will set; if not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): Madam President, the objective of the Legal Aid Scheme is to ensure that no individual in Hong Kong will be denied legal recourse because of a lack of means. The financial resource of the applicant is therefore an important consideration in granting legal aid. For this reason, section 2 of the Legal Aid Ordinance (Cap. 91) provides that "person" does not include a body of persons corporate or unincorporate. The Government has no plan to expand the scope of the scheme to cover organizations such as OCs.

To encourage and help owners form and run OCs, Liaison Officers of the Home Affairs Department (HAD) provides advice to owners. If an OC encounters a legal problem, it may, as an alternative to consulting its own legal advisers, approach the Building Management Resource Centres of the HAD for assistance provided by the duty members of the Law Society of Hong Kong and other professional institutes. These services are provided on a voluntary basis and are free of charge. There are two such Centres at present.

**Disciplinary Action against Civil Servants for Misconduct**

19. **DR DAVID LI**: *Madam President, in 1999, there were 300 civil servants against whom disciplinary action for alleged misconduct was recommended by the Independent Commission Against Corruption (ICAC). This figure is 61% higher than the corresponding figure in the previous year. In this connection, will the Government inform this Council of:*

*(a) the reasons for the increase; and*

*(b) the additional measures it will adopt to tackle the problem?*

**SECRETARY FOR THE CIVIL SERVICE:** Madam President, according to the records of the Civil Service Bureau (CSB), the numbers of officers referred to government departments by the Operations Review Committee (ORC) of the ICAC in 1997 and 1998 were 356 and 375 respectively. In 1999, the total number was 303, out of whom 182 were recommended for disciplinary/administrative actions and the remaining 121 for information. The 182 officers when compared to the 176 officers recommended for disciplinary/administrative actions in 1998, represents only a slight increase of 3% in 1999.

The Government takes a serious view of the cases referred by the ORC of the ICAC. Upon receipt of the referred cases requiring follow-up action, the Head of the department concerned will examine and investigate each of them thoroughly to decide if any disciplinary or administrative action should be taken. They are required to handle the cases promptly and to report the progress to the CSB and to the ICAC for the information of the ORC.

The Government is committed to stamp out all corrupt and improper practices in the Civil Service. Apart from taking serious and prompt action on the referral cases mentioned above, the Government promotes high standards of conduct and integrity among civil servants through the following education, training and prevention efforts:

- (a) stepping up the educational and training programmes for both new recruits and incumbent officers by organizing regular briefings and seminars on anti-corruption legislation and other good management practices;
- (b) providing full support to the ICAC in its regular reviews of the operational procedures and practices in various departments with a view to strengthening monitoring control and identifying preventive measures against improper practices;
- (c) punishing any act of corrupt and improper practice. The Government is now reviewing the existing disciplinary mechanism for civil servants in order to enhance the effectiveness of disciplinary action against officers involved in improper practices; and

- (d) forming jointly with the ICAC a Task Force to launch in 1999 a two-year programme entitled "Civil Service Integrity Programme" to assist departments in drawing up internal guidelines on the standards of conduct expected of their staff.

### **Study on Manpower and Training Needs of Information Technology Industry**

20. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, the consultant commissioned by the Education and Manpower Bureau has completed a study on the manpower and training needs of the information technology (IT) industry in Hong Kong, and the Bureau has circulated the draft final report on the study to the relevant government bureaux and departments for comments. In this connection, will the Government inform this Council:*

- (a) of the current progress of preparing the report;*
- (b) of the schedule for reporting the results of the study to the Legislative Council and the publication thereof; and*
- (c) whether it has any plan to formulate relevant policies to follow up and implement the results of the study; if so, of the details and the policy formulation schedule?*

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

- (a) The consultant is now finalizing the report to take into account the feedback from relevant government bureaux and departments and to update/revise some of the data in the report. It is expected that the final report will be completed before the end of this month.
- (b) We intend to present the major findings and recommendations of the consultancy study to the Legislative Council Panel on Manpower at its meeting to be held on 24 February 2000.



- (c) Together with relevant government bureaux and departments, we will examine the report and consider follow-up action arising from the consultant's recommendations. We will also circulate the consultant's major findings and recommendations to universities, training providers and relevant organizations so that they can take them into account in determining the training places and contents of their IT-related courses.

In fact, we have been constantly reviewing the current policy on IT manpower training to ensure that appropriate measures are taken to meet the market demands. For example, in collaboration with representatives from the industry and the relevant training providers, we have recently developed a new IT Assistant Training Programme to meet the industry's increasing demand for junior IT assistants. Besides, various University Grants Committee-funded institutions and the Information Technology Training and Development Centre of the Vocational Training Council are developing teaching materials on the Internet to facilitate teaching and learning so as to keep abreast with the global trend of implementing web-based education.

## **BILLS**

### **First Reading of Bills**

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

**LEGISLATIVE COUNCIL (AMENDMENT) ORDINANCE 1999  
(AMENDMENT) BILL 2000**

**TOWN PLANNING BILL**

**URBAN RENEWAL AUTHORITY BILL**

**BUILDINGS (AMENDMENT) BILL 2000**

**ROAD TRAFFIC (AMENDMENT) BILL 2000**

**EMPLOYEES' COMPENSATION (AMENDMENT) BILL 2000****BROADCASTING BILL****FAMILY STATUS DISCRIMINATION (AMENDMENT) BILL 2000****NOISE CONTROL (AMENDMENT) BILL 2000****SECURITY AND GUARDING SERVICES (AMENDMENT) BILL 2000**

**CLERK** (in Cantonese): Legislative Council (Amendment) Ordinance 1999  
(Amendment) Bill 2000  
Town Planning Bill  
Urban Renewal Authority Bill  
Buildings (Amendment) Bill 2000  
Road Traffic (Amendment) Bill 2000  
Employees' Compensation (Amendment) Bill 2000  
Broadcasting Bill  
Family Status Discrimination (Amendment) Bill 2000  
Noise Control (Amendment) Bill 2000  
Security and Guarding Services (Amendment) Bill  
2000.

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

**Second Reading of Bills**

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

**LEGISLATIVE COUNCIL (AMENDMENT) ORDINANCE 1999  
(AMENDMENT) BILL 2000**

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move the Second Reading of the Legislative Council (Amendment) Ordinance 1999 (Amendment) Bill 2000.

When the Legislative Council debated the Legislative Council (Amendment) Bill on 14 July last year, I undertook to consider revising the delineation of the Social Welfare Functional Constituency to remove from it the corporate electors. In addition, I also undertook to consider including Chinese medicine practitioners registered under the Chinese Medicine Ordinance (47 of 1999) in the Medical Functional Constituency. I now present the relevant Bill to this Council for Members' scrutiny.

In view of the satisfactory progress in the implementation of the statutory registration scheme for social workers, and of the fact that the professionalism of practitioners in the field is established under the scheme, we believe this is the right time to define the Social Welfare Functional Constituency to the effect that it is composed of registered social workers only.

Upon passage of the Bill, the existing registered corporate electors of the Social Welfare Functional Constituency will be disqualified from voting in the Social Welfare Functional Constituency election held for the second term of the Legislative Council. In order to ensure fair play, we have notified these corporate electors in writing of the impending changes and influences to be brought about by the Bill. We have also mentioned in the notification letter that if they intend to apply for registration in other functional constituencies and are so eligible, they should consider doing so before 16 March.

For this reason, we hope that this Bill could be passed by the Council by the end of February or early March. That way, the Government will be able to write to such corporate electors formally confirming their loss of eligibility to register in the Social Welfare Functional Constituency before the voter registration deadline.

With regard to the proposal to include Chinese medicine practitioners in the Medical Functional Constituency, we have examined carefully the progress of the relevant registration scheme. This is because to enable a sufficient number of Chinese medicine practitioners to be registered in the Medical Functional Constituency, the statutory registration scheme for Chinese medicine practitioners must be put in place for qualified Chinese medicine practitioners to register.

The Chinese Medicine Council (CMC) is currently in the process of preparing the subsidiary legislation providing for the registration of such practitioners. Although the CMC is currently finalizing the Code of Practice to lay down guidelines on professional conduct for registered Chinese medicine practitioners, it is expected that the relevant subsidiary legislation will only be ready at a later date. For this reason, it would not be possible to launch the registration scheme before April this year. Hence, no Chinese medicine practitioners could apply for registration under the Chinese Medicine Ordinance before the voter registration deadline of 16 March 2000. We consider it to be of no practical meaning to include registered Chinese medicine practitioners in the Medical Functional Constituency in the 2000 election for the second term of the Legislative Council. We hold that it is only after the subsidiary legislation for the registration of Chinese medicine practitioners has been in place and eligible Chinese medicine practitioners have completed the relevant registration procedures that the registered Chinese medicine practitioners could be included in the Medical Functional Constituency in the election for the third term of the Legislative Council.

As regards the Legislative Council Election to be held in September this year, Chinese medicine practitioners could still participate through the Chinese Medicine Subsector in the Election Committee. The arrangement for the Chinese Medicine Subsector, including its composition and the number of representatives to be returned would remain unchanged.

Madam President, as I said before, I hope Honourable Members could support the early passage of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Legislative Council (Amendment) Ordinance 1999 (Amendment) Bill 2000 be read the Second time.

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

**TOWN PLANNING BILL**

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I move that the Town Planning Bill be read the Second time. In 1996 the Town Planning White Bill was published for public consultation. The Bill sought to achieve the following major objectives: to make the planning system in Hong Kong more open and accountable, to streamline the existing statutory planning procedures, to exert greater planning control on development projects which contravene the relevant legislation and regulations, to enhance enforcement powers against such development projects, and to fully consider all planning factors when engaging in planning for places or development projects prone to changes in the environment or should be put under special protection. During the consultation period, the Government collected views on the following four major points put forward by the public:

First, on the question of making the Town Planning Board (TPB) more open and accountable to the public while not causing any adverse effect on its efficiency.

Second, on the possibility of allowing more public participation in the planning process while not causing any adverse effect on the pace of infrastructure projects.

Third, on how to enhance planning control in order to give greater protection to our environment and cultural heritage and to achieve better urban design while not causing any adverse effect on the creativity and opportunity for private development.

Fourth, on how to ensure that land development will meet the requirements of statutory plans while not making the application procedures more complicated and thereby causing unnecessary delays in private development.

After making a review of the views collected during the consultation period, the Government has made suitable amendments to the White Bill. We have discussed the main provisions of the Bill with the relevant committees, professional bodies, academic organizations, environmental protection groups and various political parties. In the course of the discussions, we have carefully considered all the divergent views and we have made further amendments to the Bill so that it can reflect public opinion as much as possible.

Madam President, the Bill now presented to the Council is the outcome of the collective endeavours of all the people who are concerned about town planning and urban design in Hong Kong. In the eyes of some people, the contents of the Bill may not be perfect, however, it is drafted with the consensus of the majority in mind. When compared with the existing legislation, the amended Bill is in a much better position to achieve the legislative intent of the White Bill.

Let me give a few examples. The Bill adds 24 new statutory time-limits in the existing planning procedures in order to speed up the procedures in the plan-making process and the vetting of planning applications. In terms of planning procedures, the Bill will reduce the time taken by these procedures by about five to six months. The Bill provides at least three statutory requirements to ensure that the public has the right to put forward their views and be consulted during the plan-making process and the planning application process. The public may put forward their views on the planning studies and make comments on the planning applications which may cause undesirable effects on the neighbours. Apart from preserving the existing land use zones, the Bill has added three new designated areas in town plans, these are: Environmentally Sensitive Area, Special Design Area and Designated Development. This is intended to achieve more effective planning control and hence better protection of the environment and our cultural heritage.

To enhance the transparency and accountability of the TPB, the Bill also proposes to increase the quorum of any meeting of the TPB and to require that members of the TPB who are not public officers should form the majority of the quorum of any meeting. Members of the TPB are required to declare interest and such record shall be made available for public inspection.

Lastly, a planning register for all statutory planning records will be set up for public inspection. In the course of the drafting and discussion of the Bill, all the organizations and groups concerned showed support for the objectives of the Bill. I commend this Bill to the Council as a first step to honour our pledge of making legislation in this respect. I hope all Honourable Members can give their full support to the Bill and give priority to it so that it can be passed into law as soon as possible.

Thank you, Madam President.

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

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

## **URBAN RENEWAL AUTHORITY BILL**

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I move that the Urban Renewal Authority Bill be read the Second time.

In October last year, the Government of the Hong Kong Special Administrative Region (SAR) published the Urban Renewal Authority Bill in the Gazette in the form of a White Bill for public consultation. The consultation period lasted until the end of the year. Last December, this Council held a motion debate on the White Bill. The Legislative Council Subcommittee to study the Urban Renewal Authority White Bill met nine times to consider the White Bill, and I am grateful to the Subcommittee for providing us with useful advice. About 300 written submissions were received during the consultation period. Representatives of our Bureau and the Planning Department attended 32 briefing sessions, seminars and public forums on the White Bill. The Bureau also organized two open forums to gather public views direct.

Comments received during the consultation period indicated broad support for speeding up urban renewal and the adoption of a people-oriented approach. The public and industry participants also expressed strong support for the adoption of a three-pronged approach in urban renewal by the Urban Renewal Authority (URA), including the redevelopment of dilapidated buildings; the rehabilitation of buildings requiring repairs; and the preservation of buildings and areas of historical, cultural or architectural interest. The main issues of concern raised during the consultation period related to rehousing arrangements for tenants affected by urban renewal projects and compensation for owners whose properties are resumed for redevelopment.

Having considered the views received, the Government has amended the White Bill into the Urban Renewal Authority Bill. In response to the comments of this Council, the public and the industry on the White Bill, the Urban Renewal Authority Bill now incorporates the following changes:

- (a) specifying the preservation of buildings, sites and structures of historical, cultural or architectural interest as one of the objects of the URA;
- (b) empowering the Financial Secretary to approve Corporate Plans and Business Plans submitted by the URA with or without amendments to allow greater flexibility in the vetting process;
- (c) giving the Town Planning Board greater flexibility by allowing it to approve development schemes submitted by the URA with or without amendments; and
- (d) improving the procedures for processing objections to an URA development project by providing an opportunity for owners affected by any amendments made by the Secretary for Planning and Lands to the project to raise objections to such amendments and the objections to be considered. The Secretary should also serve notice in writing of his determination on the owners who made the objection.

The above amendments should enable the public to have a fuller understanding of the purposes of the URA, and enhance the efficiency and flexibility in the URA's operation.

Madam President, this Council and the public have also raised concerns during the consultation period which fall outside the scope of the Bill. The issues include the Home Purchase Allowance (HPA) for domestic property owners, compensation for owners of non-residential properties, guidelines for valuation and the establishment of an appeals channel to consider appeals against the determination of the Director of Lands on the HPA. We have started to review and follow up on these issues. As they do not touch on the contents of the Bill, I do not intend to elaborate on them. As regards the guidelines for valuation and the appeals channel on HPA, we will shortly submit a paper to the relevant panel of this Council explaining our proposals. As regards



compensation for owners, we will review, based on the principle of fairness, the compensation packages for domestic and non-domestic property owners and will report to this Council on the outcome of our review.

Madam President, we are facing a crisis of rapid ageing of the urban environment and swift and effective action is required to tackle the problem of urban renewal, in order that we can improve the living conditions of those residing in old urban areas, and comprehensively improve our urban outlook. I recommend the Bill to Members for early passage into law.

Thank you, Madam President.

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

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

## **BUILDINGS (AMENDMENT) BILL 2000**

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, in my response to the motion debate on the Buildings Ordinance on 26 January 2000, I promised to review and amend the contents of the Buildings Ordinance regularly. The Buildings (Amendment) Bill 2000 tabled today is one phase of the review of the Buildings Ordinance. The purpose of the Bill is to update and improve part of the statutory requirements relating to building control; the five key proposals in this Bill have the general support of the industry.

As Hong Kong is running out of land fill space for the disposal of its waste, waste reduction measures are vital for environmental improvement and sustainable development. The current recovery rate for reusable and recyclable materials is however low; one reason for this low response is that there is insufficient space within the current provision for refuse storage chambers for separation and storage of sufficient reusable and recyclable materials to allow meaningful recovery to take place. Under the Bill, the Government proposes to make provision for regulations to cover material storage and recovery chambers and to amend the Building (Refuse Storage Chambers and Chutes) Regulations to

make it mandatory for the provision of floor space and facilities for separation of waste and material recovery in all new residential, commercial and industrial buildings and hotels. As an incentive, we propose that the space required to meet these requirements will be exempted from Gross Floor Area (GFA) calculations through an amendment to the Building (Planning) Regulations.

To help realize the Government's information technology objectives, the Bill contains a set of proposals to amend the Building (Planning) Regulations to ensure that people, whether at home or at work, can easily access and have a choice of quality telecommunication and broadcasting networks. Access facilities for these telecommunication and broadcasting services will be improved in new commercial, industrial, residential and hotel buildings. The floor space for the required Telecommunication and Broadcasting Equipment Rooms and ducts and risers for the cables will all be excluded from the GFA of the developments.

For most planning purposes, hotels are classified as premises for domestic use. The Building Authority, though, has since the late 1960s exercised discretionary power under the Buildings Ordinance in processing *bona fide* hotel developments to increase the plot ratio limits in the Building (Planning) Regulations to non-domestic standards (that is, from 10 to 15) and to grant building concessions for certain essential back-of-the-house facilities.

The Government has recently conducted a review on the policy and procedures for granting these hotel concessions. The outcome of this review is that we need to maintain these concessions to meet the needs of hotels and to encourage a steady supply of hotel rooms to satisfy the demand of the tourism industry. The Bill amends the Building (Planning) Regulations to formalize the existing concessions for *bona fide* hotel developments. There is also provision for a daily fine at level 2 (\$5,000) for continuing offences. Such an increase of penalties is considered necessary as the current levels were set in 1979. We propose to increase the penalties for unauthorized change of use of hotels which have been granted such concessions to a fine at level 6 (\$100,000) and two years' imprisonment.

The fourth set of proposals concern performance review of geotechnical design. At present, there is provision under the Buildings Ordinance for the Building Authority to exercise control on developments in the Mid-Levels Scheduled Area and other scheduled areas, such as the protection areas along the

Mass Transit Railway. However, geotechnical problems can arise outside these scheduled areas. To take account of this and provide appropriate levels of control, the Bill sets out amendments to sections 17(1) and 21(6) of the Ordinance to extend geotechnical controls to sites throughout Hong Kong where geological conditions would need to be verified during construction, or where the groundwater regime may be adversely affected by the proposed development. These controls will also be extended to buildings with unconventional designs.

The fifth proposal in the Bill is to revise the present fee structure for registration of Authorized Persons and Registered Structural Engineers. We propose, through an amendment to section 3 of the Ordinance, separate fees for application and for inclusion in these registers, and to reduce the fees to be paid by applicants for inclusion of their names in a register in accordance with a costing review from \$6,110 to \$4,500; fees for the annual retention in a register will also be reduced from \$840 to \$815. These new fees will be set out in the Building (Administration) Regulations.

With these remarks, Madam President, I urge Members to support the early passage of the Bill into law. Thank you.

**PRESIDENT** (in Cantonese): Secretary for Planning and Lands, excuse me, I do not hear you move the Second Reading of this Bill. In accordance with the Rules of Procedure, please move the Second Reading of this Bill.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): With these remarks, Madam President, I move the Second Reading of this Bill and urge Members to support the early passage of this Bill into law.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Buildings (Amendment) Bill 2000 be read the Second time.

In accordance with Rule 54(4) of the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

**ROAD TRAFFIC (AMENDMENT) BILL 2000**

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I move that the Road Traffic (Amendment) Bill 2000 be read the Second time. The objective of the Bill is to amend the Road Traffic Ordinance (Cap. 374) to improve the existing provisions on reckless driving. For many serious traffic accidents involving casualties in the past, the drivers were not convicted of the more serious offences of reckless driving or reckless driving causing death. Instead, they were only found guilty of the lesser offence of careless driving. The public in general thinks that there are obviously inadequacies in the Road Traffic Ordinance, resulting in a noticeable gap between the seriousness of the consequences of the traffic accidents and the sentences passed on the drivers. Under the existing legislation, a high degree of *mens rea* is required to prove recklessness on the part of the driver. As a result, the drivers in many cases were only charged for the lesser offence of careless driving and received lower penalties on conviction. To improve the existing provisions on reckless driving, we propose to replace "reckless driving" and "reckless driving causing death" with "dangerous driving" and "dangerous driving causing death" respectively. In future, the Administration can shift the emphasis from the mental state to the actual driving behaviour of the driver in prosecution. The court will assess the driving behaviour of the accused driver by using the driving standard expected of a competent and careful driver as the benchmark, thereby making the test for the offence more objective.

In addition, the Bill also proposes that besides the offence of "careless driving", certain existing driving offences should also be listed as alternatives to "dangerous driving causing death" and "dangerous driving" so that the court can have the discretion to convict the law-breaker for an appropriate alternative offence.

Disqualification from driving is an effective measure to deter bad driving behaviour. It is proposed that additional provisions should be made to explicitly state that those who are for the first time or repeatedly found guilty of "dangerous driving causing death" or "dangerous driving" shall be disqualified from driving for a specified period.

As far as pecuniary fines are concerned, it is proposed that the level of fines under the Criminal Procedure Ordinance, which ranges from \$4,000 to \$25,000 at present, should be adjusted to range from \$5,000 to \$50,000.

Madam President, I commend to Members the Road Traffic (Amendment) Bill 2000. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Amendment) Bill 2000 be read the Second time.

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

## **EMPLOYEES' COMPENSATION (AMENDMENT) BILL 2000**

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I move that the Employees' Compensation (Amendment) Bill 2000 be read the Second time.

The Employees' Compensation Ordinance is a major piece of legislation serving to protect the interest of employees in Hong Kong. Section 5(4)(f) of the Ordinance stipulates that an accident to an employee shall be deemed to arise out of and in the course of his employment if it happened to the employee while he was travelling between his residence and his workplace within a period of four hours before or after his working hours when a gale warning or a rainstorm warning is in effect, and that employee is entitled to claim compensation from the employer under section 5(1) of the Employees' Compensation Ordinance.

Under section 5(4)(f) of the Employees' Compensation Ordinance, "gale warning" and "rainstorm warning" are defined to have the same meaning as in the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance.

On 5 July 1999, the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance was amended to exclude the Red Rainstorm warning from the definition of "rainstorm warning" so that judicial proceedings will not be adjourned while the Red Rainstorm warning is in force. While the amendment ensures the effective use of court time, it has indirectly deprived the employees

of the protection provided under the Employees' Compensation Ordinance when a Red Rainstorm warning is issued.

In order to restore the protection originally afforded to employees, we propose to amend the definitions of gale warning and rainstorm warning under section 5(4)(f) of the Employees' Compensation Ordinance. To protect the rights of those employees who were injured after the amendment to the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance, we also suggest that the proposed amendments should be deemed to have taken effect on 5 July 1999.

I urge Members to pass the Bill as early as possible.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Employees' Compensation (Amendment) Bill 2000 be read the Second time.

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

## **BROADCASTING BILL**

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, I move the Second Reading of the Broadcasting Bill.

Rapid advances and convergence in information and communications technologies are bringing revolutionary changes to the broadcasting scene. To ensure that our regulatory framework is in step with technological and market developments, we conducted a comprehensive review of the television policy in 1998. After two rounds of thorough consultation with the industry and the community and having carefully considered all the submissions received during the consultation exercise, the Government announced in December 1998 the decisions on a package of policy initiatives which are aimed at keeping Hong Kong in the forefront of the broadcasting industry in the Asia-Pacific Region.

The main purpose of the Bill is to give effect to those policy objectives which require statutory backing. Specifically, the Bill seeks to provide a technology-neutral statutory framework governing the licensing and regulation of television programme services. The Bill when enacted will replace the Television Ordinance to cover all types of television programme services, including the terrestrial and satellite television services now separately licensed under the Television Ordinance and the Telecommunication Ordinance respectively.

The Bill serves to advance our broadcasting policy objectives, which are to:

- (a) widen programming choice to cater for the diversified tastes and interests of the community;
- (b) encourage investment, innovation and application of technology in the broadcasting industry;
- (c) ensure fair and effective competition in the provision of broadcasting services;
- (d) ensure that broadcasting services provided are up to the expectations and do not offend the tastes and decency of the community; and
- (e) promote the development of Hong Kong as a regional broadcasting and communications hub.

I will now introduce the more important provisions of the Bill to Members.

#### *Licensable broadcasting services*

We propose that the regulation of television programme services should be commensurate with the characteristics and pervasiveness of the services offered. Under the Bill, "television programme services" are classified into four categories which will be subject to varying degrees of regulation. They are:

- (a) domestic free television programme service;
- (b) domestic pay television programme service;
- (c) non-domestic television programme service; and
- (d) other licensable television programme service.

Of these four categories of broadcasting services, two are domestic services, that is, services primarily targeting on Hong Kong. They cover free or subscription services intended or available for reception by over 5 000 premises. One is non-domestic services, that is, free or subscription services not primarily targeting on Hong Kong. The remaining is otherwise licensable television programme services which are intended or available for reception by not more than 5 000 premises in Hong Kong.

To clearly define the scope of regulation, we propose that certain services should be excluded from the application of the Bill. These include the provision of a service consisting only an audio-visual programme that is made solely for performance or display in a public place, or is intended wholly or mainly for the purposes of the trade, business, employment or profession of the recipient.

Apart from the above clarifications, we propose that certain services which may involve the transmission of audio-visual services by telecommunications should be exempted from the application of the Bill. To allow flexibility in the regulatory framework to cater for the fast-changing broadcasting and multimedia environment, these exemptions are specified in a schedule of the Bill so that it can be amended by subsidiary legislation where necessary. The exemptions include:

- (a) telecommunications services that are currently exempted from the application of the Television Ordinance. These include, for example, transactional services and video conferencing;
- (b) services provided on the Internet. While video and audio services are now available on the Internet, we consider that their existing mode of operation is different from broadcasting and their



pervasiveness is not yet comparable to television programme services currently operating in Hong Kong. Our policy intent is that this type of service should be exempted from the application of the Bill for the time being unless and until its pervasiveness and mode of operation draw much closer to broadcasting and the question of effective enforcement can be resolved; and

- (c) free-to-air satellite television services uplinked from places outside but receivable in Hong Kong. At present, these services are allowed to be received and distributed by satellite master antenna television systems without a licence. In line with our open-sky policy on broadcasting, this type of service should continue to be exempted from the application of the Bill.

### *Codes of Practice and Guidelines*

To facilitate the Broadcasting Authority (BA) in discharging the functions conferred on it by the Bill, we propose that the BA should be empowered to issue codes of practice and guidelines. The purpose of the codes of practice is to provide practical guidance to licensees in respect of requirements under the Bill imposed on licensees or in respect of licence conditions. Guidelines may be published for the benefit of licensees to help them understand the considerations the BA intends to adopt in performing its statutory functions.

### *Competition Provisions*

In an open and competitive television market, we consider it most important to provide a level playing field for both incumbents and new comers. Against this background, we propose that competition provisions should be enshrined in the Bill to safeguard fair competition in the market. The Bill includes a general provision prohibiting a licensee from engaging in anti-competitive conduct. Such conduct include, among others, agreements to fix the price in a television programme service market; conduct restricting supply of services to competitors; and agreements to share any television programme service market on agreed geographic or customer lines.

The Bill also contains a specific provision prohibiting a licensee in a dominant position in a television programme service market from abusing its position. In considering whether a licensee is dominant in a television programme service market, we propose that the following factors, among others, should be taken into account — the market share of the licensee; the licensee's power to make pricing or other decisions; and any market entry barriers. A licensee should be considered to have abused its dominant position if it has engaged in conduct such as predatory pricing, price discrimination, or imposing in an agreement conditions which are harsh or unrelated to the subject of the agreement.

Under the proposal of the Bill, the BA, which is currently charged with the statutory responsibility for regulating the broadcasting industry, will be the authority to enforce these competition provisions. To enable the BA to enforce these provisions effectively and efficiently, we propose that the BA should be empowered to require a licensee and other persons to supply information; to determine dominance in a television programme service market; to investigate and make determinations of anti-competitive conduct; and to require a licensee to cease and desist from a practice determined to be in breach of the competition provisions.

The enforcement of competition provisions will require detailed guidelines setting out how and in what circumstances the BA will enforce the competition provisions. The BA is working on a set of draft competition guidelines for consultation with the industry.

### *Enforcement of Licences and Sanctions*

The current maximum levels of financial penalty that the BA may impose on a licensee for breaches of the regulatory provisions are \$50,000 for the first occasion, \$100,000 for the second occasion and \$250,000 for any subsequent occasion. They were set in 1988. We propose in the Bill that these levels should be increased by four times to \$200,000, \$400,000 and \$1 million respectively having regard to, among others, the need to catch up with inflation.

*Ownership Restrictions*

To avoid conflicts of interest and the build-up of media monopoly, we consider that the existing cross-media ownership restrictions should be retained. Nonetheless, in the light of increased cross-market developments in a technology-convergent environment, we propose that "companies which transmit sound or television material", "companies which supply programmes for broadcasting by a licensee" and "the sole or dominant supplier of a public switched telephone service by wire to residential premises in Hong Kong" should be deleted from the list of disqualified persons, that is, persons prohibited from exercising control of domestic free and domestic pay service licensees except with the prior approval of the Chief Executive in Council.

At present, the restrictions on the exercise of voting control by persons not ordinarily resident in Hong Kong (that is, unqualified voting controller) apply to all licensees under the Television Ordinance. We propose that these restrictions should be confined to domestic free licensees only under the new regulatory regime provided for by the Bill. We also propose that the incremental steps of voting control by unqualified voting controllers at which approval of the BA is required should be relaxed from 2%, 4%, 6%, 8% and 10% to 2%, 6% and 10%.

*Royalty and Licence Fees*

Under the existing regulatory regime, royalties are payable by broadcasting licensees who are conferred with the privilege to operate in an environment with limited competition. Now that the Government has decided to open up the television market for free competition, we consider that the maintenance of a royalty scheme is not appropriate. We propose that the charging of royalties should be abolished with the repeal of the Television Ordinance; and that the full-cost recovery licence fees should be payable by licensees immediately after the abolition of royalties.

We believe that the above regulatory relaxation would stimulate investment in and help foster the development of the local broadcasting industry.

*Transitional Provisions*

To ensure a seamless transition to the new regulatory regime, we have propose two transitional arrangements for existing licensees. First, we propose that each existing television broadcasting licence issued under the Television Ordinance or Telecommunication Ordinance should be expressly deemed to be a certain category of licence issued under the Bill. Second, considering that the competition provisions may affect existing contracts that a licensee has already entered into, we propose that agreements lawfully entered into before the gazettal date of the Bill, that is, 28 January 2000, should be exempted from the application of the general competition provision for two years from that date. The details of these provisions are set out in Schedule 8 of the Bill.

Madam President, the Broadcasting Bill seeks to establish a fair, predictable and business-friendly regulatory regime for the television broadcasting industry which would be flexible enough to embrace new services made possible by convergence in technologies. The Bill will help to speed up the application of technology, promote competition, attract investment and stimulate the growth of broadcasting and other related industries. The policy issues of the Bill have been the subject of extensive consultation. To enable the Hong Kong broadcasting industry to capitalize on the opportunities in the Information Age ahead, I wish that Members would examine the Bill at the earliest opportunity.

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

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

**FAMILY STATUS DISCRIMINATION (AMENDMENT) BILL 2000**

**SECRETARY FOR HOME AFFAIRS:** Madam President, I move that the Family Status Discrimination (Amendment) Bill 2000 be read a Second time.

The Family Status Discrimination Ordinance (FSDO) was enacted on 26 June 1997. The FSDO prohibits discrimination on the ground of family status in certain fields of activity, such as employment. Apart from their employees, it is common practice for some Hong Kong employers to extend certain employment fringe benefits, such as medical and dental benefits, to the spouse and children of their employees, even though this is not required by law. It has not been our intention that the FSDO will require employers to afford benefits to all immediate family members in the care of their employees if such benefits are granted. In fact, Part 2 of the Schedule 2 to the FSDO already provides for some exceptions in relation to housing, education, air-conditioning, passage or baggage benefits or allowances. However, we are aware that there is a body of legal opinion which considers that there is an alternative way of interpreting the FSDO, namely, it is unlawful for an employer to restrict benefits to only some but not all immediate family members in the care of his employees. According to this interpretation, the list of exceptions in Schedule 2 is not sufficient to cover all situations in relation to the provision of benefits and allowances. In order to comply with the FSDO, the employer has two options. The first is that he can provide the benefits to all the immediate family members in the care of his employees. The second is that he may withdraw all the benefits currently offered in order to avoid infringing the FSDO. The first option will be very costly and therefore unlikely. The second option will mean that the employees' family members will lose the existing benefits.

The Family Status Discrimination (Amendment) Bill 2000 serves to remove any uncertainty in this area. Clause 2 of the Bill puts in place an exception which clarifies that it is not unlawful for a person to accord differential treatment in the way he affords any of the immediate family members in the care of his employees, contract workers or commission agents direct or indirect access to benefits, facilities or services. In other words, it is not unlawful under the FSDO for an employer to afford benefits only to one or more, but not all, immediate family members in the care of his employees. To put beyond doubt that it has never been our intention to require an employer to provide benefits to every immediate family member in the care of his employees, clause 1(2) of the Bill provides that the amendments should be deemed to have come into operation when the FSDO took effect, that is, 21 November 1997.

Finally, I would like to reiterate that the Bill seeks to remove uncertainty over the interpretation of the FSDO in relation to the provision of benefits to immediate family members of the employees. It will not take away any legislative protection or benefits that are currently enjoyed by the employees themselves.

Madam President, with these remarks, I commend to Members that this Bill be read a Second time. Thank you.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Family Status Discrimination (Amendment) Bill 2000 be read the Second time.

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

### **NOISE CONTROL (AMENDMENT) BILL 2000**

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I move the Second Reading of the Noise Control (Amendment) Bill 2000.

Noise problems have become an increasing concern of the community. Despite vigorous enforcement action, the doubling of the maximum fine levels under the Noise Control Ordinance (NCO) in 1994, and efforts to promote good management practices, there are still many noise complaints and cases.

In particular, violations of the NCO by bodies corporate have become an increasing concern. Close to 85% of noise convictions in 1998 related to construction and commercial/industrial activities involved corporate entities. In the past few years, 44 companies were convicted five times or more. Twelve of these companies have more than 10 convictions. They include two construction companies which have been convicted 33 times and 24 times for construction noise offences.

The Bill seeks to amend the NCO to state explicitly that when a noise offence is committed by a body corporate, the management of that body corporate commits a like offence. The proposed amendments do not seek to increase the existing maximum fine levels or impose heavier penalties on either the body corporate or the management of that body. The objective is to ensure that the management discharge their duty to take all practical measures to avoid noise offences.

Under the Bill, directors who are holding honorary or non-executive posts and are not concerned in the management of the body corporate will not be held responsible. Under the proposed amendments, a due diligence defence is provided for the management if they can demonstrate that a proper system has been established and was in effective operation to prevent the offence, unless the body corporate violated the stipulations concerning the application for a construction noise permit. This statutory defence will not apply to offences related to the carrying out of noisy construction activities during restricted hours without a construction noise permit. The construction noise permit system has been in operation for nearly 10 years and there is no reason for the management of any body corporate to ignore this basic requirement. In addition, owners corporations registered under the Building Management Ordinance are not regarded as bodies corporate in the Bill due to their voluntary nature.

To enable the management to discharge their statutory responsibility, a Code of Practice will be issued by the Environmental Protection Department (EPD) to provide practical guidance on good management practices to prevent noise offences. Compliance with the Code of Practice will constitute valid grounds for accepting a due diligence defence. The proposed amendments will be brought into operation on a date to be appointed by notice in the Gazette. We will bring the amended provisions into operation after we have completed our consultation with the trades and professional organizations concerned on the Code of Practice, and give a reasonable period for a proper system to be put in place within the body corporate.

In enforcing the amended provisions, the EPD will warn the directors and officers concerned of the violation first. The EPD will prosecute the parties concerned if the body corporate continues to violate the Ordinance despite the warning.

The Bill serves to enable the public to live in a quieter environment. I commend the Bill to Members for its early passage.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Noise Control (Amendment) Bill 2000 be read the Second time.

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

## **SECURITY AND GUARDING SERVICES (AMENDMENT) BILL 2000**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the Security and Guarding Services (Amendment) Bill 2000 be read the Second time. The main objectives of the Bill are: firstly, to clarify the scope of activities regulated under the Security and Guarding Services Ordinance, to avoid obscure provisions; secondly, to improve the provisions of the Bill concerning the operation of the Security and Guarding Services Industry Authority (the Authority) for smoother implementation of the licensing system, and thirdly, to clarify and improve provisions relating to licence and permit fees. The Security and Guarding Services Ordinance was enacted in December 1994 to provide for the establishment of the Authority, the granting of permits to security personnel and the licensing of security companies. The main objective of the licensing system is to advocate and encourage the security and guarding services industry to raise service standards and provide consumers with quality and reliable security and guarding services as this will contribute greatly to combating offences.

The Ordinance has been implemented for about five years and we find after a review that several provisions need amendments. In the latter half of last year, we consulted the Authority, the Panel on Security of the Legislative Council, the security industry and other relevant organizations in respect of the amendments and we made reference to their views when we worked out this Bill.

The major proposals of this Bill include: firstly, as one of the definitions of "security work" in the existing Ordinance, that is, preventing or detecting the occurrence of any offence, has a broad scope, it may unnecessarily cover some activities not intended to be regulated. To solve this problem, we suggest narrowing the definition of "security work" by deleting "preventing or detecting the occurrence of any offence" and substituting "guarding any person or place for the purpose of preventing or detecting the occurrence of any offence". This proposed amendment will be explicit about the service to be regulated under the Ordinance, that is, guarding any person or place.



Secondly, increasing the membership of the Authority from five to seven to assist in the relevant work.

Thirdly, permitting the Authority to transact any of its business, including licensing applications, extension of licences and revision of licensing conditions, other than business specified, by the circulation of papers to enhance efficiency.

Fourthly, empowering the Authority to extend the period of time for an investigation caused by the Commissioner in respect of an application for a licence and extend the power of investigation to an application for variation of the conditions of a licence, to ensure that the licensee can implement the conditions of a licence to be varied.

Fifthly, specifying that a prescribed fee is payable by the holder of a licence or permit in respect of the renewal of the licence or permit.

This Bill will make clarifications and technical additions to the scope of regulation of the Ordinance and the provisions on fees, and further improve the operation of the Authority and the licensing system. This will be helpful to the smooth implementation of the renewal of permits of security personnel and the licences of security companies commencing in the middle of the year or the coming autumn. Thus, I hope that Members will support this Bill.

Madam President, I beg to move.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Security and Guarding Services (Amendment) Bill 2000 be read the Second time.

In accordance with Rule 54(4) of the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Consular Relations Bill.

**CONSULAR RELATIONS BILL****Resumption of debate on Second Reading which was moved on 8 December 1999**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Consular Relations Bill.

Council went into Committee.

**Committee Stage**

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

**CONSULAR RELATIONS BILL**

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

**CLERK** (in Cantonese): Clauses 1, 2 and 5 to 15.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3 and 4.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam Chairman, I move the amendments to clauses 3 and 4, as set out in the paper circularized to Members. These are technical amendments seeking to amend clause 3(4) to further clarify the meanings of the terms "head of consular post" and "head of diplomatic mission" in the Ordinance. Other amendments amend the references to "order" in the relevant provisions as the order published in the Gazette so as to definitely affirm that the order given by the Chief Executive in Council in accordance with clause 4 of the Bill is subsidiary legislation. Thank you, Madam Chairman.

*Proposed amendments***Clause 3 (see Annex III)****Clause 4 (see Annex III)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3 and 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

### **Third Reading of Bill**

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

### **CONSULAR RELATIONS BILL**

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, the

Consular Relations Bill

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Consular Relations Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Consular Relations Bill.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Elections (Corrupt and Illegal Conduct) Bill.

### **ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL**

#### **Resumption of debate on Second Reading which was moved on 3 February 1999**

**PRESIDENT** (in Cantonese): Under the Rules of Procedure, I have permitted Mr Ronald ARCULLI, Chairman of the Bills Committee on Elections (Corrupt and Illegal Conduct) Bill, to address the Council on the Committee's Report.

**MR RONALD ARCULLI:** Madam President, I rise to speak in my capacity as Chairman of the Bills Committee on the Elections (Corrupt and Illegal Conduct) Bill.

The Elections (Corrupt and Illegal Conduct) Bill is introduced to replace the Corrupt and Illegal Practices Ordinance (CIPO) which was first enacted in 1955. The object of the Bill is to ensure clean and honest elections by prohibiting corrupt or illegal conduct.

The Bills Committee held 24 meetings with the Administration. The majority of the amendments to be introduced by the Administration are made to address the various concerns and comments raised by members of the Bills Committee. I shall now report on the main deliberations of the Bills Committee under different headings.

#### *Application of the Bill*

On the scope of the Bill, some members consider that the provisions of the Bill should also apply to the elections of the Chief Executive and Village Representatives in the New Territories. The Administration initially did not consider it necessary to do so at the present stage, pending the introduction of the necessary legislation in respect of the arrangements for these elections. However, in view of some members' firm views that the Bill should cover all public elections, the Administration has subsequently agreed to amend the Bill to cover the elections of the Chief Executive and Village Representatives.

#### *Voluntary service*

Voluntary service is a controversial subject on which the Bills Committee has had many discussions. The Bill proposes that the definition of "election donation" should include "any service provided free of charge to or in respect of the candidate or group by a person whose occupation involves the provision of that kind of service". Some members have serious reservation about the definition and are quick to point out the irony that free legal advice provided by a lawyer to a candidate will be counted as election donation, whereas the same free legal service provided by an ordinary person will not.

The Administration has explained that under the Electoral Affairs Commission's guidelines for the 1998 Legislative Council Election, "volunteer work" is an election donation and counted towards election expenses at a fair estimated value if it is "the work normally undertaken by the individual and during such time for the purpose of earning income or profit". However, members note that the relevant guidelines are not reflected in the existing CIPO. They are, therefore, concerned about the policy intent of the existing law and whether the Bill has attempted to introduce any policy changes. Many members are also concerned about the difficulty in determining the types of voluntary service that should be counted as election donation and the fact that failure of a candidate to lodge a return on election expenses and election donation is an offence under the Bill.

The Administration has explained that the purpose of treating certain voluntary service as election donation is to provide a level playing field for all candidates at an election. To address members' concern, the Administration has come up with a revised proposal. Under the proposed arrangement, a candidate does not need to include in his election return voluntary service provided by a person personally and voluntarily, if the person's occupation is not related to the service; or if the person's occupation is related to the service but it is provided outside the person's normal working hours.

The Bills Committee has divided views on the revised proposal. Some members do not feel that the Administration's proposal to add a time element to further narrow the scope of voluntary service to be counted as donation would address their concern, as some people who provide voluntary service may not have "normal" or "fixed" working hours for the purpose of earning income or profit. They are of the view that restrictions on voluntary service should be removed as far as possible, in view of the practical difficulties in determining the exact scope of voluntary service that should be accounted for or not accounted for in the election expenses return of a candidate. They have also pointed out that the requirement adopted by Hong Kong is more stringent than many overseas countries.

A few members consider that exclusion of all kinds of voluntary service from the definition of "election donation" would open the "backdoor" for abuse, rendering the imposition of an upper limit of election expenses meaningless. To ensure that there is a level playing field for all candidates, they are adamant that certain services, despite being provided voluntarily, should be treated as



election donation, such as service provided by a team of professional people or provided by a person who receives money or money in kind from his employer for offering that kind of service.

After detailed deliberation, it is the view of the majority members of the Bills Committee that there should not be restrictions on voluntary service which is provided by an individual personally, voluntarily and in his own time. It does not matter whether the voluntary service consists of work normally undertaken by the individual or is related to his occupation. In addition, the voluntary service should exclude all provisions of goods or materials incidental to the service. The Administration has agreed to take on board this proposal from members.

### *Election advertisement*

Another subject which the Bills Committee has deliberated at length is the definition of "election advertisement." The Bills Committee notes that there is no specific definition of "election advertisement" in the CIPO. Section 19 of the CIPO sets out the printing requirement in respect of printed material having reference to an election, which in practice could cover "neutral" publication without the intent to promote any candidate at an election. The definition proposed in the Bill seeks to narrow the scope of election advertisement to electioneering material which "has effect of promoting or prejudicing a candidate or candidates at an election".

Some members are concerned that the definition is so wide that it might cover newspaper commentaries and other third-party publications. They have pointed out that it is an illegal conduct for a person to incur election expenses at an election without being authorized by a candidate. In the case of a newspaper commentary or a publication falling within the scope of election advertisement, it is unlikely for the author or publisher to obtain the authorization or consent of the candidate for its publication. In addition, it would be difficult to determine the costs incurred. A few members consider that an advertisement published for the purpose of promoting a political party without naming specific candidates should be covered by the definition.

To address members' concerns, the Administration has proposed to amend the definition of "election advertisement" in the Bill by replacing the "effect test" with the "purpose test". Under the proposal, media carrying out their normal and ongoing activities of reporting and commenting on public affairs in a fair and objective manner would not be caught by the definition. A publication or an

advertisement will only fall within the scope of an election advertisement if it is published for the purpose, and I emphasize, for the purpose of promoting or prejudicing the election of a candidate or candidates. In case of disputes, it is for the court to decide whether an advertisement is an election advertisement having regard to all the relevant circumstances. In the view of the Administration, the inclusion of a purpose test can strike a balance between fair elections and freedom of expression.

After consideration, the Bills Committee has agreed to support the Administration's proposal as the scope of election advertisement under a "purpose test" is more restrictive than that under an "effect test".

### *Corrupt motive under Part 2 of the Bill*

The Bills Committee notes with considerable concern that the offence provisions for corrupt conduct under Part 2 of the Bill as drafted, would have the effect of creating absolute offences without having to prove a corrupt motive. This is different from the CIPO. For example, clause 7 of the Bill criminalizes among other things, the offering, soliciting or acceptance of an advantage as an inducement or reward for standing as a candidate. Under the CIPO, bribery is expressed to be the doing of any of the activities referred to in section 5 of the Ordinance, and for any of these activities to constitute bribery, they have to be done "without reasonable excuse" or "without legal authority". The Bills Committee has requested the Administration to consider adding the word "corruptly" and the same qualifiers in clause 7 and other clauses of the Bill.

The Administration has explained that the structure of clause 7 follows that adopted in the United Kingdom Representation of the People Act 1983. The motive to bribe is built-in in the way the clause is drafted. Adding the word "corruptly" is unnecessary and tautological. The Administration also considered that it is unnecessary to add the qualifiers proposed. In the Administrations' view, there is no difference in the scope of offence between clause 7 and the relevant provisions under the CIPO.

Members remain, however, unconvinced by the Administration's explanation and have drawn its attention to the fact that the relevant provisions of the United Kingdom Representation of the People Act 1983 (that is, sections 107 and 114) include the word "corruptly". After reconsideration, the Administration has agreed to add the word "corruptly" in clause 7(1), but not any other clauses under Part 2 of the Bill.

*New corrupt offence for not using best endeavours at election*

I would also like to draw Members' attention to the introduction of a new corrupt offence. Under clause 7 of the Bill, a person engages in corrupt conduct if he accepts an advantage to stand or not to stand as a candidate at an election, or to withdraw his candidature. Some members of the Bills Committee are concerned that instead of withdrawing his candidature, a corrupt candidate can resort to not making best endeavours in his election campaign in exchange for an advantage. This will not be caught by the Bill. The Bills Committee has requested the Administration to consider introducing a new offence in this respect.

In the Administration's view, it would be most difficult to define what "best endeavours" would mean and there may be justifiable reasons for a candidate not to make his best endeavours in his election campaign. However, members maintain the view that such conduct should be prohibited. After reconsideration, the Administration has agreed to introduce a new offence element of offering or accepting an advantage as inducement or reward for not using best endeavours in campaigning at an election.

*Election donation*

In response to members' comments and concerns, the Administration has agreed to introduce a number of changes relating to election donation. First, the Administration has agreed to raise the amount of an election donation for which a candidate is required to issue a receipt from more than \$500 to more than \$1,000. The same amount will apply to donations received collectively by a group of candidates in a public place. Second, a candidate is only required to record the name and address of the donor as supplied by the donor. Third, any unspent or excessive donation should be given to a charitable institution or trust of a public character chosen by the candidate, in view of the practical difficulties that could be encountered by candidates in deciding how such donation should be returned to the donors under the existing arrangement.

*Court order to grant relief to candidates*

The Bill allows a candidate to apply for a court order to relieve himself of criminal responsibility if he contravenes the illegal conduct provisions due to inadvertence, miscalculations or other reasonable cause, and such act or

omission was not due to bad faith. In response to members' request for clarification, the Administration has advised that an application for a court order can only be made before a plea is taken in court for a criminal charge of the illegal conduct concerned. The criminal proceedings will be stayed once an application is made to the Court of First Instance and an applicant will be relieved of any criminal liability if a court order is granted. Members are doubtful whether the relevant provisions of the Bill, as presently drafted, could reflect the policy intent. Following discussion, the Administration has agreed to improve the clarity of these provisions.

### *Election return*

Finally, I would like to put on record the Administration's undertaking in respect of the arrangement for issuing demand notes for removal of election advertisements. In the light of past experience, members have expressed concern about the situation where a candidate has to apply for a court order to extend the statutory period for lodging an election return simply because the demand note from the Government for removing election advertisements arrives too late for the cost to be included in the election return. The Administration has agreed that all the demand notes in respect of removal of election advertisements should be issued within 21 days after publication of the election result in the Gazette, and the proposed deadline will be included in the Electoral Affairs Commission's electoral guidelines.

Madam President, what started as an exercise to modernize the language of the existing CIPO by the Elections (Corrupt and Illegal Conduct) Bill without any substantial policy change turned out to be far more complicated. The report that I have given does not do justice to the efforts of my fellow Committee members, and I want to place on record that irrespective of our political persuasion, views put forward by my colleagues have undoubtedly resulted in a much improved Bill.

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

**MR LEE WING-TAT** (in Cantonese): Madam President, after repeated discussions in the meetings of the Bills Committee, the Bill has resumed its Second Reading debate today. The Bills Committee has indeed spent a lot of time discussing various issues of the Bill. Just as Mr Ronald ARCULLI, the Chairman of the Bills Committee has said earlier, a major concern of the Democratic Party is whether the Bill has laid down any provisions to regulate the elections of the Chief Executive and Village Representatives.

In the opinion of the Democratic Party, the election of the Chief Executive is the election for the highest-ranking officer in Hong Kong while elections for Village Representatives belong to the most basic levels. Both are very important ones, though. It is a strange coincidence that when the Bill was first introduced, these two kinds of elections were not subject to any regulation by the Bill. As the Government puts it, the main objective of the Bill is to prohibit corrupt and illegal conduct so as to ensure that clean and honest elections are held. It strikes one as such a strange coincidence when these two kinds of elections are not included in the Bill. Does that mean that these two kinds of elections do not need to be clean and honest and can they be allowed to be held without anyone's control?

Madam President, in two years' time the Hong Kong Special Administrative Region (SAR) will be holding its second election for the Chief Executive. This election is by nature a game played by a small circle of 800 people and there is almost no chance for the public to take part in it at all. If we do not make use of this opportunity of re-enacting laws to control corrupt and illegal conduct in this election, it will only be held in an old and broken soy jar, as it were, and the Chief Executive so elected is open to questions in terms of his credibility, cleanliness and impartiality.

We recall last year when the Bill was gazetted, a lot of violence erupted in the elections of Village Representatives. I think Honourable Members will recall that there were scenes reminiscent of show-downs by triad societies in the movies. We recall vividly the electioneering teams of two sides dressed in orange and yellow standing in confrontation before the poll stations. Then there were cases where some villagers were allegedly kidnapped and hence unable to take part in the village elections. I am therefore very furious and baffled by the Government's hesitant stand, for this is tantamount to aiding and condoning various kinds of corrupt and illegal conduct in elections of the Chief Executive and the Village Representatives.

As a matter of fact, way back in May 1999 I made a proposal to expand the application of the Bill to cover the elections of the Chief Executive and the Village Representatives. I have proposed amendments to amend the draft of the legislation. But sad to say, the Government did not make its stand known and dragged on the matter, raising a lot of questions and dissent. Then in about November or December last year, the Government made a sudden change of position. Of course, I welcome this change of position, for the first draft of the Bill did not include any attempt to regulate these two kinds of elections. When I made the proposal for an amendment, the representatives of the Government in the Bills Committee repeatedly said that they did not want to have this amendment. And it was by the end of last year that there was a change of position. I am glad to see the Government make this turn of the century in the year 2000. I welcome this move because it will make elections clean and honest.

I have discussed the issue with government representatives and they are of the view that it is not at all appropriate to lay down suitable mechanisms for the elections of the Chief Executive and Village Representatives and incorporate them into the Bill. I do not see why this is inappropriate and I have not been given a detailed explanation for it. Therefore, I can only say that the change of position made by the Government is a move I would agree to, for it is a change for the better.

I hope that the Government can do better in the legislation, in this amendment and in monitoring the enforcement later. We recall in the first election of the Chief Executive, there was no regulation by legislation though there was some kind of supervision. We heard stories like some candidates treated people to abalone and abalone feasts and other similar stories were reported. Besides, the Election Committee was not questioned or prosecuted in any way. How much money was spent in the elections for the Chief Executive at that time? What should be considered as appropriate expenses? All these are not subject to any regulation. In comparison, elections for the District Councils and the Legislative Council are subject to very stringent monitoring and requirements. In the elections of Village Representatives, apart from some very similar things which I have just mentioned, there are also big feasts and dinners given to friends of the candidates. Although the Heung Yee Kuk has published the Regulations for the Election of Village Representatives as guidelines, in practice, these guidelines are not legally binding. Many villages were acting according to their customs and as a result, elections were carried out

in ways which were not acceptable to many people and a lot of unfairness involved. For example, some villages held meetings for the villagers and denied women of their right to vote, or when registering voters, the names of female voters were not submitted to the Home Affairs Department, or the incumbent Village Representative would decide on the people eligible for the next election of the Village Representatives. These are all the things which I have never heard of. The elected can have the right to choose the people who can vote in the coming election. Were elections for the Legislative Council to be conducted in this way, I would be very lucky indeed. I do not have to do anything, I just need to ask my father (sorry, he is dead), my mother and my brothers and sisters to vote for me. I do not need to do so much work in preparation. Of course, that cannot be done that way. The Government has turned a blind eye on such a state of affairs for so many years. I hope that after the Bill is passed today, we will proceed with the great amount of work that should be done. That would include the formulation of sound subsidiary legislation or orders for the elections of the Chief Executive or the Village Representatives. Extensive public consultations will have to be held as well. It is my wish that these elections can be conducted in a clean and honest manner. Thank you, Madam President.

**MR GARY CHENG** (in Cantonese): Madam President, the Elections (Corrupt and Illegal Conduct) Bill was submitted by the Government early last year. The whole scrutiny process lasted as long as a year, and several dozens of amendments to the original bill have been put forward. Once the Bill is passed into law, it will replace the existing Corrupt and Illegal Practices Ordinance (CIPO). On the one hand, the Bill seeks to draw on the experience gained from the elections held over the past few years. On the other hand, it also aims to "modernize" the legal language used in the CIPO in accordance with the policy upheld by the Department of Justice. It is believed that members of the public will thus find it easier to understand and apply the laws concerned.

We have to understand that the object of the Bill is to define the various corrupt and illegal conducts punishable under the law in a clearer, precise and quantifiable manner. But the problem is precisely that we are virtually forced to quantify everything, because we are now practising a system which sets a ceiling for all expenses. During the process of scrutiny, we noticed such a dilemma: the more we pursued precise definitions, the more we would have to deal with the intricacies involved; the more we wished to eliminate the "grey

areas", the more uncertainties would arise. And, sometimes, the original legislative intent might be blurred instead. I think that this was probably one of the reasons for the prolonged scrutiny process.

Let me just quote a few examples. What is meant by "getting votes by means of bribery", for example? People in general, I believe, will think that "getting votes by means of bribery" is bad conduct. But how are we going to set out a precise legal definition of acts relating to getting votes by means of bribery? In this respect, the Bill sets out many specific acts, stipulating that a person commits the offence of engaging in corrupt conduct at an election if he does any of the specified acts without a "reasonable excuse". One of the specified acts is to "offer an advantage to another person as an inducement to vote at the election for a particular candidate or particular candidates."

At a glance, the interpretation of this definition is very clear: If you offer another person a big red packet, asking him to vote for you in an election, then, without any doubt, you commit the offence of engaging in corrupt act at an election. But let us consider the whole thing more carefully. Does an "advantage" cover only money or red packets? I am sure that this is not the case. If I offer you a gold pen, a ring or a watch, asking you to vote for me, I should also be regarded as having committed an offence. With a view to specifying the scope of an "advantage", the Bill sets out a specific definition of it which covers seven items, the last one being any other service (other than the provision of entertainment). ("Other than" is used because there is a separate provision on the provision of entertainment.) This a definition has however led to many arguments. The problem is: Given this definition, if a person provides services to electors as an inducement to vote for a particular candidate or particular candidates at an election, is he breaking the law? I am referring to services provided to electors. But then, are there any candidate or Member who has never provided any service to electors? This is where problems may arise.

It is not at all uncommon for people intending to run in elections to provide various free services to their kaifongs — services like health checks, legal advice and so on. Some people think that well, there should probably be no problem if such services have been offered on an ongoing basis since a very long time ago, say, more than a decade ago. However, if a candidate has never been so enthusiastic before, and if he has started to be so only when an election draws near, then he may well be considered as trying to get votes by means of bribery.



Of course, "late efforts are still better than no efforts at all". But can such an interpretation be used as a test for court ruling? We may also look at an opposite scenario. There may well be a person who suddenly realizes what he should do only after he has decided to run in an election, and he may then start to offer services to electors as a means of securing their support. If we think about such a scenario more thoroughly, we may see that the actions of this person may not be wrong after all — because if he does not do so, what can he do anyway? If there is really such a person, should he be punished by the law?

What in fact are the considerations behind electors' voting decisions? Electors will of course consider the track records of candidates, and the most notable of all these records naturally relate to the services they have been offering. In the broad sense, if a candidate simply cannot offer any "advantage" to electors, why should they vote for him anyway? If an incumbent candidate wishes to be re-elected, he will have to work very hard during his current term of office, and his job involves precisely the provision of services to electors, which is nothing but an inducement to vote for him in the future. For a first-time candidate, he even has to work extra hard to make an impression before the election, so as to create an "inducement" to vote for him. It is obvious that the law should not regard this kind of actions as corrupt conduct. Unfortunately, the relevant definition contained in the Bill simply fails to draw a clear line of distinction.

Another example, one which Mr Ronald ARCULLI also mentioned a moment ago, is about the definition of "voluntary workers". The essence of our policy on preventing corrupt conduct at elections involves, as I said just now, the setting of a ceiling for election expenses, and spending above the ceiling is illegal. Election expenses include election donations, but not services provided by "voluntary workers". How should "voluntary workers" be defined? The election guidelines issued by the Government in the past define, for example, that if a professional driver provides driving services free of charge to a certain candidate during his normal working hours, then his services should be regarded as a donation, and it should then be expressed in terms of the market wages of that professional driver and counted as part of the candidate's election expenses. But if the driver simply distributes publicity leaflets for the candidate during his own time, then he should be regarded as a voluntary worker. There are actually many other similar examples.

However, the work of writing all these criteria and definitions into law has caused us a great deal of problems. Following a whole year of discussions, the Government has agreed to take on board the suggestion of the Bills Committee and amend the Bill by incorporating a definition for "voluntary service". Under this definition, "voluntary service" is taken to mean any service provided free of charge to any candidate by a "natural person", voluntarily and personally, in the person's "own time" for the purpose of promoting the election of the candidate, or prejudicing the election of another candidate. Is such a definition already perfect? It may not be, I am afraid. It may still lead to many lawsuits, and a lot has to be learnt from practical experience in the future.

Madam President, we are aware that despite the discussions in the past one year, all these provisions are still not perfect. But we do think that great and substantial improvements have already been made. We hope that the elections in the future can provide us with more practical experience, thus enabling us to introduce further amendments. At this stage, we support the Bill. Thank you, Madam President.

**MISS EMILY LAU** (in Cantonese): Madam President, I rise to speak in support of the Elections (Corrupt and Illegal Conduct) Bill.

Madam President, as pointed out by Mr Ronald ARCULLI, Chairman of the Bills Committee, the object of the Bill is to ensure clean and honest elections by prohibiting corrupt and illegal conduct. This is an objective which I definitely support, but ironically, he did not say anything about the need to ensure more democracy, fairness and impartiality for our elections. Of course, this question is very much related to the structural components of the entire electoral system (the existence of coterie elections and so on). And, since these components are clearly specified in the electoral system, we cannot possibly do much to regulate them. I remember that at a meeting with officers from the Independent Commission Against Corruption (ICAC) held in the last Session of the Legislative Council, I also raised the question of how to guard against bribery. The ICAC was actually very worried. They believed in a very straightforward principle: The smaller the electorate, the easier it will be for bribery to occur. However, Madam President, as we all know, this is exactly what the existing electoral system is like (even the good President is returned by an electorate of 800 voters; for some other Members, they are returned by an electorate of just 100 or so voters; and the electorate of yet some others is even far smaller than

that). This a structural problem with the electoral system. So, at the meetings of the Bills Committee, I raised the point that the existing situation was really ironical. On the one hand, we are being so high-sounding, saying that our elections must be clean and honest. But in reality, the structure of our electoral system is marked by a lack of fairness, impartiality and democratic element. Madam President, I am not going to dwell any more on this, but I must say that this is in fact the biggest drawback that we must note, lest members of the public may think that the Legislative Council of Hong Kong has once again passed an ordinance which can make our elections clean — lest they may thus think that Hong Kong can then become one of the most corruption-free places in the whole of Asia, or even the whole world. Well, this may be the case with the actual operation of the electoral system. I have run three times in elections, and I agree that acts of tampering with ballot boxes or other corrupt practices are not found in Hong Kong. And, when compared with the problems in other neighbouring countries, ours are not at all serious. But I must still point out that the structure of our electoral system is marked by an inherent drawback. The point is that if the vested interests of some particular organizations are already well protected by the electoral system, why should they still need to resort to any corrupt conduct in order to get votes? Therefore, we must bear this inherent drawback in mind. And, when we advocate that we have to perfect the electoral system, to make our elections clean and honest, we must remember that the electoral system itself is not fair, impartial and democratic at all.

Madam President, I am very pleased that as advised by Mr LEE Wing-tat, the Government has decided to bring the elections of the Chief Executive and Village Representatives under the ambit of this ordinance. I hope that we can be given more information on this as soon as possible, so that we can follow up the matter.

Several Members mentioned some controversial issues just now, and I wish to say a few words on them now. One of these issues is about voluntary services. Madam President, I am sure that many colleagues have already read the relevant report. My views on this matter are the minority views. I seldom share the views of the Government, but this time around, I happen to share its views. As I pointed out just now, because the Government wishes to have clean and honest elections, it has tried to impose regulation in many areas. The guidelines issued by the Electoral Affairs Commission (EAC) in the past also said to this effect: If the voluntary service provided by a person to a candidate

involves his own occupation, and if such service is provided during normal working hours, it should be counted as part of the election expenses. If not, it should not be counted. However, many colleagues are of the view that the regulation in this respect should not be too harsh. They also think that the calculations involved are very complicated. For example, they wonder, if the voluntary worker concerned is a lawyer who charges his client for every minute of his work, how can we possibly do the calculations? That is why some colleagues propose to remove this restriction. However, my opinion is that the ceiling of election expenses is already very high, and I also want to move an amendment to adjust the ceiling, because even if the ceiling is adjusted, candidates will still have enough money for their electioneering. But if the regulation on voluntary services is too lax, the back door will be opened, so to speak, and the ceiling of election expenses will be rendered largely useless. I am personally very worried, but as the Government could also notice, most colleagues at that time thought that there should be more latitude in this respect.

However, what actually can be considered an appropriate degree of regulation? Mr Garry CHENG mentioned just now that if a person renders his voluntary service free of charge during his own time, his service should not be counted as election expenses. This actually means that the definition of election donations will be significantly narrowed, because it is only when these "voluntary workers" are found working for candidates during normal working hours that their service is counted as part of the election expenses. All their service rendered during the rest of the day will not be counted. But the point is that the charges for many services can be very high, especially those rendered by professionals like lawyers, designers, advertising agents and so on. If an advertising agent is invited to produce a set of publicity materials, in particular for a political party, a lot more than simply buying a print will be involved and the charges that can be asked for may be very high, because the job will demand a lot of mental input. I now have very good reasons to believe that by doing so, we have actually opened the door wide, making it very easy for political parties or even independent candidates to ask somebody to design their publicity materials. Some of these designs may be very good in quality, and in such a case, they may each worth several hundred thousand dollars. But then the value of all the mental efforts spent will not be counted as part of the election expenses. I am sure that the Government actually agrees with me, but it can do nothing because Members think that this should not be counted. That is why

expressions like "one's own time", and "voluntarily and personally" are used in the Bill. But such expressions are largely meaningless. I am being very serious, Madam President. If any serious problems occur during the conduct of the election this time around, we must carry out in-depth studies. Our electoral system is already not democratic, so things will certainly turn even worse if even the conduct of the election fails to remain clean and honest.

Some colleagues also discussed what should be regarded as bribing electors. Madam President, bribery of course involves the giving of something to another party, whether it is money or an advantage. Clause 11 mentions the point on reasonable excuse. This means that while something may be allowed on some specific grounds, it may not be allowed under other circumstances. I believe that the President may also be aware of the emergence of a certain culture in Hong Kong — a culture which is not exactly new, but one which has become more and more popular. This is the "banquet culture" — snake banquets, vegetarian banquets, tours, overseas tours and the like. Some Members have even been providing all this with the tacit approval of the residents and organizations of housing estates. Well, Mr Garry CHENG pointed out that much had to depend on whether all this was provided on a regular, ongoing basis. He said that if this was the case, bribery was not involved. And, he added that if all this was provided with a specific purpose within the few months immediately before an election, then bribery was involved. In other words, what he meant is that if all this has been provided on an ongoing basis since a long time ago, then there should be no question of bribery. But the point is that some people are very wealthy, and many supporters behind them will give them a lot of money. He may not really offer any "free meals", but he may offer some very good food and ask for a very low price ( abalone may also be included). Or, sometimes, participants may be required to pay very little money for tours in the Mainland or other places, or for local tours and a great variety of cultural and recreational activities. Sometimes, I cannot help asking, "Should a Member do all this?" On the part of members of the public, they simply would not care whether the providers are Members. Whoever provides all this will give them a good impression, and a good impression may mean extra credit in the future. All this actually worries us a great deal, and I think that under the existing regulation, it is very difficult to regulate things of this kind. Sometimes, many of these activities do not even involve any election candidate directly, because they may be organized with the assistance of the candidate's

friends and affiliated organizations. That way, all of them will stand to gain. Well, all these services are provided year in, year out, not just on the election day or the few months before that. So, how can there be any implication of getting votes by bribery? I believe that some top government officials are also aware of these problems. They admitted in private that they were very worried about such a "banquet culture" among some electors, about such a kind of advantage often received by them. I really do not know how Hong Kong is going to deal with these problems, and I also think that the existing legislation cannot possibly handle them. In the past few elections, we could notice such problems. Well, sometimes, the offer of "free banquets" are not entirely related to any particular elections, because this is actually not a problem confined to the several months before an election. Some people are really very wealthy, and so are many consortia. So, if they wish to do so, they can always offer "free banquets" every day. Such a "banquet culture" is a problem which we cannot possibly regulate even by enacting 100 ordinances.

Madam President, another issue I wish to discuss is about election advertisements. People in the media have expressed concern about this. But we have already tried to address their concern. I mean, we have decided that some media reports should not be brought under regulation, and these, I think, should also include editorials. In other countries, we will also see newspaper editorials expressing support for some particular candidates. So, I hope that we can thus put their mind at rest. But I am still worried about some other problems. Although the Bill already contains some clear provisions on these problems, I still hope that the Secretary can give a further explanation on these problems later. I mean, some political parties or organizations may take out a lot of advertisements, such as those displayed in MTR billboard boxes. As I said just now, some people are extremely wealthy, and sometimes an advertisement may not give publicity to one single person only; a candidate's political party may have many members, and many people may support some candidates as a group. So, if an advertisement does not single out a particular candidate and mention his name, must he still be required to make a report? I think that we must all get it very clear in this respect. Perhaps, the Secretary may wish to give a further explanation on the relevant provisions later on. Advertisements of this kind are very expensive. If a candidate is required to make a report, what should he do? On a proportional basis? The fact is that some people have a lot of means to obtain huge financial support. If we really

wish to draw up a regulation on this, I am sure that we are always able to do so. My personal view is that the tighter the regulation, the better. The reason is that people all wish to see regulations which can ensure equal and fair competition. At present, extremely wealthy people are in a most advantageous position (to be precise, these people include those who are themselves very rich and those who can easily obtain donations from many companies). If we allow this situation to go on, I think that Hong Kong should really be ashamed of itself.

Another point I wish to raise concerns clause 8, which is about how employers should treat their employees who run in elections. The relevant provisions have been written very good, and I support them very much. Madam President, I understand that some employers may feel very strongly against their employees' participation in elections. On other occasions, I also talked with the Government about the issue of subvented organization employees running in elections (for subvented organizations are publicly funded). I even expressed the hope that the Government could draw up some regulations to enable the employees to run in elections under reasonable circumstances (the organization involved at that time was a subvented organization). For private-sector organizations, however, many employers hold a very negative attitude towards their employees' running in elections. They think that employees running in elections will encounter the problem of time allocation, and their work will also be affected. This is really a problem. If most employers in our society hold such an attitude, then very few people will be able to run in elections. Our very aim should be to encourage more people to participate in public affairs, which is why it is stated in clause 8 that an employer will commit an offence, if he uses force or duress against the candidature of his employees, threatening to dismiss them or reduce their salaries and fringe benefits. Having said that, I still think that even if such a provision is included in the ordinance, employers intending to violate the regulation can still resort to many other means. For example, some employers may even dismiss the employees concerned (as in the case of trade union members). So, I think that it is a good idea to let employers know more about such provisions. We all wish to protect people's legitimate rights and interests. So, if a person wishes to run in an election, he should not be subject to the duress of his employer, nor should he be prevented in any way by his employer from doing so.

Another point is on election donations. Madam President, I wish to bring out one point only. The existing restriction in this respect is very clear — any person who receives such donations must make a report, but in the case of an organization, it is not required to do so. This means that if an organization donates money to me, I must report the donation I receive from the organization. But the organization is not required to disclose how it obtained the money it donates to me. This leads me to think that if we really wish to make the whole electoral system fair, open and transparent, we may probably have to draw up a political party law (something that the Secretary for Constitutional Affairs is about to do), so as to require political organizations to report any financial donations received by them. Many companies have a lot of money, and if they want to support any particular candidates, we should require them to report all their donations. Company A may well donate \$20 million to a political party, and Company B may also donate \$400 million to the same party — that is, if that political party is really so popular. This is something that we should all know. I hope that this problem can be tackled as quickly as possible.

Madam President, finally, I wish to raise one more point. Early this month, the ICAC said that as a result of the increasingly keen competition in elections, it had received more and more complaints. In this connection, it cited some figures: In 1994, they received 350 complaints relating to corrupt conduct at an election, and in 1999, there were 417 such complaints. But it went on to point out that it had only eight investigation teams, and this had made the work of investigation very difficult. I hope that the Secretary can give some thoughts to this matter, and I also hope that the executive authorities can also participate in the relevant discussions, so as to find out whether we should spend more money to enable the ICAC to employ a sufficient number of staff. The reason is that as I pointed out a moment ago, I hope that stern and swift actions can be taken to investigate and deal with such complaint cases; we simply should not let those involved get away with it. The ICAC even said that for most complaint cases, they would not stage any prosecution and would just give a verbal warning. But as admitted by the ICAC, those who were warned would usually pay very little heed to the warning. That was why verbal warnings simply failed to achieve the desired purpose. As a result, very often, the ICAC would seek help from the EAC, requesting it to make an open condemnation. But even the EAC could not produce any significant deterrent effect, because it usually took a long time to issue an open condemnation. All this shows that even the very organization responsible for enforcing the ordinance is overburdened; it too feels that it cannot possibly do some particular jobs well enough and thus has to seek assistance from another organization.



To sum up, Madam President, I support the spirit behind the Bill. I hope that the relevant organization can be given enough resources to enforce the law. The message I wish to impart is that Hong Kong will never tolerate any corrupt conduct which stains our electoral system. But of course, my even greater hope is that there can be fair, open and democratic elections in Hong Kong as soon as possible.

Thank you, Madam President.

**MR LAU WONG-FAT** (in Cantonese): Madam President, that the original Bill does not include the elections of Village Representatives is due to historical and other reasons. One of the reasons is believed to be considerations of resource allocation on the part of the Government.

Elections of Village Representatives in the New Territories date back to more than half a century ago and they have an even longer history than the elections of the various councils in Hong Kong. People in the New Territories settle in clans and they have their own unique social and political background. The some 700 villages still follow their own customs and traditions, one of which is the election of Village Representatives. Such elections have been recognized and respected by the Government. Some people may have the misunderstanding that these elections are not subject to any control, but that is far from being the truth. The entire process of the elections in the villages, including ascertaining the eligibility of voters, their registration, nomination of candidates, vetting of their backgrounds up to the final step of voting, are all under the assistance and supervision of the departments concerned, that is to say, the respective district offices under various departments from half a century ago up to the present. These elections also follow the Requirements under the guidelines issued by the Home Affairs Department. Therefore, the Village Representatives elected have quite a considerable degree of impartiality and credibility. Due to the limited resources available on the part of the Government, it is quite a hard task already for the Government to provide the above-mentioned assistance and monitoring in the elections of Village Representatives.

The Heung Yee Kuk has always been advocating fairness and impartiality in the election of Village Representatives. I am confident that the elections of Village Representatives can be conducted in a fair and impartial manner even without the regulation of law. However, since everybody feel that elections should not just be fair and honest, but that they should be seen to be fair and honest, I therefore agree to the proposal to incorporate the elections of Village Representatives into the legislation.

As I have just said, villages in the New Territories are characterized by a concentration of people of the same clan. Contacts are frequent between clansmen and in the course of their day-to-day interactions and visits during traditional festivals, there may be possibilities of touching certain grey areas of the legislation out of sheer inadvertence. I hope the authorities can set up some guidelines before the legislation is actually enforced. Such guidelines should be promoted among and explained to the villagers, especially the elderly ones. This will prevent them from violating any provisions in law unawares. In this connection, the Heung Yee Kuk is more than willing to work with government departments to facilitate the enforcement of law.

Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move the resumption of the Second Reading debate on the Elections (Corruption and Illegal Conduct) Bill. This Bill was read for the First time at the Legislative Council meeting on 3 February last year. The object of the Bill is to ensure that elections are conducted honestly and are free from corrupt conduct. This Bill when passed into law will substitute the existing Corrupt and Illegal Practices Ordinance.

First of all, I have to thank the Chairman and members of the Bills Committee on Elections (Corruption and Illegal Conduct) Bill for the contributions they made in the scrutiny process of this Bill. As Mr Ronald ARCULLI has said, the Bills Committee held 24 meetings last year. When

members scrutinized this Bill, they expressed invaluable views on the basis of the actual experience they gained in past elections. Most of the amendments I am going to propose later on are made in response to the concerns of Members. All the amendments have been discussed in detail and supported by the Bills Committee, and they fully reflect the close co-operation between Members and the Government.

Clauses 3 and 4 of this Bill state that this Bill applies to the elections of the Legislative Council, District Councils, Heung Yee Kuk and Rural Committees. As some Members have said, during the scrutiny, we accepted the suggestions of the Committee to stipulate that the legislation also applies to the elections of the Chief Executive and Village Representatives. This explicitly reflects that the Government is determined to keep all public elections free from corrupt conduct. We have also made consequential amendments of a technical nature to some other provisions. I believe Members know that we still need to make legislation to regulate the elections of Village Representatives. There are hundreds of elections of Village Representatives and such elections are of a smaller scale compared to those of the Legislative Council or District Councils. Therefore, when we formulate legislation on the elections of Village Representatives, we will suitably invoke the provisions of this Bill applicable to the elections of Village Representatives to ensure that the actual process and arrangements of future elections of Village Representatives can be based upon the criteria of being open, fair and free from corrupt conduct.

Similarly, we will need to make the specific legislation for regulating the election of the Chief Executive. When we draft a bill to provide for the election of the Chief Executive, we will adopt the same criteria to ensure that the election of the Chief Executive is open, fair and free from corrupt conduct.

To make elections more transparent, we will require candidates to declare the receipt of donations. In the course of scrutinizing this Bill, some members expressed the concern whether voluntary services should be regarded as election donations that should be counted as election expenses. In relation to this issue, we have held very detailed and thorough discussions with the Committee, and accepted its suggestions. If a person provides voluntary service free of charge to a candidate of his own accord and at his own time and it causes the election of a certain candidate or prejudices the election of another candidate, the voluntary service should not be regarded as election donation.

Under clause 7 of this Bill, if a person offers an advantage to another person as an inducement for the other person to stand, or not to stand, as a candidate at an election, he has engaged in illegal conduct. Some members are concerned that the acceptance of the advantage may not necessarily induce the person not to stand as a candidate, for he may only fail to make the best efforts at the election in exchange for the advantage. This will not constitute the offence under the existing provisions. Therefore, we suggest adding a new clause to specify that if the provision or acceptance of an advantage becomes an inducing cause or reward for not making the best efforts at an election, this constitutes corrupt conduct.

Members have also expressed concerns about election advertising. The Bills Committee has also discussed this in great detail. To dispel Members' worries, we will propose amendments to the definition of election advertising. After the amendments, whether an advertisement is regarded as election advertising depends on whether the intention of placing the advertisement will cause or prejudice the election of a candidate or some candidates. Having confirmed the intention of placing the advertisement, when the court hears these cases, it should also consider the content and form of placing the advertisement and all factors affecting the placing of the advertisement. Apart from the above more significant amendments, we will also propose amendments to other clauses of this Bill as requested and suggested by the Bills Committee. I will elaborate these later when I propose the relevant amendments.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Elections (Corrupt and Illegal Conduct) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Elections (Corrupt and Illegal Conduct) Bill.

Council went into Committee.

### **Committee Stage**

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

### **ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Elections (Corrupt and Illegal Conduct) Bill.

**CLERK** (in Cantonese): Clauses 1, 5, 8 to 11, 13 to 16, 20, 22 to 26, 32, 40, 41 and 43 to 46.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 3, 4, 28, 33 and 35.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to the definitions of "appropriate authority", "elector", "electoral law" and "returning officer" in clause 2 and to add the definitions of "Chief Executive" and "village representative" to the same clause and amendments to clauses 3, 4, 28, 33 and 35, as set out in the paper circularized to Members.

Since I already gave a detailed explanation when I spoke a moment ago, I am not going to repeat it here.

*Proposed amendments*

**Clause 2 (see Annex IV)**

**Clause 3 (see Annex IV)**

**Clause 4 (see Annex IV)**

**Clause 28 (see Annex IV)**

**Clause 33 (see Annex IV)**

**Clause 35 (see Annex IV)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 4, 28, 33 and 35 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to the definitions of "advantage", "election advertisement" and "election donation" in clause 2 and to add the definition of "voluntary service" the same clause, as set out in the paper circularized to Members.

*Proposed amendment*

**Clause 2 (see Annex IV)**

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

**MISS EMILY LAU** (in Cantonese): Madam Chairman, may I seek clarification from the Secretary at this stage concerning how "election advertisement" which I have mentioned earlier during the Second Reading debate is to be defined, and how the candidates concerned are to share the expenses of placing advertisements

when a political party or group is to put up advertisements collectively? Should such expenses be shared and how should they be shared? Could the Secretary make a clarification on this now? Thank you, Madam Chairman.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, as I said in my main speech, upon amendment, whether or not an advertisement falls within the scope of election advertising will depend on the purpose for which it is published, if an advertisement is published for the purpose of promoting or prejudicing the election of a candidate or candidates, it will be counted as an election advertisement. With regard to the case to which Honourable Members referred just now, if certain organizations or political parties have all along been providing services for the public or striving for their benefits, the advertising activities for the services concerned should be counted as normal activities. They should have nothing to do with advertisements published during the election period to urge members of the public to vote for a certain candidate. So, the most important factor is the purpose for which the advertisement is published. Certainly, the actual situation would vary from case to case, and it is quite impossible for me to clearly define here the scope of election advertising for each and every case. Nevertheless, as I said just now, if cases of this kind should be brought to court, the court would consider whether the advertisement being complained of has breached the relevant provisions in the light of many factors. These would include the content of the advertisement concerned, its form and effects, as well as the manner in which it is published. I am sorry to say that I cannot provide Members with a generalized answer in the absence of any specific example of complaint.

**MISS EMILY LAU** (in Cantonese): I think the Secretary has not answered my question. He has talked a lot about "advantage" and "service", but my question is not about any of these issues. My question is: If during the election period a political party puts up an advertisement to call for public support, how will the candidates from that party share the expenses for that advertisement? Madam Chairman, this kind of situation is bound to arise, so that is why I have raised



this question. If the Secretary cannot answer it, I can do nothing about it. Since we are studying this Bill with a view to passing it, I hope questions on the Bill should be clarified as much as possible so that we may avoid putting every thing to the court for a ruling. Besides, there are not many people who can afford to pay the legal expenses involved.

**CHAIRMAN** (in Cantonese): Miss Emily LAU, at the Committee stage, you may of course speak more than one once, but if in a debate the Secretary thinks that he has finished with his response, then we should proceed with the voting. Secretary for Constitutional Affairs, do you have anything to add?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, actually I was also explaining the meaning of the term literally. Perhaps let me use a more direct approach to answer the question as to how election advertisements should be handled during the election period that Miss Emily LAU raised just now.

According to our proposed amendment to the definition of "election advertisement", an advertisement will be counted as an election advertisement if it is published for the purpose of promoting or prejudicing the election of a candidate or candidates. As regards other practical situations, say if someone should bring cases of this kind to court, naturally the Court will look at all the relevant circumstances. I have also explained that as well.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 6, 12, 17, 18, 21, 27, 29, 30 and 36.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to clauses 6, 12, 17, 18, 21, 27, 29, 30 and 36, as set out in the paper circularized to Members.

*Proposed amendments*

**Clause 6 (see Annex IV)**

**Clause 12 (see Annex IV)**

**Clause 17 (see Annex IV)**

**Clause 18 (see Annex IV)**

**Clause 21 (see Annex IV)**

**Clause 27 (see Annex IV)**

**Clause 29 (see Annex IV)**

**Clause 30 (see Annex IV)**

**Clause 36 (see Annex IV)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 6, 12, 17, 18, 21, 27, 29, 30 and 36 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 7, 19, 31, 34, 37, 38, 39 and 42.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to clauses 7, 19, 31, 34, 37, 38, 39 and 42, as set out in the paper circularized to Members.

All of these amendments are proposed to address the concerns expressed by the Bills Committee, including the addition of a new offence under clause 7 to set out clearly that accepting an advantage as reward for not making one's best endeavours in an election campaign will constitute corrupt conduct. The amount of an election donation for which a candidate is required to issue a receipt under clause 19 will be raised to more than \$1,000; besides, candidates will also be required to give any unspent or excessive donation to a charitable institution.

The Bill also sets out clearly that all relevant criminal proceedings shall stop once a candidate's application for a court order to relieve him of criminal liability is granted by the High Court. The deadline for lodging a statutory declaration to rectify mistakes in an election advertisement will be amended as "not later than a week after the advertisement is published".

Last but not least, a person being guilty of an attempt to commit an offence under the Bill will be subjected to the same disqualification and penalties for a complete offence.

*Proposed amendments*

**Clause 7 (see Annex IV)**

**Clause 19 (see Annex IV)**

**Clause 31 (see Annex IV)**

**Clause 34 (see Annex IV)**

**Clause 37 (see Annex IV)**

**Clause 38 (see Annex IV)**

**Clause 39 (see Annex IV)**

**Clause 42 (see Annex IV)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 7, 19, 31, 34, 37, 38, 39 and 42 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

|   |   |
|---|---|
| <b>CLERK</b> (in Cantonese): New clause 34A | Court may grant relief in certain circumstances if election advertisements do not meet requirements |
|---|---|

|               |                        |
|---------------|------------------------|
| New clause 47 | Transitional provision |
|---------------|------------------------|

|               |                   |
|---------------|-------------------|
| New clause 48 | Saving provision. |
|---------------|-------------------|

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that new clauses 34A, 47 and 48, as set out in the paper circularized to Members, be read the Second time.

The objective of new clause 34A is to stipulate that a candidate can apply for a court order to relieve him of criminal liability if he contravenes the election advertisement provisions. As the existing Corrupt and Illegal Practices Ordinance will be repealed upon enactment of the Bill, we need to add in new clauses 47 and 48 to make it clear that the orders on election expenses limits for various elections under the Ordinance will continue to have effect, and that any penalty or disqualification as a result of conviction of any offence under the Ordinance will continue to be effective.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 34A, 47 and 48 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clauses 34A, 47 and 48.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that new clauses 34A, 47 and 48 be added to the Bill.

*Proposed additions*

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

**New clause 47 (see Annex IV)**

**New clause 48 (see Annex IV)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 34A, 47 and 48 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to the Schedule, as set out in the paper circularized to Members.

*Proposed amendment*

**Schedule (see Annex IV)**

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

(No Member indicated a wish to speak)



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

(Members raised their hands)

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

(No hands raised)

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

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

**Third Reading of Bill**

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

**ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL**

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

Elections (Corrupt and Illegal Conduct) Bill

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Elections (Corrupt and Illegal Conduct) Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Elections (Corrupt and Illegal Conduct) Bill.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999.

**FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT)  
(NO. 2) BILL 1999****Resumption of debate on Second Reading which was moved on 12 January 2000**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999.

Council went into Committee.

**Committee Stage**

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

**FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT)  
(NO. 2) BILL 1999**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999.

**CLERK** (in Cantonese): Clauses 1, 2 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

**Third Reading of Bill**

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

**FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT)  
(NO. 2) BILL 1999**

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

Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999.

## **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.

First motion: Opposing the levy of a sales tax.

## **OPPOSING THE LEVY OF A SALES TAX**

**DR YEUNG SUM** (in Cantonese): Madam President, I move the motion on "Opposing the levy of a sales tax" as set out on the Agenda.

I will concentrate on discussing problems which arise from the nature of sales tax, while my colleagues, Mr Albert HO and Mr SIN Chung-kai, will focus on discussing public expenditure and revenue issues.

In principle, the Democratic Party opposes the levy of a sales tax, because it is a controversial kind of sales tax. Sales tax is a kind of indirect tax which is characterized by the unfairness of a regressive tax. Everybody has to pay this tax at the same rate, be they rich or poor. As a result, sales tax fails to function as a means to facilitate the redistribution of social wealth and to close the gap between the rich and the poor. For instance, in respect of the seven essential things to the livelihood of the populace (namely fuel, rice, oil, salt, vinegar, sauce and tea), an unemployed worker has to pay the tax at the same rate as a boss of some technology-based companies. It is a drop in the ocean to the rich but an added burden to the poor. In fact, the proportion of indirect tax in Hong Kong has been diminishing in the post-war years, from the then 85% to the current 35%. The major reason for the reversing of the proportion between direct tax and indirect tax is the unfairness of the regressive characteristic of indirect tax. As a result, an over-dependence on indirect tax will widen the gap between the rich and the poor. In particular, the standard rate of direct tax adopted by Hong Kong also falls in such a category, which lacks the function of progressive tax and consists of an element of unfairness. It is because of this that the continual decline in the proportion of indirect tax just happens to be a remedy to the shortcomings of direct tax itself. Now, the Government's intention to reverse this tendency is just a way of taking the incidental for the fundamental, which is violating the basic principle of moving towards a fairer and resources-reallocating taxation system.

Some people may argue that some advanced countries in the world are developing towards increasing the weight of indirect tax while cutting the proportion of indirect tax, so as to achieve the goal of broadening the tax base and implementing a user pays policy. However, the Democratic Party considers the inclination not applicable to Hong Kong. There are two reasons. Firstly, most developed countries have munificent social welfare and security systems, so that the unfairness derived from indirect tax is offset by the munificent social welfare system. Furthermore, the gap between the rich and the poor in most developed countries is less acute than that in Hong Kong, thus the unfairness arising from indirect tax is significantly diminished. In fact, the Government has recently emphasized many times on strengthening the "user pays" concept on the levy of tax, so as to rationalize the theoretical base for increasing the proportion of indirect tax. In the meantime, I hope Members should bear in mind that the "user pays" concept has already violated one of the three intrinsic qualities of a tax system, that is, being gratuitous. The other two being mandatory and regular. Gratuitous means that tax is paid gratuitously by the taxpayer without any pledge made by the government to undertake any responsibility.

Madam President, the Democratic Party considers that service charges and taxation cannot be mentioned in the same breath. To pay tax is the social obligation of the public, we are obliged to pay tax no matter we have used any public service or not, and we have to pay tax regularly according to the taxation schedule. However, taxpayers need not pay a specific tax for using a certain kind of public service. As a result, the Government should not say that the public has to pay a land departure tax in accordance with the "user pays" principle for using departure services. I think the Government is mixing up the concepts between service charges and taxes.

On top of violating the essence of a taxation system, a number of practical problems may arise from the levy of a sales tax. For example, as the targets for a sales tax are very extensive, the commodities and services to be taxed will be difficult to quantify and record. It is foreseeable that the procedures and formalities for the levy of a sales tax would be very complicated. Furthermore, it would be comparatively easy for wholesalers, retailers or consumers to find loopholes for tax evasion activities. As a result, the Government has to put in immense manpower and resources to monitor such activities and plug the

loopholes. It will not only contravene the Government's objective of finding more sources of income and reducing expenditure, but also jeopardize the world-renowned simple taxation system of Hong Kong. Consequently, the loss will outweigh the gain and the price we have to pay will indeed be an expensive one. The introduction of this new tax will also affect the international image of Hong Kong for its simple taxation system.

The levy of a sales tax will undoubtedly deal a heavy blow to internal consumption-based industries, such as the retailing, catering, hotel and tourist industries. According to a survey conducted by the Democratic Party in January on the levy of a sales tax, 76% of the respondents were of the view that the levy of a sales tax would dampen their consumption desire. I do not know whether or not more people will do their shopping in Shenzhen, proving that the public are reluctant to pay additional tax at a certain percentage of the purchase value during shopping. By the same analogy, we should be able to envisage that tourists are likely to give up their intention of visiting Hong Kong owing to the same belief. It will ultimately devastate the reputation of Hong Kong as a shoppers' paradise.

According to the Government, one of the grounds for the levy of a sales tax is to consolidate public revenue by exploring new and steady sources of tax revenue. Sales tax is undoubtedly a significant source of taxation. It is estimated that each percentage point levied on sales tax will bring about \$7 billion additional revenue to the Government. In other words, only a 4% to 5% rate of sales tax will be equivalent to the Government's aggregated revenue from land sales. Accordingly, the Government does not have to be troubled by a unsteady financial position due to an excessive reliance on revenue from land sales. However, some academics have pointed out that there is a similarity between the sum of income tax and the fluctuation of total consumption expenditure which is the basis of sales tax. That is, the public will increase consumption when their income goes up, and will cut expenses and reduce consumption when their income goes down. Therefore, at the time of an economic downturn, it will be difficult to achieve the objective of introducing a sales tax to make up for the loss in revenue from profits tax, salaries tax and land sales revenue.



The levy of a sales tax may indirectly encourage the activities of illegal itinerant hawkers. Pirated and counterfeit goods may also become rampant because people do not have to pay any tax at all in these forms of shopping. Eventually, problems relating to public order, social, sanitary and intellectual property disputes may arise. These are situations the Government does not wish to see.

To the general public, the agonies of unemployment and pay cuts remain fresh in their memory. Now if the Government levies a sales tax on top of contributions for the upcoming Mandatory Provident Fund Scheme, the income of the public will be skimmed again and again. It is just like hitting a person when he is down, and he has nowhere to evade but to allow himself to be trampled upon. Eventually, the public will only end up leading a more miserable life. In fact, despite the positive growth recorded for economy in the past two quarters successively, the unemployment rate still remains at a high 6%, and the news of redundancy and pay cuts are still frequently heard. I believe there are signs that the polarization tendency of the rich and the poor has further deteriorated. In the opinion poll conducted by the Democratic Party in January, a total of 71% of the respondents were against the levy of a sales tax. It only shows the public's aversion to the levy of a sales tax. So we hope the Government will not insist on its own way under such circumstances.

Moreover, according to the second survey conducted by the Democratic Party in February, 71.5% of the respondents were against a rise in taxation and public charges at the present stage. Therefore, it is perceivable that the public are unwilling to see the Government aggravate their burdens by introducing new taxes or new charges under the present circumstances of a high unemployment rate.

In view of the abovementioned reasons, the Democratic Party opposes in principle the Government's levy of any form of sales tax, and we call upon Honourable colleagues to support this motion.

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

**Dr YEUNG Sum moved the following motion: (Translation)**

"That this Council is opposing the levy of a sales tax."

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 motion moved by Dr YEUNG Sum, as set out on the Agenda, be passed.

We shall now proceed to a debate.

**MR RONALD ARCULLI:** Mr Deputy, I thought I was in another place when I heard your voice. I hope you will have a speedy recovery.

Today's debate on the desirability or otherwise of the introduction of a sales tax to a large extent pre-empts the Budget due to be presented to this Council by the Financial Secretary in three weeks' time on 8 March. I suspect that sales tax will be rapped on its head fairly severely today. However, whether that will prove to be a fatal blow remains to be seen. That, of course, is the risk that any one of us will run in today's politics by floating an idea before an appropriate incubation period, and before the community and indeed this Council have had enough time to discuss the pros and cons of a sales tax. Whilst we can assert that in Hong Kong we do have representation with taxation, we can, nevertheless, say that this Council sometimes function as opposition with, and indeed, to taxation. It is not very often that this Council has any meaningful input into policy formulation by the Government of the Hong Kong Special Administrative Region. Whilst it is easy to blame this state of affairs on the Basic Law in the sense that as structured, all the Government needs is a maximum of 31 votes to pass any measure that it requires as compared to two times 16 votes on the split voting method on any member's measure. And therefore, Mr Deputy, against this background, it is surprising that Dr the Honourable YEUNG Sum's motion is likely to receive enough support, particularly in the light of today's economic condition, unemployment rate, lack

of details of any sales tax proposal and a meaningful and substantial plan from the Government to cut the waste of resources or to redeploy the resources from the public sector, by which I mean the Civil Service and the subvented sector. I think in fairness to the Civil Service, the first few steps have been taken in attempts — of course, not all together so smoothly, and even sadly on occasions. Not so long ago, an attempt by the Secretary for the Civil Service to reform the entry pay level did not exactly receive a smooth sailing, although I am sure that the community, particularly the private sector, would have welcomed that move.

Mr Deputy, I believe that the community is entitled to be taken into its confidence by the Government if a measure like sales tax is to be introduced in the not too distant future. To begin with, any new tax, however necessary, will be regarded as unpalatable. I do not think that anyone likes the introduction of a sales tax and I suspect, with respect to the Financial Secretary, that he is no exception. But, and I emphasize, can an irrefutable case of necessity be made out? I now cite a simple example. Look at our salaries in Hong Kong. And I ask two questions. Is there any section of the private sector which has escaped a pay cut or pay freeze over the last couple of years? Has anyone in the public sector experienced a pay cut? This is not a dog in the manger attitude, but this is real life. Secondly, it is also likely that the Mandatory Provident Fund Scheme which was passed several years ago will kick in at the end of this year. As a result, over 2 million workers in the private sector and their employers will be required to make contributions to their retirement scheme. How does this compare with their public sector counterparts?

Thus, when we are told by the Government that we need to widen the tax net, some might say that "we told you so many times before", but why now?

Mr Deputy, I think that the community as a whole is unlikely to support the introduction of a sales tax unless there is an irrefutable case to do so, and that such a case can be made out by the Government. However, this cannot be done by simply telling the community that recurrent expenditure either today or in the future will exceed recurrent revenue. The Government must demonstrate that it, too, is prepared to bear its share of the pain and only then will the community begin to consider and consider seriously the acceptability of a sales tax. As at presently advised, the Liberal Party cannot support a sales tax today and unhesitatingly supports Dr YEUNG Sum's motion.

**Mr CHAN KAM-LAM** (in Cantonese): Mr Deputy, recently, I often heard the Financial Secretary "complain of short of money" and blame it on our narrow tax base and huge deficits. As a result, the Government will consider widening the tax base to increase sources of tax revenue and fiscal incomes. Yet the Financial Secretary has failed to mention the point that the financial turmoil taken place over the past two years has led to an economic restructuring, which has caused a sharp fall in our tax revenue. Given the fact that the Government needs to maintain huge spending while failing to cut expenditure, we are caught in a relatively passive financial position.

I still remember the famous allusion to "a fatal car crash" made by Mr CHEN Zou'er before 1997. What he said precisely reflects the dilemma we are facing today.

As revenue from direct taxes is now less than before, the Government definitely hopes to, from its own point of view, introduce a sales tax for it is less susceptible to economic fluctuations. However, the impact produced by sales tax will be quite substantial.

To start with, sales tax is a kind of regressive tax. With its uniform tax rate, it will have less impact on high-income persons. Even with exemptions, the low-income group will unavoidably need to pay more taxes in buying taxable products. Furthermore, retirees, the orphaned, the widowed, the handicapped and the weak will all need to pay sales tax for the purchase of goods.

Secondly, sales tax might push prices up. It has been pointed out in a research that a \$1 sales tax will invariably lead to a price increase of more than \$1. This is because intermediary expenses will be included in the increase. The grass-roots people will naturally suffer more hardship with the introduction of a sales tax. On the other hand, the tax will result in a dull consumer market, dampen the retail industry and slow down the revival of the economy in general.

Sales tax will also produce a worrying far-reaching impact: As every consumer will need to pay sales tax, there will be a sharp rise in social welfare spending. In order to redress tax burdens, the Government will then need to increase other taxes. For these reasons, the Government should examine the issue very seriously to see if the introduction of a sales tax will ultimately lead to more losses than gains.

In the long run, the rate of sales tax will rise higher and higher. Today, if we look at the countries where sales taxes are levied, we can only find a few countries where a single-digit tax rate is levied. Sales tax rates in most countries have gone beyond 10%. How can we stop ourselves from worrying that Hong Kong's future mode of public finance might move on to the same path?

Mr Deputy, the Democratic Alliance for the Betterment of Hong Kong (DAB) objects to the levy of a sales tax mainly because the Government will then need to change its long-standing prudent principle of "keeping expenditure within the limits of revenues".

Faced with a deficit, it is of course important for the Government to "broaden sources of income". But at the same time, it should not ignore the importance of "cutting expenditure". Over the past two years, private organizations have introduced innumerable measures for cutting expenditure and adding value. However, the Government has only set a productivity enhancement target of 5% to be achieved in three years; no wonder government expenditure is still climbing up. The DAB considers it extremely easy for the Government to save more than \$1 billion in public money only if it can reduce wastage and cut expenditure. In doing so, the Government will obviate the need to squeeze money out of the purses of the general public.

We can find a lot of examples showing the wastage of public money by government departments. The wastage of potable water by the Water Supplies Department is the most prominent example. Another example which impressed me most recently is the extremely busy schedules of spring receptions organized by various government departments. Even "Mr Fortune" needs to rush around like all of us. Moreover, most government departments have chosen to hold their receptions in the most luxurious hotel ballrooms. I would like to ask the Financial Secretary or the Secretary for the Treasury to give us a written reply later to set out the amount of money spent by various government departments on spring receptions each year and explain why the Government has failed to consider holding an inter-departmental spring reception in an appropriate venue to save time and money.

Members should all understand that fiscal deficits will avoidably appear in a less favourable fiscal year. However, if we thus assert that our tax base is suffering from a structural problem, we might be making a mistake of jumping to conclusions a bit too rashly. The DAB holds that the downward adjustment of the Hong Kong economy is only a short-lived phenomenon. Our fiscal revenue will naturally improve when the economy moves back on to the right track. Introducing a significant revamp to the taxation system at this moment will only give people an impression that the Government lacks full confidence in our economic development and that its fiscal policies are in confusion.

Lastly, I want to point out that sales tax can only meet part of the Government's financial needs. It will definitely not be able to tackle problems at their root. Today, the fever of speculating on property has faded. The people of the Hong Kong have also come to realize that we must not rely on internal speculation to sustain the Hong Kong economy, rather we should rebuild Hong Kong's competitiveness in the international arena in a pragmatic manner. For these reasons, the DAB considers it imperative for the Government to continue with its economic policies to improve the business environment, assist small and medium enterprises and enhance the productivity and competitiveness of the community in general. Furthermore, the Government should wait until our economic development has stabilized before conducting a comprehensive review of the taxation system. Only until then can we draw an objective and fair conclusion and prepare Hong Kong for the implementation of a permanent and stable taxation system.

With these remarks, Mr Deputy, I support the motion.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, since 1998-99, our budget experienced a huge deficit reaching \$32.3 billion. Although a deficit of \$36.5 billion has been forecast for the year 1999-2000, we can expect the deficit to be slightly reduced as the Hong Kong economy has begun to improve recently. Nevertheless, as it is extremely difficult for revenue from land sale to climb back to its previous level and in view of our narrow tax base, we are now facing a structural problem rather than a non-recurrent deficit problem. In order to meet the requirement of "keeping expenditure within the limits of revenues and achieving a fiscal balance" as prescribed under the Basic Law with respect to the budget, the Government must find ways to resolve the deficit problem. As in the past, sales tax has again become the focus of debate.

Undeniably, the levy of a sales tax can widen Hong Kong's tax base and help boost the Government's recurrent revenue. Nevertheless, I think the levy of the tax will also produce many negative impacts on the territory. To start with, the levy of a sales tax will not be conducive to the revival of our economy. Moreover, the tax will seriously undermine the spending desires of the public and visitors as well as producing a great impact on the retail industry and tourism-related businesses.

Furthermore, the levy of a sales tax will result in unfairness. Although some supporters of sales tax consider that all people, rich and poor, will receive the same treatment with respect to the levy of this tax type. Those who are rich enough to spend more will be asked to pay a higher tax. However, in terms of actual burdens, the impact on the grass-roots people will be greater. As a result of this, the gap between the rich and the poor might widen and the conflicts in the community might aggravate. While the Government considers it necessary for Hong Kong to widen its tax base, it has "hinted" that it might gradually abolish the levy of stamp duty for stock transactions. This has given the grass-roots even more grounds to doubt the Government's rationale in widening the tax base.

Hong Kong has for a long time been adopting a simple tax regime, which has proved to be effective and been regarded as an important merit of the territory. This factor has also served to attract a lot of external investors to Hong Kong. Our tax regime will become complicated with the introduction of a sales tax. This will seriously undermine the competitive edge that Hong Kong previously possessed and produce a definite impact on Hong Kong as an investment and business centre.

With respect to the levy of a sales tax, the Government must consider some of the difficulties encountered in actual implementation, particularly practical problems pertaining to certain trades such as itinerant hawkers. In addition, we might find many underground economic activities conducted through cash transactions emerge in society and this might give rise to other problems as well. When the Government really decides to levy a sales tax, it must consider carefully the administrative costs involved. Otherwise, the losses might end up outweighing the gains.

Mr Deputy, I so submit. Thank you.

**MISS CHOY SO-YUK** (in Cantonese): Mr Deputy, as far as the Government is concerned, sales tax is undeniably a very attractive tax type. It can not only draw more people to the tax net, but also widen our tax base. What is more, all people, rich or poor, will be treated equally in a fair manner. Moreover, revenue from sales tax will be substantial. In terms of the total spending of Hong Kong people, the Government will reap \$7.7 billion if a sales tax of 1% is levied.

Hong Kong has all along been faced with the problem of having a narrow tax base. This problem has become increasingly serious with the Budget remaining in the red for several years in a row. Furthermore, the Government's usual revenue from business transactions is also challenged by the rapid advancement in the Internet and e-commerce. Incomes from stamp duty and betting duty have also dropped constantly as a result of online stock transactions, illegal gambling and so on. Apparently, the Government must take the indispensable measures in reviewing its taxation system and widening its tax base. Sales tax has naturally come under discussion for it can serve to widen the tax base.

In spite of the fact that the Government has accumulated nearly \$60 billion in deficit over the past two years and it is faced with the problem of having a narrow tax base as well as the obligation of complying with the requirement of keeping expenditure within the limits of revenues as prescribed in Article 107 of the Basic Law, is it really necessary for the Government to, for these reasons, levy such an unpopular sales tax which has a far-reaching effect when our economy is yet to recover and the market is yet to improve without taking into account the livelihood of the general public and the hardship faced by various trades and industries? Is the Government unaware of the fact that the transformation of the Japanese economy into its present state is partly attributed to the levy of a sales tax in Japan?

Mr Deputy, Members from the Hong Kong Progressive Alliance (HKPA) will put forward a number of arguments and views on our objection to the levy of a sales tax later. Not wishing to repeat what they will say, I will only focus on one point. Surely we cannot blame the Government for adopting a prudent fiscal policy. We are indeed in need of an urgent solution for the deficit has been with us for several years now. However, the Government must not stress the importance of "broadening sources of income" at the expense of "cutting expenditure". It must not harbour the "take-it-for-granted" mentality of relying on "increases" to solve problems and refuse to think harder in order to come up



with saving measures which will be conducive to the Government and yet will not cause disturbances to the public!

In fact, there is still much room for the Government to "cut expenditure". Just now, Mr CHAN Kam-lam has cited many prominent examples. I would also like to say a few words here. The Public Accounts Committee has, in relation to the Audit Commission's Report, pointed out that some government departments are having serious problems in wastage and abuse of public money. For instance, the Water Supplies Department has, in the past few years, failed to observe Hong Kong's actual water usage. This has caused a loss of \$1.7 billion to the Government as a result of the purchase of excessive Dongjiang water. As for the Vocational Training Council, up to \$500 million has been involved as a result of its mismanagement and failure to make good use of resources. The Government has also found to have wasted more than \$400 million annually because of mismanagement on the part of the Housing Department. I am sure Members and the Government are well aware of all these examples. A good deal of public money will have been saved if the Government can review relevant problems thoroughly and give full play to cost effectiveness.

Another example concerns the long-standing practice of the Government to spend millions and even hundreds of millions of dollars in public money for engaging consultancy reports regardless of the policies to be formulated and whether the Government has only a little or full knowledge of the relevant issues or has already drawn a conclusion long ago. Of course, some consultancy reports (such as the Harvard Report on health care financing) can serve to arouse the public's awareness of the relevant problems. However, some consultancy reports (such as the one in support of the Submarine Outfall Strategic Sewerage Disposal Scheme I) are absolutely a waste of money. The Government will have been able to save an enormous amount of consultancy fees if it can tighten its grip on the effectiveness of its policy on the engagement of consultancy service. This is already a significant measure for enhancing productivity.

Another example concerns the Social Welfare Department (SWD), which has succeeded in detecting in just the first nine months of 1999-2000 a total of 196 Comprehensive Social Security Assistance (CSSA) fraudulent cases. This figure is more than double that of the previous year, involving some \$8.5 million. Although this is something we should be pleased with for such a dramatic increase in CSSA fraudulent cases is mainly caused by the fact that the SWD has tightened its grip in taking follow-up work in recent years. But if we look at it

the other way round, this also reflects how slack the SWD has been working in this area in the past and the fact that the SWD has neither the concept nor principle of "financial prudence". There are indeed innumerable similar examples such as abuse of allowances, abuse of overtime allowances, "loafing" and so on. I just have no idea how much public money has been wasted annually!

Let me cite one more example. Information has revealed that a total of 317 computer crime cases have been detected in 1999, representing a nine-fold increase when compared to 34 cases in 1998. It is also reported that government income from betting duty will be threatened as a result of illegal gambling and Internet gambling. In this age where information technology is rapidly changing, the Government may be able to save a lot if it can take more initiative in making improvements.

By briefly summarizing the few examples mentioned above, we can see that it is indeed possible for the Government to save almost several billion dollars. The fact that there is much room for the Government to "cut expenditure" has also been fully reflected. It all depends on whether the Government is willing to explore and face the problems seriously. As the saying goes: "Drip-drops become a river". If the Government is willing to make an effort and try its best to "cut expenditure", the money thus saved will already be enough to make up for the revenue generated from the levy of sales tax.

Mr Deputy, the United States, now the most prosperous country in the world, was far worse than present-day Hong Kong in terms of economic situation many years ago. After President CLINTON took his office, the economy of the United States took off rapidly. This was of course partly due to the efforts made by Mr CLINTON in technological development. But a more important factor was related to the United States Government's determination to tighten expenditure, curb inflation and develop its economy. The Government of the Hong Kong Special Administrative Region can indeed make reference to this example in upgrading its enhanced productivity programme. With the added factor that the Hong Kong economy is gradually recovering, I am sure government revenue and expenditure can strike a balance in the near future. There is virtually no need for the Government to levy a sales tax which will not only be resented by the public but also affect the economy.

With these remarks, Mr Deputy, I support the motion.

**MR LEE CHEUK-YAN** (in Cantonese): Mr Deputy, I speak in support of Dr YEUNG Sum's motion on behalf of the Frontier and the Hong Kong Confederation of Trade Unions. I guess the Financial Secretary is considering how to formulate the Budget at this moment. I would like to share a remark with the Financial Secretary. I would also like to share it with the Deputy President for I find it appropriate to what happened to you, Mr Deputy, just now. This remark comes from a feature article from the magazine *Forbes* on the levy of sales tax. It is mentioned in the article that Jean-Baptiste COLBERT, a finance minister of King Louis XIV of France, once remarked: "The art of taxation is to pluck from the goose the most feathers with the least hissing". Mr Deputy, you seem to have known long time ago that I will mention this remark because you have been sounding like "a goose" since this meeting started (*laughter*). It is reported that the vast majority of the public in Hong Kong, including the Deputy President, have been sounding like "a goose" and condemnation was heard everywhere in response to the Government's proposal to levy a sales tax. Has the Financial Secretary failed to master this art of levying tax?

In fact, sales tax is regressive in nature. Although a uniform tax rate is levied on a packet of rice whether it is sold to a low-income person or a high-income person, the tax paid by the low-income person will be much higher comparatively speaking. Such a regressive tax type is absolutely unacceptable. We can compare the levy of a sales tax to the example I cited just now. Each of the geese, no matter how many feathers it has, will have all its feathers plucked by the Financial Secretary. For a goose which is abundantly clad in feathers, it will not really mind the Financial Secretary plucking its feathers. But for a goose which has almost lost all its feathers, even plucking one of its feathers will mean a lot to it. For the majority of the public in Hong Kong, it can be said that they have nearly "lost all their feathers". In an economic downturn, many people have lost their jobs or have their incomes cut. They find it increasingly difficult to make a living. Figures from a recent survey show that of the 400 000 lowest-income families, their average incomes in 1999 have dropped by 30% over 1997. With 400 000 families recording a 30% drop in income, our feathers have become less and less. Those remained are really "bald". The Government is like striking a man when he is down if it really decides to "pluck feathers" from the low-income people who are already living in poverty, including Comprehensive Social Security Assistance recipients, elderly people with no income as well as the orphaned and the widowed. It will only make the poor become even poorer. For these reasons, we object to the levy of a sales tax.

Secondly, will it be possible that the Financial Secretary is trying to bluff with the levy of a sales tax? We have recently come to notice the Government's tendency of "spreading rumours" through some authoritative people before the publication of the Budget every time. The advantage of releasing information through these people is that the Government will then not be held "responsible". In accordance with its strategy to first create a crisis, the Government has chosen the structural deficit problem this year in order to create a crisis to let the entire community know that the Government is having a difficult time in seeking sufficient income to make up for spending. This is the crisis created by the Government. As the second gesture, the Government has combined something real and unreal so that we will never know which is real and which is not. For instance, is the levy of sales tax unreal? Is the land departure tax real or unreal? Then the Government says it needs to raise charges. Its recent proposal is to raise water charges. Is this proposal real or unreal?

The reason for the Government making so many gestures is to create a crisis on the one hand and let the public know that the Government needs to levy numerous taxes to cope with the crisis on the other. In doing so, members of the public will lower their expectations of the Budget and prepare psychologically for something "really serious" this time prior to the publication of the Budget. I have no idea what it will really turn out to be. We may or may not have something "really serious". This is because, as I mentioned just now, some gestures may not turn out to be real. After making so many unreal gestures, the Government is expecting the public to accept those which are real, such as fees increases. We can see the Government repeat such a strategy year after year.

In my personal opinion, the usual practice of asking authoritative people to "spread rumours" (of course the Financial Secretary has denied this) will prevent us from conducting a rational discussion as well as preventing the public from debating on the issue, thereby resulting in a lack of transparency. The Government should indeed appoint responsible officials to inform us of what is really happening. Just take structural deficits as an example, we have urged the Government a number of times and asked if we really had structural deficits. Has the Government told us the actual situation? According to the Medium Range Forecast, the Government can basically enjoy surpluses in 2001, 2002 and 2003. Moreover, the need to raise taxes is not mentioned in the forecast.

Where can we find structural deficits? If there is no structural deficit, why is there such an argument? Who puts forward such an argument? Is it responsible for the Government to have shirked its responsibility on to authoritative people so as to avoid itself from "taking responsibility" and giving explanation? We earnestly hope that the Government can really focus on the facts in its future discussion, instead of making frequent use of authoritative people to "spread rumours".

The third point I wish to particularly stress is even though our finance has suffered from deficits over the past three years, our fiscal reserves are estimated to have reached \$400 billion. Compared to the whole community, the Government is already having the greatest fiscal power to cope with crises. Why does it choose to shirk the entire responsibility on to the general public?

Now let me come back to the levy of a sales tax. It seems that the "God of Fortune" is wearing a robe laced with gold leaf, or a robe made entirely with gold, in plucking the "feathers" of the public. How will the public accept it? How can the most well-off Government wield its axe at the public? Eventually, the Government will say we cannot do this for we have to look at the matter from a long-term point of view.....

**DEPUTY PRESIDENT** (in Cantonese): Mr LEE, your time is up.

**MR LEE CHEUK-YAN** (in Cantonese): Thank you, Mr Deputy. I will speak again during the Budget debate.

**MR CHAN WING-CHAN** (in Cantonese): Mr Deputy, the Government has flown a lot of balloons hinting its intention of increasing taxation to pave way for the Budget to be published in March. To start with, the Treasury has proposed increases for more than 3 000 government charges. Then, the Financial Secretary put forward the proposal of levying a land departure tax. Again, the Government has revealed its intention of levying a "sales tax" recently. At the same time, it has tried to pave the way for levying new taxes by constantly exaggerating the severity of our deficits.

We are told by the Government that Hong Kong will see deficits for three consecutive years starting from the last fiscal year: a deficit calculated to be around \$23 billion for last year, an estimated deficit of \$36.5 billion for this year and an estimated deficit down to approximately \$5.6 billion next year. Notwithstanding this, it is estimated in the medium range forecast that 2001-02 and 2002-03 will see a surplus of \$8.3 billion and \$14.6 billion respectively. We can thus see that the deficit is not going to be with us continuously. Deficits for three consecutive years are used for adjusting the economic downturn brought about by the financial turmoil only. This is quite similar to what happened in the 1980s when Sir John BREMRIDGE prepared deficit budgets for three consecutive years in coping with the economic depression in 1982.

At the same time, the \$23 billion deficit recorded in the first half of the year accounts for 1.1% of the Gross Domestic Product (GDP) only. Of course, an exceedingly high deficit is not going to be satisfactory. It has been suggested by the European Union that deficit budgets should be capped under 3% of GDP annually. Such being the case, Hong Kong's deficit should not be considered serious. Furthermore, we still have more than \$400 billion in foreign exchange reserves. Moreover, the Mass Transit Railway might be listed in future. Should the listing be passed by this Council, the Government will be able to reap a sizable revenue. For these reasons, even if we have a forecast deficit of more than \$30 billion, we cannot say that the Government is going to have a financial crisis. Why does the Government still put on the look that it must increase taxation substantially?

After all, the fiscal concept adopted by the Hong Kong Government is too conservative. Without a more flexible and long-term fiscal notion, it only aims at "achieving a fiscal balance and keeping expenditure within the limits of revenues". The Mainland, however, has been formulating deficit budgets over the past 10-odd years in order to inject a large amount of resources into opening up China and carrying out reformation. Its economy has been generally recognized by the international community to have shown an obvious improvement. In 1998 and 1999, the Singapore Government also recorded deficits for the purpose of coping with economic recession in the wake of the financial turmoil. This year, Singapore's official forecast has predicted an economic growth of between 4.5% and 6.5%. We can thus see that government budgets are not the same as budgets for private organizations. If a community is found to have developed problems such as economic depression, high unemployment rate and so on, its government must not just look on with

folded arms. Through making adjustments to public finance, it can always set the economic development of the entire community into motion. This is what happens to Hong Kong right at this moment. After experiencing the worst unemployment we have over the past 10-odd years, the Government has now decided to formulate a deficit budget just for the sake of meeting some expenses. It is unacceptable for the Government to levy a sales tax just for the purpose of coping with a short-term deficit. This is because, in doing so, the responsibility will be shifted on to the general public.

As sales tax is levied at a uniform rate, people with different incomes will be charged the same amount of tax. Sales tax is therefore a regressive tax and will only serve to widen the gap between the rich and the poor. Such a gap has become increasingly serious in Hong Kong. According to a report published by the World Bank, Hong Kong's Gini Coefficient has reached 0.518, which is even higher than 0.484 and 0.365 as recorded by such developing countries as Malaysia and Indonesia respectively. The latest statistics released by the Census and Statistics Department also show that, by dividing family incomes into five groups, incomes of the 400 000 lowest-income families have fallen by approximately 30% over the corresponding period of 1997. On the contrary, incomes of the highest-income families are higher than those registered in 1997. We have even discovered from the findings of the research that the monthly income for the lowest-income families is \$4,600 only.

A taxation system should originally be able to play the role of balancing distribution of wealth in society. Sales tax can only directly make "the poor become even poorer while the rich become even richer". Earlier on, a member of the Executive Council published an article in a newspaper pointing out that sales tax is "extremely fair and all people will be treated equally" for every member of the public, rich or poor, will have to pay tax and the tax amount will be the same too. I cannot agree to such an observation.

I think the significance of fairness lies in its ability to balance the gap between the rich and the poor, not in the size of the tax net. Why do we need to set a salaries tax threshold? It is for the purpose of relieving those who are financially vulnerable of the pressure to shoulder government expenses. In order to allow society to distribute wealth in a more even manner, people of higher incomes should pay more tax. However, the scope of sales tax is so extensive that all members of the public in Hong Kong will be involved. Moreover, the poor will need to pay a relative higher tax than the rich. In other

words, the poor will need to pay higher spending costs than the rich. Subsequently, they will not dare to spend or their desires of shopping and spending will be hampered as a result of this. People with good incomes, however, will be affected to a lesser extent. This is simply not fair.

In the long run, the Government should review the taxation system and aim at narrowing the gap between the rich and the poor. Sales tax is basically unfair and is not conducive to the grass-roots people. Therefore, I object to the levy of a sales tax.

Mr Deputy, I so submit.

**MR MA FUNG-KWOK** (in Cantonese): Mr Deputy, the long-standing policy of adopting a simple tax regime with low tax rates has long been regarded as a major factor contributing to the attraction of foreign investment and Hong Kong's success. Our vibrant economic development, coupled with a high land-price policy, has brought the Government a huge financial surplus, creating a myth of low taxation.

Nevertheless, some people have cast doubts on the notion of the local tax system for it attaches importance only to revenue but ignores the fairness of taxation and the strategy of promoting economic development. As the economy is moving into a stage of restructuring, loopholes in the existing taxation system have been uncovered successively. In recent months, the Government has been talking about the problem of having deficits for two consecutive years, claiming that it is necessary to broaden the tax base and consider the introduction of new taxes, including a sales tax, in order to restore a balance between revenue and expenditure.

To decide whether to impose new taxes, we have to acquire a full understanding of the issue first. I think we should consider the matter from three different aspects.

Firstly, we have to adduce sufficient evidence to prove whether the current fiscal deficit is a cyclical or structural one.



Some academics consider the current deficit a cyclical adjustment only. As soon as the economy recovers, government revenues are bound to rise, which will naturally lead to a fiscal balance. Thus, the Government actually needs not carry out any reforms. Some members of the business community also agree that Hong Kong has all along been bragging about its low rates of taxation. Should new taxes be imposed as a result of a short-term deficit, the faith of international investors in the Hong Kong Government's fiscal principle will be affected. Moreover, it has been the Government's practice to formulate its Budget on the basis of a five-year medium range forecast of economic growth. As long as it can achieve a fiscal balance within five years, it will not be considered to have contravened the Basic Law.

It is the view of another group of people that the existing tax base is too narrow. As Hong Kong has been relying excessively on property-related revenues and stamp duty on stock trading, 40% of government revenue is directly or indirectly related to property activities. After the financial turmoil, the Government needs to cut tax on stock transactions so as to maintain the competitiveness of the financial market and, at the same time, abandon its high land-price policy that has long been an object of public denunciation. In the foreseeable future, revenues from stamp duty and land sales are hardly expected to rebound substantially. But in view of the constant expansion in public expenditure on education, health care and social welfare as well as the Government's failure to suppress expenses effectively, expenditure is bound to outgrow revenue unless a new source of taxation can be opened up.

Nevertheless, even if the Government is to resolve a structural problem, it should start from the overall tax system of Hong Kong and carry out a comprehensive review of the existing taxation policies. Sales tax is only one of the new taxes we can consider.

Secondly, the Government has to make a full analysis of the pros and cons of imposing a sales tax.

There is no doubt that the imposition of a sales tax can broaden the tax base and generate a stable and sizable income for the Government. Based on the current retail turnover of over \$700 billion a year, the coffers will have an additional income of more than \$20 billion by simply imposing a sales tax of 3%.

Originally, it gave no cause for much criticism for the middle and upper classes to shoulder higher tax liabilities. At present, however, only 40% of the working population is required to pay tax, with 70% of the tax payments coming from about 10 000 people. This is especially unfair to the middle class because, on the one hand, they are not allowed to enjoy a number of benefits and, on the other, they are asked to shoulder a huge tax burden. Actually, it means that the middle and upper classes are asked to subsidize the Government over a long period of time.

As sales tax is going to cover all people, this might help the general public to foster their civic awareness of tax payment and balance the current unfair situation where quite a lot of salaried employees need not pay tax.

There are, however, some people who hold that sales tax might affect the consumer market or even hurt the tourism industry and dampen the desires of foreign enterprises to invest in Hong Kong, thereby dealing a blow to the Hong Kong economy which has just shown signs of recovery. Moreover, the imposition of a sales tax will increase administrative expenses so that the actual income of the Government will not necessarily rise as expected and the loss incurred might even outweigh the gain.

Some people also hold the view that the sales tax is a regressive tax. It will therefore affect the middle and upper classes to a lesser extent. But as far as the gross-roots are concerned, their livelihood might be threatened.

Of course, the favourable and unfavourable elements mentioned above might vary according to the details of the imposition of the sales tax. We should definitely not make sweeping generalizations. For example, what is the rate of the sales tax? Should the tax be imposed at the wholesale level or the retail level? Are all kinds of commodities taxable? Can some daily necessities and foods be exempted from taxation? After the imposition of a sales tax, will salaries tax and profits tax be lowered at the same time in order to enhance the purchasing power of the public and mitigate the effect on the people's livelihood and the economy?

For instance, when Singapore imposed a sales tax in 1992, it cut down corporate profits tax at the same time and guaranteed that the tax rate would not be increased within five years for the purpose of enhancing transparency to avoid undermining investors' confidence.

Hence, in considering the introduction of a sales tax, the Government should put forward more specific plans for the public to assess the merits and demerits arising under different situations.

The last issue we must consider is whether it is now an opportune moment for the Government to impose a sales tax.

To begin with, I have to state that the "opportune moment" to which I referred is purely based on consideration of our economic development and the people's livelihood. We should not oppose the imposition of a sales tax just because we need to please electors in exchange for their votes as the Legislative Council Election is going to be held this year.

As early as in the 1980s, two former Financial Secretaries, Sir John BREMRIDGE and Sir Piers JACOBS, proposed to impose a sales tax on separate occasions. But owing to the economic downturn and high inflation at that time, the matter was finally left unsettled.

Some people see a steady economic growth and low inflation rate as suitable conditions for the levy of a sales tax. In spite of the fact that the Hong Kong economy has just shown signs of recovery, some trades and industries seem to have turned more active and the GDP has shown positive growth for two consecutive quarters, prices still remain in a state of deflation. On the face of it, this is exactly the golden opportunity for imposing a sales tax.

However, has the Hong Kong economy fully recovered? There is still a divergence of opinions in this area.

When Japan just showed signs of economic recovery in the mid-1990s, the Japanese Government once raised its sales tax from 3% to 5% in order to rebuild its finance to make up for its ever-increasing deficit. This eventually dealt a great blow to its consumer market and its economy was thrown into depression again. The current economic situation of Hong Kong is very similar to the situation of Japan in those years. Once a sales tax is imposed, will Hong Kong follow the footsteps of Japan? In my opinion, the Government should grasp more information before making the decision.

In view of the above arguments, I would suggest the Government to, before deciding to impose a new tax, carry out a comprehensive review of the current tax system, disclose more information on taxation, enhance transparency to enable members of the community to hold discussion and gain knowledge with respect to the issue in a more extensive manner as well as enabling the Government to gather more valuable views.

Whether for the purpose of reforming the taxation system, adjusting the existing tax rates or introducing new taxes, the Government has to consider the principle of fair taxation to cope with the restructuring needs of our economic development in future apart from taking account of the revenue of the coffers.

The next election for the Legislative Council is only seven months away from now. Some people might openly oppose the levy of a sales tax so as to please electors in the short term in exchange for more votes. This votes-oriented attitude is not worth encouraging.

At a time when we are still unable to fully understand the nature of the budget deficit and analyse the pros and cons of a sales tax sufficiently, and when the issue has not been adequately discussed by the community, we will be acting rashly and irresponsibly if we raise objection in a "broad-brush" manner by targetting solely on the sales tax.

With these remarks, I will vote against the motion. Thank you, Mr Deputy.

**MR AMBROSE LAU** (in Cantonese): Mr Deputy, while the Hong Kong economy is showing signs of turning the corner, the levy of a sales tax might be tantamount to spoiling the ship for a halfpenny-worth of tar. Although it could bring some revenue to the Government, the price could be slowing down the economic recovery and adding to the people's burden.

There are four reasons why a sales tax should not be levied at this stage. First, according to reports, the investment earnings on the Exchange Fund, the revenue from stamp duty on stock transactions and land sales in Hong Kong last year have been higher than the Government's estimate. As a result, the forecast \$36.5 billion deficit has been substantially reduced to around \$10 billion. If the economic recovery continues, the Government's forecast of a \$5.6 billion deficit

this year may also be reduced and we may even achieve a surplus. This shows that economic recovery is the most important factor in reducing and avoiding a deficit. The levy of a sales tax is like spoiling the ship for a halfpenny-worth of tar because it might affect economic growth and increase the deficit, so that the loss would outweigh the gain.

Second, the levy of a sales tax will hit the retail industry and the catering industry the hardest. These two industries are central to the people's daily spending. If these two industries are hit, consumer spending will shrink in Hong Kong and the shrinking of consumption is the greatest obstacle to economic recovery. According to figures of the Census and Statistics Department, the total turnover of the retail industry recorded a positive 6% increase in last December, showing that the retail industry has turned the corner. As regards the catering industry, the receipts of food premises in the third quarter of last year were estimated to be \$14.5 billion, representing an increase of 2% compared to the same period the year before. It was the first time that there was positive growth since the first quarter of 1998. If a sales tax should be levied, the hard-won recovery in these two industries would be the first to be affected and depression would set in again. It must be noted that the retail and catering industries have managed to turn the corner and recover in a difficult environment largely because of the general price discounts offered and the improvements in product quality and service standards. If the Government levies a sales tax, it will unfairly write off the great efforts made by these two industries in terms of low price and high quality in order to achieve recovery.

Third, the levy of a general sales tax is also unfair because it will include the poor, the unemployed and families receiving Comprehensive Social Security Assistance (CSSA) in the tax net. According to a survey of the Census and Statistics Department, under the continuing economic recession, the real income of the majority of the people of Hong Kong has declined over the past three years. The levy of a sales tax will increase the basic cost of living of low-income families and aggravate their hardship.

Fourth, the levy of a sales tax will change the simple tax regime of Hong Kong and will have far-reaching effects. Therefore, the issue warrants careful consideration.

Due to the four reasons stated above, I am of the view that a sales tax should not be levied before a full economic recovery has been achieved.

Mr Deputy, I so submit.

**MRS SELINA CHOW** (in Cantonese): Mr Deputy, in the face of the budget deficit and the narrow tax base, the Government seems to be very keen on levying a sales tax. However, as the local economy is just at its early stage of recovery, consumer sentiment remains fragile while the various businesses are still operating with difficulty. Since the Government hinted on the levy of a sales tax, strong objections have been raised by different sectors of the community. I believe this should not come as any surprise to the highly intelligent Financial Secretary.

Recently, two large department stores have announced that they would close some of their branches after the Chinese New Year. From this we could see that the retail market has not yet improved. As regards the general public, many of them are still under threats of negative assets, salary cuts, salary freeze and layoffs. Obviously, it is not the time to propose a sales tax now.

Furthermore, Hong Kong has always enjoyed a reputation as a "shoppers' paradise" and a "free port", while tourism is a major pillar of the Hong Kong economy. If the Government of the Special Administrative Region (SAR) should levy a sales tax, it would only ruin our reputation as a "shoppers' paradise".

As the representative of the wholesale and retail functional constituency, I have conducted a questionnaire survey on sales tax in the industry. Of the 435 questionnaires returned, 95.6% are against the levy of a sales tax. Members of the industry point out that the levy of a sales tax by the SAR Government will only drive tourists to other cheaper regions in Southeast Asia. It will destroy Hong Kong's tourism and make more Hong Kong people go to Shenzhen in the Mainland to spend their money. In the end, the consumer market in Hong Kong will be further weakened, more shops might have to wind up, thereby adding to the rate of unemployment. The levy of a sales tax will aggravate the disparity between the rich and the poor and create a risk of social instability. Here, I should like to report to Honourable Members some of the responses

expressed in the questionnaires and reflect briefly the views from members of the industry, since the comments collected are very interesting. Some pointed out that this is a lousy idea that will only harass the people and waste money. Others opined that the levy of a sales tax would put visitors off. One wrote, "Do not ruin the increasingly stabilized market, or businesses would be forced to close down; do not put an end to the economic recovery to deal another blow to the seriously hit local economy, for the last blow will "finish off" Hong Kong once and for all. Will the Government please let us off? If it sticks to its policy, it will certainly arouse public indignation and bring disgrace upon itself. Is the Hong Kong Government out of its mind?"

Actually, we should draw lessons from the experience of other countries or regions. In Japan, for example, consumer sentiment was completely destroyed after the introduction of a 3% sales tax and its subsequent increase to 5%.

The Financial Secretary cited the narrow tax base as one of the reasons for levying a sales tax. I cannot help but ask who is responsible for this situation. Looking back on the few years before the reunification, while the number of taxpayers has declined continuously, it was weird enough that many a times the increase in tax allowances granted by the Government went even beyond the public demand as reflected by the various political parties in the Legislative Council. Actually, during Governor Chris PATTEN's incumbency from 1992 to 1997, the number of taxpayers has dropped from 1.49 million to 1.32 million. At that time, the economy was thriving, yet the tax base was deliberately narrowed down by the Government. How could one not suspect there was some conspiracy behind this all?

Some colleagues suggested increasing the profits tax to open up new sources of revenue. I cannot agree less. Business owners have a hard enough time now. Individual businesses have to operate with losses in order to survive. Many well-paid employees have a higher income than small traders. Is it fair to traders to increase the profits tax now? Such an increase will also have extremely adverse effects on the economic recovery, since it would certainly not help to foster investment desire.

Though fully aware that levying more taxes will meet with strong opposition under the present circumstances, the Government and the Financial Secretary continue to drop hints about levying a sales tax. This cannot help but make suspicious people like me speculate that the Government has another motive. Perhaps it is trying to divert attention and pave the way for a land departure tax. Although no one would welcome the levy of any new tax at this stage, if the Government can prove a real need to increase tax to cover the deficit, the land departure tax would be a relatively fair tax. The retail and wholesale sector has always supported the levy of this tax. There were recent reports that if the Hong Kong Government levied a land departure tax, Shenzhen would give Hong Kong visitors a \$30 coupon for spending as compensation. If this should be true, the people of Hong Kong would not have much to lose.

Mr Deputy, the levy of a sales tax is extremely harmful to Hong Kong in all respects, since the trades and people affected are not confined to the wholesale and retail sector. I firmly oppose the levy of a sales tax and support the motion.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Deputy, Hong Kong has always been famed in the world for its simple tax regime and low tax rates. Apart from this, the majority of Hong Kong taxes are linked to the salaries or profits earned by taxpayers in a certain financial year. In other words, the more one earns, the more commitment one must make to the community.

However, the Government has recently proposed again the levy of a sales tax, which will certainly take away all the advantages of our tax regime mentioned above. As early as the 1980s, the Government repeatedly proposed the levy of a sales tax, and the Hong Kong Federation of Trade Unions (FTU) already stated its opposition. I am surprised that some Members said that the Government's proposal to levy a sales tax at this stage was sudden just now, since this issue was discussed many times in the 1980s. In our view, the greatest disadvantage of a sales tax is that regardless of wealth or age, Hong Kong people will inevitably be included in the tax net once they spend money. Besides, the sales tax is a regressive tax. If the Government insists on levying it, the only bit of "fairness" in the taxation system will be destroyed. It will add to the poor people's burden and even aggravate the disparity between rich and poor. Whenever the people buy a product, they will have to pay the same sales tax, irrespective of they are rich or poor. This is extremely unfair.



If the people have to pay an extra sales tax in spending, consumer sentiment will be greatly affected. Although the Government stresses that the Hong Kong economy has rebounded and turned the corner, the people's purchasing power is still weak. Many retail stores are now operating without consideration of cost and barely surviving (as Mrs Selina CHOW mentioned just now). This is a fact known to us all. If the Government turns a blind eye to this and levies a sales tax, it will be turning its back on Hong Kong's retail industry and catering industry and even the whole economy. This is just like playing with fire in a dangerous place.

Some people think that Hong Kong is lagging behind since the Group of Seven (G7) or countries like Japan and Singapore have already introduced a sales tax. However, I have to point out three things. First, the profits tax rates or salaries tax rates overseas are much higher than those in Hong Kong. Thus, it is very difficult for their government to adjust the relevant rates of existing taxes. The marginal tax rate in Hong Kong is very low. I have to stress that our profits tax rates are among the world's lowest. In other words, there is much room for adjustment in the existing taxation system. Thus, the Government has no need to levy new taxes to off set the budget deficit.

Besides, the expenditure of foreign governments is much higher than that of Hong Kong. For instance, in the United States, the government expenditure in 1999 accounted for 17.6% of the GDP, while the Hong Kong Government's expenditure in 1998 only accounted for about 9% of the GDP. The Medium Range Forecast in this year's Budget assumes that the Government will have a \$8.3 billion surplus in the year 2001-02. With the recovery of the Hong Kong economy, we also expect substantial increases in profits tax, salaries tax and receipts from land sales. Since the Government is unable to come up with convincing figures to show that Hong Kong is facing a structural deficit, it would be irresponsible of the Government to levy a new tax rashly.

Further, a sales tax should not be introduced because of Hong Kong's geographical situation. Overseas, there is plenty of land and a sparse population. People often need to travel for a few hours to go and shop in another place. However, people in Hong Kong only need to travel some 10 minutes or so to reach Shenzhen and spend their money there. Due to the great difference between the prices of both regions, more and more people are travelling north for consumption. If the Government levies a sales tax, it will only drive people to spend their money in the north. Hong Kong's retail industry will suffer a fatal blow. Of course, some people have suggested that the Government should levy a land departure tax in order to discourage people

from going north to spend their money. However, I wish to point out that it would be unwise for the Government to levy a departure tax with this intention in mind and it will only be an ineffective measure that will cause inconvenience to the people.

Mr Deputy, the FTU is of the view that Hong Kong's taxation system should be reviewed. We have been proposing this for more than 10 years. We have said on different forums that even if our tax base is considered to be narrow, the Government should not levy new taxes all of a sudden, such as it now proposes. This is unnecessary. In our view, a comprehensive review of our taxation system should be conducted in order to find a good and fair solution based on the views expressed in debates over the past 10 years or so. The Government should not repeat from time to time that our tax base is too narrow and that a certain tax has to be levied.

I especially stress that the Government repeatedly proposed to levy a sales tax in the 1980s. Although the economic situation was favourable then, members of the community strongly opposed it. When the Government first proposed a sales tax in the 1980s, it proposed to levy the tax at the retail level and later on proposed to levy it at the wholesale level. These issues would come up in every debate. However, I hope that Members will understand that if the proposal to introduce a sales tax in the retail industry is implemented, the administrative costs will be very high. It is very questionable whether the Government's target can be achieved. Now, the Government is revisiting this proposal. If some colleagues think that there should be an extensive discussion on this, they can refer to the different views in the various discussions in the 1980s.

Since we all oppose the levy of a sales tax and the Government always says that the tax base is too narrow, we should review the taxation system. Some professors have pointed out that Hong Kong's taxation system only stresses revenue to the neglect of the fairness of taxation and its ability to regulate the economy. I think that the latter is very important. If the Government wishes to increase our revenue, it could continue to apply the principle of "equity" and introduce the progressive tax bands into profits tax. For instance, it could levy a profits tax on companies earning a profit from over \$5 million to \$10 million at 16.5%, and a profits tax at 17% on companies earning a profit over \$10 million. In my view, this will be beneficial to the Treasury.

**DEPUTY PRESIDENT** (in Cantonese): Miss CHAN, your time is up.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Deputy, both the FTU and I oppose the levy of a sales tax by the Government. Thank you.

**MR ALBERT HO** (in Cantonese): Mr Deputy, Dr YEUNG Sum has spoken on the stand of the Democratic Party on the topic of "opposing the levy of a sales tax". To avoid repeating what he has said, I will speak only on the topic of revenue and expenditure of the Government.

Recently, the Government has been constantly using different channels to convey the message that revenue and expenditure in public finance are facing structural deficits. That is to say, the operational income is unable to meet the operational expenses, and this is forming a problem of continuous operational deficits. The main reasons for this state of fiscal imbalance can be grouped under two different parts, that is, income and expenditure. In terms of income, the income from non-recurrent land sales and the stamp duties associated with property and stocks transactions have reduced sharply in the wake of the financial turmoil. Income taxes such as profits tax and salaries tax have also reduced due to the economic recession. In terms of expenditure, in a bid to rectify the social welfare policy which has been neglected, there has been quite a sharp growth in social welfare spending over the past few years. Salary expenses have also exerted a heavy burden on the recurrent expenditure of the Government.

The Government is of the view that this fiscal imbalance and the deficits it has created cannot hope to experience any dramatic change in the short term. Therefore, the Government has to ensure a stable source of income by exploring the possibilities of imposing new taxes. In the past few months, the Government has put forward proposals of a land departure tax, a sales tax and the reintroduction of increases of public fees and charges. These have caused great repercussions among the public. The Democratic Party agrees to some of the views of the Government, that is, a review should be made of the existing taxation system and structural proportions of various sources of income. However, the Democratic Party is opposed to the view repeatedly put forward by the Government that a problem of structural deficits has already appeared and that this has to be solved by the opening up of new taxes with a specific purpose.

In the past, the Government adopted a high land-price policy and this resulted in property and related income accounting for as much as 30% of the total revenue. The standard rate of salaries tax has remained at a low level of 15% for a long time and the profits tax also stays at a low 16%. There is an absence of a more equitable progressive element in the taxation system. This shows that there indeed exist problems of structural distribution and an imbalance of proportions. A comprehensive review of this situation should be undertaken so that solutions can be devised.

The Democratic Party is convinced that the Government should conduct a thorough review of the entire tax regime, rather than spending a lot of efforts on individual taxes with specific purposes like the land departure tax and the sales tax. The Democratic Party has conducted an opinion survey earlier on whether a comprehensive review should be conducted on the current taxation system. Findings of the survey show that 55% of the interviewees think that such a review should be conducted, but 72% of the interviewees think that this is not the ideal time to make any upward adjustments of government taxes and charges. Such findings show the concern and worries of the public for the uncertainties of their existing standard of living. The Democratic Party is of the view that the Government should not try to create a sense of crisis by highlighting the problem of structural deficits through the media in the hope that such a move will convince the public to accept the levy of a sales tax or a land departure tax which will cause a great impact on the daily life of the public. The Government should analyse the issue carefully, make thorough considerations and present detailed figures on that. It should also make a forecast of public income and expenditure for the coming five years. Only when the results prove that the problem of structural deficits does exist as the Government claims, then proposals on various tax types and the levy of new taxes can be made.

I must emphasize that any plans to reform the system of public revenue warrant careful consideration and emphasis should not be placed only on fiscal measure which will affect the lives of the lower income groups. As a matter of fact, there is still a lot of room for the Government to manoeuvre. Apart from the profits tax and salaries tax which we have mentioned earlier, and the introduction of a progressive element to make the tax regime more equitable, we may consider widening the tax net for estate duty or to impose patents and franchise duties. The basic personal allowance for salaries tax may be revised to bring it in line with the rate of inflation. There is indeed no need for us to stick to the levy of any particular new tax to the detriment of the simple tax regime that we now have.

As Dr YEUNG Sum has just said, by its very nature, sales tax will bring very controversial outcomes. There are many adverse effects brought about by the introduction of sales tax in different forms as found in other countries. Therefore, the Democratic Party is in principle against the levy of a sales tax, and we are opposed to the levy of such a tax at a time when the economy has just shown some signs of recovery. Private sector consumption has always been the engine for our growth and its total value accounts for 60% of our GDP. The driving force of our economic recovery comes from our export growth. If our consumption continues to be weak and with this imposition of a sales tax, that will deal a severe blow to our economic recovery.

Owing to the above reasons, the Democratic Party reiterates that we oppose the levy of a sales tax. Thank you, Mr Deputy.

**DR TANG SIU-TONG** (in Cantonese): Mr Deputy, the Hong Kong Progressive Alliance (HKPA) understands that the Government's budget deficit over the past two years is estimated to reach approximately \$50 billion and there might be a deficit of several billions next year. As Legislative Council Members, we are duty bound to ensure that the Government adheres to the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strives to achieve a fiscal balance, in order to comply with the provisions of Article 107 of the Basic Law. However, the HKPA opposes the Government's proposal to levy a sales tax on the excuse that it needs to off set the short-term deficit and open up new sources of revenue.

Actually, although the Hong Kong economy has seen an initial recovery, it is only a slight one. While the operating costs in Hong Kong have dropped, we still have to enhance our competitiveness. The unemployment rate in Hong Kong is gradually coming under control but still stands at a high level. Therefore, the first thing the Government should do now is to accommodate the need of the people and the business sector for a respite. It should avoid measures that will affect people's livelihood and try to help the business sector to lower its costs. If the Government decides to levy a sales tax, it is bound to increase operating costs and affect consumer sentiment, thus dealing a great blow to the service-based Hong Kong economy.

Take tourism as an example. Although operating costs in Hong Kong have visibly dropped after the financial turmoil, prices in Hong Kong are still high compared to other Southeast Asian countries and regions. Although figures show that the number of visitors to Hong Kong has risen by 12% compared to last year, they also show that the receipts from tourism have declined. If a sales tax is levied, Hong Kong's attractiveness will be reduced. It will have an even greater impact on mainland and Taiwanese visitors who are not used to paying a sales tax. "Paying tax" will be seen as "price increase" and will directly affect their willingness to spend. This will certainly slow down the pace of recovery of tourism in Hong Kong.

Another example is the retail industry. In recent years, it has become the trend for Hong Kong people to go north to spend their money. This has seriously affected retail business in Hong Kong, especially in the northern part of the New Territories. If a sales tax is levied, the competitiveness of Hong Kong's retail market will decline further. This is like pouring cold water on the local retail industry which has striven to lower costs and enhance competitiveness.

Leaving aside the impact on the people and the economy, the Government lacks sufficient grounds for changing the tax regime rashly and widening the tax base considerably with the levy of the sales tax, which will catch everyone in Hong Kong in the tax net. The figures show that the Government's budget deficit was \$24.5 billion in 1998-1999. There will be a \$36.5 billion deficit in 1999-2000 and a \$6 billion deficit in 2000-2001. According to the Government's Medium Range Forecast, the Government will have an \$8.3 billion surplus in 2001-2002 and the surplus in 2002-2003 will be as high as \$14.5 billion. Let us consider the following figures: in the second quarter of 1999-2000, the negative growth will become positive growth at a rate of 0.7%, while the economic growth rate in the third quarter will be +4.5%. It is estimated that the economic growth rate for the whole year will come close to the Government's Medium Range Forecast, which is 3.5%. What does this imply? It implies that the Government's forecast is quite accurate. It also implies that the present deficit is merely a "short-term" deficit.

Besides, from past experience, we know that the Government often overestimates the deficit. For instance, the Government proposed to increase government fees and charges in June last year due to the \$36.5 billion deficit this year. However, at the end of the year, the Financial Secretary changed his tune and said that the deficit would probably not exceed \$30 billion. According to outside estimates, the sale of the stocks held by the Government, the active trading on the stock market as well as the substantial receipts from land sales have increased the receipts of the Treasury considerably. Thus, the actual deficit may be lower than that of last year.

Since the deficit is short-term and may be much lower than the estimate, the Government can use our abundant fiscal reserves to offset the deficit. There is no need at all to levy a new tax with far-reaching effects for the sake of a short-term deficit, disregarding the hardship of the people and the business sector.

Moreover, levying a sales tax might send a negative message to overseas investors. Hong Kong has always been renowned internationally for its simple tax regime with low tax rates, which has proved to be effective. In the past, the simple tax regime attracted vast number of investors to Hong Kong and brought us huge budget surpluses each year, helping Hong Kong to survive the cyclical recessions many times. If a sales tax is levied, the structural changes will complicate Hong Kong's tax regime. With more tax items, we will lose the advantage of a simple tax regime with low tax rates, which might have some adverse effects in future.

Mr Deputy, due to the reasons stated above, the HKPA opposes the levy of a sales tax.

With these remarks, Mr Deputy, I support the motion.

**MR ERIC LI** (in Cantonese): Mr Deputy, for me, the debate on the sales tax and the taxation system is a very "old" one. From the time I joined the former Legislative Council till now, similar questions would be raised almost every year in the Legislative Council. I do not wish to be too repetitive, especially since I have recently expressed a number of my views systematically in the newspapers. Therefore, I have no wish to discuss the matter all over again today.

The result of today's voting and debate is totally predictable. This is not at all surprising. As I said, the levy of a sales tax or a sales-related tax will have a one-off effect on the economy. Today, a number of colleagues have talked about the many effects of such a tax on the economy, such as slowing down the economic recovery. However, these effects are one-off and will not recur. They are short-term effects. Under the present economic situation, when the economy is just starting to recover and show positive growth, it is the best time to introduce a sales tax. However, politically, I very much agree with Members that we are not fully prepared at this stage. This is entirely understandable and the people's general response is also understandable.

In my view, today's debate could be more objective and useful. However, it lacks several elements. First, what I wish to say is that the suggestions made in terms of many taxes and taxation in today's debate lack the necessary figures to support them. As an accountant, I am most concerned with figures. In terms of figures, Members must have or the Government must provide clearer figures to show how big a problem we are facing. If the problem is related to the sales tax, there must be a deficit of over \$10 billion or a need for a revenue of over \$10 billion to justify such a drastic move. Of course, as some Members said, the over \$10 billion collected could help to reduce other taxes and make up for other taxes. It would reduce the burden of some people.

In discussing the need for a revenue of over \$10 billion, some colleagues suggested that a slight increase in estate duty or salaries tax in line with inflation would suffice. However, we are talking about tens of millions of dollars and hundreds of millions of dollars. In terms of amount, these sources of revenue are nothing compared to the deficit that our Financial Secretary is now facing and has to take precautions against. We must not assume that our new suggestions to increase some taxes can solve the Financial Secretary's problem. I am afraid that our suggestions are not very helpful to the Government's fiscal policy or to resolving the problem. In the long term, some colleagues also suggested how to promote economic development and make more money for Hong Kong. However, there is a time lag and it will not help to solve the present problem. A slow remedy cannot meet an urgency. Our deficit and the problems generated by the deficit have emerged and they will last in the future. If we hope to solve the problem with long-term strategies to stimulate the economy, first, they will not be very effective since Hong Kong follows a "small government" principle. Second, the effect may not be felt even after 10 to 20 years.



The truth is, we cannot just think of the deficit as an outstanding amount. We should know that in terms of the structure of the present deficit, once we go into the red, the Government will have to cut expenditure. The expenditure that could be cut is limited and a large part of it is salary. However, many Members do not think that the Government should drastically reduce the salary of civil servants. If the expenditure on services and salaries that could be cut is limited, we could only increase our revenue. In terms of revenue, Members must pay attention to two phenomena. First, over the past two to three years, the Government has used some short-term income or one-off income, such as selling the Mass Transit Railway or setting up the Hong Kong Tracker Fund, to offset or cover long-term recurrent expenditure. In terms of financial management, such qualitative change in strategy is extremely unhealthy. Another kind of qualitative change is that the present economic recovery is mainly driven by certain special economic activities which look very promising. For instance, speculation has caused technology share prices to soar. However, these companies do not have any track record yet and will not necessarily make a profit. Even if they make a profit, many activities may be carried out offshore and may not be taxable. It may take five or 10 years or even longer for the signs of economic recovery to translate into any revenue. The change brought about by the economic restructuring may result in a change in the sources of revenue. We cannot but maintain a certain amount of wariness and a high degree of alertness. This is not necessarily "spreading rumours" as referred to by Mr LEE Cheuk-yan. Instead, it is a political vision on the part of a Member. We have to consider these circumstances first in order to decide whether there will be a structural deficit.

Hong Kong is very lucky. Recently, we have made big money with the investments with the Exchange Fund. I believe that these earnings would help the Financial Secretary to make do for two or three years. Actually, as some Members said, the political pressure is not so heavy or the crisis is not so big that he has to introduce more drastic tax measures. However, we cannot escape from the reality. We have to stay alert and be prepared to discuss it. In numerical terms, we are talking about a sales tax of over \$10 billion. The Government does not have much choice. As I said just now, many Members have suggested some small adjustments, but they will not bring much tax revenue.

First, the Financial Secretary could consider restoring certain measures, although it might not be the best solution. The first measure that can be considered is to resume the high land-price policy. This would certainly not be welcome, since it is very easy to pass the cost on to the people. As people in

the real estate industry know, one will sell at a low price when land is bought at a low price, and he will sell at a high price when land is bought at a high price. If the number of lots supplied is reduced, the people will inevitably have to pay a high land price.

The second measure is to cancel the tax concessions made by the Government in 1998 to prop up the market. This has cost the Government over \$8 billion in salaries tax and profits tax has also been reduced by 5%. Actually, these measures are adopted when the economic situation is extremely precarious. In the long term, perhaps the Government can consider gradually returning to the old concessions after the economy has recovered. This would also help to change the tax base. I wish to say a few words in response to Mr LEE Cheuk-yan's remarks. He said that the Deputy President hissed like a "goose" and asked the Financial Secretary not to pluck the feathers of taxpayers. However, those who hiss like the Deputy President have to stay, while those who hiss least or make no sound at all run fastest.

**DEPUTY PRESIDENT** (in Cantonese): Mr LI, please do not continue to speak. Your time is up.

**MR ERIC LI** (in Cantonese): Thank you, Mr Deputy.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Deputy, just now, many Members talked about the main reason why we are discussing the sales tax today. It is because the Government has thrown out a series of taxes and increases of fees that may be implemented, leading to our rife speculation. We have to fend off the Government's attack no matter from which side it comes. In my view, this will not bring any constructive suggestions for our taxation system or our overall budget. Instead, a solution to the existing fiscal problems might be put off forever. This is not a good thing for our overall operation. If the Government means to reform the taxation system, it should present a good and complete blueprint properly and discuss with us, instead of throwing out a "smokescreen". As I said, the present course might do more harm than good. I hope the Government could note this.

In discussing the sales tax, Members seem to focus on two aspects. Some colleagues seem to oppose the sales tax because of the timing. They think that a sales tax should not be introduced now because the economy is not faring well. If it is introduced now, it will hinder the economic recovery. The Government must be satisfied after hearing these colleagues' comments. If they say that now is not the time because the economy is not faring well, does it mean that it can be introduced when the timing is better? Their argument does not focus on the principle of the issue.

Just now, some colleagues also said that it might be a ploy of some candidates. They oppose the sales tax because an election is near. After the election, they might change their mind and support it. This is an irrational and improper thing to do to the community. I will certainly support them in opposing the levy of the sales tax. However, such opportunistic objection is not the best way. It is in my view more appropriate and rational to discuss the question basing on principle.

I oppose the sales tax mainly as a matter of principle. As many colleagues mentioned just now, it will "make the poor even poorer" and is the most unfair and unjust tax. As some colleagues also said, if a sales tax is levied, even recipients of Comprehensive Social Security Assistance (CSSA) and the unemployed have to pay tax. As we all know, in a community, different people have different ability and social backgrounds. That is why we have a progressive taxation system. The progressiveness is the fundamental principle of the taxation system. If a sales tax is levied now, people from the grass roots will have to pay the same amount of tax. This violates the fundamental principle, which I think is very important.

Some colleagues said that the Government might threaten us with a possible structural deficit in order to make Members agree to a sales tax. Actually, what if there is a structural deficit? The most important question is whether the sales tax is the only solution to our fiscal problems. Even if there is a structural deficit, do we have to accept the sales tax which violates the principle mentioned by me, and abandon the concept of progressive tax rates? In my view, this is not the way to examine the taxation system. We must examine it against a major premise. The premise is to reduce the disparity between rich and poor in the community. Only such an approach is acceptable. If we disregard this principle, it is pointless to talk about the taxation system.

Of course, people may say that the levy of a sales tax is the best method for widening the tax base and ensuring a stable revenue. However, if one imposes this on the community, one is blind to the other crises. Other conflicts in society might be breaking out all the time, but the Government simply ignores them. When other problems arise, the Government ignores them and only looks at things from one perspective. It seems to me that the Government is doing this all the time. For instance, the Social Welfare Department only looks at social welfare problems, while the financial departments only look at financial problems, without considering the community as a whole. When problems arise, they say they have nothing to do with them, because they are only responsible for other matters. To me, this is untenable. We have to consider matters from a holistic social perspective so that we can take care of people who especially need to be taken care of. The Government always says that there are certain people in society we have to take care of. Unfortunately, we see the Gini Coefficient increasing all the time, showing that the poor have become poorer in society and the disparity between the rich and the poor is growing. If we oppose the sales tax opportunistically, the Government can wait for another opportunity to propose this tax again. Very simply, it can propose it again when the timing is better.

I hope that when colleagues oppose the levy of a sales tax, they would not do so opportunistically. Rather, they should oppose it out of a wish to take care of the needy. Since the poorer have become poorer and there is growing disparity between the rich and the poor in society, Members should understand that we cannot allow such an unfair tax to exist.

Mr Deputy, I so submit.

**MR HUI CHEUNG-CHING** (in Cantonese): Mr Deputy, as the Government will have fiscal deficits for three consecutive years, it really should keep expenditures within the limits of income so that revenues and expenditures are balanced in accordance with Article 107 of the Basic Law. In the meantime, I also hope that the Government will not forget the provisions of Article 108 of the Basic Law and continue to implement a low tax policy in Hong Kong. Besides, the Government should bear in mind the Preamble of the Basic Law and maintain the prosperity and stability of Hong Kong. I am worried that even though levying a sales tax can make up for the deficits within a certain period of time, it will complicate our simple tax regime. In the long run, I am afraid that it will

stifle such economic lifelines as the import and export industries and the wholesale and retail industries, and tarnish the image of Hong Kong as a free port. At the end, the total tax revenue of the Government will become less and the loss will outweigh the gain.

Our economy is at the most in a state of rehabilitation and it is not rebounding strongly. After all, deflation is still serious, we still have a high rate of unemployment and the economic situation in future is uncertain.

Take the import and export industry to which I belong as an example. According to the statistics of the Government, comparing December 1999 and the same period in 1998, the values of products imported to Hong Kong from 10 major regions (including Japan, mainland China and the United States) have obviously increased. The values of imports from these 10 countries have increased simultaneously for the first time since 1999. Comparing 1999 and 1998, there are gratifying increases in the values of most of the major imports. For instance, the values of garments have increased by \$3.7 billion, that is, 3.4% and the values of miscellaneous products such as toys, games and sports products have increased by \$5 billion, that is, 4.7%. These data more or less show that it seems that the internal demand of Hong Kong has begun to rebound.

An overview of the import values of the whole year shows that when 1999 is compared with 1998, there was still a drop of 2.5%, and the import values were just some \$1,390 billion, the lowest in the past five years. The import values of products popular with tourists such as telecommunications, recordings, audio and textile products kept dropping. Evidently, it is still not known whether the internal demand of Hong Kong will continue to rebound. If the Government asserts on the basis of the economic performance in one to two quarters that the consumption power of Hong Kong people has stopped falling and is rising, or that the extent of economic recovery can sufficiently withstand the levying of a sales tax, has the Government acted with undue haste? How can the Government assure that a sales tax will not strike a blow at the consumption desire that has just started to increase?

If the Government would like to convince the public to accept the proposal to levy a sales tax, it must first present us with a report card indicating that it has spared no efforts to cut expenditure. For example, can the target of the Enhanced Productivity Programme of the Government be increased from 5% to 10%? In government and quasi-government organizations, staff remuneration

and benefits account for over 60% of the total expenditures, can this ratio be slightly lowered? Has the Government made full use of the properties it owned such as quarters and warehouses to get the highest economic results?

In my view, the Government should definitely reduce deficits and relieve the burdens of the public and business operators and make economic recovery the main theme of the budget, for only so will business and job opportunities increase and the Government generate more revenues.

Mr Deputy, I so submit.

**MR HOWARD YOUNG** (in Cantonese): Mr Deputy, as the tax base in Hong Kong is narrow, the Government intends to widen its tax base to make up for its budget deficit. The tourism sector considers it possible for the Government to examine the pros and cons of various proposals for the levying of new tax types — I am not lecturing; I am only talking about new tax types — in order to make up for its budget deficit in line with the principle of keeping expenditure within the limits of revenues as prescribed in the Basic Law. But given the fact that our economy has just bottomed out and yet to recover and the Government has not yet provided us with concrete information on the levy of a sales tax, the tourism sector has great reservations about whether it is now timely to impose a sales tax.

Renowned as a "shoppers' paradise", Hong Kong was once well known for its quality goods at competitive prices. Now we enjoy an edge over other cities mainly because we are able to offer a greater variety of goods and brand-name products. The spending pattern of visitors to Hong Kong has been inclined towards shopping which makes up over half of total visitors' spending. Although I consider it unhealthy for tourism to rely solely on visitors' shopping, this is an objective fact I cannot deny for the time being. As a result of the Asian financial turmoil, currencies of our neighbouring Southeast Asian countries have depreciated sharply. In comparison, prices in Hong Kong have become apparently higher. This has put Hong Kong's position as a "shoppers' paradise" under direct threat. The fact that Thailand and Singapore have levied sales taxes of 7% and 3% respectively in recent years has directly raised the prices of their goods which have been lowered as a result of currency depreciation. This has in turn narrowed their gaps with Hong Kong in terms of prices. Introducing a sales tax at this time will very likely rid Hong Kong of its existing dominant edge.

In the long run, Hong Kong must diversify its tourism products in order to enhance its competitive edge to become a major tourism centre in the Asia-Pacific Region. Although the Government has formulated a series of initiatives on developing tourism by constructing theme parks such as the Disney theme park, Wetland Park, Fisherman Wharf and so on, we cannot expect these projects to bring Hong Kong new stimulus and boost its attractiveness within one or two years. Under such a situation, Hong Kong will still need to rely on visitors' shopping and spending for foreign exchange earnings in the short run.

The tourism industry has experienced a very difficult time during the past two-odd years. By offering cut-throat prices, the industry has carried out intensive promotions overseas. In addition, people in the trade racked their brains in a bid to proposing various initiatives conducive to the development of tourism. In order to save the gloomy industry, the Government has reduced the air passenger departure tax and hotel accommodation tax from \$100 to \$50 and from 5% to 3% respectively. In addition, the Airport Authority has lowered the airport landing charges. Although these measures have proved to be effective in getting tourism out of the depression, I want to point out that the situation in Hong Kong is still unstable. In spite of the fact that the number of visitors has started climbing up, it is regrettable that the visitors' spending is still weak when compared to previous years. Per capita spending is now approximately \$4,822, nearly 30% down when compared to the per capita spending of \$6,700 in 1997. It is the hope of the people in the trade that the Government can, for the time being, refrain from implementing measures that will impede or even deal a blow to the revival of tourism.

I do admit that sales taxes or value-added taxes ranging from 5% to 25% are very common in many countries where tourism is flourishing, such as countries in Europe. Many of these countries, such as France and Britain, levy a variety of taxes. However, in order to encourage visitors' spending, these countries offer tax rebate to visitors on shopping and spending items. Such a tax rebate system has, on the contrary, become a selling point in many European countries. Finding it quite interesting, many visitors coming from countries where sales taxes are levied will deliberately go shopping. I think many people have experienced this before. If the SAR Government really wants to widen its tax base through levying a sales tax, it must carefully consider in advance and assess the feasibility of a tax rebate system as well as its impact on the tourism

industry, and whether its effectiveness is proportionate to spending on administrative management. In many European countries, sales tax rates go beyond 10 percentage points on average, it is therefore still worthwhile for these countries to put in place a system to refund tax of a few percentage points. In Hong Kong, however, we are only talking about a sales tax of a few percentage points. In terms of effectiveness, a tax rebate system is not necessarily feasible. Therefore, the Government must carefully consider the matter and refrain from solely relying on imitating other countries.

I support this motion and object to levying a sales tax today.

**MR CHAN KWOK-KEUNG** (in Cantonese): Mr Deputy, at present, the Government's recurrent revenues are less than its recurrent expenditures. Earlier on, the Financial Secretary and the Finance Bureau have accordingly claimed that Hong Kong has structural deficits. To solve the structural deficits, the Government must levy new taxes and widen the tax base, and it has thus proposed to levy a land departure tax and a sales tax.

Does Hong Kong have structural deficits? Structural deficits mean that the recurrent revenues are less than the recurrent expenditures over a long period of time. How long is a long period? We started to have (some \$23 billion) deficits from the year 1998-99, and it is estimated that there will be (\$36.5 billion) deficits this financial year. It is also projected that there will be \$5.6 billion deficits next year. In other words, we have deficits for three consecutive years. Will we continue to have fiscal deficits?

According to the Financial Secretary's projection (the 1999-2000 Budget), by the year 2001-02, we will have a \$8.3 billion surplus, and we will have a \$14.5 billion surplus by the year 2002-03. When the Financial Secretary formulated the budget, he did not include the revenues from levying new taxes. In other words, even if the Government does not levy new taxes, it can still get rid of the fiscal deficits in the year after. We can hardly say that fiscal deficits in three consecutive years are structural deficits.



Last week, the Secretary for the Treasury, Miss Denise YUE, replied that we could hardly conclude whether the deficits we had were general or structural deficits. I think that this adjusted remark is rather objective.

The Government has really reduced tax income. Since the second quarter of 1999, the GDP has a 0.7% positive growth but salaries tax and profits tax have decreased rather than increased. This is an unprecedented phenomenon. Will this phenomenon continue?

It is not hard to understand why there is reduced salaries tax revenue. During these two years, industrial and commercial organizations have kept reducing salaries and benefits, how can the salaries tax revenue not be reduced? There will only be an increase in salaries tax revenue when salaries are increased.

There is a reduction in profits tax revenue mainly because the overall business environment has not really improved, and only certain economic aspects have recovered. Profits tax revenue will hopefully increase when the overall business environment improves. However, we must pay attention to the impact of the rapid development of e-commerce on tax revenue.

The profits tax levied by the Government mainly originates in Hong Kong. But it is hard to ascertain the origins of the e-commerce transactions on the Internet. Even businesses run in Hong Kong can leave their network servers overseas to evade payment of profits tax. Moreover, it is difficult to audit the profits and losses of e-commerce, therefore, it will not be easy to levy taxes on e-commerce. This will have the greatest impact on government revenue.

Apart from the impact of e-commerce on tax revenue, there are actually many problems with our taxation system. Back in the early 1980s, many people in the community asked the Government to conduct a review to perfect the taxation system.

Let us take profits tax as an example. The Hong Kong Federation of Trade Unions (FTU) always thinks that the profits tax rate of only 16% is relatively low, lower than that of neighbouring countries, and this affects the revenue of the Government. However, the Government refuses to conduct a review since low tax rates and a simple tax regime are favourable to investments. In Singapore, for example, which is a strong competitor of Hong Kong, its tax

rate is 26% higher than ours and its tax regime is more complicated, yet, it can still attract substantial investments. This serves to illustrate that a simple tax regime is not the only condition that attracts investments.

In respect of profits tax, the Government should consider the introduction of a progressive tax regime. This will not only increase tax revenue but also achieves vertical fairness. Enterprises with generous profits will pay taxes at a higher rate and commit more to the community. For example, as only a few trades are making profits now, we can collect profits tax under a progressive tax regime, and I believe that the profits tax revenue of the Government in this respect will definitely not be reduced sharply.

Therefore, levying new taxes is definitely not the only way to balance revenue and expenditure. A sales tax is also regressive in nature as the same tax rate applies to all regardless of whether they are rich or poor. When people buy books, food or articles for everyday use, they have to pay taxes. This is extremely unfair to those with low income, the old, weak, injured and disabled. From the labour's standpoint, the FTU definitely opposes doing so. We must not forget that wage earners have reduced salaries and benefits and their double pay has been withheld. For them, a sales tax is another disaster.

In addition to looking for bigger sources of income, the Government should also consider how it can reduce expenditure. We can see from the report of the Audit Commission how the Government wastes public money and pours it away. The Government only implements the Enhanced Productivity Programme by wielding the axe at the grass-roots employees. It reduces their salaries and lays off some staff but it does not suit the remedy to the case in order to cut expenditures. In this case, no matter how much its revenue increases, it cannot make up for expenditures that have been wasted.

Summing up, the Financial Secretary should formulate a balanced budget. Besides levying a sales tax and a land departure tax, it should also adopt other methods to widen the tax base and perfect the tax regime. We should conduct a comprehensive review rather than levy new taxes in a hasty manner.

I so submit. Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**MR BERNARD CHAN:** Madam President, a sound and strong finance is important for Hong Kong's continuous success. Consecutive budget deficits will definitely affect public spending and reduce overseas companies' confidence to invest in Hong Kong. But unfortunately, we have had deficits since 1998. Our revenue has been further reduced after the financial turmoil.

Salaries tax, profits tax and land premiums, which make up half of the government income, have been shrunk. A total of \$100.9 billion of revenue was collected during 1998-99, representing a drop of \$36.6 billion or 26.6% from that collected in the previous year.

Stamp duty, for instance, has recorded a drop of \$18.9 billion because of the relatively inactive property and stock market during the economic downturn. The profits tax has also dropped by \$15.8 billion.

To help Hong Kong people tide over the hard times in the economic downturn, the Government froze public fees and offered tax rebates together with many others as a package of measures to boost Hong Kong people's confidence towards our economic future. However, the plunge of property prices has diminished a great deal of the Government's income in land premiums and stamp duty.

The Asian financial turmoil should not be the sole culprit to be blamed for our fiscal imbalance. Our tax system has indeed contributed to the unfavourable outcome of having public spending gradually exceeding public revenue. An overview of government revenue shows that profits tax and land premiums are the two most important sources of revenue. Salaries tax now accounts for only 10.1% of the total receipts.

What is worse, we rely too much on a minority of people for tax income. There are 1.2 million salaries taxpayers in 1999-2000. The top 100 000 taxpayers contribute 64.9% of the total revenue from salaries tax, whereas the bottom 600 000, or half of all salaries taxpayers, contribute only 4 % of the total salaries tax yield. Only 0.3% of the working population, or about 10 000, pay at the standard rate of 15% and they contribute 21.7% of the total salaries tax receipts. The number is unbelievably small when comparing to the entire working population of 3 million. Taxation should never deviate from the principle of fairness.

These statistics have shown us that our present tax system is neither fair nor healthy. We are not, and we should never be, a welfare state. Users should pay for the public services they consume. Only the elderly, the weak and those who really need assistance should be considered with exemptions. How can the government finance be healthily sustained in the long run if only a few are paying for the needs of the whole? The entire community should shoulder the responsibility of tax on the basis of equity, and it should not be the duty exclusively of the wealthy and the middle class.

Because of the pressure of our growing population, it is perceived much of the public money will go to finance a wide range of government services like health, welfare and education. Spending on education, health and social welfare already cost 57.5% of the total government recurrent expenditure in 1999-2000. As our economy has been undergoing a transformation process, it is inevitable, though painful, to widen the tax base in order to meet newly arising needs.

Some people suggest raising profits tax. I can hardly be convinced by such a move because the burden is again thrown back to the business sector and the employers.

Some people argue that it is not a right time to introduce additional tax because Hong Kong is still recovering from the financial turmoil. New taxes will slow down recovery. I appreciate the difficulty and like many people, I do not want to see any new tax introduced in a rush.

But it does not mean that the Government can only sit back and do nothing. Should we not review our tax system and think of new sources of tax before our revenue drops to a dangerously low level? Should we not prepare for the rainy days?

We should find ways to increase our revenue. It could be sales tax, departure tax or other new forms of taxes. And the taxes could be introduced across the board or with exemptions. They are the options if they prove to be effective and least harmful to the society. At least we should let the Government study the options carefully, come up with the pros and cons of each option, before reaching a conclusion.

Sales tax, especially one introduced across the board, is controversial because it will affect every member of the public. It is still too early to say whether a sales tax is the only and the best option. But I believe that most will support a review and revamp of the tax system.

Sales tax is not uncommon around the world. Some countries have introduced it for some time. The Government should study their models, compare their advantages and disadvantages, and present a full picture to us.

While exploring new tax, the Government should tighten its belts in a better way. It is no use exploring new tax alone. One way to strengthen our finance is to cut costs. A government which cannot control costs will fail to come up with a strong finance.

We must be careful during the overhaul. Any reform may weaken businessmen's incentive to invest in Hong Kong. It is the low tax rate that attracts so many overseas companies to come to Hong Kong for business. They can easily pull out their investment to other countries with lower tax. If so, the ultimate loser will be the entire Hong Kong economy.

Madam President, I oppose levying a sales tax at this stage when discussions on a comprehensive review of the taxation system are still premature. Thorough discussion and consultation are needed before the introduction of any new tax. Thank you.

**MR FUNG CHI-KIN** (in Cantonese): Madam President, the Hong Kong Progressive Alliance has stated clearly its stand on the levy of a sales tax. I would like to raise the following points. First, in solving the problem of fiscal deficits, we cannot put the cart before the horse. I would like to ask the Financial Secretary, if you are the head of a household and your income has dropped drastically, so much so that you find it hard to make your ends meet, what would you do about it? Or suppose you are the Chief Executive Officer of a big corporation, now that the business is bad and you are faced with the problem of having not enough income to meet your expenditures, how would you deal with it? Would you start to look for other sources of income? Although it may be a good idea to look for new sources of income, how can this be done? The answer is definitely to cut expenses as a first step. In last year's debate on the Budget, I said that we had to work hard at reducing expenses at all costs and

until there were evidence that the economy had improved could we consider any increase in spending. That is the first prerequisite. For the last couple of years we have experienced great economic hardships, but did we really have a great deficit? I think deficits are only a problem in the Financial Secretary's accounts, we still have a lot of extra income to meet our deficits. Therefore, the proposal we now have to broaden our tax base is meant to prepare for the future and to educate the public and make them understand how our Government manages its finance to deal with the many problems and conflicts we face. I am not for the idea of charges can only be reduced and not increased, while welfare spending has to be increased all the time. For that is simply not workable. The issue of whether now is the best time to introduce new taxes warrants discussion. When Mrs Selina CHOW talked about the land departure tax earlier, she said that Shenzhen was considering giving away some coupons to incoming travellers. I am glad to hear that. For I have said that if I were the Shenzhen authorities, I would consider such a move. It is because a tax of \$20 to \$30 can easily be offset by say, the money spent by some Hong Kong people who go there to have their feet massaged. So, the Shenzhen authorities will certainly do the best they can to attract Hong Kong people to go there and spend. Mr Martin LEE has just passed a note to me and it says, "free coupons given, see your second wife there". Madam President, the problem lies in the fact that only the Government has the prerogative to levy taxes on the people. When it comes to the head of a household or the CEO of a big corporation, they have no power to look for new sources of income at will. Should they try to rob to get money to meet their expenses? So, as I see it, we must curb expenses at all costs, before we can think of looking for new sources of income. We should not put the cart before the horse.

Second, we must not complicate our taxation system by levying a sales tax. A complicated taxation system is a nuisance and a headache. Once sales tax is introduced, when we pay for something, not only do we have to pay for the price, we need to pay also the tax. The tax can be very trivial and it can be in dimes and cents. To be frank, it is hard for me to take this complicated taxation system. If for example I am a businessman importing gold, I sell the gold to a local goldsmith. He uses the gold to make small bars in pure gold or gold in whatever carat of purity. Then he sells the gold to the wholesaler jeweller. The wholesaler then sells the gold jewellery to the retail jeweller and finally it comes to the hands of the consumer or tourist. If the Government is to levy a sales tax in these four links of commercial activity, then it will be a very complicated sales tax system. I have no idea how the sales tax system is going

to be devised, but there will be difficulties in terms of administration, mechanisms for levy and rebate, costs of law enforcement, tax evasion and off-shore on-line purchases and so on. Under such circumstances, will it worth the effort for the Government to levy a sales tax? We need to find out the details of the tax and we cannot reach any conclusions before we have a good picture of how the tax is devised. It remains, of course, that at the present moment I am not 100% against it.

Third, in the Budget debate last year, we raised the point that government expenditure should be curbed. I remember most of the expenditures of the Government are used in paying the salaries of the civil servants. The amount is as much as 60% of the total expenditure. The Government will certainly need to identify ways to solve this structural problem of imbalance between income and expenditure. Miss CHAN Yuen-han has said just now that the Hong Kong Federation of Trade Unions (FTU) has been urging for a tax review over the past 10 years. But have they put forward any sound proposals? The FTU only says that a review should be made, but when the Government arrives at some conclusions, they will raise their objections. That is unfair. If the FTU had a long-term vision 10 years ago, they should have put forward many proposals. Mr Albert HO has made some suggestions just now, but some people think that these are not that useful, because they are only some sort of mild attack and criticism on the Government. As a representative assembly accountable to the public, besides making analysis of the issues and represent the interest of the public, the Legislative Council needs to strike a balance and consider things from an overall perspective. I am confident that we can come up with some practical and workable proposals which are acceptable to the public. Mr LEUNG Yiu-chung said that we are not really opposed to the idea of a sales tax, it is only a matter of timing. I am in full support of Mr LEUNG's idea. I think when public consultations have been made, then a reasonable proposal can be put into practice. Those proposals which are unreasonable, causing undue inconvenience and nuisance to the public should all be discarded. I think the Government should give the public and this Council ample opportunities to debate on the workable proposals before going ahead with the idea. Otherwise, there will only be opposition from the public and that is also not a workable solution either.

These are the three points I wish to make. However, under the present circumstances, I cannot support the levy of a sales tax.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, just now Mr LEE Cheuk-yan told us a goose story, and Mr Eric LI also tried to give this story an ending. Actually, this story about plucking feathers from a goose has two parts, albeit Part II of the story is very simple. In Part II of the story, the goose simply ran away because this is no longer the era of King Louis XIV of France, one cannot tie the goose up to pluck its feathers at a leisurely pace. While large corporations might move out of Hong Kong, members of the public could go shopping in Shenzhen. At present, when the governments of many countries want to pluck feathers from their geese, they would need to bath their geese, give them massage and help them relax before plucking their feathers. In short, they would need to lure the geese to come over before plucking feathers from them. With the globalization of world economy, large companies, large corporations and news networks like the one owned by MURDOCH are able to reap huge profits. Naturally, the amount of tax they need to pay would be in hundreds of thousands of US Dollars. Yet at the same time, they will employ a variety of methods to pay the smallest possible amount of tax. As such, tax collection would become the biggest challenge facing governments of countries all over the world. In the future, governments would find it increasingly difficult to collect enough tax to cover their expenditures. As a matter of fact, many governments, in particular governments of many European countries, have for a successive number of years been offering tax concessions to attract companies to set up plants or operate businesses in their countries. This situation in Europe is particularly serious because many companies would move from countries of high tax rates to countries of low tax rates.

So, the traditional kind of wisdom just cannot help to resolve the problems confronting us now. On the other hand, I do agree that the Government has indeed sent us some confusing messages for quite some time in the past. Take the current economic situation as an example. Different government officials have sung different praises of the economic situation. Some talked about a V-shaped recovery, others talked about vigorous economic growth, the World Trade Organization, the Disney theme park, the remarkable volume of transactions in the stock exchange and so on. Added to these confusing messages are the terms mentioned by Honourable Members just now, including structural deficits, long-term deficits for the Government and crisis for the Government. In the end, some have suggested the Government levying a new tax. In this connection, I believe what the Government needs most is a consistent description of the deficits concerned.



Just now my fellow party members and other Honourable colleagues have raised objections to the levy of a sales tax with many different reasons. In three weeks' time, the Financial Secretary will be presenting to this Council his annual budget. Sitting in my seat here just now, I was thinking about what the Financial Secretary have achieved with his annual budgets over the past four years. I remember very well that the Financial Secretary has acceded to the requests made by Members of this Council and granted tax reduction as well as a 10% tax rebate to the public. For this reason, I feel that some of the criticisms made by Honourable colleagues against the Financial Secretary were a bit too much. As I can remember, the Financial Secretary has reduced the tax rates for red wine before. And in 1998, he also reduced the salaries tax substantially. Certainly, the financial situation then allowed the Financial Secretary to reduce certain tax rates in the light of the practical circumstances to help the people to ride out the storm. Today, it is said that a structural deficit might be resulted after the financial turmoil. But so far the Government has never explained to us anything about this structural deficit. I hope the Financial Secretary would give us a clear account in his Budget speech, so that Honourable colleagues, including myself, could understand where the problem of the Government lies.

"Be the first one to show concern and the last to enjoy oneself" is the warning sounded by the Financial Secretary. I understand and agree that as Members of this Council we should always be on the alert. I think Members should understand very well that under Article 73 of the Basic Law, this Council has the powers and functions to, *inter alia*, examine and approve budgets introduced by the Government, as well as to approve taxation and public expenditure. I believe that the power to approve the annual budget should constitute a major part of the powers we have as Members of this Council. Given that we cannot introduce any Members' bills, and that we could hardly amend the bills introduced by the Government, it seems that Article 73 of the Basic Law has indeed vested in us considerable power to vet the budget. As Members of this Council, we should shoulder this responsibility jointly with the Government. It is also set out under the Basic Law that the Hong Kong Special Administrative Region should strive to achieve fiscal balance. But achieving fiscal balance is by no means easy. My point is that since we will shoulder the responsibility together with the Government, we should be informed of the details of the structural deficit and the ways to resolve it. For example, whether we can resolve it by way of the existing salaries tax, profits tax and other government fees and charges. We should also be informed of the merits and demerits of the various options. It is necessary for the Government to have

thorough communication with the various parties and groups in this Council over a long period of time before we could share with it the responsibility in this respect. If the Government should all of a sudden put forward any proposals that are unacceptable to us, we would have no choice but to exercise the power conferred upon us under Article 73 of the Basic Law and reject the tax item concerned.

As I said at the beginning of this speech, tax collection would become the biggest challenge facing governments of countries all over the world in the 21<sup>st</sup> Century. I understand that with the arrival of e-commerce, the revenue arising from the different kinds of taxes collected by the Government would reduce. As mentioned by some Members just now, given that different forms of gambling would emerge one after another, the Government would have difficulty collecting betting duties as well.

Last but not least, if the Financial Secretary should consider to levy new taxes or adjust tax rates in the process of preparing the annual budget, I hope that he would have good communication with the various party and groups in this Council before presenting his Budget, so that we could render our support to the Government's proposals.

**MR NG LEUNG-SING** (in Cantonese): Madam President, in discussing today's motion on the levy of a sales tax, we will inevitably touch upon the tax regime in Hong Kong as a whole. Looking back on the final years of the British colonial rule in Hong Kong, the Government had continuously taken on more public expenditure commitments in areas of housing, medical and health care, social welfare and education. Besides, growth was also witnessed in both the civil service structure and the amount of public funds appropriated. All these are proofs positive that the British Hong Kong Government had deviated from the principle of a small government. Nevertheless, no corresponding adjustment has ever been made to the simple tax regime of low tax rates to cater for the changes in administration and public expenditure commitments. It so happened that the economy of Hong Kong was able to flourish by turning to its benefit the policy of reform and opening up introduced in the Mainland during that period, in particular the property market has prospered under the high land-price policy and brought substantial land-related revenue to the Government. As a result, the problem of a narrow tax base of our tax regime was not exposed.

In the wake of the regional financial turmoil, the economy of Hong Kong was severely hit and resulted in substantial cost to the revenue, in particular the land and property-related government revenue. This heavy blow has caused Hong Kong to undergo economic restructuring. While in the past the Treasury relied on the land and property-related revenue for most of its income, the contribution from this source would inevitably drop in the future. Actually, the Government has also put in great efforts to facilitate the restructuring of the economy, with a view to relying less on the real estate sector for income. On the other hand, the Government still needs to maintain its public expenditure commitment at the existing level. As a result, the problem of a narrow tax base that was not exposed during the rule of the British Hong Kong Government has now started to impact on the long-term stability of the financial position of the Government. Rather than just an issue for the time being, this problem of the tax regime is also a long-term structural problem.

In the face of such a structural problem of the tax regime, the responsible measure to be adopted should be to conduct a comprehensive review of the existing taxation system. Naturally we would need to be very prudent in conducting the review, but we should not dismiss the possibility of giving consideration to the introduction of a new tax item. Even if certain new taxes may not be suitable for introduction at the present stage, it does not follow that they would never be levied. As a matter of fact, nobody could produce enough evidence to absolutely and eternally oppose the levy of any new tax.

With regard to the review of the taxation system, I suggest the Government deliberating on the right amount of fiscal reserves to be kept, so that we could have in place a reasonable and healthy level of fiscal reserves to contribute towards a higher credit rating of the Government and to bolster the confidence of investors in Hong Kong. At the same time, the Government should also assess the future trend of development of the Government's original sources of income, in particular the real estate-related income. When looking at the tax base issue, the public also needs to understand that with a wider tax base, actually the Government could have more room for tax rates adjustments. Moreover, it was due to the high land-price policy that we were able to maintain a simple tax regime with low tax rates. In this connection, although the tax burden on industries and businesses is rather light, the weight of the land-related costs on them, including rent payments and so on, is extremely heavy. Likewise, members of the public also need to spend a fortune on housing. If the Government could rely less on land-related revenue for its income, it would be

able to change the high land-price policy effectively. That way, even though the public as well as industries and businesses might be required to pay more tax, in reality the additional tax payment would not add to the burden on them. On the contrary, they might also benefit from the lower land prices, which should be conducive to both the long-term competitiveness of Hong Kong on the international front and the rationalization of daily expenses.

Madam President, we should also consider and examine the essence of new taxes as well as their possible influences on economic activities. At the present stage when the economy is turning the corner, it is particularly meritorious to look into the effects of the tax items concerned on businesses, industries, as well as the general public. Certainly, in the event that there should be any genuine need for Hong Kong to reform the tax regime, and that the implementation of the reforms has been suspended in view of an economic slump, the various sectors of the community should reach a consensus beforehand, so that when the economy improves, the reforms will not be turned down on account of not being called for then. In addition, the implementation of any new tax must be technically feasible, of low administrative costs, and able to strike a reasonable balance between the contributions made to the Treasury and the effects on businesses, industries, as well as the livelihood of the people.

All in all, there is indeed a need for Hong Kong to review its taxation system and to make widening the tax base its guiding principle in the long run. Hong Kong is an international industrial and financial centre, if it is to maintain low tax rates as its competitive edge, it would inevitably need to consider widening the tax base as the past mode of economic development which relied heavily on the real estate sector has now changed. The decisions in this respect should be made by the people of Hong Kong as a whole after rationally discussing the substantial data and suggestions provided by the Government, including the detailed assessment of the arguments in support of or against the proposal to widen the tax base. For these reasons, it is not appropriate to support or oppose indiscriminately any new tax at this stage when sufficient information and data relating directly to the practical situation in Hong Kong are not available.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Are there any other Members who wish to speak?

(No Member responded)

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I have listened attentively to the different views expressed by Honourable Members on the motion. I do not intend to respond to each of these views for the subject of a sales tax as discussed in this motion debate involves the introduction of a new tax. This is an issue of great importance which has to be dealt with on the Budget level. We all know that the Financial Secretary is proceeding in full speed on the preparation of the 2000-01 Budget, and as Honourable Members can see for themselves, the Financial Secretary has been here in this Chamber listening to the speeches of Honourable Members. I believe that the Financial Secretary, when presenting the Budget for the next year on the 8th of next month, will certainly speak at some length on taxation to address this issue of public concern.

Before the 2000-01 Budget is presented by the Financial Secretary, I just wish to state in brief five irrefutable facts.

Firstly, any proposal to levy a tax will invariably receive a thumbs-down and will even evoke opposition. Broadly speaking, whether it will meet with great opposition or otherwise depends on the number of people being directly affected.

Secondly, any proposal to widen the tax base or tax net denotes that those who are not paying taxes currently will fall into the tax net. Such proposals are apparently even more controversial.

Thirdly, in over 100 countries worldwide, sales tax or value-added tax has been imposed in one way or another for quite some time. In the Asia-Pacific Region, a sales tax or consumption tax is levied in various forms in Australia, New Zealand, Singapore, South Korea, Japan, China, Taiwan, Thailand, the Philippines and so on. Judging from this, sales tax or consumption tax or value-added tax is not that abhorrent.

Fourthly, the SAR Government has always adhered to the long-held principle of fiscal prudence. We live within our means and strive for fiscal balance. These fiscal principles are enshrined in the constitution of Hong Kong and require strict compliance by the Administration.

Fifthly, continued provision of necessary public services is viable only if the SAR Government is fiscally sound in its public finances. A healthy financial position is also pivotal to maintaining a high opinion of Hong Kong among international investors and credit agencies, and ties in with the overall interest of the people of Hong Kong.

With these ironclad facts in mind, the SAR Government has taken active steps to increase efficiency and enhance productivity. Just now many Members urged the Government to be persistent and thorough in its initiatives to reduce government expenditure. Here, I can assure Honourable Members that the SAR Government will not slacken in its efforts for this cause. I just hope that Members will vote in support of the Government when its various proposals to enhance productivity are tabled for the approval of the Legislative Council. I also hope that Members who made this appeal just now will bear in mind what they had said tonight, so that when the expenditure estimates for 2000-01 — I mean the part on public expenditure in the Budget — is released on the 3rd of next month, they will not criticize the Government for spending too little.

Aside from controlling public expenditure, we must carefully analyse and examine government revenue and expenditure in the medium term, so as to ascertain whether structural problems would arise. What does "structural" mean? In simpler terms, it refers to whether the Government's recurrent expenditure will successively exceed its recurrent revenue. As we all know, education, social welfare (including elderly services) and health are the three major policy areas of recurrent public expenditure, and these are also areas of public concern. Therefore, in pursuit of reduction in public expenditure, the SAR Government particularly hopes that Honourable Members can translate their support for the Government into actions (by speaking and voting for the Government) in respect of the various productivity enhancement proposals put forward by the Government in these areas.

Furthermore, the past two years also saw some distinct changes in the major sources of public revenue. These changes, which may affect the stability of the overall income of the Government, are generated mainly from three factors.

Firstly, with a more stable and abundant demand and supply of land, property prices have been stabilizing. Property-related taxes (such as profits tax payable by real estate agencies, stamp duty on property transactions, rates, and so on) no longer yield a considerable income for the Government as they did in the past. We estimate that it will be difficult for the related earnings to return to the previous levels despite a continuous pick-up of the economy. Having said that, it is not our wish to see that residential properties in Hong Kong will again go beyond the purchasing power of the public. Nor do we wish to see that our competitiveness being undermined by high land premium and high property prices.

Moreover, there are signs of a narrowing tax base in respect of our major recurrent taxes. The proportion of those paying salaries tax in the working population has reduced from 58% five years ago to the present figure of below 40%, with 17% of the taxpayers contributing 80% of the salaries tax income. The same applies to profits tax in that 80% of the profits tax revenue came from some 5% of companies, or about 3 000 companies paying profits tax. A tax regime under which the majority of tax revenue relies on fewer and fewer individuals and companies is most vulnerable to economic volatility, hence making it difficult to ensure a stable recurrent revenue.

In the longer term, electronic commerce, trading of shares and gambling on the Internet, and so on, are bound to become more and more pervasive following the advancement of information technology. We can expect that such mode of transaction and activities will have a certain impact on the income from some major tax items, in particular the profits tax, stamp duty on stock transactions and betting duty. Meanwhile, in view of the fierce competition among financial and stock markets worldwide, other major stock markets have reduced or even abolished the stamp duty on stock transactions in an effort to attract listings of companies in their markets. We cannot but face squarely this development. We cannot but consider the possible impacts on the further development of our stock market if the stamp duty on stock transactions is retained and continuously pitched at the present rate.

All these factors will affect the base of our recurrent revenue. As a responsible government, we must save for a rainy day, plan ahead in perspective and prepare for the worst. When we are more certain of the correlation between economic restructuring and public revenue, we will come to know whether or not structural problems will arise, and we will be able to identify the best option to resolve problems that may arise.

Madam President, from a sentimental point of view, it is not surprising to learn from the results of some opinion polls that about 70% of the respondents are opposed to the levying of a sales tax. But on the contrary, it is indeed quite unexpected that 30% of the respondents are supportive of a sales tax. I think it represents that there is no unanimous view among the people of Hong Kong on the levying of a sales tax.

I hope that Honourable Members, being representatives of the people, can remain objective, rational and open on this issue. To hastily reject a taxation proposal adopted by many other governments before the Administration has the opportunity to report on whether our public finances may face structural problems should not be a position taken by a Legislative Council which is accountable to the public. Therefore, I very much hope that Members can vote against this motion which is couched in such terms that leave no leeway at all.

Madam President, just now I noted that some Members said in their speeches that they do not consider it optimal to levy a sales tax at this point in time given that the economy has not yet recovered to the full. I hope that these Members can vote against the motion for this very reason because they are opposed not to the idea of a sales tax, but the best timing for levying the tax.

Madam President, just now some Members also pointed out that the Government has not provided sufficient justifications for the levying of a sales tax, so they cannot support the proposal before they have full statistics and information. I appreciate their reasoning and I hope that they can vote against the motion on the same ground. It is because the wording of the motion suggested that a sales tax should not be accepted irrespective of whether the Government can provide sufficient justifications to support the levying of the tax. As Members' arguments are along the timing of the tax, or the Government's failure to provide sufficient statistics and information, I think Members should



vote against the motion for its wording suggested absolute disapproval of a sales tax under whatever circumstances and disregarding when the tax is to be levied, which is inconsistent with Honourable Members' line of reasoning.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, you may now reply. You have six minutes eight seconds.

**DR YEUNG SUM** (in Cantonese): Madam President, I would like to thank the Secretary for the Treasury for her concise speech and I would like to use the six minutes left to respond to certain points.

The Secretary has just mentioned five facts, for example, levying taxes will not be welcomed, opposite views will depend on the impacts and so on. Certainly, levying taxes is mostly unwelcome but if 70% of the people oppose a sales tax, we should definitely not take their views lightly, especially when we are caught in an economic downturn. I believe that the bright Secretary certainly knows this very well. The Secretary has just said that she is very pleased that 30% of the people support a sales tax. We conducted the relevant survey and I would like to tell the Secretary that the information she got is incorrect, and she has thus become too optimistic. Turning back to the figure, only 10% of the people support sales tax while the remaining 20% have no comments. Therefore, the Secretary should not say that even though 70% of the people oppose sales tax, 30% of the people still support it and become very happy for the 7:3 ratio is actually incorrect.

The Secretary has just said that being in a healthy financial position will inspire investor confidence. In fact, we have hundreds of billions of reserves, excellent earnings from the Exchange Fund and improved land sales, I do not think our sound financial position will collapse overnight.

Members have just said that over 100 countries have implemented a sales tax but they have not mentioned that these are welfare countries, and their welfare offsets the unfairness of the regressive sales tax. The Secretary has not mentioned this either.

When some Members spoke just now, they queried if the fiscal deficits referred to by the Government were structural. In the past three years, the figure given by the Government really showed that there were deficits but according to the Medium Range Forecast of the Government, the Government will have a surplus from the year 2001-02 onwards. Today, 21 Members have spoken and I would like to thank them for their remarks. If the Government thinks that the fiscal deficits are structural deficits, I hope that it can give us more information and the Democratic Party will talk this over with the Government on the basis of the facts in a reasonable manner. Members can see that I have not found fault with the Government today, and this proves that we are determined to handle the fiscal deficits with the Government properly. If the Secretary really thinks that the fiscal deficits are structural deficits, I hope that she can give us more information so that Members can participate fully in discussions over this matter. Let us solve the problems, if any, together.

The Secretary and some Members have said that economic recovery has just begun, and if we increase fees and introduce new taxes, we may delay the recovery. Some Members have also touched upon this point. In respect of the international image of Hong Kong, Hong Kong basically upholds a simple tax regime, so if the Government suddenly and rashly proposes introducing a new tax now, it may give the international community a very bad message. They will wonder why Hong Kong will undergo such a big change after the reunification. This may not be a good thing for Mr TUNG Chee-hwa's administration. We may not intend to do so but we may have unintentionally done something bad and tarnished the international image of Hong Kong as a place having a simple tax regime. Therefore, we must handle the matter carefully. Yet, if the Government really thinks that the fiscal deficits are structural deficits, I hope that it will give us more information so that we can solve the problem together.

Some Members have also said that there may be technical problems as there are many tax types. Mr FUNG Chi-kin has just given the example of the sale of gold and pointed out that there may be a lot of problems. I believe that we must handle technical problems properly.

Furthermore, we have also talked about reducing expenditures. The Secretary has just expressed the hope that Members would remember what was said today, so that when the Government reduces expenditures in future, we will support it. I think our considerations are more complicated and the issue is not

that simple. If the Secretary wants to reduce expenditures, we should consider how this is done and the cost of reducing expenditures. The Secretary can propose any methods, so long as we have sufficient information, we will consider them carefully.

Summing up the above, the Democratic Party thinks that this motion debate has a good topic: Opposing the levy of a sales tax. However, the Secretary for the Treasury may not be pleased. In fact, Members can oppose the levy of a sales tax on different grounds. While the Democratic Party does so on the ground of principles, other Members have done so on the grounds of timing and technicality. In any case, we have similar ideas and we oppose the levy of a sales tax. Therefore, I am very glad that this simple topic is raised as it can unite different Members in opposing the levy of a sales tax. If the Government obstinately wants to levy a sales tax, I believe the public will respond very strongly and I hope that the Government will handle the matter carefully.

Lastly, I would like to discuss the Government's intention to review the tax regime. In the past, 30% of the tax revenue came from land sales while the profits tax rate was maintained at 16% over a long period of time — I am not saying that the Government must increase taxes but it must conduct a review — but only 40% of our population paid taxes. I do not want to blame the Financial Secretary for reducing taxes in the past because we clapped our hands and welcomed the move at that time. I do not want to criticize him for that because we thought that he did something good at that time. I only hope that the Government will conduct a comprehensive review of the tax regime instead of devising new tax types when it encounters difficulties. This is no doubt a simple but dangerous act. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr YEUNG Sum, 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)

Dr YEUNG Sum rose to claim a division.

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

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

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

Functional Constituencies:

Mr Michael HO, Dr Raymond HO, Mr LEE Kai-ming, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr LAW Chi-kwong, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Mr Eric LI voted against the motion.

Dr Philip WONG abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr HO Sai-chu, Mr CHAN Kam-lam, Mr Ambrose LAU and Miss CHOY So-yuk voted for the motion.

Mr MA Fung-kwok voted against the motion.

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, 21 were present, 19 were in favour of the motion, one against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, 17 were in favour of the motion, one against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): The second motion: Preserving natural resources and developing leisure agriculture and fishery trades.

### **PRESERVING NATURAL RESOURCES AND DEVELOPING LEISURE AGRICULTURE AND FISHERY TRADES**

**MR WONG YUNG-KAN** (in Cantonese): Madam President, I move the motion as set out on the Agenda.

Madam president, the purpose of my proposing this question today is to urge the Government to formulate a sustainable leisure agriculture and fishery trades policy to zone certain traditional farmlands and inshore waters as "leisure agriculture areas" and "leisure fishery areas", with government investment to provide ancillary facilities for people interested in leisure agriculture and fishery trades to invest in the operation, for citizens and tourists to view and enjoy and experience, thus achieving the conservation of natural resources as well as sustained development of Hong Kong's agriculture and fishery industries and the tourist industry, a contribution towards Hong Kong's economic diversification, education for the community at large in understanding Hong Kong's natural resources, and provision of healthy outdoor leisure entertainment activities.

Leisure agriculture and fishery trades in areas close to Hong Kong are already in good enough shape, and are making a positive contribution towards transformation in occupation for people in the agriculture and fishery industries. The Taiwan authorities have fully utilized the coral reef districts of the south and north extremities, the perpendicular seashore of the eastern coast and the ecological environment formed by the sand and stone beaches of the western coast, in the leisure fishery trade incorporating sightseeing, marine fishing, expedition, exhibition and conservation. However, as far as Hong Kong is concerned, leisure agriculture and fishery trades are still virgin land awaiting exploration and development.

I must point out that it is not the intention of the Democratic Alliance for the Betterment of Hong Kong (DAB) to completely change Hong Kong's agriculture and fishery industries from the traditional production mode to the leisure mode, but according to the needs of the times, besides maintaining and developing the existing production mode, to provide another avenue of development, giving employment opportunities to fishermen and farmers interested in occupational transformation, injecting at the same time fresh nutrients into the tourist industry of Hong Kong. My DAB colleagues, including Miss CHAN Yuen-han, Mr TAM Yiu-chung, Mr Jasper TSANG and Mr CHAN Kam-lam, will also speak on their recommendations later.

Why do I strongly urge for the development of a leisure component in Hong Kong's agriculture and fishery industries? It is mainly due to changes in the whole social environmental of Hong Kong. There are internal factors in the agriculture and fishery industries themselves as well as external factors in other socio-economic sectors. And the emergence of these internal and external factors constitute the soil and atmosphere necessary for the germination of leisure agriculture and fishery trades in Hong Kong. My analysis of these factors is as follows:

- The Government's long-term reclamation, dredging works, imperfect effluent discharge systems, and heavy metals and pollutants released from sludge have seriously affected the marine ecology, jeopardized offshore fishing and polluted marine fish farms, causing damage to the seas, marine organisms and the Hong Kong population. For example, in Tolo Harbour in Tai Po, Port Shelter

in Sai Kung, Tung Chung and Kap Shui Mun, especially Tolo Harbour where the Pak Shek Kok Science Park has employed the public dumping for reclamation, it has hence made it difficult to attract marine organisms to gather and settle, causing serious damage to the only natural fish breeding ground of Tolo Harbour. Besides, coral groups are gradually shrinking. Apart from the continued existence of 36 species of coral in Hoi Ha Bay, coral species at the estuary of Tolo Harbour and relatively hidden and polluted bays are decreasing gradually.

- Tourism is the trade that makes the most foreign exchange earnings for Hong Kong, but the question of maintaining the competitiveness of Hong Kong's tourism has become the urgent concern of the trade in recent years. The Chief Executive is also gravely concerned about this: there is mention of this in his three policy addresses released since he took office, including the appointment of the Tourism Commissioner, exploring Hong Kong tourist sites, building the movie town, and building a Disney theme park on Lantau Island. The Financial Secretary also proposed the construction of a Fishermen's Wharf in the Budget last year. However, has the Government given consideration to what tourists are in love with about Hong Kong, namely, the characteristics of our nation and the fame of a cuisine paradise?
- Because of the upsurge in awareness of environmental protection, the Government has launched many plans to conserve natural resources over the years, which however have affected the livelihood of people engaged in agriculture and fisheries. This include country parks, marine parks and marine protection zones, artificial fish reef, Chinese White Dolphins sanctuary, and wetland parks, with the boundary ever expanding. Once these plans are implemented, the environment may be protected, but the operation areas on which fishermen and farmers originally rely for their livelihood will be restricted at a price. The community at large will benefit little either, because only a small group of car and pleasure craft owners can enter the areas for fishing, bird-watching and diving. From such closed forms of natural environment

conservation measures, how much can the population at large benefit? For example, in a pilot project of a leisure fishery area I will suggest later — Tolo Harbour, the Tai Po seaside park at which rim is of unmatched beauty in its sea view and park scenery, but for a lack of good means of transportation, food pavilions and other multifarious water tour activities, visitors have been scarce since its opening, wasting its enormous recurrent expenditure. In fact, if well utilized, the above-mentioned areas are ready-made materials suitable for developing leisure agriculture and fisheries.

Leisure agriculture and fisheries, though advocated by me, have in fact been developing spontaneously in Hong Kong, and the Government has also unconsciously supported them in some policies.

Among the people, when summer is as cool as water, original fishermen in Sai Kung district engage one after another in operating squid tours launch activities. They apply their knowledge in hydrology and carry visitors to waters frequented by squids for fishing. Not only do they make a living out of it, but also provide a healthy entertainment to visitors.

In leisure agriculture, there is in the western part of the New Territories a country theme farm which has grown and prospered from planting lichi and various fruit trees and providing for fishing and barbecues. The proprietor has a lofty ambition of building the place into a multifaceted holiday village incorporating education, recreation, farming culture and natural science in one entity. So far it has built mainly a fruit tree education trail, an ostrich yard, an agricultural tools exhibition hall, an experimental farm, a self-farming paradise, and so on. The operator has told me visits last year totalled a record 200 000, among which 100 000 were by kindergarten, primary and secondary school and university students.

Not only do we see signs from the above cases that leisure agriculture and fishery areas are popular among the people, but there are also supporting figures from public opinion polls. The DAB conducted a telephone poll last week on the citizens. There were 223 collected valid replies. 84.8% of the interviewees supported developing a leisure agriculture and fishery area with the promotion of sustainable agriculture and fisheries, and the development of green



and marine tour activities as attractions. 86.1% of them expressed that they would visit such leisure agriculture and fishery areas if there were any. 85.7% were in favour of the Government promoting the development of green and marine tourism. 90.1% favoured the Government promoting green farms and farming activities to the citizens. 81.2% favoured the Government building an agriculture and fishery museum, to preserve the history of Hong Kong's agriculture and fishery, and to educate the next generation, where especially the Government should start with nurseries educating children to care for natural resources and conserve the environment.

As for the Government, the above kinds of protected areas drawn up for the conservation of natural resources are all possible sites for the development of leisure agriculture and fisheries. Let us recall the Chief Executive's policy address last year. In the section "Nature Conservation", he proclaimed, "Taking advantage of the beautiful natural landscape of Lantau Island and Sai Kung District, we intend to develop these two areas into centres of recreational and leisure activities compatible to the principle of nature conservation." With reference to the existing recreational and leisure activities in Sai Kung, which are already blended with a fishery component, I think what the Government can best do is to capitalize on the trend to develop in the direction of a leisure fishery trade.

Madam President, looking around all Hong Kong, we see places that can be used to establish leisure agriculture and fishery districts and they include Tolo Harbour in the northeast of the New Territories, Port Shelter in Sai Kung, Tai O of Lantau Island and the Chinese White Dolphins sanctuary opposite Tuen Mun, and the fish ponds in the Mai Po Marshes Reserve. Since Tai Po's Tolo Harbour already has a ready-made seaside park, Sai Kung's Port Shelter already has a vanguard of people engaged in leisure fishery trade, and the waters of those two places host more than 100 species of marine population growing there, including seabreams, grouper, chicken grunts, threadfins, pampano, yellow tail, yuk tsat (玉質), moray eels, marine catfish, gold-line scads, squids, cuttlefish, sea urchins, abalones, conches, and different species of shrimps and crabs, I suggest the Government can use the waters of the above-mentioned two places for pilot projects, building facilities for visitors, adding pavilions of fine food with special flavour, building a museum of agriculture and fisheries, implementing a scheme for artificial fish reefs, and putting fish fry in leisure

areas as well as defining restricted fishing areas, to allow fishermen to develop a sightseeing tourist fishery trade.

In building such leisure fishery areas, we can regulate the sizes and quantities of fish to be caught, thus limiting the original fishermen's traditional production activities on the one hand, and provide them an opportunity for occupational transformation on the other. I therefore recommend that the Government adopt the format of redemption to purchase the fishing boats from the affected fishermen, sink these boats to the seabed to make artificial fish reefs, and at the same time put in large quantities of fry to increase the value of the resource, making a great increase in the quantities of fish species. As for the fishermen, they can obtain specified licences and under safety principles, rent boats to visitors for use going out to sea for sight-seeing, fishing, diving and other fun. Moreover, I suggest that the Government allow marine culturists in these waters to rent out their fishing rafts to tourists for fishing and have a taste of the characteristic flavour. As every step in the implementation of leisure agriculture and fishery trades depends on the support of the Government and the community, I suggest that the Government establish a committee composed of officials, academics, local people and the industry participants, to be responsible for the co-ordinated management of the leisure agriculture and fishery areas.

As to those people who are still interested in pursuing the fish capturing trade, I suggest that the Government grant them low interest loans for them to build steel hulk and fibre fishing boats, encouraging them to change over from shore fishing to ocean fishing. As to agriculture, it would be appropriate for the Government to set aside government land specified for developing leisure agriculture or "organic farming" and similar high value-added agriculture.

Because the proposed leisure fishery areas impose restrictions on fishing, there are individuals who worry that these would impact adversely on the livelihood of production fishermen which is understandable. But I have consulted the fishermen organizations of Tolo Harbour and Port Shelter. These fishermen organizations are very representative of the local areas. They have all expressed their support for the recommendations by me and the DAB. The Joint Conference of Hong Kong Fishermen Organizations, with members from 90% of the fishermen organizations and most agricultural organizations across Hong Kong, have also expressed that they are in favour of my recommendations. Moreover, the Government is presently carrying out a consultative study on the feasibility of an ocean fishing industry, in order to provide better employment

prospects for production fishermen. The content of my motion, my speech, and the recommendation paper distributed to Honourable Members have been amended after taking into consideration the opinions and views provided throughout the year by Members within the Council, a PhD in the Marine Biology Department of the University of Science and Technology, several academics, and members of the two trades. Therefore, I hope Honourable Members of this Council will later vote in support of my motion.

Madam President, I so submit.

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

"That this Council urges the Government to make its best endeavours to preserve the natural resources, create an environment for the sustainable development of agriculture and fisheries and promote the leisure agriculture and fishery trades, in order to keep in line with environmental protection and further developments in green and marine tourism, so that Hong Kong may, while preserving its natural resources, open up new dimensions in agriculture and fisheries to ensure their continued contribution to the economy of Hong Kong."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr WONG Yung-kan, as set out on the Agenda, be passed. We will now proceed to the debate.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, whether tourism is prosperous is very important to Hong Kong's extrovert economy orientated towards foreign exchange earnings. For this reason, the Government has in recent years been positively increasingly tourist facilities, including the construction of a Disney theme park and a world-class performance stadium, to make sure that tourists are attracted to Hong Kong again or stay longer here and spend more. Such plans do merit our support. I have recently received books mailed to me by the Hong Kong Tourist Association (HKTA) in and among which are collections of many photographs of Hong Kong's countryside. I was all of a sudden taken by a big surprise, surprised by, and I sighed for, the many beautiful scenic spots that Hong Kong still has today. When I was at college, I often took part in trekking in the hills and in distance hiking. I realized then

that there were a lot of ecological tourist resources in Hong Kong not yet explored. This is why today's motion for the Government to develop leisure fisheries and agriculture is really meaningful.

One big advantage for developing leisure fishery and agriculture industry is that the Government does not need to invest enormous resources in it, does not need to engage in large scale construction, does not need to ruin the environment, and yet be able to attract more tourists to come to Hong Kong in a relatively short time, as well as encouraging citizens to stay and spend in Hong Kong leaving more money here rather than regularly travelling to mainland China or abroad in order to enjoy nature. Nor will our government mandarins have to throw away money travelling thousands of miles to Alaska to angle for big salmon any more.

In fact, when everyone is envying Thailand for its Phuket Island, and Indonesia for Bali, such leisure paradises, do we know that many foreign tourists gasp in admiration at the soothing scenery of Sai Kung's Sai Sa Wan and the 70-odd infinitely strange islands? Besides Sai Kung, there are in the southwest New Territories and southern Hong Kong Island many bays with constant grade A quality water especially suitable for the growth of coral reefs and shells and crutaceans. Should the Government not, while positively improving the appearance of the city and planting trees in large scale, at the same time treasure the existing tourist resources of the Hong Kong waters and consider building more underwater parks?

Besides, when the HKTA and the Government are hoping to develop a Fishermen's Wharf like San Francisco's, are we aware that Cheung Chau, Tai O, and Sai Kung themselves are fishing ports? In fact, fishing development, how fishermen work on fishing expeditions, fish market operation, especially harvest auctions, are all attractions for tourists. One regrets these attractions are dying out with the fishing industry as we rely on imported marine products. The decline of the fishery industry is mainly due to the lack of government support, backward culturing skills, and high production costs. To avoid a faked Fishermen's Wharf, the Government should help local fishery upgrade and regenerate, and match revitalizing the fishery industry with promotion of tourism.

Certain Hong Kong waters are internationally recognized as ideal tourist and leisure grounds. The Convener of the Asia Pacific Economic Co-operation

Organization Tourism Subcommittee visited Hong Kong last year on a study tour and he thought Sai Kung and Stanley were most suitable to develop as tourist areas. *The Time* magazine, 6 September 1999, mentions specially that Sai Kung, in this concrete forest of Hong Kong, is a hiking scenic place where the beaches in particular are Hong Kong's most clear and beautiful. International organizations and overseas media may not be familiar with Hong Kong and yet are able to discover the potential of certain bays to develop ecological tourism. Cannot Hong Kong Government and the HKTA?

There is one more notable point. Leisure agriculture and fishery trades have enormous potentials in value appreciation. Not only will leisure agriculture and fishery's prosperity affect the catering, tourist and other service trades, but also be an indicator to show the extent of economic benefits of Hong Kong's environmental protection work. Furthermore, the catching and culturing trades presently lack as many as 4 000 workers; the Government can take advantage of the integration of agriculture and fishery, tourism, environmental protection, to absorb the unemployed population, especially the basic level labourers, whereby promoting the diversification of Hong Kong's industrial structure.

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

**MR HOWARD YOUNG** (in Cantonese): Madam President, the ocean has always been a very important resource for Hong Kong. Before the inception of Hong Kong as a port, fishing was the territory's principal economic activity. Half a century ago, sea communication extending in all directions opened up, and became a turning point for foreign trade for this new port. Nowadays, the deep water and year round ice free waters especially have been Hong Kong's economic lifelines bringing enormous profits in trade, transportation and tourism to Hong Kong.

However, along with its economic development, Hong Kong's whole environmental ecology gradually deteriorated and the ocean was not spared either. Not long ago in the '60s and '90s, the Sai Kung and Tolo Harbour areas still had deep and clear waters and abundant marine life, and were a joyfully lively natural marine resource. In the '50s, citizens were able to pick up mussels in Tolo Harbour, and in the late '60s and early '70s, I was able to "finger-search for clams" on the beach off the Chinese University. But I

believe there is no ecology to speak of today in Tolo Harbour besides Deep Bay. At present, many waters of Hong Kong are polluted. Some Honourable Members just now mentioned Inner Port Shelter (Sai Kung Hoi). I would agree if they meant Tai Long Sai Wan, Tai Long Tung Wan, Long Ke, and so on that those waters are still very beautiful and unpolluted; but if they meant Lung Ha Wan and Seung Sze Wan close by, then I dare not agree. The seabed is damaged; marine species are scarce to our great disappointment. Hence, conservation of the marine resources is a task that brooks no delay.

I very much support the proposal to open up leisure agriculture and fishery areas in appropriate places. Through restricted agriculture and fishery operations, and breeding of marine products, we can give the seas a new lease of life; but we must pay attention that if marine culture is done badly and too much left over food accumulates under the fish rafts, that would also cause pollution to the harbour. A year ago, the Chinese Government's fishing moratorium achieved good results. After the break, marine products in the seas increased obviously and were also obviously fatter and better.

Moreover, we can develop green and marine tour activities in leisure agriculture and fishery areas to boost Hong Kong's tourism. In fact, Hong Kong's tourist industry is searching for and exploring more new attractions. Since Hong Kong possesses rich natural resources, we have no reason not to treasure them, to develop green and marine tourism. For example, there is a beach in Hawaii with no fishing allowed the year round and tourists are only allowed to go to sea feeding the fish but not to catch them. We have the conditions to develop similar tourist sightseeing sites. In the past, there have been people in the community proposing opening up hiking green tours. Why do we not make good use of our marine resources and develop green marine tourism? I believe this idea will greatly help promote Hong Kong's tourism and at the same time help further establish a new image of Hong Kong for foreign tourists to see the green face of Hong Kong's environmental protection.

Madam President, I so submit in support of the motion.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, towards the end of 1998, Mr WONG Yung-kan put forward the motion "Promoting the development of the agriculture and fisheries industries" in this Council, urging the Government to formulate a long-term strategy for the development of

agriculture and fisheries industries, and establish as soon as possible an agriculture and fishery research centre, in order that these two industries may closely follow world trends in technology and development of high value-added production skills. The motion had the unanimous support of Honourable Members, but to date, the Government has not done any follow-up work in this respect, which cannot help making us feel disappointed. I hope that after the establishment of the new Policy Bureau, there will be change under the new Secretary's leadership. Today, Mr WONG, with the support of 130 agriculture and fishery organizations, has again unremittingly proposed concrete proposals to develop leisure agriculture and fishery trades to ensure that agriculture and fishery will make greater contribution to the Hong Kong economy. I hope the Government will take the matter seriously and implement concrete measures.

Hong Kong possesses wide seas with rich fishery resources and a land of plains and peaks of beautiful scenery, entirely sufficient with great conditions to develop green tourism. Those engaged in agriculture and fishery have long been making their utmost efforts to promote the development of these two trades. However, with the lack of support from the Government, these two trades have not been able to develop effectively or grow significantly. Hence, taking advantage of Hong Kong's excellent and rich natural resources, together with the driving force of the agriculture and fishery trades, to develop leisure agriculture and fishery will not only add tour programmes and scenic sites to enrich citizens' leisure life, but also provide new impetus to the development of Hong Kong's agriculture and fishery, hence killing two birds with one stone.

However, to develop leisure agriculture and fishery trades, we must pay serious attention to construction work in the leisure agriculture and fishery areas. The Government has in the past 10-odd years regularly carried out dredging and reclamation works, which have damaged the precious seabed. For example, between September and November 1996, the Government started the construction of a shelter in Hei Ling Chau, where the dredging and filling made the belt of water from Hei Ling Chau to Shap Long of Lantau Island turn yellowish green, seriously polluting the water quality; the sea fish bred by the fishing households of Shap Long marine culture areas had silt accumulated in their gills and massive deaths resulted from anoxia, causing serious losses to the fishing households. Four years have gone by, and there has not yet been resolution of the related claims for damages. For this reason, leisure agriculture and fishery areas must have the attention and support of the Government, otherwise the enterprises will perish in substance, leaving just the

names. Therefore, in addition to providing more assistance to the marine culture industry, the Government must deal with the anoxic layer formed by wastes sinking from the fish rafts, and solve the problem of pollution of the fish rafts, and also avoid sand dredging reclamation to make sure the water quality of leisure agriculture and fishery areas is not affected.

In developing leisure agriculture and fishery trades, we must also reinforce the conservation work on the natural resources and the environment. In the leisure agriculture and fishery areas, the Government should prohibit fishing with trawls, gill nets, and purse seines. Through such restrictions, we can reduce damage caused by fishing activities to the seabed and maintain normal growth of fish shoals. Moreover, the Government should also reinforce ecological protection work. For example, it can put in fish fry and artificial fish reefs in the waters of leisure agriculture and fishery areas to cultivate more fish species and attract fish shoals to gather, promoting the growth and diversification of marine organisms.

Through the development of leisure agriculture and fishery trades, we hope to better the quality of life of Hong Kong citizens, promote tourism, expand the developmental space for people engaged in the fishing and agriculture trades, creates more employment opportunities, and at the same time protect the environment and promote sustainable development of the ecological environment.

Madam President, I so submit in support of the motion.

**DR RAYMOND HO** (in Cantonese): Madam President, earlier on, the Hong Kong Tourist Association engaged in promoting and developing Hong Kong's hiking tourism, and arranged for some Japanese tourists to hike in Sai Kung. The fact is, although Hong Kong is labelled a "concrete forest", yet it possesses a lot of beautiful natural environment. Hong Kong's unique natural scenery is the most important resource in developing leisure agriculture and fishery trades. In addition, we have other important development conditions, including the qualified people and capital required; this is a concept that really merits our in-depth consideration.



That concept, for one thing, can satisfy the need of our economic development, create more tourist scenic sites and activities, and stimulate our tourism, thereby promoting other trades and, for another, with appropriate planning, we can also proceed with the development consistent with the principle of environmental protection, in order that we can more effectively utilize our natural resources. Of course, some people may worry that with the development we may damage the nearby environment. However, if we can effect serious and stringently careful planning, we should be able to reduce the impact to the minimum. Besides, since the main economic benefit comes from the beautiful natural scenery and related activities, the related business companies will certainly also make the effort to protect the natural resources in the development areas in order to maintain their appeal. Hence, the development concerned, and the protection of the environment, need not be opposed to each other, but be mutually supportive.

Apart from direct economic benefits like drawing foreign tourists to Hong Kong and creating a certain number of employment opportunities, the development concerned can also provide many kinds of leisure activities to Hong Kong citizens. In tourism, activities can include sightseeing at sea, and green tourism. At the same time, some land and sea sport activities can be provided to promote the physical and mental health of the people. In the development areas, we can also establish some educational facilities with which we can advocate to students and visitors the importance of protecting the natural environment.

The concept can also provide a new avenue to Hong Kong's fishery and agriculture development, bring about a new direction and carry through the principle of sustainable development. The SAR Government should give the concept serious consideration and give it policy support and co-ordination, so that the relevant plans will at the same time create economic and social benefits for Hong Kong to the benefit of the citizens.

Madam President, I so submit. Thank you.

**MR LAW CHI-KWONG** (in Cantonese): Madam President, on the question of developing leisure agriculture and fishery areas, the Democratic Party thinks there are three points that should be considered carefully. On the whole, the most important principle is how to strike a balance between economy and

protection of the environment. First, in the respect of fishery, the Government should consider formulating a licensing system for fishing vessels in fishing moratorium areas, in order to prevent over-fishing and control the number of fishing boats in the protected areas; and require owners of tourist service fishing boats to come up with environment protectional measures and abide by relevant guidelines. For example, boat owners should be required to provide adequate garbage collection equipment, so that visitors will not carelessly throw garbage into the sea causing marine pollution. In addition, the Government should also consider issuing line fishing permits to limit the activity, stipulating only after obtaining permits will angler in leisure agriculture and fishery areas be allowed to fish. The Democratic Party thinks that insofar as supervision is concerned, the most important point is to make use of education to encourage fishermen and visitors to cultivate a spirit of mutual supervision in the protection of the seas, water quality and the organisms.

Secondly, the Democratic Party suggests that the Government include leisure agriculture and fishery areas as conservation areas: For land use and development within the areas, besides control and restriction under the Town Planning Ordinance, any development must also go through environmental assessment. The Government should also consider, according to individual environmental characteristics formulate plans for conservation, planning, and management, to ensure development of the leisure areas and strike a balance between preserving the natural ecology and economic development. Hong Kong is a place where land is scarce and precious, a foot of land being worth an inch of gold. In the past, many cases have shown private developers have made developments on ecologically valuable land and seriously damaged the natural ecology. A very good example was the Shum Chung farmland having been developed into a golf course: This piece of land had not been listed as a protected area and was also private farmland, and the Government had no power at all to stop the private developer from turning up the soil and damaging the ecology. Hence, the Democratic Party thinks we must, through the establishment of conservation areas and formulation of conservation plans, regulate and control development in leisure areas, in order to avoid operators ignoring the importance of environmental protection on account of economic profit.

Thirdly, developing leisure agriculture and fishery trades is only one of the directions we can consider for protecting the natural resources. To adhere to the principle of sustainable development, we must formulate regulations for the protection of natural resources to protect the natural ecological environment, so

that everyone and the next generation will enjoy natural resources of equal quality and quantity. This proposal was passed in the motion debate proposed by me in the Legislative Council last year, but regrettably the Government has never responded even after stalling for a long time. In addition, the Democratic Party suggests that the Government carry out regular monitoring and analysis on Hong Kong's ecological environment in order to grasp how various developments are affecting the ecological environment, and regularly publish the relevant research findings to serve as reference data for future research on development.

Lastly, the Democratic Party supports in principle the development of leisure agriculture and fishery trades. Judging by the Australian experience and a presently small amount of leisure agriculture occupation, these activities will not only enhance city people's knowledge about natural ecology, but also help personal health, thinking, and character training, and even parent-child relationship. However, the Government must make sure any activity in the leisure agriculture and fishery areas is carried out under the premise of protecting nature, protecting farmland and protecting marine ecology.

Madam President, I so submit.

**DR TANG SIU-TONG** (in Cantonese): Madam President, quite a few Honourable colleagues have just examined the question from the angles of agriculture and fishery development and environmental protection, and so on. I mainly want to talk from the angles of tourism and economy about the advantages and the necessity of developing leisure agriculture and fishery trades.

The financial turmoil made Hong Kong's tourism go through a severe winter, but it also made us realize that new elements must be added into Hong Kong's tourism to enhance its competitiveness in order to continue to maintain and upgrade Hong Kong's unfailing appeal in the next century. Last year, the Government established the office of the Commissioner for Tourism to develop tourism in the southwest New Territories, promoted green tourism and so on, which was to change the passive growth of tourism in the past to initiative development with long-term planning.

To lay down new strategies for Hong Kong's tourism, we must first of all understand the world trend of tourism development. The World Tourism

Organization has pointed out that environmental and ecological tourism is the new direction of development of tourism in the world. According to a survey conducted by the Hong Kong Tourist Association, besides good food and shopping, visits to cultural relics, hiking and so on, are the favourable activities preferred by foreign tourists to Hong Kong, and the market potential for long haul travellers is especially great. Lately we have been seeing more Japanese and Taiwanese groups visiting Hong Kong for hiking and bird-watching. In this respect, the Government has launched a series of plans, including the international wetland park in the Mai Po Marshes, studying a development programme to construct a Fishermen's Wharf, and developing Lantau Island into a leisure tourist area; which, we may say, have taken the right step.

Regrettably, the Government has not yet given full play to Hong Kong's superiority. Specifically, it has neglected an asset which contributes greatly to Hong Kong's economy but still an asset that does not get the attention it deserves — agriculture and fisheries, which also has the potential to develop into ecological tourist attractions.

At present, many countries and regions like Taiwan are actively developing their agriculture and fishery into tourist and sightseeing trades. Facts have demonstrated that the development of a tourist sightseeing fishing trade is not only conducive to development of the fishing trade itself but also local tourism; it is also meaningful in the protection of local natural ecology and natural resources. If Hong Kong does not rise and catch up in this respect, I am afraid it will not only fall behind but also miss the opportunity to develop the potentials of the fishing-agriculture and tourist trades, running away from the implementation of the principle of sustainable development.

In this respect, it does not mean that Hong Kong has not an advantage at all. It just has not fully utilized and developed it. In fact, besides the southwest New Territories, Tolo Harbour in Tai Po and the beaches in Sai Kung both possess development potentials provided the Government is willing to invest resources in them to erect the necessary infrastructural facilities, like building connecting roads, establishing shore rest areas or bay corridors, constructing tourist facilities, laying artificial fish reefs, restocking fish fry, marking out restricted fishing areas and so on. This will develop these places into leisure agriculture and fishery areas that will promote sustainable development of agriculture and fishery and also develop green marine tour activities. In addition, in the North District, Tai Po, Yuen Long and Tin Shui Wai areas, there

are enormous farmlands and orchards that need only a little planning and appropriate investment of resources from the Government to develop into tourist spots specially for farm visits by tourists, fun in orchards, and an experience of farm life.

If the Government implements the relevant plans, I believe we will not only enhance the quality of life of the fishermen, farmers and citizens, bringing more employment opportunities to the local areas, but also bring about long-term tourism profits to Hong Kong, as well as protecting Hong Kong's natural resources and putting into effect the concept of sustainable development.

Madam President, although Hong Kong has to positively develop into a knowledge economy based on science and technology in co-ordination with global economic development, yet we cannot, for this reason, neglect other types of assets, especially the No. 1 asset which bears great influence on both the economy and the environment, that is, agriculture and fishery. I believe developing leisure agriculture and fishery trades will immensely benefit Hong Kong's tourism, as well as its economic development.

At present, the Government has transferred the Agriculture, Fisheries and Conservation Department, which originally belonged to the Economic Bureau, to the domain of the Environment and Food Bureau; I think in the not too distant future, the Agriculture, Fisheries and Conservation Department will be transferred back to the brief of the Economic Services Bureau. This is the flux of life, turning and circling; so will the direction of the development of agriculture and fishery change on account of the times and place. However, Hong Kong's tourism and economy have found the right direction in this case.

Madam President, I so submit in support of Mr WONG Yung-kan's motion.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, this afternoon there was a group of friends from the agriculture and fishery industry outside the Legislative Council to support Mr WONG Yung-kan's motion to develop leisure agriculture and fishery trades. There were also a few voicing objection. I listened to their voices, but I was unable to make out the reason of their objection. Perhaps they do not quite understand Mr WONG's proposal. They may think the development of leisure agriculture and fishery trades will mean their "losing

their rice bowls": having to sell the boats and switch to another trade! In fact, Hong Kong's coastal fisheries have been damaged so badly in recent years that not a single patch of intact skin is left, thanks to the dredging and reclamation works. Inshore fishing is slowly dying out. Even the culture zones' ecological environment has also been harmed by red tides and pollution. The fishermen are having a hard time in operation. To protect the natural resources and develop leisure agriculture and fishery trades is exactly pinpointing at the above-mentioned difficulties and hardships. It will improve the operation environment of our fishermen friends and open up a new avenue for the trade, giving them more employment opportunities. And, the Government is also devoting itself to developing tourism. We mark out certain water areas with natural marine products as leisure fishery areas. This is killing several birds with one stone.

One of the pilot project areas suggested by Mr WONG Yung-kan for leisure agriculture and fishery, namely the vicinity of Tolo Harbour in Tai Po, has been subject to regular reclamation and dredging works in recent years, greatly affecting the seabed of the area. Hence, the Government must strike a balance between reclamation works and protection of the ecological environment. Even so, we still see not a small number of fishing boats fishing in that area; so we believe setting up restricted fishing areas may somewhat still affect them. However, I believe if there are leisure agriculture and fishery trades, they will have more choice. We believe it will be much better renting out boats taking visitors out for marine sightseeing than relying presently on capturing for a living. On the other hand, the Government should also help people in the trade develop deep-sea fishing out in the ocean.

Farmers in leisure agriculture areas may have to adapt to a new form of farming. We see a lot of land in the New Territories turned into car parks, container parks or similar storage grounds. We hope the Government can help the farmers to develop organic farming. Although organic farming is no longer a brand new technique, yet it is after all a good farming method. Farmers have to adapt to new circumstances. It also involves the problem of how to launch organic produces onto existing sale channels and markets. Hence, the Agriculture, Fisheries and Conservation Department (AFCD) should do more in introducing to them new operation formulae and farming methods, so that those intending to convert into leisure agriculture farmers can grasp the knowledge and skill of organic farming, or other improved farming methods.

The concept of leisure agriculture and fishery areas requires co-ordination with different departments of the Government for effective conservation of natural resources. First are the Government and the AFCD. The Democratic Alliance for the Betterment of Hong Kong (DAB) suggests that the Government change the present mode of operation of the AFCD which is regulatory management first and assistance to agriculture and fishery second, and effectually upgrade it to a Department incorporating management, production and research in the same organ. Moreover, it should establish an agriculture and fishery research centre.

In the management of leisure agriculture and fishery areas, the AFCD should be responsible for issuing licences for renting out boats and fishing permits in the areas, placing artificial fish reefs and restocking fish fry, reinforcing cleansing of the country parks, and so on. The Department should also make periodic assessments on whether there has been any increase in the agriculture and fishery resources.

In promoting education, the DAB suggests the Government promote among fishermen knowledge about the conservation of the agriculture and fishery resources and fishing moratoria, and educate them to abide by fishing regulations. The Government should also educate the public to understand the importance of the agriculture and fishing trades to the economy, to learn to care for the young and little fish fry, to treasure the fish species, and protect the natural environment.

With regard to other departments, we hope the Marine Police will reinforce marine patrols, prevent mainland fishermen from illegally intruding into and fishing in Hong Kong waters. The Food and Environmental Hygiene Department should also do more in public education, teaching citizens not to carelessly throw away rubbish. Finally, the Marine Department should exert greater efforts in cleaning up rubbish on the sea surface, and improve liaison with the other departments, helping the cleaning of garbage on the sea and the beaches, to prevent pollution.

Madam President, I believe a leisure agriculture and fishery area that protects the agriculture and fishery resources, encourages citizens to care for the nature, and promotes leisure agriculture and fishery trades will bring great benefits to the agriculture and fishery trades, tourism, as well as the economic development of Hong Kong, and provide a good place for people to go for

weekend pastime. In the long run, if the Special Administrative Region Government promotes and extends leisure agriculture and fishery areas to other districts, and formulate a set of long-term policies for agriculture and fishery, we will be really creating "a better future" for Hong Kong.

Madam President, I so submit in support of the motion.

**PRESIDENT:** Does any Member wish to speak?

(No Member responded)

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I would like to thank Mr WONG Yung-kan and other Honourable Members for their valuable opinions.

It is a long-standing government policy to "preserve natural resources", which is also an important condition for the sustainable development of the agriculture and fisheries industries. Therefore, the Administration has actively put in place a number of measures to implement this policy in recent years.

First of all, in 1996 the Agriculture, Fisheries and Conservation Department (AFCD) started a project of placing artificial reefs in Hong Kong waters at a cost of some \$100 million. The artificial reefs encourage the growth and development of marine organisms, and provide food, protection and shelter for juvenile fish, thereby improving their chances of survival to maturity. The project is implemented in two phases, with placement of artificial reefs in marine parks and other suitable locations. Phase I of the project has been completed. The AFCD has deployed redundant vessels and tyres as artificial reefs in the Hoi Ha Wan and the Yan Chau Tong Marine Parks. According to initial survey and investigation, the AFCD has recorded over 100 fish species, including juveniles of high value fish, and a diversity of marine life in these areas. The AFCD is planning to implement Phase II of the project at Port Shelter and Tap Mun in 2001. They will continue to discuss with the fishermen about the detailed implementation plan.



In addition, the AFCD is consulting the Working Group on Fisheries Management on the formulation and implementation of the fisheries resources management strategy. Members of the Working Group include representatives from the fishing industry, green groups and academics. Proposed management measures include the introduction of a fishing licence system, the establishment of "fish spawning and nursery protection areas" in Tolo Harbour and Port Shelter, and the aforementioned artificial reef placement project. We propose that fishing activities should be restricted within these protection areas and all fishing vessels would be required to obtain a licence from the AFCD in order to fish. Moreover, fishing practices which have an adverse impact on the fisheries resources in the inshore waters, such as trawling, would be prohibited. These management measures would help to conserve fisheries resources. The AFCD will thoroughly consult the fishermen associations and consider their views before implementing these measures.

In response to fishermen's request, the AFCD plans to implement a pilot scheme this year for restocking fish fry in the marine exclusion zone near the Chap Lap Kok Airport, where fishing activities are already prohibited. The AFCD will examine such implementation details as the best time, environment and fish species for this purpose. The information obtained will help the AFCD to assess the cost effectiveness of restocking fish fry in the "fish spawning and nursery protection areas".

Moreover, the Administration implements the Marine Park Programme to conserve the marine environment and natural resources of significant ecological value. At present, we have designated three marine parks and a marine reserve. The Programme has successfully conserved precious marine and fish species. We will therefore expand this Programme by designating the fourth marine park in East Ping Chau in 2001.

Apart from the aforementioned measures, the Administration has also enacted legislation to conserve natural resources. To enhance the deterrent effects against destructive fishing activities, we have amended the Fisheries Protection Ordinance to significantly increase the maximum penalty for such activities from \$10,000 to \$200,000. We have also made legal provisions to prohibit the use of destructive fishing appliances for fishing purposes.

We also place importance on improving water quality and creating a suitable marine environment for the growth of fishes. As present, all the waters in Hong Kong are declared Water Control Zones under the Water Pollution Control Ordinance. Effluents are subject to stringent control which requires proper treatment to the stipulated standards before discharge into these Zones, with a view to protecting the water quality and marine ecosystems from pollution.

In addition, the Environmental Impact Assessment Ordinance stipulates that environmental impact assessment should be carried out before the implementation of the designated projects. This includes assessment of the impacts of these projects on fisheries resources and marine ecosystems and implementation of proper mitigation measures to ensure that adverse impact would be minimized.

Some Members have referred to the impacts of borrow and reclamation projects on the fisheries trade, in fact, reclamation projects are in general regulated under the Environmental Impact Assessment Ordinance. The initiator of any project must first make an environmental impact assessment to prove that the project will not have serious impacts on the environment, and the project can only be carried out after a valid environmental permit has been issued.

Apart from conservation of natural resources, the AFCD has been promoting the development of agriculture and fisheries industries through a number of support services to help them to enhance productivity and competitiveness. The services include the provision of infrastructure, technical guidance, low-interest loans and so on. The AFCD has, through its experimental farms, veterinary laboratory and fisheries stations, conducted researches relating to agriculture and fisheries and introduced the use of new technology to the industries. In addition, the AFCD has established a specialized division to strengthen efforts in aquaculture research and expand fish health management service with a view to minimizing losses due to fish diseases.

Moreover, to increase the yields of agricultural land, the AFCD is planning to construct greenhouses suitable for the climate of Hong Kong. It is also working with local organic farms and the associations concerned with a view to devising appropriate measures to assist local farmers in converting to organic farming. The AFCD will help them to review the marketing potential of organic produce.

As regards the development of leisure agriculture and fishery trades and green tourism, we must ensure that these activities will not have adverse impacts on the environment and natural ecology. In this regard, it is reasonable for the AFCD to be included in the Environment and Food Bureau. We will construct an International Wetland Park and Visitor Centre (IWP) in the most important wildlife conservation area of the territory, namely Mai Po Marshes and Inner Deep Bay. The IWP will serve as an education, natural conservation and recreation facility.

In addition, the Hong Kong Tourist Association (HKTA) produced a comprehensive and user-friendly guidebook entitled "Exploring Hong Kong's Countryside - a Visitor's Companion" in October last year to introduce our admirable countryside to both overseas tourists and local residents, and promote the conservation of the beautiful nature of Hong Kong. To give green tourism a further boost, the HKTA will shortly publish promotional leaflets and organize green tourism training courses for local tour guides. It will also encourage travel agents to arrange overseas hiking tours to Hong Kong.

We will continue to vigorously implement measures to facilitate the sustainable development of agriculture and fisheries and help the industries to meet new challenges, so that they may continue to provide fresh and quality fresh food produce to the public.

The proposed establishment of leisure agriculture and fisheries area carries wide implications. We need to look into the proposal in greater detail together with other bureaux and departments and consider the views of various parties.

I would like to reiterate that the Administration will keep up its efforts in preserving natural resources and promoting the sustainable development of the agriculture and fisheries industries. We will also carefully consider the views expressed by Members and various parties in respect of developing leisure agriculture and fishery as well as green and marine tourism.

Thank you. Madam President.

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, you may now reply and you still have one minute 52 seconds.

**MR WONG YUNG-KAN** (in Cantonese): Madam President, first of all, I would like to thank those Members who have spoken in support of my motion today and I also hope that other Members present will support my motion.

Although some bodies oppose the leisure agriculture and fishery trades, I do not think there is strong opposition. Some colleagues have just asked if we need to preserve the natural resources. In fact, my proposals have been brewed for more than a year among the trade and I have put them forward for discussion in the Legislative Council only after I have gained the support of the trade. Thus, this proves that the future development of the leisure agriculture and fishery trades is viable.

Taking an overview at the Southeast Asian countries, Taiwan alone has over 30 leisure fishery points and various fishing methods, and the trade also participates in the ultimate management. Without the participation of the trade, even the artificial reef placement programme of the Agriculture, Fisheries and Conservation Department cannot be implemented. Therefore, I think that the Government should conduct more researches in this respect instead of just letting the Secretary make some "routine remarks". The Government should carefully and thoroughly consider these proposals rather than just holding discussions. The trade participants support my proposals as they think that they are good ideas. In addition, I have lately received a lot of suggestions from the community and some bodies. They also think that the leisure agriculture and fishery trades can preserve natural resources as well as enhance the trades' knowledge of the environment which is really a good deed.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 23 February 2000.

*Adjourned accordingly at twenty-nine minutes to Eleven o'clock.*

**Annex I****WRITTEN ANSWER****Written answer by the Secretary for Education and Manpower to Mr Albert HO's supplementary question to Question 1**

The Government does not collect the relevant statistics. Our policy is to maintain a liberal and open services regime. In general, foreign practitioners may enter the local market by meeting certain professional requirements, which are objective and non-discriminatory. The Government has been actively participating in negotiations in the World Trade Organization and promoting more liberalization of trade in services. This will pave the way for our professionals to open up overseas markets and broaden their development opportunities.

**Annex II****WRITTEN ANSWER****Written answer by the Secretary for the Treasury to Mr Albert HO's supplementary question to Question 2**

As I explained on 16 February, the Government attaches the utmost importance to maintaining the independence of the Audit Commission. Such independence is enshrined in Article 58 of the Basic Law as well as section 9 of the Audit Ordinance. We consider periodic meetings between the Chief Executive and the Director of Audit to facilitate communication and foster a professional working relationship are necessary and appropriate. Such meetings do not undermine in any way the independent functioning of the Audit Commission. In view of the internal nature of these meetings, we do not consider it appropriate for the contents to be disclosed at any point in time.

**Annex III****CONSULAR RELATIONS BILL****COMMITTEE STAGE**Amendments to be moved by the Chief Secretary for AdministrationClauseAmendment Proposed

3(4) By deleting everything after "if it has been" and substituting -  
"expressed by -

(a) the person charged with the duty of acting  
in the capacity of; or

(b) any person for the time being performing  
the functions of,

head, of the superintending diplomatic mission of that State or  
of the consular post concerned."

3(8) By adding "in the Gazette under section 4" after "by order".

4 By adding "in the Gazette" after "by order" wherever it appears.



**Annex IV****ELECTIONS (CORRUPT AND ILLEGAL CONDUCT) BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for Constitutional Affairs

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 2             | <p>(a) In the definition of "advantage" -</p> <p>(i) in paragraph (d), by adding "of" after "exercise";</p> <p>(ii) in paragraph (e), by adding "of" after "performance";</p> <p>(iii) in paragraph (g), by adding "voluntary service or" after "other than".</p> <p>(b) In the definition of "appropriate authority" -</p> <p>(i) by adding before paragraph (a) -</p> <p style="padding-left: 40px;">"(aa) in the case of an election to elect the Chief Executive, the person designated to be the appropriate authority under any law in force providing for the election of the Chief Executive; and";</p> <p>(ii) in paragraph (a), by adding ", the Election Committee" after "Legislative Council";</p> <p>(iii) in paragraph (b), by deleting the semicolon and substituting "or, if the returning officer for the election has not been appointed, the Director of Home Affairs; and";</p> |

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(iv) by adding -

"(c) in the case of an election to elect a village representative, the person designated to be the appropriate authority under any law in force providing for the election of village representatives;"

(c) In the definition of "election advertisement", by deleting "that has the effect" and substituting "published for the purpose".

(d) In the definition of "election donation" -

(i) by deleting "group of candidates at an election, means" and substituting "candidates at an election, means any of the following donations";

(ii) in paragraph (a) -

(A) by deleting "group" and substituting "candidates";

(B) by deleting everything after "towards meeting," and substituting "the election expenses of the candidate or candidates;"

(iii) in paragraph (b), by deleting everything after "in respect of the candidate or" and substituting "candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, and includes any goods given incidental to the provision of voluntary service;"

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- (iv) by deleting paragraph (c) and substituting -
  - "(c) any service provided to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, but does not include voluntary service;"
- (e) In the definition of "elector" -
  - (i) by adding before paragraph (a) -
    - "(aa) in relation to an election to elect the Chief Executive, means a person who is an elector under any law in force providing for the election of the Chief Executive; and";
  - (ii) in paragraph (e), by adding "and" at the end;
  - (iii) by adding -
    - "(f) in relation to an election to elect a village representative, means a person who is an elector under any law in force providing for the election of village representatives;"
- (f) In the definition of "electoral law" -
  - (i) in paragraph (c), by adding "or" at the end;
  - (ii) by adding -
    - "(d) the Heung Yee Kuk Ordinance (Cap. 1097); or

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- (e) any law in force providing for the election of -
  - (i) the Chief Executive; or
  - (ii) village representatives;".
- (g) In the definition of "returning officer" -
  - (i) by adding before paragraph (a) -
    - "(aa) in relation to an election to elect the Chief Executive, means the person appointed to be the Returning Officer under any law in force providing for the election of the Chief Executive; and";
  - (ii) by adding before paragraph (b) -
    - "(ab) in relation to an election for an Election Committee subsector, means a Returning Officer appointed for the subsector under section 78 of the Legislative Council Ordinance (Cap. 542); and";
  - (iii) in paragraph (b), by deleting "73" and substituting "75";
  - (iv) in paragraph (d), by adding "and" at the end;
  - (v) by adding -
    - "(e) in relation to an election to elect a village representative, means a person appointed to be a Returning Officer under any law in force providing for the election of village representatives,

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and -

- (i) if the Returning Officer referred to in paragraph (a), (ab) or (b) has not been appointed, means, in so far as it relates to the relevant election, the Chief Electoral Officer; and
- (ii) if the Returning Officer referred to in paragraph (c) has not been appointed, means the Director of Home Affairs;".

(h) By adding -

" "Chief Executive" (行政長官) means the Chief Executive of the Hong Kong Special Administrative Region;

"village representative" (村代表) means a person elected to be a village representative under any law in force providing for the election of village representatives;

"voluntary service" (義務服務) means any service provided free of charge to or in respect of a candidate or candidates at an election by a natural person, voluntarily and personally, in the person's own time for the purpose of -

- (a) promoting the election of the candidate or candidates; or
- (b) prejudicing the election of another candidate or other candidates."

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- 3(a) (a) By adding "the Chief Executive and" before "persons to membership".
- (b) By adding "and to be village representatives" after "public bodies".
- 4 (a) By adding before paragraph (a) -
- "(aa) an election to elect the Chief Executive;".
- (b) In paragraph (g), by deleting the full stop and substituting a semicolon.
- (c) By adding -
- "(h) an election to elect a village representative.".
- 6(3)(a) By deleting "election".
- 7(1) (a) By adding "corruptly" after "at an election if the person".
- (b) In paragraph (a), by adding -
- "(iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or".
- (c) In paragraph (b), by adding -
- "(iii) if the other person was or has been nominated as a candidate at the election, for not having used the other person's best endeavours to promote the election of the other person; or".

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(d) In paragraph (c) -

(i) by deleting "to the" and substituting "for the other";

(ii) by adding -

"(iii) if the third person has been nominated as a candidate at the election, not to use the third person's best endeavours to promote the election of the third person; or".

(e) In paragraph (d), by adding -

"(iii) if the third person was or has been nominated as a candidate at the election, not to use the third person's best endeavours to promote the election of the third person; or".

(f) In paragraph (e) -

(i) in subparagraph (ii), by deleting "having been" and substituting "if the person has been";

(ii) by adding -

"(iii) if the person has been nominated as a candidate at the election, not to use the person's best endeavours to promote the election of the person; or".

(g) In paragraph (f), by adding -

"(iii) if the person was or has been nominated as a candidate at the election, for not having used the person's best endeavours to promote the election of the person; or".

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(h) In paragraph (g), by adding -

"(iii) if the other person has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person; or".

(i) In paragraph (h) -

(i) in subparagraph (ii), by deleting the full stop and substituting "; or";

(ii) by adding -

"(iii) if the other person was or has been nominated as a candidate at the election, not to use the other person's best endeavours to promote the election of the other person.".

12(5) By deleting "會議" and substituting "聚會".

17(1) By deleting paragraph (d) and substituting -

"(d) without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper in use, or that has been used, at the election; or

(e) without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election.".



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18 By deleting everything after "for a purpose" and substituting -

" -

- (a) other than that of meeting, or contributing towards meeting, the election expenses of the candidate; or
- (b) in the case of an election donation consisting of goods or a service, other than that of promoting the election of the candidate or that of prejudicing the election of another candidate or other candidates,

engages in corrupt conduct at an election."

19 (a) In subclause (1) -

- (i) by adding "or candidates" after "A candidate";
- (ii) by deleting "\$500 or more" where it twice occurs and substituting "more than \$1,000";
- (iii) by adding "as supplied by the donor" after "address of the donor".

(b) By deleting subclauses (2) and (3) and substituting -

"(2) If an election donation of more than \$1,000 or, in the case of an election donation consisting of goods, of more than \$1,000 in value, is given to or for a candidate or candidates and the candidate or candidates do not know the name and address of the donor, the candidate or candidates must ensure that the donation -

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(a) is not used -

(i) for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or any of the candidates; or

(ii) in the case of an election donation consisting of goods, for the purpose of promoting the election of the candidate or any of the candidates or of prejudicing the election of another candidate or other candidates; and

(b) is given to a charitable institution or trust of a public character chosen by the candidate or candidates.

(3) If an election donation of money or goods has been given to or for a candidate or candidates and the donation -

(a) has not been used -

(i) for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates; or

(ii) in the case of an election donation consisting of goods, for the purpose of promoting the election of the candidate or candidates or of

ClauseAmendment Proposed

prejudicing the election of another candidate or other candidates; or

- (b) is not used in the case referred to in subsection (2),

the candidate or candidates must ensure that the donation is given to a charitable institution or trust of a public character chosen by the candidate or candidates."

- (c) By deleting subclauses (4) and (5).

- (d) By deleting subclause (6) and substituting -

"(6) If the aggregate of all election donations given to or for a particular candidate or a particular group of candidates exceeds the maximum amount prescribed under section 44, the candidate or the candidates belonging to the group must ensure that the excess (not including election donations of services) is given to a charitable institution or trust of a public character chosen by the candidate or those candidates."

- (e) By deleting subclause (7).

- (f) By deleting subclause (8) and substituting -

"(8) If an election donation is received by a candidate or candidates, the candidate or each of the candidates engages in corrupt conduct at an election if -

- (a) the candidate or candidates fail to comply with subsection (1) or (2); or

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- (b) the candidate or candidates fail to comply with any other requirement of this section before the time when the candidate's or each candidate's election return for the election is lodged in accordance with section 36."
  
- 21
  - (a) In subclause (3), by adding "an advantage as" before "a reward".
  - (b) In subclause (4), by deleting "a reward to another person" where it twice occurs and substituting "an advantage to another person as a reward".
  - (c) In subclause (5), by deleting "or reward" wherever it occurs.
  
- 27
  - (a) In subclause (1), by adding "unless, before the publication of the election advertisement, the person or organization consented in writing to the inclusion of the name, logo or pictorial representation" before the full stop.
  - (b) In subclause (2), by adding "unless, before the publication of the election advertisement, the other person or organization consented in writing to the inclusion of the name, logo or pictorial representation" before the full stop.
  - (c) By deleting subclause (3).
  - (d) In subclause (4) -
    - (i) by deleting "subsection (3), it is sufficient for the defendant to prove that" and substituting "subsections (1) and (2), the consent of an organization is taken to have been obtained if";

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- (ii) in paragraph (a), by deleting "affected";
- (iii) in paragraph (b), by deleting "defendant" and substituting "candidate or person who publishes, or authorizes the publication of, the election advertisement".
- (e) By deleting subclause (8).
- (f) In subclause (9) -
  - (i) by deleting "person or an organization" and substituting "candidate";
  - (ii) by deleting "person or organization." and substituting "candidate."

28

By adding -

"(5A) Despite subsection (5), an application for an injunction under this section can be made by -

- (a) if the election is to elect the Chief Executive, a person specified for this purpose under any law in force providing for the election of the Chief Executive; or
- (b) if the election is to elect a village representative, a person specified for this purpose under any law in force providing for the election of village representatives."

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- 29(2) (a) By deleting paragraphs (a) and (b) and substituting -
- "(a) the candidate was not aware of the conduct; or
- (b) the candidate, if aware of the conduct, did not consent to or connive at it."
- (b) By deleting "下述各項" and substituting "有以下情況".
- (c) By deleting "從事" and substituting "作出".
- 30(1) (a) In paragraph (a), by deleting everything after "engage in the conduct" and substituting "; and".
- (b) In paragraph (b), by deleting "was of a trivial nature" and substituting "did not materially affect the result of the election".
- (c) In paragraph (c), by deleting "all".
- (d) In paragraph (d), by deleting "in connection with" and substituting "at".
- 31 (a) In subclause (2) -
- (i) by adding a comma before "an electoral law";
- (ii) in paragraph (a)(i), by deleting "some other" and substituting "any".
- (b) By deleting subclause (3) and substituting -
- "(3) If an application is made under subsection (1), no prosecution against the applicant for having done or omitted to do an act that, but for this section,

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would be illegal conduct at an election may be instituted or carried on until the application is disposed of by the Court.

(4) An applicant is not liable to be convicted of an offence of having engaged in illegal conduct at an election if the act or omission of the applicant that, but for this section, would be illegal conduct at the election is the subject of an order made under subsection (2).".

33

(a) In the definition of "incumbent candidate" -

(i) by deleting everything before paragraph (a) and substituting -

"incumbent candidate" (在任的候選人) means -

(aa) the person holding office as, or for the time being assuming the duties of, the Chief Executive; or";

(ii) in paragraph (b), by deleting "or a Provisional District Board";

(iii) in paragraph (d), by deleting the comma at the end and substituting "; or";

(iv) by adding -

"(e) a serving village representative,";

(v) by adding "office or" before "body" where it twice occurs.

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(b) In the definition of "performance report" -

(i) by adding before paragraph (a) -

"(aa) the Chief Executive; or";

(ii) in paragraph (b), by deleting "or a Provisional District Board";

(iii) in paragraph (d), by adding "or" at the end;

(iv) by adding -

"(e) a serving village representative;".

(c) In the definition of "printer", by deleting "of" and substituting "in relation to".

34

(a) In subclause (3), by deleting "before" and substituting "not later than 7 days after".

(b) By deleting subclause (4) and substituting -

"(4) A person must, not later than 7 days after publishing a printed election advertisement, furnish 2 copies of the advertisement to the appropriate returning officer.

(4A) If a printed election advertisement is published in a registered local newspaper, the duty to comply with subsection (4) is on the person who seeks to place the advertisement in the newspaper."

(c) In subclause (7), by deleting "Any" and substituting "Subject to subsection (4A), any".



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- (d) In subclause (8), by deleting "現任議員" and substituting "在任的".

## New

By adding in Part 5 -

**"34A. Court may grant relief in certain circumstances if election advertisements do not meet requirements**

(1) A person who published a printed election advertisement without complying with section 34(1) or (4) may apply to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order allowing the publication which would, but for this section, constitute an offence under section 34, be excepted from the relevant requirements under that section and relieving the applicant from the penalties imposed by that section, but only if the Court -

(a) is satisfied that -

- (i) the non-compliance was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith; and
- (ii) where the Court requires notice of the application to be given in Hong Kong, the notice has been given; and

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(b) believes it to be just that the applicant should not be subject to those penalties.

(3) If an application is made under subsection (1), no prosecution against the applicant for not having complied with section 34(1) or (4) may be instituted or carried on until the application is disposed of by the Court.

(4) An applicant is not liable to be convicted of an offence under section 34 if the non-compliance by the applicant with section 34(1) or (4) is the subject of an order made under subsection (2).".

35

(a) By adding before paragraph (a) -

"(aa) in the case of an election to elect the Chief Executive, the date specified for this purpose under any law in force providing for the election of the Chief Executive; and".

(b) In paragraph (a), by adding ", the Election Committee" after "Legislative Council".

(c) In paragraph (b), by deleting the full stop and substituting "; and".

(d) By adding -

"(c) in the case of an election to elect a village representative, the date specified for this purpose under any law in force providing for the election of village representatives.".

| <u>Clause</u> | <u>Amendment Proposed</u>   |
|---------------|---|
| 36(2)         | <p>(a) In paragraph (a), by deleting "within 30 days" and substituting "not later than 30 days".</p> <p>(b) In paragraph (b) -</p> <p>(i) in subparagraph (ii), by deleting "\$500 or more" where it twice occurs and substituting "more than \$1,000";</p> <p>(ii) in subparagraph (iv) -</p> <p>(A) by deleting "such a" and substituting "an election";</p> <p>(B) by deleting "19" and substituting "19(3)".</p>  |
| 37            | <p>By adding -</p> <p>"(1A) If a candidate has made an application under section 39, no prosecution against the candidate for failing to have lodged an election return as required by section 36 may be instituted or carried on until the application is disposed of by the Court."</p>   |
| 38            | <p>(a) In the heading, by adding "<b>act in office or</b>" before "<b>participate</b>".</p> <p>(b) In subclause (1), by deleting everything after "having been elected to" and substituting "an office or membership of a body at an election to which this Ordinance applies, the person acts in the office or participates in the affairs of the body as a member without having complied with section 36.".</p> <p>(c) In subclause (2), by deleting "participates as a member of the Legislative Council or body without having lodged an election return as required by" and substituting "acts in the office or</p> |

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participates in the affairs of the body as a member without having complied with".

(d) By adding -

"(3) A person is not liable to be convicted of an offence under this section for acting in the office or participating in the affairs of the body as a member without having complied with section 36 if -

- (a) the non-compliance is the subject of an order made under section 39; and
- (b) the further period specified in the order has not yet expired.

(4) A person who acts in the office or participates in the affairs of the body as a member without having complied with section 36, if -

- (a) the person's application for an order under section 39 is refused; or
- (b) the person has not complied with section 36 within the further period specified in the order made under section 39,

may be convicted of an offence under this section and is liable on conviction to the daily fine referred to in subsection (2) counting from the day on which the person began to act in the office or participate in the affairs of the body as a member without having complied with section 36."

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39

- (a) In subclause (1) -
  - (i) by adding "is unable or" before "has failed";
  - (ii) by deleting "within the" and substituting "before the end of the".
- (b) In subclause (2) -
  - (i) by adding "inability or" before "failure";
  - (ii) in paragraph (d), by deleting "some other" and substituting "any".
- (c) In subclause (4)(c), by deleting "some other" and substituting "any".
- (d) By adding -

"(4A) A candidate who has not complied with section 36(2)(b)(i), (ii) or (iii) can also apply to the Court for an order excepting the candidate from the requirement to send an invoice or a receipt, or a copy of a receipt, as required by that section.

(4B) On the hearing of an application made under subsection (4A), the Court may make the order sought, but only if it is satisfied that the non-compliance was due to -

- (a) misconduct of an agent or employee of the applicant; or
- (b) inadvertence, or an accidental loss or destruction of the invoice or receipt or copy of the receipt, by the applicant or any other person; or

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(c) any reasonable cause,

and was not due to the applicant's bad faith."

42

(a) By renumbering the clause as clause 42(1).

(b) In subclause (1), by deleting "taken to have committed" and substituting "guilty of attempting to commit".

(c) By adding -

"(2) A person who is convicted of an attempt to commit an offence against this Ordinance is subject to the same penalties and disqualifications imposed by any law to which the person would have been subject on conviction of the offence attempted."

New

By adding -

**"47. Transitional provision**

Any subsidiary legislation made under the Corrupt and Illegal Practices Ordinance (Cap. 288) before its repeal and in force at the commencement of this Ordinance is, so far as it is not inconsistent with this Ordinance, to continue in force and have the like effect for all purposes as if made under this Ordinance.

**48. Saving provision**

The repeal of the Corrupt and Illegal Practices Ordinance (Cap. 288) does not affect any obligation or liability incurred, or any penalty or disqualification imposed, or any investigation or legal proceedings instituted, under that repealed Ordinance; and any such penalty or disqualification

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may be imposed, and any such investigation or legal proceedings may be instituted or carried on, as if this Ordinance has not been passed."

Schedule (a) By deleting item 1.

(b) By adding -

"1A. Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg.) Repeal section 4(2)(e) and substitute -

"(e) he has been convicted of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000); or".

1B. Crimes Ordinance (Cap. 200) In section 46(1), add "or corrupt conduct" after "corrupt practice".

(c) By deleting item 4.

(d) By adding -

"5A. Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (a) In section 2(1), in the definition of "election expenses", repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal

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Regulation  
(Cap. 541  
sub. leg.)

Conduct)                      Ordinance  
(        of 2000)".

(b) In section 26, repeal "return and declaration of election expenses of the candidate is to be open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copy of the election return lodged by the candidate is available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance (        of 2000)".

(c) In section 52 -

(i) in subsection (1), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(ii) in subsection (2), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";



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(iii) repeal subsection (4)  
and substitute -

"(4) In this section, the reference to corrupt conduct by impersonation is to be construed as the corrupt conduct referred to in section 15 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(d) In section 96(2), repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(e) In section 102(11), repeal "returns and declarations of election expenses of candidates are open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by candidates are available for inspection

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under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

- (f) In section 1(1) of Schedule 1, in the definition of "election expenses", repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".
- (g) In section 22 of Schedule 1, repeal "return and declaration of election expenses of the subsector candidate is to be open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copy of the election return lodged by the subsector candidate is available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".
- (h) In section 48 of Schedule 1

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(i) in subsection (1),  
repeal "committed the  
offence of  
personation" and  
substitute "engaged in  
corrupt conduct by  
impersonation";

(ii) in subsection (2),  
repeal "committed the  
offence of  
personation" and  
substitute "engaged in  
corrupt conduct by  
impersonation";

(iii) repeal subsection (4)  
and substitute -

"(4) In this  
section, the  
reference to  
corrupt conduct  
by impersonation  
is to be construed  
as the corrupt  
conduct referred  
to in section 15 of  
the Elections  
(Corrupt and  
Illegal Conduct)  
Ordinance ( of  
2000).".

(i) In section 86(2) of Schedule  
1, repeal "Corrupt and  
Illegal Practices Ordinance

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(Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

- (j) In section 92(11) of Schedule 1, repeal "returns and declarations of election expenses of candidates are available for inspection under section 29A(1) of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by subsector candidates are available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

5B. Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg.)

- (a) In section 2(1), in the definition of "election expenses", repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".
- (b) In section 29, repeal "return and declaration of election expenses of the candidate is to be open for inspection under section 29A of the

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Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copy of the election return lodged by the candidate is available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(c) In section 55 -

(i) in subsection (1), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(ii) in subsection (2), repeal "committed the offence of personation" and substitute "engaged in corrupt conduct by impersonation";

(iii) repeal subsection (4) and substitute -

"(4) In this section, the reference to corrupt conduct by impersonation

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is to be construed as the corrupt conduct referred to in section 15 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(d) In section 94(2), repeal "Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(e) In section 103(10), repeal "returns and declarations of election expenses of candidates are open for inspection under section 29A of the Corrupt and Illegal Practices Ordinance (Cap. 288)" and substitute "copies of election returns lodged by candidates are available for inspection under section 40 of the Elections (Corrupt and Illegal Conduct) Ordinance ( of 2000)".

(e) In item 6(i) -

(i) by deleting "during" and substituting "at the end of";

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- (ii) by deleting "in relation to" and substituting "at or in connection with".
- (f) By adding -
  - "6A. Legislative Council  
(Election Petition) Rules  
(Cap. 542 sub. leg.)
    - (a) In rule 11(3) -
      - (i) repeal "a corrupt or illegal practice" and substitute "corrupt or illegal conduct";
      - (ii) repeal "practice." and substitute "conduct.".
    - (b) In rule 21(3) -
      - (i) in paragraph (a), repeal "a corrupt practice has not been proved to have been committed" and substitute "corrupt conduct has not been proved to have been engaged in";
      - (ii) in paragraph (b), repeal "corrupt practices being committed" and substitute "corrupt conduct being engaged in";
      - (iii) in paragraph (c), repeal "practices"

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where it twice occurs  
and substitute  
"conduct".

(g) In item 7 -

- (i) in paragraph (c), by deleting "擬任期" and substituting "任期擬";
- (ii) in paragraph (f), by deleting "29(d)" and substituting "30(d)";
- (iii) in paragraph (g), by deleting "47(1)(a)(ii)" and substituting "49(1)(a)(ii)";
- (iv) in paragraph (h), by deleting "47(3)" and substituting "49(3)";
- (v) in paragraph (i) -
  - (A) by deleting "53" and substituting "55";
  - (B) by deleting "during" and substituting "at the end of";
  - (C) by deleting "in relation to" and substituting "at or in connection with".

(h) By adding -

"8. District  
Councils  
(Election  
Petition) Rules  
(Cap. 547 sub.  
leg.)

(a) In rule 11(3) -

- (i) repeal "a corrupt practice or an illegal practice" and substitute "corrupt or illegal conduct";



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(ii) repeal "the corrupt practice or the illegal practice" and substitute "the corrupt or illegal conduct".

(b) In rule 21(3) -

(i) in paragraph (a), repeal "a corrupt practice has not been proved to have been committed" and substitute "corrupt conduct has not been proved to have been engaged in";

(ii) in paragraph (b), repeal "corrupt practices being committed" and substitute "corrupt conduct being engaged in";

(iii) in paragraph (c), repeal "practices" where it twice occurs and substitute "conduct".