

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 12 April 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 KENNETH TING WOO-SHOU, J.P.

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

THE HONOURABLE DAVID CHU YU-LIN

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE EDWARD HO SING-TIN, 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.

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

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 JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

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 MRS SOPHIE LEUNG LAU YAU-FUN, 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 CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE LAU WONG-FAT, G.B.S., 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 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 MRS MIRIAM LAU KIN-YEE, J.P.

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

MS MARIA KWAN SIK-NING, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MS ANISSA WONG SEAN-YEE, J.P.  
SECRETARY FOR THE CIVIL SERVICE

MS EVA CHENG, J.P.  
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

**CLERKS IN ATTENDANCE:**

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

| Subsidiary Legislation/Instruments   | <i>L.N. No.</i> |
|--|-----------------|
| Electrical Products (Safety) (Amendment) Regulation<br>2000.....   | 77/2000         |
| Grant Schools Provident Fund (Amendment) Rules<br>2000.....  | 78/2000         |
| Subsidized Schools Provident Fund (Amendment) Rules<br>2000.....   | 79/2000         |
| Airport Authority Ordinance (Map of Restricted Area)<br>Order.....   | 80/2000         |
| Organized and Serious Crimes (Amendment) Ordinance<br>2000 (8 of 2000) (Commencement) Notice<br>2000.....            | 81/2000         |
| Hong Kong Arts Development Council (Amendment)<br>Ordinance 2000 (9 of 2000) (Commencement)<br>Notice 2000.....      | 82/2000         |
| International Organizations (Privileges and Immunities)<br>Ordinance (17 of 2000) (Commencement)<br>Notice 2000..... | 83/2000         |

**Other Papers**

- No. 89 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1999-2000 (Public Finance Ordinance : Section 8)

- No. 90 — Report of the Broadcasting Authority  
September 1998 - August 1999
- No. 91 — Kowloon-Canton Railway Corporation  
Annual Report 1999
- No. 92 — MTR Corporation  
Annual Report 1999
- No. 93 — Supplemental Report of the Public Accounts Committee on  
Report No. 33 of the Director of Audit on the Results of  
Value for Money Audits  
(April 2000 - P.A.C. Report No. 33B)

## **ADDRESS**

**PRESIDENT** (in Cantonese): Address. Mr Eric LI, Chairman of the Public Accounts Committee, will address the Council on the Committee's supplemental report on Report No. 33 of the Director of Audit on the Results of Value for Money Audits.

### **Supplemental Report of the Public Accounts Committee on Report No. 33 of the Director of Audit on the Results of Value for Money Audits**

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

At the time when PAC Report No. 33 was finalized, the PAC was continuing with our deliberations on Chapters 1, 4 and 12 of the Director of Audit's Report No. 33. A full report on these Chapters was therefore deferred. The PAC has now concluded our deliberations and have the honour to table a supplemental report on these Chapters. In the paragraphs below, I wish to highlight some of the key facts and observations relating to the following subjects:

- refuse collection service of the Urban Services Department (USD);
- management practices of the Vocational Training Council (VTC);  
and
- water purchased from Guangdong Province.

Refuse collection and water supply relate directly to the provision of utilities and services to the public. Vocational training has a direct bearing on the grooming of our young talent for future responsibilities. The PAC believes that the sound management of these respective services is critical to the cost-effectiveness of public expenditure and ultimately the well-being of our community. That is why we have taken time to consider these subjects in detail and decided that they merit the submission of a separate report.

#### *The refuse collection service of the USD*

The PAC notes that the efficiency of the USD's refuse collection service has been subject to examination for a long time. As early as in 1986, the USD's Transport Manager had pointed out that the non-productive time of refuse collection teams was unacceptably high and that many refuse collection vehicles had substantial excess capacity. In spite of this, the USD had failed to implement any effective measures to redress the situation.

We are gravely concerned that according to Audit's findings in 1998, over one quarter of the refuse collection teams and one fifth of the refuse collection vehicles for various refuse collection routes were surplus to requirement. However, upon implementing the Audit recommendations, to our astonishment, the USD was able to delete 47 refuse collection teams and stop purchasing 142 refuse collection vehicles, thereby achieving recurrent cost savings of \$80 million and capital cost savings of \$170 million. This suggests that effective remedial action could have and should have been taken much earlier.

The PAC notes with serious dismay that, although the USD had recognized as early as 1986 that contracting out the refuse collection service would bring about substantial cost savings, the USD had not contracted out any of this service. By contrast, its counterpart in the New Territories, the Regional Services Department, had pursued contracting out since 1993 with proven satisfactory results.



We believe that, to improve the efficiency and cost-effectiveness of the refuse collection service, it is essential for the newly-established Food and Environmental Hygiene Department (FEHD) to speed up its action in contracting out the service. In this regard, we urge the Secretary for the Civil Service to provide support and assistance to the FEHD to ensure that it can manage its workforce with maximum flexibility and transfer surplus staff back to the Civil Service if necessary.

The PAC also notes that the USD commissioned a six-month consultancy in 1998 to review the cleansing services. However, the consultancy report was shelved and the matter had not been reported nor explained to the Provisional Urban Council. The Administration has explained that no follow-up action had been taken because the scope of the review was not sufficiently comprehensive to enable the USD to initiate any major changes to existing policies and that the quality of the report was unsatisfactory. The PAC is seriously dismayed that the consultancy report had not been submitted to the Provisional Urban Council and that, because of the lack of follow-up, public money and time for commissioning the consultancy may have been wasted. This incident reveals the weakness of an established mechanism for ensuring that public officers will make public the results of consultancy studies on matters of public interest. In view of the large number of consultancy studies commissioned by the Administration throughout the years, the PAC hopes that the Administration will improve the situation by issuing clear guidelines on the publication of consultancy reports.

### *Management practices of the VTC*

In examining the Director of Audit's Report on the management practices of the VTC, the PAC is concerned that a detailed Memorandum of Administrative Arrangement or a framework agreement between the VTC and the Government has still not been drawn up, despite the fact that the VTC was established in 1982. We consider that the various inadequacies in the management of the VTC, as identified by the Director of Audit, highlight the symptoms which need to be redressed by a framework agreement for providing guidance in the management of the public body. It is therefore essential for the Government and the VTC to rectify the situation as soon as possible. We note that the Secretary for Education and Manpower has undertaken to finalize the framework agreement with the VTC by the end of this month, and wish to be kept informed of the progress in this regard.

The PAC acknowledges that the VTC has a high degree of autonomy, but the public also expects the VTC, as a publicly-funded organization, to follow the best practices of corporate governance. We therefore recommend, among others, that the Executive Director of the VTC should set key output and outcome performance indicators for planning and measuring the results of vocational education and training services.

We also urge the Secretary for the Treasury to review the Financial Rules of the VTC to ensure compliance with the new framework agreement and the relevant subvention rules. The Executive Director of the VTC should then observe the requirement to seek prior approval from the Government where necessary in the light of the review and the new framework agreement.

Last but not least, the PAC also considers that it is vital for the Administration to arrange for one of the public officers appointed to the Council to be responsible for reminding the Council of the Government's subvention rules. As the VTC plays an important role in our education system and commands substantial public resources, the PAC hopes that the Administration will pursue these recommendations seriously.

#### *Water purchased from Guangdong Province*

The overflow from reservoirs and the quality of water supplied by Guangdong Province have been a matter of considerable public concern in recent years. Naturally, the community wish to be assured that the valuable water resources will not continue to be wasted and that Dongjiang water, purchased by Hong Kong at a significant price, will meet the required quality standards, so that value for money is achieved and public health is guaranteed.

Over the years, the mishaps committed by the Administration in dealing with the Dongjiang water saga are legion. The PAC is dismayed that in concluding the 1989 Agreement with the Guangdong Authority, the Administration committed Hong Kong to a long period of fixed supply quantity without any mechanism for adjusting the annual supply quantities in ensuing years. Neither was there any mechanism for ensuring that the water quality standard stipulated in the Agreement, that is, the 1983 Standard, would be complied with, nor was there any mechanism for resolving disputes in case of non-compliance with the terms of the Agreement by either party.

The PAC is concerned that prior to 1995, the Government had not raised the concern about excess water supply with the Guangdong Authority, despite the fact that the rate of growth in actual and industrial water consumption had dropped since 1990. We are seriously dismayed that the Government had once again failed to make use of the golden opportunity in 1998, when negotiating the Loan Agreement with the Guangdong Authority, to incorporate more flexibility for adjusting the annual supply quantities and to insist that water supplied to Hong Kong complied with a more comprehensive and stringent water quality standard, that is, the 1988 Standard.

In the course of examining the evidence relevant to the subject, the PAC was dismayed to find that even though the Administration had been aware of the deterioration in the quality of Dongjiang water for some time and had taken various measures to try to improve the water quality, the matter was only revealed to the Legislative Council at the meeting of the Panel on Environmental Affairs in April 1997. More seriously, information of a material nature had been omitted from the papers submitted for discussion at the meetings of the Panel on Environmental Affairs on 10 April 1997 and 2 July 1999, the Finance Committee on 3 April 1998, and the joint meeting of the Panels on Environmental Affairs and Planning, Lands and Works on 5 February 1999. The information includes:

- (a) the adoption of the 1988 Standard in the Mainland since 1 June 1988 and in Guangdong Province since 1991;
- (b) the discussion with the Guangdong Authority on the deterioration of water quality as early as in 1993;
- (c) the results of the consultancy study in 1996 which indicated that the quality of raw water would continue to deteriorate;
- (d) the approval of \$14.7 million in 1995 and \$13.8 million in 1997 to improve the chlorination facilities at the various water treatment works; and
- (e) a total of \$115 million of additional recurrent costs and \$30 million of capital costs having been incurred for water treatment since 1993.

Although the above material information was available at the time, the Administration still maintained at the meetings mentioned above that there was no trend in quality changes of any proportion which warranted material concern. It had further stated that there was no cause for alarm and that the water supplied was clean at source and was up to the standard stipulated in the 1989 Agreement.

The PAC condemns the Administration for not providing Members of the Legislative Council with accurate and complete information. Such omission had influenced the direction of Members' discussion at the relevant meetings leading to approval of various financial proposals concerning the quantity and quality of Dongjiang water. We also reject the explanation given by the Secretary for Works that such information was not disclosed because it was not related to the focus of the issue being discussed. Such a state of affairs is highly unsatisfactory and should be put right promptly.

The PAC notes that the Guangdong Authority has implemented a considerable number of environmental protection and improvement measures to protect and improve the quality of Dongjiang water. We also acknowledge that the Secretary for Works and the Director of Water Supplies gave an assurance that the quality of Dongjiang water had improved significantly since 1999 and that the quality of treated water had complied with the World Health Organization standards.

We urge the Administration to continue to negotiate with the Guangdong Authority with a view to:

- (a) incorporating in future water supply agreements more flexibility in adjusting the annual supply quantities;
- (b) stipulating a requirement that the water supplied to Hong Kong must comply with the 1988 Standard; and
- (c) enabling Hong Kong to stop drawing unneeded water in order to avoid wasting water due to overflow and to achieve some savings in the electricity cost of pumping operations and treatment costs.

We also urge the Administration to continue to discuss the subject of the quality of Dongjiang water at the Joint Working Group on Sustainable Development and Environmental Protection, and consider escalating the level of discussion to Beijing if the various issues raised cannot be resolved.

The PAC has also recommended, among others, that the Administration should adopt a more reasonable water storage level, and explore alternative sources of water supply if the quality of Dongjiang water continues to deteriorate. To increase the transparency of the monitoring and reporting process, we urge the Administration to publish, on a timely and regular basis, the test results of both raw water and treated water. To this end, we hope that the independent Advisory Committee on Water Supply will be established at the earliest possible date.

In the final analysis, water is so basic a commodity to our daily living that we must not let loose the control on its quality and public health standards. The Government owes this responsibility to the people of Hong Kong.

Madam President, on this occasion, even though the PAC has only been addressing three topics in a supplemental report, we have pursued our inquiry according to the best tradition of vigilant and balanced examination. We have paid ample attention to safeguarding the interest of the public in obtaining efficient, safe and clean services, whether it is to do with the refuse collection service in the urban area or the supply of water for consumption. As for the management of the VTC, with the growing family of public bodies in Hong Kong, it is only right that we should work to ensure such bodies follow proper financial arrangements.

I would take this opportunity to express my appreciation of the perseverance of members of the PAC in our examination of the very complex issues contained in this Report. We are grateful to the officials concerned and the representatives of the VTC for taking part in our hearings and for working together with us with patience in the last few months. Our appreciation also goes to the Director of Audit and his colleagues, and staff of the Legislative Council Secretariat for their unfailing support and hard work.

As always, we have made our conclusions and recommendations in this Report with the best intentions in order that value for money in the delivery of public services is achieved. We hope that the Administration will receive this Report and respond constructively to the ideas contained therein.

Thank you, Madam President.

**ORAL ANSWERS TO QUESTIONS**

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

**Conflict of interests of HKEx in Performing its Functions**

1. **MISS CHRISTINE LOH:** *Madam President, given that the new Hong Kong Exchanges and Clearing Limited (HKEx) is now a profit-making stock company, it has a fiduciary duty to maximize profits for its shareholders. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed if the HKEx has a conflict of interests in performing its dual functions of being a regulator to protect investors' interest (including refusing to list unsuitable companies or those with insufficient track record, the enforcement of the listing rules, and the sanctioning of listed companies for breaches of the listing rules), as well as setting a regulatory framework which is sufficiently relaxed to attract companies to listing, waiving and/or not strictly enforcing the rules, in order to maximize the profits of the HKEx;*
- (b) *if there is a conflict of interests, the conflict is acceptable; if it is acceptable, of the rationale for it; and*
- (c) *it knows of the reasons for the United Kingdom Government's decision, in connection with the demutualization of the London Stock Exchange, to transfer on 1 May 2000 the responsibility for the United Kingdom Listings and Regulation from the London Stock Exchange to the Financial Services Authority which will become the single statutory body for financial business, and whether it will follow suit in order to reduce the conflict of interests; if not, of the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES:** Madam President,

- (a) Let me start by highlighting the dual objectives of the HKEx. While it is a commercial entity, it also has to act in the wider interests of the public as well as the investing public. Indeed in

circumstances where conflicts arise between the two, the latter must prevail. But this is not totally new. Even prior to the merger, the Stock Exchange of Hong Kong (SEHK) has always been mandated to ensure an orderly and fair market, and in doing so act in the interests of the public, having regard to the interests of the investing public. The key to achieving such dual objectives is to establish an appropriate set of checks and balances so that conflicts between commercial and public objectives can be dealt with as and when they arise. The Administration has always laid emphasis on the importance of building the right balance into the legislative and regulatory framework. This policy also underlay the implementation of the merger and, particularly, the formulation of the Exchanges and Clearing Houses (Merger) Ordinance, which I would allude to in greater detail in my answer to part (b) of the question.

Now let me turn to the specific area of listing. The regulation of prospectus for offer of shares of a company incorporated in or outside Hong Kong is provided for under the Companies Ordinance and vested upon the Securities and Futures Commission (SFC). Such functions with respect to companies listed on the SEHK were in turn transferred to the SEHK by virtue of the Securities and Futures Commission (Transfer of Functions) Order made under the Securities and Futures Commission Ordinance. These remain unchanged after the merger.

The SEHK always has been the frontline regulator of listed companies in Hong Kong. The performance of its listing functions is overseen by the SFC. In November 1991, the SFC and the SEHK entered into a Memorandum of Understanding (MOU) to define the delineation of authorities and co-operation between the two organizations in respect of the Main Board of the SEHK. With the establishment of the Growth Enterprise Market (GEM) by the SEHK in November last year, an addendum to the MOU is being prepared to replicate and institutionalize similar arrangements for the GEM.

The SEHK is empowered under section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) to make rules in relation to listing, the regulation of market participants and the efficient operation and management of the exchange. These rules have to be approved by the SFC. The SFC may also makes rules relating to the listing of securities on the SEHK under section 14 of the Securities Ordinance.

To cater for the variety of situations in dealing with the applicants for listing and listed companies, the Listing Rules provide the SEHK with certain flexibility of interpretation and application. For example, the SEHK may impose additional requirements and special conditions, waive or modify the Listing Rules in individual cases in order to suit particular circumstances.

During the merger exercise last year, a review had been conducted by the SFC in conjunction with the SEHK on, among other things, the listing function and the possible alternative options for the future division of regulatory responsibilities between the SFC and the HKEx. That review did recognize that in certain circumstances, conflict of interests might arise between the roles of the HKEx/SEHK as a commercial market operator and service provider on the one hand, and regulator and enforcer of the Listing Rules on the other. We believe that the outcome of that review has provided the appropriate mechanism to address circumstances where such conflict arises.

- (b) As noted in the first part of my answer, while the HKEx is a commercial entity, it is a key financial asset of Hong Kong. It has to carry out important public functions, including ensuring an orderly and fair market and managing risks prudently. Some of these duties already existed for the Stock Exchange under the Stock Exchanges Unification Ordinance prior to the merger and have been extended and more clearly specified under section 8 of the Exchanges and Clearing Houses (Merger) Ordinance. That section also provides that where conflict arises between the interests of the HKEx and the wider interests of the public and the investing public, the latter must prevail.



The Merger Ordinance also contains a comprehensive framework of checks and balances including, the power to approve the appointment and removal of the chairman of the HKEx, a majority of its directors representing public interests, and senior executives; vetting of its fees and charges; and the establishment of the Risk Management Committee. These have been thoroughly debated and endorsed during the legislative process in this Council.

The framework of checks and balances covers also the listing functions performed by the SEHK. Making of Listing Rules by the SEHK continue to be subject to the approval by the SFC before the rules come into effect. In considering any rule change proposed by the SEHK which would amount to a relaxation of a prevailing standard, the SFC would consider what is in the best interests of the investors. Rule changes of this kind are rarely agreed without debate and public consultation where the interests of the market and the interests of the investors could be fully expressed.

In addition, there are limitations on the HKEx/SEHK in exercising its waiver power under the Listing Rules. More specifically, any waiver or modification of a rule which is intended to have general effect (that is to say, affecting more than one issuer and its subsidiaries at the same time) may only be granted with the prior consent of the SFC. The SEHK should not grant a particular waiver or modification of a rule on a regularly recurring basis so as to create the same result as a general waiver.

Section 13 of the Merger Ordinance contains further provisions which specifically deal with possible conflict of interests which would arise if the SEHK were to supervise its holding company, that is, the HKEx and other companies of the HKEx after their listing on the SEHK. This section provides that before such listing is permitted, the SFC will have to be satisfied that there are adequate rules dealing with possible conflict of interests and that arrangements are in place to ensure market integrity and compliance with listing obligations. It further provides for the SFC to be responsible for all matters regarding the HKEx, which would, in the case of any other listed company, be dealt with by the Listing Division of the SEHK. Section 14 of the same Ordinance provides

another safeguard by providing the SFC the power to give direction to the HKEx or its subsidiary company to take steps where it is satisfied that conflict of interests exists or may exist.

We believe that sufficient safeguards exist in the regulatory measures against possible compromise of investors' interests by the business pursuits of the company including its listing function.

- (c) I am not in a position to comment on the reasons behind the decisions of the United Kingdom Government. As far as we understand from a press release issued by HM Treasury in October last year, the United Kingdom Government's policy intention to transfer the responsibility of Competent Authority for Listing from the London Stock Exchange to the Financial Services Authority was made following the London Stock Exchange's proposal to demutualize and turn itself into a commercial company. We do not have the full details of the proposal, such as whether the whole of the listing function is to be transferred. In any case, the implementation of this proposal would require a revision of the Listing Rules currently adopted by the London Stock Exchange and possibly amendments to the relevant parts of the Financial Services and Market Bill which was introduced into the United Kingdom Parliament in June last year.

As for Hong Kong, the SFC last year had reviewed the listing function in consultation with the SEHK in the context of the merger exercise in order to rationalize the regulation of the market. The options for possible re-delineation of functions and responsibilities between the two on listing were considered. Two options, namely, to leave the structure as at present or to return the listing functions to the SFC were examined at the Co-ordinating Committee on Market Structure Reform which was established in May last year to advise the Administration on policy matters relating to the merger. After careful consideration of the merits and demerits of both options, the SFC recommended and the Government endorsed that the present division of listing function should remain. This position was subsequently stated in the policy paper entitled "Hong Kong Exchanges and Clearing Limited: Reinforcing Hong Kong's Position as a Global Financial Centre", published by the

Government on 8 July 1999. Meanwhile, discussions to improve the efficiency of the performance of the listing function within the SEHK and the co-ordination of functions undertaken by both the SFC and the SEHK continue. This involves a re-examination of the allocation of resources within the SEHK and an examination of the functions and work processes in the Listing Division. A further MOU is being prepared by the SFC and the HKEx to implement the rationalized delineation of regulatory functions.

**MISS CHRISTINE LOH:** *Madam President, I would like to ask for one clarification.*

*In response to part (a) of the question, the Secretary said quite clearly that if there were conflict of interests, it should be resolved in favour of the investing public. Two paragraphs from there, the Government talked about the GEM. Can the Secretary confirm that as of this moment, whether the MOU is still being prepared and is not yet finished? Can the Secretary also tell us that when the GEM was giving out waivers to companies such as tom.com, whether he is indeed satisfied that it has acted in the public interests over any other conflict of interests?*

**SECRETARY FOR FINANCIAL SERVICES:** Madam President, the question of the GEM's Listing Rules, in particular, waivers granted to individual listed companies on the GEM, had been thoroughly discussed at a meeting of the Legislative Council Panel on Financial Affairs last month. As far as the Administration is concerned, the Administration agrees with the SFC that on the basis of the Listing Rules applied now with the GEM, the importance of public interests has not been undermined. In other words, on the launch of the GEM, there was, in fact, an agreed set of rules between the SFC and the SEHK. What was also agreed at the time was that in view of the GEM being a new activity, the Listing Rules should be reviewed six months after the GEM has started operation. Now, because of the various questions raised with regard to individual cases, the Chairman of the SFC, at a meeting of the Panel on Financial Affairs in March, declared that he would advance the review instead of waiting for six months. He will start the review right now together with the SEHK in order to see what further improvements are necessary, not only to the Listing Rules, but also, as Miss LOH has indicated, to the addendum to the MOU as well.

In other words, up till now, the SFC has not seen any action taken by the SEHK with regard to the GEM that would lead it to believe that public interests have been injured and that further action has to be taken. We should bear in mind that the SFC has ample powers even to issue, for example, restriction notices against the SEHK if, in its view, the actions taken by the SEHK were either wrong, or not in the interests of the investing public or not in the general interests of Hong Kong.

**MR RONALD ARCULLI:** *Madam President, firstly, I would like to declare my position as a non-executive director of the SFC. Secondly, I would also like to advise colleagues that within the last two weeks, I actually visited the Australian equivalent of the SFC and the concern that .....*

**PRESIDENT** (in Cantonese): Mr ARCULLI, I think you should not make any suggestion at this stage. Please come to your supplementary question direct.

**MR RONALD ARCULLI:** *Madam President, I simply want to state what the practice in Australia is and ask the Administration whether, in fact, this would be the practice in Hong Kong, since the regime in Australia is identical to Hong Kong.*

*The practice in Australia is that where a conflict arises between the stock exchange in its listing function, the stock exchange will give up its regulatory role in specific cases to the SFC equivalent in Australia.*

*Thus, my question to the Secretary is that firstly, is there a mechanism, in so far as our laws are concerned, to allow the SFC to take over the HKEx's role as a regulator or supervisor of any listing or other matters in cases of conflict between the HKEx and the listed companies? And secondly, whether this is indeed the Government's policy that if something like this does arise, it will automatically, as it were, transfer the regulatory and supervisory powers back to the SFC in case of potential conflict?*

**SECRETARY FOR FINANCIAL SERVICES:** Madam President, the short answer is "Yes". As indicated more specifically in my main reply, sections 8, 13 and 14 of the Merger Ordinance have already provided for such eventualities.

**MR HOWARD YOUNG:** *Madam President, I notice that the Secretary mentions at least in two places of his reply, that is, at the beginning of part (a) and also in part (b), that where conflict arises between the interests of the HKEx and the wider interests of the public as well as the investing public, the latter must prevail.*

*I would like to know that in such an event, who is the final arbitrator in deciding whether there is a conflict and what should prevail? Is that the case where we have judges and jury, or do we have the final arbitrator, a body which has no connection whatsoever with the HKEx?*

**SECRETARY FOR FINANCIAL SERVICES:** Madam President, the Board of the HKEx has to operate according to the law. And in this particular instance, the relevant law, of course, is the Merger Ordinance which spells out that where a conflict exists, the interests of the public and the investing public must come first, that is enshrined in the law. In other words, the management and the leadership of the new Stock Exchange is expected to operate on this particular basis. This is not the end of the story, of course. The other safeguard is that the SFC has full powers in case the HKEx was seen not to be operating on such a basis. So there are, of course, various provisions in the existing ordinance to ensure that this is the case.

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

**MR NG LEUNG-SING** (in Cantonese): *Madam President, did the Government collect information concerning conflicts mentioned earlier in the recent review of functions in relation to the merger, which should include past records of cases concerning conflict of interests; if yes, can such records or information be made available for public inspection?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, according to my understanding, the question of Miss LOH refers to the situation after the merger. Since the new HKEx is a listed commercial entity now, the problem of potential conflict of interests is therefore more acute than before. As a result, when those issues were reviewed last year, we had not taken the past into consideration alone, because the old exchanges are a far cry from the present situation. The Australian practice was our only reference, as Mr ARCULLI indicated earlier. The Australia Stock Exchange (ASX) was the only regime to demutualize, list and transform into a share company in last summer. We took the practice of Australia for reference before we made the current arrangement for the HKEx. Therefore, there are many similarities between our stock exchange and ASX in terms of practice.

### **Enhanced Productivity Programme of Government Departments and Subvented Organizations**

2. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, with regard to the implementation of the Enhanced Productivity Programme (EPP) by government departments and subvented organizations, will the Government inform this Council of:*

- (a) *the government departments which have left permanent posts in their establishment vacant for one year or more and the respective numbers of such posts in each department; whether such posts have been left vacant in order to implement the EPP;*
- (b) *the total number of government departments and subvented organizations which have cut back the number of their junior and front-line posts so as to implement the EPP, and the respective numbers of junior and front-line posts deleted in those departments and organizations; and*
- (c) *the total number of government departments which have contracted out services originally provided by their staff to private organizations in order to implement the EPP; the respective numbers of staff thus affected in these departments and organizations, and whether all these staff have been assigned new duties?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I would like to reply to the question in respect of government departments. For the first part of the main question, as at 31 December 1999, the total civil service establishment of various government departments is 195 629 and the total strength of serving civil servants is 186 997. As such, there are currently 8 632 posts on the civil service establishment not being substantively filled by serving civil servants. The respective establishment and vacancy position of individual departments is at Annex A.

There are many reasons for these posts on the civil service establishment being temporarily left vacant, including:

- (a) posts reserved to accommodate officers on pre-retirement leave or final leave;
- (b) posts reserved to provide operational relief for officers on leave;
- (c) posts reserved to accommodate permanent staff working on short-term or time-limited projects upon their reversion;
- (d) posts reserved to accommodate permanent staff on secondment to other grades upon their reversion;
- (e) posts frozen temporarily pending post or establishment review or reorganization;
- (f) having regard to operational requirements and for the purpose of achieving greater efficiency, posts frozen for redeployment of resources for other uses, such as contracting out, employing non-civil service contract staff or short-term projects and so on; and
- (g) posts not yet filled due to natural wastage of civil servants, creation of new posts for providing new services and so on.

As deployment of civil servants varies constantly according to the actual operational situation and vacancies are distributed in various grades and departments, we do not keep overall statistics as to how long individual posts have been left vacant. The number of vacancies at present is higher than the average of 6 000-odd vacancies over the past few years mainly because of the

general freeze on recruitment to the Civil Service in the past financial year imposed by the Government. The vacancy position is not directly related to the implementation of the EPP.

Regarding the second part of the main question, in 2000-01, the numbers of post deletions arising from the implementation of the EPP are:

|   |   |     |
|---|---|-----|
| At junior level (MPS point 9 or below)  | = | 268 |
| At middle level (MPS points 10-33)      | = | 525 |
| At senior level (MPS point 34 or above) | = | 87  |
| Total                                   |   | 880 |

The breakdown of posts deleted by departments is at Annex B.

As regards the third part of the main question, up to 2000-01, a total of 17 Policy Bureaux and departments have contracted out their services for implementing the EPP. These plans involve the deletion of 124 posts. All staff affected have been redeployed and there is no redundancy of surplus staff due to the implementation of the EPP.

As regards that part of the main question concerning subvented organizations, it should be noted that the management of resources, the employment of staff and the procurement of services are basically matters for the respective subvented organizations. Like government bureaux and departments, subvented organization subject to the EPP are required to progressively reduce their operating expenditure to achieve the target of a 5% cumulative savings by 2002-03. In recognition of the management autonomy of these organizations and their individual operation and characteristics, and the large numbers involved, we have not sought to collate information regarding the deletion of posts or contracting out of services in individual subvented organizations as a result of the EPP. Nonetheless, like their government counterparts, these organizations are required to ensure that the EPP is implemented without compromising the quality of service and in an open, transparent and accountable manner.



Civil Service Establishment, Strength and Vacancy  
as at 31 December 1999

| <i>Policy Bureau/Department</i>                   | <i>Permanent<br/>establishment</i> | <i>Supernumerary<br/>posts</i> | <i>Total<br/>Establishment</i> | <i>Total<br/>Strength</i> | <i>Vacancy</i> |
|---|------------------------------------|--------------------------------|--------------------------------|---------------------------|----------------|
| Civil Service Bureau                              | 353                                | 3                              | 356                            | 347                       | 9              |
| Constitutional Affairs Bureau                     | 54                                 | 2                              | 56                             | 52                        | 4              |
| Economic Services Bureau                          | 95                                 | 2                              | 97                             | 96                        | 1              |
| Education and Manpower Bureau                     | 103                                | 3                              | 106                            | 106                       | 0              |
| Finance Bureau                                    | 197                                | 1                              | 198                            | 196                       | 2              |
| Financial Services Bureau                         | 219                                | 2                              | 221                            | 203                       | 18             |
| Health and Welfare Bureau                         | 111                                | 1                              | 112                            | 114                       | -2             |
| Home Affairs Bureau                               | 234                                | 4                              | 238                            | 234                       | 4              |
| Housing Bureau                                    | 58                                 | -                              | 58                             | 58                        | 0              |
| Information Technology and<br>Broadcasting Bureau | 82                                 | 3                              | 85                             | 84                        | 1              |
| Planning, Environment and Lands<br>Bureau         | 60                                 | 3                              | 63                             | 63                        | 0              |
| Security Bureau                                   | 167                                | 2                              | 169                            | 169                       | 0              |
| Trade and Industry Bureau                         | 124                                | 2                              | 126                            | 118                       | 8              |
| Transport Bureau                                  | 119                                | 4                              | 123                            | 121                       | 2              |
| Works Bureau                                      | 279                                | -                              | 279                            | 266                       | 13             |
| Agriculture and Fisheries Department              | 2 388                              | -                              | 2 388                          | 2 286                     | 102            |
| Architectural Services Department                 | 2 199                              | 3                              | 2 202                          | 2 037                     | 165            |
| Audit Commission                                  | 229                                | -                              | 229                            | 216                       | 13             |
| Auxiliary Medical Service                         | 103                                | -                              | 103                            | 102                       | 1              |
| Beijing Office                                    | 20                                 | -                              | 20                             | 20                        | 0              |
| Buildings Department                              | 881                                | 1                              | 882                            | 865                       | 17             |
| Census and Statistics Department                  | 1 610                              | -                              | 1 610                          | 1 546                     | 64             |
| Chief Executive's Office                          | 90                                 | -                              | 90                             | 85                        | 5              |
| Chief Secretary for Administration's<br>Office    | 457                                | 8                              | 465                            | 453                       | 12             |
| Civil Aid Service                                 | 126                                | -                              | 126                            | 122                       | 4              |
| Civil Aviation Department                         | 722                                | -                              | 722                            | 702                       | 20             |
| Civil Engineering Department                      | 1 646                              | 2                              | 1 648                          | 1 537                     | 111            |

| <i>Policy Bureau/Department</i>                  | <i>Permanent establishment</i> | <i>Supernumerary posts</i> | <i>Total Establishment</i> | <i>Total Strength</i> | <i>Vacancy</i> |
|--|--------------------------------|----------------------------|----------------------------|-----------------------|----------------|
| Civil Service Training and Development Institute | 164                            | -                          | 164                        | 148                   | 16             |
| Companies Registry                               | 419                            | -                          | 419                        | 393                   | 26             |
| Correctional Services Department                 | 7 215                          | -                          | 7 215                      | 6 981                 | 234            |
| Customs and Excise Department                    | 5 256                          | -                          | 5 256                      | 5 057                 | 199            |
| Department of Health                             | 7 274                          | 1                          | 7 275                      | 6 940                 | 335            |
| Department of Justice                            | 1 157                          | 6                          | 1 163                      | 1 095                 | 68             |
| Drainage Services Department                     | 2 166                          | -                          | 2 166                      | 2 086                 | 80             |
| Economic and Trade Offices                       | 65                             | -                          | 65                         | 59                    | 6              |
| Education Department                             | 6 787                          | 3                          | 6 790                      | 6 481                 | 309            |
| Electrical and Mechanical Services Department    | 5 591                          | 2                          | 5 593                      | 4 838                 | 755            |
| Environmental Protection Department              | 1 652                          | -                          | 1 652                      | 1 618                 | 34             |
| Fire Services Department                         | 9 290                          | -                          | 9 290                      | 9 170                 | 120            |
| Government Flying Service                        | 257                            | -                          | 257                        | 240                   | 17             |
| Government Laboratory                            | 369                            | -                          | 369                        | 361                   | 8              |
| Government Land Transport Agency                 | 195                            | -                          | 195                        | 179                   | 16             |
| Government Property Agency                       | 274                            | -                          | 274                        | 269                   | 5              |
| Government Secretariat (Operational Reserve)     | 526                            | 1                          | 527                        | 324                   | 203            |
| Government Supplies Department                   | 496                            | -                          | 496                        | 437                   | 59             |
| Highways Department                              | 2 114                          | 7                          | 2 121                      | 2 031                 | 90             |
| Home Affairs Department                          | 1 924                          | 1                          | 1 925                      | 1 892                 | 33             |
| Hong Kong Monetary Authority                     | 105                            | -                          | 105                        | 75                    | 30             |
| Hong Kong Observatory                            | 333                            | 1                          | 334                        | 334                   | 0              |
| Hong Kong Police Force                           | 35 072                         | -                          | 35 072                     | 34 516                | 556            |
| Hospital Authority                               | 5 457                          | -                          | 5 457                      | 5 457                 | 0              |
| Housing Department                               | 14 277                         | 6                          | 14 283                     | 13 387                | 896            |
| Immigration Department                           | 5 702                          | 1                          | 5 703                      | 5 632                 | 71             |
| Industry Department                              | 254                            | -                          | 254                        | 247                   | 7              |
| Information Services Department                  | 505                            | -                          | 505                        | 491                   | 14             |
| Information Technology Services Department       | 946                            | 2                          | 948                        | 898                   | 50             |
| Inland Revenue Department                        | 3 356                          | -                          | 3 356                      | 3 320                 | 36             |
| Intellectual Property Department                 | 152                            | -                          | 152                        | 145                   | 7              |

| <i>Policy Bureau/Department</i>   | <i>Permanent establishment</i> | <i>Supernumerary posts</i> | <i>Total Establishment</i> | <i>Total Strength</i> | <i>Vacancy</i> |
|---|--------------------------------|----------------------------|----------------------------|-----------------------|----------------|
| Judiciary   | 1 745                          | -                          | 1 745                      | 1 685                 | 60             |
| Labour Department   | 1 896                          | -                          | 1 896                      | 1 831                 | 65             |
| Land Registry   | 599                            | 2                          | 601                        | 592                   | 9              |
| Lands Department  | 3 826                          | 7                          | 3 833                      | 3 697                 | 136            |
| Legal Aid Department  | 621                            | -                          | 621                        | 606                   | 15             |
| Management Services Agency  | 94                             | -                          | 94                         | 85                    | 9              |
| Marine Department   | 1 715                          | -                          | 1 715                      | 1 657                 | 58             |
| Office of the Ombudsman   | 79                             | -                          | 79                         | 77                    | 2              |
| Official Languages Agency   | 224                            | -                          | 224                        | 209                   | 15             |
| Official Receiver's Office  | 266                            | -                          | 266                        | 265                   | 1              |
| Planning Department   | 843                            | 2                          | 845                        | 831                   | 14             |
| Post Office   | 5 884                          | 3                          | 5 887                      | 5 846                 | 41             |
| Printing Department   | 446                            | -                          | 446                        | 425                   | 21             |
| Public Service Commission   | 36                             | -                          | 36                         | 33                    | 3              |
| Radio Television Hong Kong  | 699                            | -                          | 699                        | 604                   | 95             |
| Rating and Valuation Department   | 976                            | 1                          | 977                        | 945                   | 32             |
| Regional Services Department  | 11 518                         | -                          | 11 518                     | 10 384                | 1 134          |
| Registration and Electoral Office   | 235                            | -                          | 235                        | 187                   | 48             |
| Secretariat for Independent Police<br>Complaints Council  | 26                             | -                          | 26                         | 26                    | 0              |
| Secretariat of Standing Commission<br>on Civil Service Salaries and<br>Conditions of Service        | 30                             | -                          | 30                         | 27                    | 3              |
| Secretariat for Standing Committee on<br>Disciplined Services Salaries and<br>Conditions of Service | 12                             | -                          | 12                         | 12                    | 0              |
| Social Welfare Department   | 5 593                          | -                          | 5 593                      | 5 396                 | 197            |
| Student Finance Assistance Agency   | 206                            | -                          | 206                        | 203                   | 3              |
| Office of the Telecommunications<br>Authority   | 280                            | -                          | 280                        | 277                   | 3              |
| Television and Entertainment<br>Licensing Authority   | 195                            | -                          | 195                        | 189                   | 6              |
| Territory Development Department  | 399                            | -                          | 399                        | 389                   | 10             |
| Trade Department  | 773                            | -                          | 773                        | 749                   | 24             |
| Transport Department  | 1 375                          | 3                          | 1 378                      | 1 357                 | 21             |

| <i>Policy Bureau/Department</i> | <i>Permanent establishment</i> | <i>Supernumerary posts</i> | <i>Total Establishment</i> | <i>Total Strength</i> | <i>Vacancy</i> |
|---------------------------------|--------------------------------|----------------------------|----------------------------|-----------------------|----------------|
| Treasury                        | 780                            | -                          | 780                        | 747                   | 33             |
| University Grants Committee     | 47                             | -                          | 47                         | 46                    | 1              |
| Secretariat                     |                                |                            |                            |                       |                |
| Urban Services Department       | 15 981                         | -                          | 15 981                     | 14 523                | 1 458          |
| Water Supplies Department       | 6 059                          | -                          | 6 059                      | 5 798                 | 261            |
| Total                           | 195 534                        | 95                         | 195 629                    | 186 997               | 8 632          |

## Annex B

## Post Deleted for Implementation of Enhanced Productivity Programme in 2000-01

| <i>Policy Bureau/Department</i>         | <i>Senior Level</i> | <i>Middle Level</i> | <i>Junior Level</i> | <i>Total</i> |
|---|---------------------|---------------------|---------------------|--------------|
| Civil Service Bureau                    | 0                   | 4                   | 2                   | 6            |
| Civil Service Bureau (General Expenses) | 2                   | 0                   | 1                   | 3            |
| Constitutional Affairs Bureau           | 1                   | 3                   | 2                   | 6            |
| Economic Services Bureau                | 0                   | 0                   | 1                   | 1            |
| Finance Bureau                          | 0                   | 1                   | 0                   | 1            |
| Health and Welfare Bureau               | 0                   | 0                   | 1                   | 1            |
| Housing Bureau                          | 1                   | 0                   | 0                   | 1            |
| CS/FS' Offices                          | (1)                 | 2                   | 0                   | 1            |
| Transport Bureau                        | 0                   | 1                   | 0                   | 1            |
| Agriculture and Fisheries Department    | 2                   | 6                   | 26                  | 34           |
| Audit Commission                        | 0                   | 3                   | 0                   | 3            |
| Auxiliary Medical Service               | 0                   | 0                   | 1                   | 1            |
| Buildings Department                    | 0                   | 5                   | 11                  | 16           |
| Census and Statistics Department        | 1                   | 19                  | 0                   | 20           |
| Civil Aid Service                       | 0                   | 0                   | 5                   | 5            |
| Civil Engineering Department            | 0                   | 6                   | 15                  | 21           |
| Correctional Services Department        | 10                  | 47                  | 4                   | 61           |
| Customs and Excise Department           | 7                   | 50                  | 2                   | 59           |
| Department of Health                    | 11                  | 56                  | 75                  | 142          |
| Drainage Services Department            | 1                   | 5                   | 0                   | 6            |

| <i>Policy Bureau/Department</i>               | <i>Senior<br/>Level</i> | <i>Middle<br/>Level</i> | <i>Junior<br/>Level</i> | <i>Total</i> |
|---|-------------------------|-------------------------|-------------------------|--------------|
| Education Department                          | 0                       | 18                      | 0                       | 18           |
| Electrical and Mechanical Services Department | 0                       | 0                       | 2                       | 2            |
| Environmental Protection Department           | 2                       | 5                       | 8                       | 15           |
| Fire Services Department                      | 13                      | 100                     | 0                       | 113          |
| Government Laboratory                         | 2                       | 1                       | 1                       | 4            |
| Hong Kong Police Force                        | 20                      | 55                      | (3)                     | 72           |
| Immigration Department                        | 4                       | 54                      | 42                      | 100          |
| Inland Revenue Department                     | 0                       | 4                       | 9                       | 13           |
| Judiciary                                     | 3                       | 14                      | 4                       | 21           |
| Labour Department                             | 1                       | 10                      | 9                       | 20           |
| Lands Department                              | 4                       | 25                      | 22                      | 51           |
| Legal Aid Department                          | 0                       | 4                       | 1                       | 5            |
| Management Services Agency                    | 0                       | 0                       | 2                       | 2            |
| Marine Department                             | 1                       | 2                       | 6                       | 9            |
| Office of The Ombudsman                       | 0                       | 0                       | 1                       | 1            |
| Official Languages Agency                     | 1                       | 0                       | 0                       | 1            |
| Planning Department                           | 1                       | 4                       | 1                       | 6            |
| Public Service Commission                     | 0                       | 0                       | 1                       | 1            |
| Radio Television Hong Kong                    | 0                       | 3                       | 6                       | 9            |
| Registration and Electoral Office             | 0                       | 1                       | 0                       | 1            |
| Office of the Telecommunication Authority     | 0                       | 2                       | 1                       | 3            |
| Territory Development Department              | 0                       | 2                       | 0                       | 2            |
| Trade Department                              | 0                       | 8                       | 2                       | 10           |
| Transport Department                          | 0                       | 5                       | 2                       | 7            |
| Treasury                                      | 0                       | 0                       | 5                       | 5            |
| Total   | 87                      | 525                     | 268                     | 880          |

Note: ( ) denotes creation of posts

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in her reply to part (c) of the main question, the Secretary said "these plans involve the deletion of 124 posts". May I ask the Government whether these posts are all pensionable posts or inclusive of posts for contract and non-contract staff?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, the 124 posts we were talking about are posts on the civil service establishment.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, in the coming three years, how many government departments and categories of work will have their services contracted out? How many posts will be affected by the contracting-out practice?*

**PRESIDENT** (in Cantonese): Which Secretary would like to make a reply? Secretary for the Treasury.

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, our controlling officers have taken follow-up action with respect to contracting out services. We are actually talking about what will happen in this year, the coming and the 2002-03 fiscal year. The controlling officers have yet to formulate a three-year plan setting out clearly what services will be contracted out in the next three years and the number of posts to be deleted as a result of the contracting-out practice. We do not have the relevant data for the time being.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, will the Secretary inform this Council whether the Government will, upon acquiring such information, let Members know as soon as possible?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I will forward Mr CHAN's request to various Policy Bureaux.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, in answering part (c) of the main question, the Government mentioned "all staff affected have been redeployed and there is no redundancy of surplus staff due to the implementation of the EPP". Will the Government inform this Council whether the policy and the objective of ensuring that there will be no redundancy of surplus staff due to the implementation of the EPP are similarly applicable to subvented organizations?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I would like to thank the Honourable LAW Chi-kwong for raising this supplementary question. Actually, we have made ourselves very clear in the last paragraph of the main reply. As "the management of resources, the employment of staff and the procurement of services are basically matters for the respective subvented organizations", they are given a high degree of autonomy in terms of management. The supplementary question raised by the Honourable Member precisely touches upon matters to be dealt with by subvented organizations within their autonomy. Of course, in the last sentence of the main reply, we urge these organizations to "ensure that the EPP is implemented without compromising the quality of service and in an open, transparent and accountable manner".

**MR ANDREW CHENG** (in Cantonese): *Madam President, we can see from Annex B to the main reply that the Department of Health (DH) and the Fire Services Department (FSD) have the greatest numbers of deleted posts. However, it has been the public's most intense aspiration that these two departments can boost their services, including enhancing the out-patient services and achieving the performance pledge with respect to punctual arrival of ambulances. Will the Government inform this Council of, in implementing the EPP, the benchmarks for determining the respective number of staff needed to be cut by which government departments, and ways to ensure that the services provided by these departments will not be affected?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, in implementing the EPP, every controlling officer will assess the past operational needs before proposing ways to enhance productivity. The numbers of deleted posts set out in Annex B have been calculated by controlling officers bearing in mind that the services must not be affected.

**MR ANDREW CHENG** (in Cantonese): *Madam President, my supplementary question concerns how the Government can give assurances. The two departments mentioned by me — the FSD and the DH — will need to delete 113 and 142 posts respectively. However, we frequently find these two departments*

*suffer from inadequate manpower. Examples are the out-patient services provided by the DH and the performance pledge made by the FSD in relation to punctual arrival of ambulances, an issue mentioned in a meeting recently held by the Panel on Security. As such, why will these two departments have the greatest numbers of posts cut under the EPP? How can the Government convince the public that the services provided by these two departments will not be affected?*

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

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, our information has not indicated which grades will be deleted. However, according to the information I have on hand, the work to be reduced or contracted out by departments such as the DH and the FSD is confined to cleansing services for buildings or other support services. It is not related to the services directly provided by front-line staff to the public.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I think the thrust of the supplementary question is really about what posts will be affected when the 10 000 posts are deleted in future. Actually, the main reply has given us some clues. In answering the part of the question relating to the posts on the civil service establishment being temporarily left vacant, the Secretary has listed her reasons under items (a) to (g). I am not sure whether the Secretary will agree with me. But I am of the view that most of the reasons listed are normal; only items (e) and (f) are abnormal. Item (e) refers to "posts frozen temporarily pending post or establishment review or reorganization"; whereas item (f) refers to "posts frozen having regard to operational requirements and for the purpose of achieving greater efficiency". Of the 8 000-odd posts on the civil service establishment not being substantively filled by serving civil servants, how many posts have been left temporarily vacant for these two reasons? In other words, how many posts have been left vacant under abnormal circumstances? Perhaps we can thus predict whether the Government will slash these posts in future.*



**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, we do not have separate breakdowns for items (a) to (g). As far as item (g) is concerned — that is, posts not yet filled due to natural wastage of civil servants or creation of new posts — there are 3 200-odd such vacant posts. As regards "posts frozen temporarily pending post or establishment review or re-organization" in various departments, two bureaux responsible for managing resources have, subsequent to the proposal by the Financial Secretary to control the civil service establishment, issued notices requesting departments to submit their manpower plans and give their reasons for proposed retention of posts. We will conduct an objective and comprehensive review in the light of the plans submitted.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question in relation to items (e) and (f). Perhaps she is unable to give me a reply now. May I ask the Secretary to give me a written reply in due course? Furthermore, the Secretary has also failed to answer my supplementary question concerning the slash of posts. Can the Secretary simply say "yes" or "no"?*

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

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I have pointed out in the main reply that department heads and heads of grade will, in the light of their manpower resources plans and needs, submit their proposals for the deletion of posts. I do not see a certain item will suffer from "a slash" in particular.

**MR LEE KAI-MING** (in Cantonese): *Madam President, in the last paragraph of part (a) of the main reply, the Secretary remarked: "The number of vacancies at present is higher than the average of 6 000-odd vacancies over the past few years mainly because of the general freeze on recruitment to the Civil Service in the past financial year imposed by the Government. The vacancy position is not directly related to the implementation of the EPP." In her reply to part (a) of the main question, however, the Secretary again pointed out that there are 880*

*post deletions arising from the implementation of the EPP. Will the Secretary inform this Council why there has been a rise in the number of vacancies if it is because of the freeze on recruitment to the Civil Service, having nothing to do with the implementation of the EPP?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, in the past, in the event of natural wastage of civil servants, government departments might recruit new staff on condition that there was no freeze on recruitment to the Civil Service. Since the policy of freezing recruitment to the Civil Service was implemented last year, we have been unable to fill vacancies arising out of natural wastage of civil servants, thereby causing a rise in vacancy rates. The 880 extra posts are actually posts that can be deleted based on the calculation by controlling officers in consideration of their operational needs and manpower deployment under the EPP. These posts are unrelated to the vacant posts mentioned by Mr LEE in the first part of his supplementary question.

**MR LEE KAI-MING** (in Cantonese): *Madam President, my supplementary question is: Why is it necessary to freeze recruiting civil servants as the Secretary said the freeze has nothing to do with the EPP?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, the Financial Secretary actually pointed out in last year's Budget speech that it was necessary to implement the policy to freeze recruiting civil servants because the Government was examining the civil service reform and considered there was a need to freeze recruiting civil servants temporarily.

**DR RAYMOND HO** (in Cantonese): *Madam President, in the last paragraph of part (a) of her main reply, the Secretary for the Civil Service pointed out that "deployment of civil servants varies constantly according to the actual operational situation". However, there are certain circumstances beyond the control of government departments. For example, the commencement of a project may be delayed for certain reasons. In that case, the deployment of manpower may not be required immediately. Will the project suffer from manpower shortage upon its commencement should the posts currently left vacant be deleted? How can the Administration make better arrangements with respect to the deployment of manpower?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, it is precisely because the deployment of civil servants is frequently required to cope with the actual operation that we have the practice of reserving some vacant posts for the purpose of coping with staff deployment. According to guidelines issued by the Government, department heads and heads of grade will, in examining the deletion of posts, exercise extreme care in assessing the amount of work they have on hand and their needs before making proposals for the deletion of posts.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. We shall now proceed to the third question.

### **Remuneration of Employees of Contractors Providing Cleaning/Security Services for Tertiary Institutions**

3. **MR CHAN WING-CHAN** (in Cantonese): *Madam President, at present, most of the University Grants Committee (UGC)-funded tertiary institutions engage private companies as contractors to provide cleaning and security services for them. It has been reported that the employees of these companies are poorly paid and some are even denied statutory rest days. In this connection, will the Government inform this Council whether:*

- (a) *it knows if these tertiary institutions, before deciding to engage private companies to provide cleaning and security services, had consulted their staff who had previously undertaken such work; if so, of the form and results of the consultation;*
- (b) *the authorities concerned have issued guidelines to these institutions regarding the engagement of companies for the provision of services, requesting them to stipulate in the service contracts the maximum daily working hours for and the minimum wages payable to such employees of the service companies, and to monitor the levels of remuneration given by the service companies to such employees; and*
- (c) *the authorities concerned will request these institutions, in selecting the service companies, to take into account the levels of remuneration offered to the relevant employees by the companies concerned; if not, of the reasons for that?*

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

- (a) To enhance service quality and cost-effectiveness, local tertiary institutions have contracted out some non-core services (such as cleaning, security and catering) to private operators. Six of the UGC-funded institutions have contracted out their cleaning and security services. In fact, this is a long-standing practice, with some institutions having outsourced these services since their inception. Before deciding to outsource these services, the institutions have already consulted the staff concerned through various channels, including discussion with the staff representatives, and their views have been taken into account. We are given to understand that through such measures as internal staff redeployment, institutions have not laid off any employees as a result of outsourcing their cleaning and security services.
- (b) All UGC-funded institutions are independent statutory bodies. By virtue of their respective ordinances, the institutions have management autonomy in, for example, employing staff and entering into contracts. It is therefore inappropriate for the Government to issue any guidelines to the institutions on such internal administrative matters as the outsourcing of services. Like all other companies and organizations in Hong Kong, the institutions' service contractors are obliged to provide all the protections that the employees are entitled to under the Employment Ordinance and other relevant legislations.
- (c) We do not consider it appropriate for the Government to request the institutions that, in selecting service contractors, they must take into account the levels of remuneration offered to their employees. This is because it is an employment matter between the contractors and their employees. In practice, in selecting service contractors, the institutions' primary consideration is whether the companies are able to meet their requirements on service quality. Therefore, we believe that during the process of selection, institutions will consider all the information provided by the bidding contractors in order to judge whether they can provide satisfactory service.

**MR CHAN WING-CHAN** (in Cantonese): *Madam President, it is mentioned in part (b) of the main reply that all UGC-funded institutions are independent statutory bodies and it is therefore inappropriate for the Government to issue any guidelines to them on internal administrative matters. At present, the expenditures of all tertiary institutions are borne by the UGC and hence there is a very close relationship between the institutions and the Government. May I ask whether the Government will monitor the levels of remuneration offered by the institutions to their employees? As I have mentioned in my main question that those employees are denied statutory rest days, does it mean that the Government ignores them and will this not affect the image of the tertiary institutions and the Government? In regard to contractors' breach of the Employment Ordinance to the prejudice of workers' interests, does the Government stay aloof from it? Will the Government take actions against the contractors who have breached the Employment Ordinance and damage workers' interests?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, I think it is necessary to clarify the matter in two ways. In the first place, in spite of the fact that the UGC subsidizes the institutions with public money, the relationship between the Government and the institutions has been established to ensure the institutions full management autonomy. It is therefore inappropriate for us to issue any guidelines on the internal administration of the institutions. Secondly, however, as I have made it clearly in my main reply, all organizations and companies, including service contractors, are required to comply with the laws of Hong Kong, including the Employment Ordinance and other legislation according protection to employees. For this reason, if a company violates the law, the employees concerned should take such action as lodging complaints with the Labour Department and we will definitely follow up these complaints.*

**MR JAMES TIEN** (in Cantonese): *Madam President, I strongly support the current stance and approach of the Government, but since the Honourable CHAN Wing-chan has on several occasions mentioned violations of the Employment Ordinance by these so-called contractors, may I ask the Government whether investigation has been conducted to ensure that the contractors have not violated the existing Employment Ordinance in these circumstances?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Labour Department has not received any complaints about this. Of course I am ready to make further inquiry with the institutions concerned in order to find out whether the relevant complaints have been received by the authorities within the institutions. However, we have received no complaints about this so far.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, I would like to follow up the Honourable James TIEN's supplementary just now. The Secretary said that no complaints had been received. But just as the two Honourable colleagues have said, the crux of the issue is whether the Government has taken the initiative in conducting investigations. Outsourcing has now become a trend. The employees of many contractors very often are subject to exploitation whether in terms of welfare, remuneration, or even rights stipulated in legislation. How is the Government supposed to protect them? Apart from entertaining complaints lodged by the employees themselves, actually the Labour Department should also send officers to make regular inspections. Has the Secretary requested the Labour Department to dispatch its staff to conduct regular inspections on the work of these contractors?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as far as I know, the institutions will carry out reviews with these service companies on a regular basis in order to find out whether these companies can implement all the provisions stipulated in the contract and whether they have encountered difficulties over labour relations in the course of implementation of the provisions. We have not received any specific complaints from the institutions in this respect. However, as I have said in my main reply, actually all companies, including their staff, should be well aware of the statutory holidays to which employees are entitled under the Employment Ordinance, and the Labour Department often receive complaints about violation. In my opinion, except in special circumstances, it is impossible and inappropriate for us to initiate investigations in connection with the reports of every newspaper because of limited manpower. However, after going over the newspaper reports and this question, I believe that if there are employees who really think that they have been subject to unreasonable treatment, they should know that they can lodge complaints with the Labour Department and we welcome this very much.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, which part of your supplementary has not been answered?

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, actually I wish to ask the Secretary whether he intends to arrange for regular inspections. From the Secretary's reply just now, we see that the Government has adopted a passive approach, but I have all along considered that regular inspections are most important and effective. Just now the Secretary replied that they would have difficulty in staff deployment, but what mechanism does the Government have in place to prevent contractors from exploiting employees?*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower, do you wish to add anything?

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, according to our priorities, if it is necessary to dispatch staff to conduct inspections, the top priority will be inspection in connection with occupational safety. If it is relevant to the basic rights as stipulated in the Employment Ordinance, such as statutory holidays, we basically rely on the appeals mechanism.

**MR ANDREW CHENG** (in Cantonese): *Madam President, I wish to follow up the Honourable CHAN Wing-chan's supplementary in relation to part (b) of the main reply. The Government said that it was inappropriate to issue any guidelines to the institutions on internal administrative matters, but just as Mr CHAN has said, the UGC subsidizes every university with public money. When a supreme academic institution is found to be offering a remuneration package which is not only inhumane but which also exploits employees and undermines their dignity, with the Government issuing no guidelines on this, people will suspect that the Government is conniving at such exploitation by employers. As we all know, guidelines are not binding though instructive.*

**PRESIDENT** (in Cantonese): Mr CHENG, what is your supplementary?

**MR ANDREW CHENG** (in Cantonese): *Will the Government consider making these guidelines in order that the UGC may oversee the operation of the universities on the basis of the guidelines for the prevention of these acts of exploitation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we cannot make an arbitrary judgment by holding that outsourcing is tantamount to exploitation because essentially, the spirit of outsourcing is to enhance the cost-effectiveness of the institutions. In addition, just as I have said in my main reply, the institutions' primary consideration in outsourcing is whether the service contractors are able to provide satisfactory services. If the service companies are to provide satisfactory services, they must pay a reasonable market price before competent employees are available for the provision of reasonable or satisfactory services. In other words, the market mechanism will compel the service companies to observe market rules to a certain extent that might involve the payment of a reasonable remuneration as required in the market out of the need to provide satisfactory services.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, apart from the Secretary's earlier statement that the service contractors are responsible for the provision of cleaning, security and catering services, does the Government know of the job types and services to be contracted out by these educational institutions and the effect on the employees after outsourcing these services?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have mentioned in my main reply that the institutions have essentially contracted out non-core services. As regards the institutions' core services such as teaching and research, they cannot be contracted out as a matter of course. We do not know whether the institutions have any intention of contracting out other non-core services in addition to the cleaning, security and catering services at the present time. If this is the case, I believe the institutions will exercise management autonomy in making the relevant arrangements.



**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, after the release of these findings by the relevant trade union on that day, a newspaper had the headline "Contracted workers seriously exploited by seven universities for working 10 hours daily at an hourly rate of \$14 only and without statutory holidays" with a subheading "Acerbic and bitterly sarcastic". Now it is obvious that these institutions have turned into unscrupulous establishments and what is more, these unscrupulous establishments have passed the buck to the Government by saying that the situation has arisen from the Government's incessant demands for enhanced productivity in universities so that the Government has become the main culprit. Does the Government have a code of ethics explaining that payment by the hourly rate of \$1 or \$14 is immoral? Has the Government provided the institutions with some criteria explaining the meaning of exploitation and immorality? Would the Government please not mention constantly that there are reasonable wages offered in the market? What if the so-called reasonable wages are immoral?*

**PRESIDENT** (in Cantonese): Mr LEE, you can sit down after raising a supplementary question. You need not give any comments. *(Laughter)*

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I have just finished.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, everyone has a different moral standard. I think we should look at two aspects of the issue. First, on the legal aspect, we have the minimum employee protection that includes holidays. Second, with respect to services, since contractors are required to provide satisfactory services, so the market forces will come into play, making it necessary for the companies to provide remuneration as required in the market. As to the levels of remuneration, I believe that everyone has a different standard, so the Government is not in a position to make any decisions for anyone.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, at present there is a trend towards outsourcing both in the Civil Service and subvented*

*organizations. But if a number of contractors that provide services for these subvented organizations have breached labour legislation, will the Government refer to the practice of the Housing Authority (HA) in blacklisting the relevant companies as a warning? If the Government refuses to do so, I will give the competent authority a vote of no confidence. Will the Government follow the practice of the HA of blacklisting the contractors of problematic works to blacklist the contractors that have violated the labour legislation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, as I have said before, we have received no employee's complaints against the companies' violations. We therefore cannot assume that these companies have breached the law. To my understanding, in selecting these contractors, the institutions will also set out some considerations. For example, they may consider the track records of these companies including records of whether there has been any violation of the provisions of the Employment Ordinance or other relevant regulations. As regards the question of whether the institutions will further consider prohibiting a company from participating in bidding within a specified period when that company is found to have breached the Employment Ordinance, I will get a full understanding of the case before giving Miss CHAN a supplementary reply.

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

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. I was asking the Policy Bureau was prepared to implement this policy rather than requesting the Secretary to inquire other institutions. Since the HA has made this provision in spite of its messy situation, then why is there no such a provision in the publicly-funded UGC? This is a question of policy.*

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

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have nothing to add. Basically, as I have said in my main reply, owing to the management autonomy of these institutions, it is not appropriate for the Government to enforce all the relevant provisions on the institutions.

**MR ANDREW WONG** (in Cantonese): *Madam President, the crux of this question is that the employment criteria set by publicly-funded organizations should be consistent with that of the Government. However, the UGC funding for the universities is premised on the freedom enjoyed by the universities. It is inadvisable for the Government to intervene too much and the UGC should not interfere in the institutions' internal administration. I am therefore fairly worried about the Honourable Andrew CHENG'S earlier supplementary and many Members' implications.*

**PRESIDENT** (in Cantonese): Mr WONG, what is your supplementary?

**MR ANDREW WONG** (in Cantonese): *The supplementary question that I hope the Secretary will answer is that in providing the UGC with funds for subvention to the institutions, the Government will not bother about the internal administration of the institutions on any account, but in the event that the contractors engaged by the institutions violate the law, will the authorities concerned necessarily lay a serious charge against them?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I thank the Honourable Andrew WONG for his supplementary. I can state clearly that just as I have pointed out in my main reply, we will not interfere with the management autonomy of the institutions and it is not appropriate for us to do so, but in regard to the disputes arising between the companies providing contractual services for the institutions and their employees or other violations, we will certainly take proper action if necessary in accordance with the existing legislation.

**MR HO SAI-CHU** (in Cantonese): *Madam President, outsourcing is no scourge, but will the Secretary inform this Council whether the Administration will request the Labour Department to conduct investigations upon receiving complaints with a view to solving the problem?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we will certainly do so, which is a matter of routine on the part of the Labour Department.

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

**MR LEE KAI-MING** (in Cantonese): *Madam President, I was shocked by the Secretary's earlier statement that it was impossible and inappropriate to conduct inspections because of limited manpower. As I know, labour inspectors shall conduct inspections on a regular basis, and every employer is therefore required to keep a record of his employees' sick leave and vacation leave to facilitate the labour inspectors' regular inspections. I was astonished at the Secretary's earlier reply. If this is the case, may I ask whether the Secretary has changed the functions of the labour inspectors or whether the Government can possibly begin to reduce the number of labour inspectors?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I would like to make a point of clarification. Of course labour inspectors do make regular inspections. However, in the Honourable LEUNG Yiu-chung's earlier supplementary, we were asked if we would initiate investigations into all the companies, including these service companies and my reply is: Firstly, occupational safety is a top priority in our current practice of inspection; secondly, we do random investigations very often and it is therefore impossible to conduct comprehensive investigations of all the companies, especially investigations into possible violations of the Employment Ordinance.

**Monitoring Demolition Works for Unauthorized Structures**

4. **DR YEUNG SUM** (in Cantonese): *Madam President, last month, a canopy collapsed in the course of the works to demolish unauthorized structures of a building, causing injuries to a number of passers-by. In this connection, will the Government inform this Council:*

- (a) *whether the existing legislation stipulates that when carrying out works to demolish unauthorized structures as ordered by the authorities, the owner must engage registered specialist contractors or Authorized Persons to take charge of the works concerned; if not, of the reasons for that;*
- (b) *whether, for the sake of safeguarding public safety, it will consider extending the application of the Building (Demolition Works) Regulations to cover demolition works in respect of unauthorized structures on external walls and rooftops; if so, of the implementation schedule; if not, the reasons for that; and*
- (c) *of the measures in place to prevent the recurrence of similar accidents?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, there is a duty of care under the Buildings Ordinance (Cap. 123) for all those involved in building works, including demolition works, to perform the works in a competent and safe manner. If they perform the works in an unsafe manner, they are liable to prosecution under section 40(2B) of the Buildings Ordinance and subject to a fine of \$250,000 and to imprisonment for three years. They may also incur civil liability.

Regarding unauthorized building works, the Building Authority may issue an Order under section 24 of the Buildings Ordinance on owners of such works requiring their demolition.

If, in the professional opinion of the Building Authority, these demolition works are, or appear to be, substantial or significant in scope then the Building Authority would require the owners to appoint an Authorized Person or a Registered Structural Engineer to supervise the demolition work and to employ a

registered specialist contractor to do the work. Demolition works will be considered substantial or significant if the demolition could give rise to concerns for the structural integrity of the building; for instance, works involving beams, columns, slabs or structural walls. In those cases the provisions of the Building (Demolition Works) Regulations apply and the Authorized Person/Registered Structural Engineer must prepare a Demolition Plan and have it approved by the Building Authority before demolition begins.

However, some demolition Orders are for the removal of works not affecting the structure of the building: such as for the demolition of metal cages, flower racks and light canopies. In these instances owners are advised to carry out the works by specified date and the owners are not required to engage the services of Authorized Persons/Registered Structural Engineers or registered specialist contractors. Nevertheless, the contractors whom the owners engage are still subject to section 40(2B) of the Buildings Ordinance and have the duty of care to perform the works in a competent and safe manner.

Following the incident last month, the Building Authority has issued guidelines for contractors for minor demolition works where the contractors are not required to be supervised by Authorized Persons or Registered Structural Engineers. These guidelines make it clear that the demolition works should be carried out in a safe manner by technically competent and experienced workers. General guidance is given on: precautionary measures to ensure the safety of workers and passers-by when undertaking demolition works at a height; the conduct of a general survey of the works to be demolished and the protective measures such as temporary support of the unauthorized building works, catch-fans, and so on which may be necessary; the sequence in which demolition should occur and precautions to take against overloading of surfaces by demolition debris. Guidance is given on the steps to be taken in undertaking demolition of typical unauthorized building works structures, such as canopies and rooftop structures. Guidelines are also provided on the use of double scaffolding to provide for public safety when working on external walls. These guidelines are being distributed through the Hong Kong Construction Association Limited, the Home Affairs Department's Building Management Resource Centres and public inquiry centres, and are freely available at the Buildings Department. In addition, officers of the Buildings Department (BD) will hand out copies of the guidelines to building managers or owners incorporations in the course of their work. The guidelines will also be attached to the advice given to owners in receipt of demolition Orders.

To enhance the quality of building works and demolition works, we are giving consideration to the registration of minor works contractors. This has been discussed and supported by the Working Group on Built Quality, chaired by the Director of Buildings and comprising representatives from the building industry. Registration will help advance the quality of our building contractors and of the work they undertake. At the same time, in consultation with the industry and training organizations, such as the Construction Industry Training Authority, we are considering improvements to training on demolition works for technicians and workers doing such work.

It is our common responsibility as home owners, employers, buildings professionals and technicians, contractors and workers to ensure safe demolition works. As the regulator for the building industry, the Building Authority will continue working with the industry to achieve this aim of safe demolition works. Yet, to avoid incidents similar to the one last month, it is most important for contractors and workers carrying out demolition works to use their professional knowledge and ethics, and pay particular attention during demolition works to avoid hurting workers, people who live there or passers-by.

**DR YEUNG SUM** (in Cantonese): *Madam President, the Secretary has just said in his main reply that the Government has considered registering all contractors for minor works, how will the Government monitor them after registration? As regards major works, will the Government grant low interest loans to home owners to assist them in carrying out the relevant works?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, monitoring will mainly be conducted in accordance with the provisions of the existing Buildings Ordinance. The Ordinance has set out clearly the points to be noted by the Director of Buildings when he exercises his powers in respect of various projects and how actions should be taken to keep track of responsibilities. In respect of resources, the Government has actually granted different loans to help home owners carry out maintenance works. As the relevant information has been stated in detail in the document issued by the BD, I do not intend to elaborate on it today. If Members of the public need the relevant information, they may get a copy of the document from the BD or district offices.

**MR LEE WING-TAT** (in Cantonese): *Madam President, a few similar incidents have actually occurred within two to three weeks following the collapse of canopy incident last month. The Secretary has just said that a registration system will be established. Many demolition works of different scales are carried out every day in so many buildings in Hong Kong and I believe reports and applications for most of these works have not been submitted to the Building Authority. I would like to ask the Secretary a specific supplementary question. How can the Government ensure that such works are carried out safely? Although we have not asked the Government to inspect every building, the Director of Buildings as the Building Authority has the legal responsibility to ensure that these demolition works are carried out in a safe manner. Thus, my supplementary question is: Does the Secretary have other more positive measures apart from establishing a registration system?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the Honourable Member is right. In fact, while we are having discussions, I believe that thousands — probably even more — workers are carrying out fitting-out, construction or demolition works in various places in Hong Kong, Kowloon and the New Territories. Some of them may be larger scale works such as the construction and demolition of whole buildings, some may be simpler interior or exterior fitting-out works, and some may be the demolition of unauthorized structures. It will be very difficult for the Government to fully discharge its responsibility to monitor and safeguard safety because the areas covered are too large, there are too many works involving too many people, and the projects have different degrees of complexity. Therefore, I have said in my main reply that the Government is responsible for setting up a mechanism for training, registration, issuing guidelines, supervision, inspection and taking follow-up actions after incidents. Yet, to really safeguard the safety of workers, residents in the relevant buildings and passers-by, we have to reply on front-line workers and their supervisors after all. I have just mentioned thousands of workers, but more workers may actually be involved. If we multiply this figure by the number of workers working on the works and their contractors, we may be talking about tens of thousands workers carrying out such work and it is impossible for the Government to help them one by one. There is a monitoring and review system and registration is just an encouragement and a mechanism for keeping track of responsibilities. In fact, workers have to rely on themselves.



**MISS CHOY SO-YUK** (in Cantonese): *Madam President, accidents very often involve liability insurance. Many owners of properties with dangerous structures do not know that they have to be insured and if Owners' Corporations are not set up, they cannot do anything. What measures will the Government take to better solve the problem, at least in terms of compensation, when similar incidents happen in future?*

**PRESIDENT** (in Cantonese): Secretary for Planning and Lands, as this question is mainly about safety, please answer the question if you have the relevant information on hand.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, home owners, contractors and workers can make inquiries about insurance with the insurance industry for the protection of their interests. As far as I know, the industry provides home owners with various kinds of insurance such as fire insurance, insurance against risks and incidents that may arise during maintenance of buildings as well as short-term and long-term insurance. In the course of our negotiation with Owners' Corporations and building management bodies, we often give them this message and ask them to pay attention to this. As regards insurance, we think that Owners' Corporations, home owners and contractors can take actions on their own and the Government can only give them encouragement. I believe it is not necessary for the Government to legislate or amend the relevant legislation for this purpose.

**MR ALBERT HO** (in Cantonese): *Madam President, responsibility is mentioned in the last part of the main reply: "it is our common responsibility as home owners, employers, buildings professionals and technicians, contractors and workers to ensure safe demolition works" but accidents very often occur in public places. Firstly, roads are government facilities, and secondly, the Government should bring the relevant mechanisms into operation. I find that the Government is somewhat slow in responding and it fails to take measures earlier, that is why many accidents have occurred. Will the Secretary admit that the Government should be fully or partially responsible? If so, I hope that the Secretary will consider setting up a fund like the Traffic Accident Victims Assistance Fund to give victims some compensation first and then they can make repayment to the Government after they have recovered compensation from the precedent responsible persons?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I am very grateful to the Honourable Member for making this highly innovative suggestion, and the Director of Buildings and I will consider it later on.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, on the basis of the Secretary's answer to this supplementary question, I can see that the Government has issued guidelines and set up a registration system. But if we only rely on the guidelines, I am afraid it will be hard for us to take actions just like what the Secretary has just said. I agree with the Secretary that it is the common responsibility of home owners, employers, contractors and workers but we can hardly achieve the purpose if we merely rely on the guidelines. Has the Government considered enacting a law apart from issuing guidelines?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the legal responsibilities of people carrying out construction works have been clearly stated in the existing legislation. As I have said at the very beginning of my main reply, if the works of registered contractors (including contractors of minor works whose registration we are going to consider) or works carried out by people at home cause injuries, the people concerned may have to shoulder criminal or civil responsibilities. Thus, the existing legislation is adequate from the legal point of view, but the problem is how we can keep track of responsibilities and make people more responsible, and how we can increase workers' common sense while making technical improvements. If we can solve the above problems and provide training, we should be able to achieve our aim.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary has not answered the part of my supplementary question about whether he will consider enacting a law on the guidelines mentioned in the fifth paragraph of his main reply. I have asked this supplementary question because the Commissioner for Labour has considered enacting a law after the recent oxyacetylene cylinder incident.*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, we do not intend to enact a law at this stage because our guidelines have generally covered the existing clauses in many ordinances as well as other provisions. We may later consider, in the course of implementing of the registration system, if there are other methods to ascertain the responsibilities of people who have not registered.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. We shall now proceed to the fifth question.

### **Giving Effect to Article 23 of the Basic Law by way of Legislation**

5. **MR SZETO WAH** (in Cantonese): *Madam President, it is learnt that the Government is studying how Article 23 of the Basic Law can be given effect by way of legislation. In this connection, will the Government inform this Council:*

- (a) *of the estimated timetable and current progress of the whole study and legislative process;*
- (b) *whether, before submitting the relevant Bill to this Council, it will consult the people of Hong Kong and the Central People's Government; if it will, how and through what channels the consultations will be carried out; and*
- (c) *whether it has studied if the definition for "foreign political organizations or bodies" in the above-mentioned Article includes those political organizations or bodies in Taiwan and the Macao Special Administrative Region?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Government is studying how to implement the requirements of Article 23 of the Basic Law. The position in reply to the three questions raised by the Honourable Member is as follows:

- (a) We are at an early stage of our study. We are in the process of researching the laws and law reform proposals of other jurisdictions, and studying relevant human rights principles. We do not yet have a firm timetable for completion of the whole process;
- (b) We intend to consult the public after we have drawn up our tentative proposals for implementing Article 23 of the Basic Law. This will take place before detailed legislation is prepared. Given that the implementation of Article 23 of the Basic Law involves questions of national sovereignty, unification and territorial integrity, we envisage that we would need to exchange views with relevant departments of the Central People's Government before our tentative proposals are finalized. However, no view has been reached regarding the detailed format or time scale of such discussion; and
- (c) As Taiwan and Macao are parts of China, our understanding is that the reference to "foreign political organizations or bodies" in Article 23 of the Basic Law does not include political organizations or bodies in these two places.

**MR SZETO WAH** (in Cantonese): *Madam President, will the Administration inform this Council whether "enacting laws on its own" should be taken to mean that the SAR Government can make its own decision concerning the legislative timetable and procedure? Suppose some people, especially those who do not belong to the SAR, try to exert pressure and make wanton remarks, asking for a quicker pace of legislation, are they actually infringing upon the high degree of autonomy of Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, naturally, my understanding of "enacting laws on its own" is that the SAR Government can conduct studies, gather information, draw up the legislative timetable and draft legislative proposals all on its own. I cannot see how anyone can possibly make any wanton remarks to interfere with our autonomy in the process. I do not see anything like this now.

**MISS EMILY LAU** (in Cantonese): *Madam President, can the Secretary assure this Council that when it conducts its own studies, the Administration will always be guided by the very significant principle that any legislation thus drawn up will not result in any retrogression in terms of the current freedoms of speech and actions enjoyed by the people? Or does it not dismiss the possibility of this situation arising?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, actually, at the meeting we held with the Honourable Miss Emily LAU in January this year, and also on various informal occasions and during media discussions, we already pointed out explicitly that any future legislation thus drawn up must comply with the provisions of Article 39 of the Basic Law. Article 39 of the Basic Law provides that "the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article." Therefore, when we make legislation to implement Article 23 of the Basic Law, we certainly have to comply with the provisions of Article 39.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. Madam President, my question is actually very straightforward: Will there be any retrogression? Why do I want to ask this question? Because I have heard that the Information Centre on Human Rights and Pro-democracy Movement in China may be labelled as a "counter-revolutionary" organization in the future. So, we are worried that there may be retrogressive changes, and we may be barred from doing what we are allowed to do now.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think the question asked by Miss Emily LAU is hypothetical. I do not intend to comment on any such question, especially when it deals with a specific organization.

My reply just now already set out our principle. Our principle is that whatever we do in the course of legislation in the future, we must not violate the provisions of Article 39 of the Basic Law. In other words, we must never affect the existing rights and freedoms enjoyed by Hong Kong residents. With respect to the specific details of the future situation, I think much will have to depend on the legislation eventually enacted.

**MR MARTIN LEE** (in Cantonese): *Madam President, during the days before and immediately after the establishment of the SAR, the Provisional Legislative Council did not make legislation to implement Article 23 of the Basic Law. And, this was also the case immediately after the establishment of the first Legislative Council of the SAR. What has actually happened recently to make it necessary to consider the enactment of legislation to implement Article 23 of the Basic Law? What new events have cropped up anyway?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, under Article 23 of the Basic Law, the SAR Government is required to enact laws on the seven types of acts listed therein. As Members are aware, seven types of acts are listed in Article 23, and basically, they can be described as acts endangering the security, integrity, independence and self-determination of the country as a whole. Laws on all these acts are found all over the world in all countries. So, the SAR Government is duty-bound to conduct detailed studies on this matter and work out its own proposals through an appropriate procedure. The work is absolutely essential. The studies we are now conducting have not been caused by the occurrence of any special events.*

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, my supplementary question is very similar to that of Miss Emily LAU. How is the Administration going to ensure that in the course of drafting the laws, or exchanging views with the Central Government, or enacting the laws required for the implementation of Article 23 of the Basic Law, the legal activities or acts undertaken by any organization or individual now will not be rendered illegal as a result?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, like Miss Emily LAU's supplementary question, the Honourable Member's supplementary question is also about some specific individuals or organizations. However, I do not wish to make any comments in regard to the individuals or organizations they have in mind. I only wish to reiterate our underlying principle that in the course of enacting laws to implement Article 23 of the Basic Law, we will certainly comply with the provisions of Article 39 of the Basic Law, and we will do nothing which may affect the existing human rights and freedoms enjoyed by the people of Hong Kong.

**MR JAMES TO** (in Cantonese): *Madam President, I should make it very clear on the outset that I am not asking a question about any specific individual or organization. Rather, my question is about the matter of general principles. For acts and activities which are not considered illegal now, will they still be considered not illegal after the enactment of legislation to implement Article 23 of the Basic Law? In other words, for things which can be done now and considered perfectly legal, can they be done in the future and considered perfectly legal? I wish to ask a question on this principle, not about the provisions of Article 39 of the Basic Law.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not see any point in asking questions of this type. If Members ask me to guarantee that nothing will change and no illegal acts will be added after the enactment of laws, I will simply wonder why there should be any need for legislation in the very first place. As Mr James TO also knows, the Official Secrets Ordinance, for example, defines what acts constitute espionage. But this Ordinance was drawn up on the basis of the United Kingdom official secrets legislation at the beginning of the 20th century. So, this Ordinance is already very outdated. The acts of espionage described in it are just like the espionage acts we often see in films about World War II. In other words, this Ordinance simply cannot sanction the high-tech espionage acts of the modern-day society. When the Administration conducts any review of this Ordinance, it must naturally introduce provisions to modernize it. This explains why I cannot possibly give any assurance to Members to the effect that no further illegal acts will be added in the course of legislation.

**MISS CYD HO** (in Cantonese): *Madam President, on many past occasions, when the Administration briefed us on the application of international human rights covenants in Hong Kong, it invariably made the point that due to the unique circumstances in Hong Kong, it was impossible to implement many provisions of these covenants to provide the desired protection. We are now discussing the enactment of local laws to implement Article 23 of the Basic Law. Will the ordinance thus enacted create yet even more circumstances unique to Hong Kong, with the result that our human rights protection is further curtailed and fewer human rights covenant provisions can be implemented in Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, as far as my understanding goes, whenever any such human rights covenants are to be extended, or, in Miss HO's words, applied, to Hong Kong, the sovereign will usually impose some reservations. For example, concerning the handling of illegal immigrants, the sovereign may make a reservation on the freedoms of residence and entry and exit. This means that the relevant provisions will not apply to illegal immigrants. I think Miss HO should be referring to these reservations. If yes, then as far as my understanding goes (but I may need to seek further legal advice), I can say that no additional items can be added to the reservations made at the time when these covenants were first applied to Hong Kong.

**MISS CYD HO** (in Cantonese): *Madam President, instead of talking about any specific cases, I am focusing on the question of general principles as the Secretary does. Will the enactment of local laws for the implementation of Article 23 of the Basic Law create even more circumstances unique to Hong Kong, with the result that our current human rights protection is curtailed?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, if I am correct, the original question of Miss HO was on whether or not any reservations were made when these covenants were applied to Hong Kong, and whether or not there would be any curtailment of Hong Kong people's human rights protection. My reply is that the reservations made at the time when these covenants were first applied to Hong Kong would not be further extended because of the legislation under discussion presently.



As regards the situation after the enactment of laws, I can only reiterate that under Article 39 of the Basic Law, we have to consider the unique circumstances of Hong Kong and the need for national security on the one hand. On the other hand, we must also ensure that the statutory human rights and freedoms stipulated in the Basic Law will not be curtailed.

**MR ALBERT HO** (in Cantonese): *Madam President, I believe the Secretary will also agree that the legislation in question is highly sensitive and contentious in nature. I have two proposals in mind. I wonder whether the Secretary would comment on them.*

**PRESIDENT** (in Cantonese): Mr HO, this is the question time. You are not supposed to raise any proposals.

**MR ALBERT HO** (in Cantonese): *Madam President, I am sorry. First, will the Secretary consider the possibility of making a pledge that when the Administration exchanges views with the relevant departments of the Central Authorities, it will do so with transparency and let us know what advice has been given by the Central Authorities to the SAR Government? Second, will the legislation in question adopt the mechanism of the Law Reform Commission? In other words, will the Administration put forward its views in the form of a White Bill first, and formally submit a bill after consultation?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have already given an explanation on the legislative procedure. We will first conduct extensive studies. After we have drafted and formulated our tentative proposals, we will conduct a public consultation exercise. This means that we may consult the public widely on our proposals in the form of a Green Paper. However, before we formulate any tentative proposals, we will need to exchange views with the relevant departments of the Central Authorities, because such work involves issues like sovereignty and national security. The exchange of views must be conducted in strict confidentiality, but once we have finished exchanging views and drafted our tentative proposals, we will announce our proposals, in the form of a Green Paper, for example, so as to let members of the public voice their opinions. Therefore, Mr HO can rest assured that there will be opportunities for the public to air their views.

As regards whether I can undertake to follow the practice of the Law Reform Commission, that is, whether we would ask the Law Reform Commission to conduct some studies before the SAR Government puts forward any proposal, I would say that there is not any need for us to do so. Similar laws on national security are also found in other countries, and laws on treason and sedition, or indeed the offence of treason and sedition, for example, actually has a long history of 2 000 years in the West. Over the recent two decades, in many common law jurisdictions such as the United Kingdom, Australia and Canada, the law reform commissions there have conducted a lot of in-depth and thorough analyses on the need or otherwise for enacting laws on safeguarding national security. All the arguments for and against such legislation are already clearly set out in their reports, and the Legal Policy Division of the Department of Justice also keeps a lot of comparative law literature and information relating to these jurisdictions. Therefore, we do not think that we should take the unnecessary step of asking our own Law Reform Commission to repeat all these studies. However, I can assure Members that once we have completed our studies and draft proposals, we will definitely announce them to the community and let people voice their opinions before we start to work on any detailed legislative proposals.

**MR ALBERT HO** (in Cantonese): *Madam President, there was one point I could not hear clearly. Will the Secretary please give a clear reply to it? Has the Administration in fact already decided that it will not let us know what advice the Central Government has given to the SAR Government? Are we really going to enact the laws on our own anyway?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I can assure Mr HO that the SAR will certainly enact the laws on its own, and all the relevant studies will be undertaken by the SAR Government. During the future consultation exercise, all members of the public can give their views. Also, the finalized provisions after amendments will need to be tabled before the Legislative Council for open debate and endorsement, and they must also have the acceptance of the people of Hong Kong. Therefore, we are of the view that such a procedure is in total compliance with the principle that the relevant laws are to be enacted by the SAR on its own. That said, I must still point out that in accordance with normal practices, we will not disclose the views exchanged between us and the relevant departments of the Central Authorities during the process.

**MR ANDREW CHENG** (in Cantonese): *Madam President, Mr XU Si-min has recently lashed out at Wharf Cable for its television interview with Vice-President-elect of Taiwan Annette LU, an advocate of Taiwan independence. He has even called upon the SAR Government to take prompt actions to enact laws to implement Article 23 of the Basic Law. When the Administration seeks to define the crimes of secession, sedition and subversion against the Central People's Government in the course of the relevant studies, will it focus only on actual acts of violence, or will it also include the airing of views, as interpreted by Mr XU Si-min?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the detailed points mentioned by the Honourable Andrew CHENG is precisely one of the many topics which we are going to study. For this reason, it is not appropriate for me to give any general answer at this stage. However, I can assure Mr CHENG that the freedoms of speech, association and press enjoyed by the people of Hong Kong will be protected under the Basic Law. Our position regarding the making of legislation to implement Article 23 of the Basic Law will not be affected by the comments made by any particular individuals.

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

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary said just now that one of the purposes of Article 23 of the Basic Law was to safeguard national security. However, I must point out that "one country, two systems" is now in operation. In regard to the definitions of the seven types of crimes mentioned by the Secretary just now, may I ask her whether Hong Kong will be allowed to define them according to our local context and interpretations? Will there be room for us to define all these crimes differently from the Mainland, so as to realize the principle of "one country, two systems"? Or, if not, are we going to have "one country, one system" in this particular respect?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think the intention of the Basic Law drafters was to allow the SAR Government to enact the laws on its own, to determine for itself what kinds of laws could both safeguard national security and take account of the unique circumstances of Hong

Kong. If it had been their intention to apply all national security laws of the Mainland to Hong Kong, they would have included all these relevant laws in Annex III to the Basic Law. That way, all these laws can be applied to Hong Kong direct. So, I am sure that we will have adequate room in the legislative process to study similar laws in other jurisdictions before making any proposals and deciding what types of laws are most suitable for Hong Kong.

### **Vehicular Traffic of Cross-harbour Tunnels**

6. **MR CHAN KAM-LAM** (in Cantonese): *Madam President, will the Government inform this Council of:*

- (a) *the respective daily average vehicular traffic of the Cross Harbour Tunnel (CHT) at Hung Hom, the Western Harbour Crossing and the Eastern Harbour Crossing (EHC) since the toll increase of the CHT on 1 September last year, together with a breakdown of these figures by type of vehicles; and how these figures compare with their corresponding figures prior to the toll increase;*
- (b) *a comparison of the actual effect of the above toll increase on easing traffic congestion at the CHT with that expected by the authorities; and*
- (c) *other measures in place to divert traffic originally destined for the CHT to other cross-harbour tunnels?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, the toll levels of the CHT for motorcycles and private cars were increased from \$4 to \$8 and from \$10 to \$20 respectively on 1 September 1999. The toll levels for other types of vehicles remained unchanged.

The toll increase for the CHT was primarily a fiscal measure announced by the Financial Secretary in his 1999-2000 Budget to raise revenue for the Government. In terms of traffic impact of the toll increase, the Transport Department estimated that initially the patronage of the CHT would reduce by about 10 000 vehicles a day after the increase. The estimation was close to the actual traffic volume, which reduced by 9 720 vehicles from 119 830 vehicles a day in June 1999 to 110 110 vehicles a day in September 1999.

Comparing the daily average traffic volume of the three harbour crossings six months before and after the CHT's toll increase, we note that the number of private cars and taxis has reduced by 5.3% (from 80 000 to 75 800) at the CHT but increased by 17.5% (from 25 700 to 30 200) and 10.4% (from 45 300 to 50 000) at the WHC respectively. We saw an even more significant reduction of 12.5% in the number of motorcycles (from 4 800 to 4 200) at the CHT but increased by 40% (from 500 to 700) and 18.8% (from 1 600 to 1 900) at the WHC and the EHC respectively.

A further point to note is that despite the increase in the total volume of cross-harbour traffic by 2.7% in the six months following the toll increase, the average throughput for the CHT for the same period showed a reduction of 2.2%. On the other hand, the average throughput for the WHC and the EHC increased by 11.7% and 6.2% respectively. Therefore, the toll increase clearly has a positive impact on the distribution of traffic amongst the three harbour crossings.

However, given the strategic location of the CHT, it will always remain the most popular harbour crossing hence more likely to be congested. To address the issue, we have been working closely with the tunnel companies to identify and implement measures to improve utilization of the other two harbour crossings. These include:

- (i) erection of additional directional signs to enhance accessibility to the EHC and the WHC;
- (ii) implementation of local traffic management schemes to improve the traffic conditions of the feeder roads; and
- (iii) promotional campaigns by the tunnel companies to boost patronage.

We will continue to explore ways to ensure that all cross-harbour infrastructure are properly utilized.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, as we can see from the main reply, the traffic volume at the CHT suddenly reduced in September when its tolls were increased, showing that the toll increase did have a diversion effect. However, we can see a sharp increase in the average throughput six months thereafter. Therefore, I very much support the implementation of local*

*traffic management schemes as mentioned by the Secretary in the last paragraph of the main reply. As we all know, the traffic in the area surrounding the Hong Kong Polytechnic University at the CHT's Kowloon access is very busy. Can the Secretary tell us the specific local traffic management measures to be implemented?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, this involves two aspects. One is what traffic management measures we can take to improve traffic at the CHT; the other is to facilitate access to the EHC and the WHC through these traffic management measures. In fact, we must adopt a two-pronged approach to ease congestion at the CHT on the one hand and to ensure smooth traffic on roads leading to the other two harbour crossings on the other hand.

The Princess Margaret Road and the Hung Hom Bypass are fundamental to improving traffic conditions at the CHT. Since the completion of the new roads, there have been obvious improvements to the traffic conditions in the vicinity of the CHT, enabling vehicles to cross the harbour through the CHT more smoothly.

Madam President, as I said in the main reply, the CHT, given its convenient location, will always remain the most popular harbour crossing hence most likely to be congested. Nevertheless, we will take every measure to reduce congestion to the minimum.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, as the Government mentioned in the second paragraph of the main reply, the 100% toll increase of the CHT on 1 September 1999 only resulted in a 10% reduction of the traffic volume. Is the Government satisfied with this progress? Will it effect a toll increase again to ease congestion at the CHT?*

**SECRETARY FOR TRANSPORT** (in Cantonese): I hope Dr the Honourable TANG Siu-tong was not suggesting us to double the tolls in order to obtain double the effects accordingly.

Madam President, according to the figures that I presented just now, the patronage of the CHT has apparently declined after the toll increase, as opposed to an increase at the other two tunnels. I must point out that the total traffic volume at the three harbour crossings has increased in the same period, but the CHT registered a lower traffic throughput instead of an increase in patronage against this backdrop. It is believed that congestion at the CHT would become worse without a toll increase.

**MR HO SAI-CHU** (in Cantonese): *Madam President, in the last paragraph of the main reply, the Secretary mentioned promotional campaigns by the tunnel companies, which, I think, refer to the other two tunnel companies. May I ask what promotional campaigns will be implemented by the tunnel companies? Will the tunnel companies, in view of an increase in traffic volume, reduce their tolls instead of effecting a toll increase in order to attract more drivers to use those two tunnels?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, in fact, the WHC and the EHC have offered concessions to attract a higher patronage. For instance, concessionary tolls and coupons for free passage were offered to drivers of motorcycles and private cars by the WHC between September and November last year. Of course, these concessions were valid only within a specified period of time. In December last year and January this year, the WHC also offered free passage coupons to taxi drivers to encourage them to use the WHC. These are concessionary measures initiated by the WHC in an attempt to boost patronage.

Similarly, the EHC has also offered free passage coupons to drivers. Members may recall that the EHC had offered a free passage coupon for every purchase of 10 coupons. So, the two tunnel companies actually attach great importance to marketing. They will explore ways to attract more drivers to use these two tunnels.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary stated a number of measures to specifically ease congestion at the CHT, including erection of additional directional signs, implementation of local traffic management schemes, and promotional campaigns by the tunnel companies. These measures have all been implemented but there is little improvement to the present situation. Will the Secretary consider taking active measures, such as restricting the use of the CHT by certain types of vehicles during peak hours?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I think what Dr Raymond HO proposed just now is more of a passive than an active measure. I think an active way to address the problem is to encourage more drivers to use the other two harbour crossings, or to identify ways to alleviate congestion at the CHT. In fact, we are making ongoing efforts to explore new measures to this end. For instance, we are currently studying ways to facilitate access to the WHC via more direct routes. In-depth studies are being conducted with the Western Harbour Tunnel Company Limited to, among other things, facilitate smooth access to the WHC by vehicles in Mong Kok or the Prince Edward Road in Kowloon. We must consider whether we can achieve this objective by traffic measures within the existing road networks. In fact, we have studied and accepted a diversity of active measures. But just as I said, given that the location of the CHT makes it the most convenient cross-harbour tunnel, the CHT will always be congested. In fact, the throughput of the CHT has exceeded the design traffic volume by as much as 40% to 50%.

**PRESIDENT** (in Cantonese): Dr Raymond HO, which part of your supplementary question has not been answered?

**DR RAYMOND HO** (in Cantonese): *The current traffic pattern shows that congestion mostly takes place during peak hours. Can the Secretary consider restricting the use of the CHT by certain types of vehicles during peak hours so that the traffic volume can be more evenly distributed?*

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I think the idea is flawed in logic. Dr HO's proposal to restrict the use of the CHT by certain types of vehicles appears to target on just one tunnel, whereas the same restriction does not apply to the other two tunnels. For the time being, to impose restrictions on certain types of vehicles at a particular area or during a particular period of time is not an option under consideration.



Certainly, we do have measures of a similar nature. For example, vehicles are restricted to pull in on busy streets only outside the period between 7.00 am to 7.00 pm or within a specified period of time. Yet, this is a general measure that applies not just to a particular type of vehicles or a particular tunnel. For this reason, we have not considered implementing this proposal.

**MR ANDREW CHENG** (in Cantonese): *Madam President, we think that this issue actually boils down to money. The WHC charges higher tolls whereas the CHT, as the Secretary has said, is more convenient in terms of its geographical location. So, I personally think that the measures mentioned in the last paragraph of the main reply will have very limited effect. May I ask the Secretary — we have asked the same question before — whether the Government will consider drawing on overseas experience by standardizing the tolls of the tunnels, and then pooling all the toll revenues for distribution among the tunnel companies based on the throughput of each harbour crossing? This can achieve a more proportional utilization of public resources and will not create an impression that the WHC is under-utilized, as the public generally feels now.*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, the proposal to standardize tunnel tolls has been put forward for our consideration from time to time. In fact, at the meeting of the Legislative Council on 17 November last year, a Member also raised a supplementary question on this subject.

First of all, we must bear in mind that the three harbour crossings were constructed at different times and at different costs. As a matter of fact, the costs and operating environment of these three tunnels vary. Under such circumstances, if we were to determine a well-balanced toll level to facilitate an even distribution of traffic volume, we would have to make a great many considerations, including the throughput that the three tunnels were originally designed to cope with, the actual patronage, the background of each operator and the costs involved, and how to ensure proportional apportioning of returns if this proposal is implemented. We must consider all these factors.

Our expert consultants have considered this proposal roughly in the course of the Third Comprehensive Transport Study. We will follow it up and carefully study the feasibility of the proposal against the realistic situation. However, as I said just now, this is not a simple matter. We must handle it with care and consider different factors.

**PRESIDENT** (in Cantonese): End of question time.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Plans to Link up Euroasia Transcontinental Bridge with Beijing-Kowloon Line**

7. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, it was reported that the Central People's Government was discussing with the Kowloon-Canton Railway Corporation (KCRC) a plan to link up the "Euroasia Transcontinental Bridge" with the Beijing-Kowloon Line with a view to increasing the freight volume between Europe and Asia by tapping Hong Kong's freight facilities. In this connection, will the Government inform this Council whether:*

- (a) *it is aware of the details of the plan;*
- (b) *it has assessed how Hong Kong's import and export trade and the overall economy will benefit from the implementation of the plan; and*
- (c) *it will adjust the planning of local freight infrastructure in the light of the plan?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, having consulted the KCRC, the Administration's response is set out below:

- (a) the Government and the KCRC do not have details of the plan to develop or expand the link between the "Euroasia Transcontinental Bridge" and the Beijing-Kowloon Line to increase the freight volume between Europe and Asia;

- (b) in the light of the above and given that neither the KCRC nor the mainland authorities have raised such a plan with the Administration, no assessment of its impact on the trade and economic forecasts for Hong Kong has been conducted; and
- (c) given that neither the KCRC nor the mainland authorities have raised such a plan with the Administration and no details of the plan are available, planning for Hong Kong's freight infrastructure such as road, rail and port facilities has not been adjusted to take it into account. The Government and the KCRC will however continue to monitor rail freight developments on the Mainland.

### **Support Services for Hong Kong Deputies to NPC and Hong Kong Members of CPPCC**

8. **MR AMBROSE LAU** (in Chinese): *Madam President, will the Government inform this Council whether the Office of the Government of the Hong Kong Special Administrative Region in Beijing (Beijing Office) will provide support services to the Hong Kong deputies to the National People's Congress (NPC) and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) when they attend the NPC and the CPPCC in Beijing; if so, of the details; if not; the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Chinese): Madam President, according to the Beijing Office, it has not received any request for support services from Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC who attend meetings in Beijing. We understand that when they attend meetings in Beijing, they are received by the General Office of the NPC and the General Office of the CPPCC respectively, the receive support services from these Offices. If they are in Beijing other than for attending NPC and CPPCC meetings and require practical assistance there, the Beijing Office confirms that it would be prepared to provide assistance in accordance with the actual circumstances.

**Defence of Computer Systems against Interference by Hackers**

9. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, regarding the defence of computer systems against interference by hackers, will the Government inform this Council:*

- (a) *whether the computer systems used in government departments are required to be equipped with security measures for defending against interference by hackers, as well as managed by technical staff with relevant training; if so, of the details of such requirements;*
- (b) *of the general requirements on security measures laid down by government departments in the procurement of computer systems;*
- (c) *in view of the paralysis of the services of several major Internet websites in February this year due to interference by hackers, whether it has assessed if the websites of various government departments can withstand similar interference and the system administrators can expeditiously locate the sources of interference in the event of such an incident; and*
- (d) *whether it is a criminal offence for hackers to interfere with Internet web sites?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President,

- (a) In February this year, the Information Technology Services Department (ITSD) issued a comprehensive set of information security guidelines to assist all government departments to effectively implement their information security measures. The guidelines set out security standards for computer equipment, system networks, archiving and retrieval of data, usage of software, and so on; and recommend measures on security auditing and arrangement to deal with emergency cases. Under the guidelines, the part on data security has specified measures against unauthorized access to government networks and computer viruses. These measures will enhance departments' ability to deal with hacker's interference.

In addition, all government departments are required to appoint staff with proper information technology security training to enforce the information security guidelines and to provide security-related support, including technical support. Details are as follows:

- (i) to ensure that the department follows the security guidelines laid down by the ITSD and to comply with international standards and codes of practice on the development and operation of Internet gateway;
- (ii) to install security facilities including the relevant hardware and software and to implement security procedures;
- (iii) to carry out monitoring work; and
- (iv) to conduct regular review and assessment on possible security risks.

The ITSD also provides training to these security management staff on specific issues like Internet security, data encryption technology, and so on according to needs.

- (b) Basic requirements of security facilities include installation/establishment of firewalls, hacking identification and monitoring mechanisms, and anti-virus devices.
- (c) As regards interference by hackers, the Government has assessed and strengthened the defensive ability of its websites. Classroom and on-the-job training is provided to the staff concerned. Moreover, we maintain close contact with local and international IT security institutions to ensure that our staff are kept abreast of the incidents and researches relating to IT security as well as the latest information and knowledge about IT development. This enables them to detect and defend against hackers' interference in the shortest possible time.
- (d) Hacker's interference can generally be classified into three categories: (1) using websites to spam individual computers systems; (2) mail-bombing a website to inhibit its normal operation; and (3)

adding or deleting information of others' website without prior authorization.

All the above actions contravene the relevant provisions of the Crimes Ordinance (Cap.2000) (the Ordinance). For example, the scope of "destroying or damaging property" as stipulated in section 60 of the Ordinance covers actions of unauthorized alterations to the original use of others' computers or causing damages, distortions, deletions, additions, and so on to the programmes or data in others' computers. Furthermore, section 161 of the Ordinance "access to computer with criminal or dishonest gain" provides that it is illegal to make dishonest gains by interfering with others' websites; and any person who interferes with others' websites and causes loss to others also infringes the section, regardless of whether the purpose of such action is to make gains or not.

### **Problem of Tenants Defaulting on Rental Payments**

10. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the problem of tenants of private domestic flats defaulting on rent payments, will the Government inform this Council:*

- (a) *of the number of complaints lodged by flat owners about tenants defaulting on rent payments with the relevant government departments over the past three years, and the follow-up actions taken by those departments; and whether it knows the percentage of cases in the total number of such complaints in which flat owners ultimately recovered the outstanding rents;*
- (b) *of the progress of work and the specific proposals made by the Working Group which was set up last year by the Administration to review the procedures for repossession of domestic premises on grounds of non-payment of rent and recovery of arrears of rent; and*
- (c) *whether the Working Group has considered proposing to the Administration the prosecution of those habitual and fraudulent rent-defaulting tenants; if not, of the reasons for that?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, according to the information provided by the Judiciary, the numbers of applications filed with the District Court for distress for rent and successful cases in the past three years are as follows:

|                  | 1997  | 1998   | 1999   |
|------------------|-------|--------|--------|
| Applications     | 7 790 | 14 677 | 12 475 |
| Successful cases | 7 730 | 14 532 | 12 386 |

The Judiciary has no further breakdown of statistics for domestic and non-domestic premises.

A Working Group, led by the Housing Bureau, was set up in September 1999 to review the statutory procedures for repossession of domestic premises and recovery of rent. The problem of habitual default in rent payment was also examined. The Working Group is now drawing up recommendations for consultation with government departments concerned before its recommendations are finalized.

As regards habitual and fraudulent rent-defaulting tenants, legal advice is that the non-payment of rent is a breach of contract. The landlord can seek civil remedies such as making an application to the Court for repossession of the premises, or distress for rent. It would not be appropriate to enact legislation to make non-payment of rent a criminal offence as this interferes with the contractual relationship between a landlord and his/her tenant.

### **Use of School Facilities by Community Groups after School and on Holidays**

11. **MISS EMILY LAU** (in Chinese): *Madam President, will the executive authorities inform this Council:*

- (a) *of the respective numbers of government and aided primary and secondary schools which usually make their school premises and facilities available for use by non-governmental organizations, voluntary agencies and the local community after school and on holidays; and*

- (b) *whether, in order to encourage optimum use of such facilities, they will consider providing more resources for these schools to cover the additional expenses incurred (such as cleaning expenses, electricity fees and overtime allowance for janitors); if not, of the reasons for that?*

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

- (a) All government schools may, in accordance with the principles set out in the circular issued by the Education Department (ED) on hire of accommodation in government schools, approve applications from outside bodies for hiring their school premises and facilities. Aided schools could also make reference to the relevant guidelines and approve applications for hiring their premises and facilities themselves. The ED does not keep record on the number of schools making their school premises and facilities available for use by outside bodies. However, according to an informal survey conducted by the ED in March this year, there are currently about 151 government and aided primary and secondary schools which usually make their school premises and facilities available for hire by outside bodies (such as uniformed groups, religious bodies and organizations running evening school courses) after school hours or during holidays. The breakdown of these schools is as follows:

|                    | <i>Primary<br/>Schools</i> | <i>Secondary<br/>Schools</i> |
|--------------------|----------------------------|------------------------------|
| Government Schools | 12                         | 22                           |
| Aided Schools      | 49                         | 68                           |
| Total              | 61                         | 90                           |

- (b) We encourage outside bodies to hire premises and facilities of government and aided schools. In this connection, the ED has also provided sufficient guidelines for schools to facilitate their processing of these applications. In general, all hirers of



government and aided school premises and facilities have to pay a hiring fee; otherwise they will be receiving indirect government subsidies. The hiring fee is basically calculated on a full cost recovery basis, that is based on the additional charges (such as electricity and wages) incurred to the school concerned as a result of hiring out school facilities. This practice is fully in line with the "user pays" principle. Therefore, there is no need to provide additional resources to schools for making available their facilities for hiring by outside bodies.

### **Geological Fault in the Vicinity of Shing Mun Reservoir**

12. **MR LAU KONG-WAH** (in Chinese): *Madam President, it was reported that a study recently conducted by an academic with the aid of new monitoring technology had found an unstable geological fault in the vicinity of Shing Mun Reservoir and it would affect the structural safety of Shing Mun Tunnel. In this connection, will the Government inform this Council whether:*

- (a) *it knows the details of that study; if so, of the follow-up actions it has taken, and whether it has assessed the credibility of that study; if it has, of the assessment results;*
- (b) *it has collected data about the changes or movements along that fault over the past three years; if it has, whether the data have revealed that the fault poses a danger; and*
- (c) *it has regularly inspected the geotechnical safety of the areas in the vicinity of Shing Mun Reservoir and Shing Mun Tunnel; if it has, of the following:*
  - (i) *the frequency of such inspections;*
  - (ii) *the details of these inspections; and*
  - (iii) *the date and the outcome of the last inspection?*

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

- (a) We are aware of the study undertaken by researchers of the Chinese University of Hong Kong (CUHK). The technique referred to is radar imagery. Radar spectrum is not affected by cloud cover and vegetation so that radar images generally provide a better definition of the terrain and ground features.

The study by the CUHK researchers demonstrated that aerial radar imagery is a useful technique in identifying geological faults from topographic evidence. However, the radar image itself cannot be used to assess if the fault system is active.

- (b) From 1982 to 1996, the Geotechnical Engineering Office undertook a comprehensive geological survey for the whole of Hong Kong. The Shing Mun fault system was identified as part of that survey and was mapped in detail using visible spectrum aerial photographs with the support of extensive and comprehensive fieldwork. This information has been reported in various publications and the publications are available to the public.

Based on all the available data gathered so far, it has been concluded that the Shing Mun fault system is inactive. Furthermore, there is no evidence of any recent movement associated with the fault system.

- (c) Regular inspections have been carried out for the Shing Mun Tunnel and Shing Mun Reservoir.
- (i) The Highways Department carries out regular inspection and maintenance of the road carriageway. The Department also arranges geotechnical consultants to carry out engineer inspection of the roadside slopes in the vicinity of the Shing Mun Tunnel, every three to five years.

The Water Supplies Department carries out regular inspection and maintenance of the Shing Mun Reservoir. The Department also has a regular programme to employ a qualified independent inspecting engineer to carry out safety inspection of the main dam of this reservoir and the surrounding slopes, at a four to six year interval.

(ii) and (iii)

In the regular inspections, no problem has been reported on the sections of the carriageway in and around the Shing Mun Tunnel area. The last engineer inspections of the slopes in the Shing Mun Tunnel area were carried out in 1998. These inspections examined the drainage and surface cover conditions and state of stability of the slopes, and did not indicate significant slope instability.

Comprehensive safety inspections had been carried out for the main dam of the Shing Mun Reservoir and the surrounding slopes in 1993 to 1997. These inspections examined the permeability, stability and structural condition of the dam and the stability of the adjacent slopes as well as their effects to the dam. The inspections had not identified any movement or settlement of the main dam in relation to the fault system.

### **Senior Staff of Tertiary Institutions Holding Remunerated Directorships in Outside Organizations**

13. **MISS EMILY LAU** (in Chinese): *Madam President, will the executive authorities inform this Council whether they know:*

- (a) *the respective numbers of senior staff (including Presidents/Vice-Chancellors, Vice-Presidents/Pro-Vice-Chancellors, Deans of Faculty, Department Heads and Heads of Research and Administration Departments) of various University Grants Committee (UGC)-funded tertiary institutions currently holding remunerated directorships in outside organizations;*

- (b) *the respective amounts of directors' fees and other benefits received last year by these persons for holding such directorships, as well as the names of the private organizations involved; and*
- (c) *if these institutions have put in place a formal procedure for vetting and approving the applications submitted by their senior staff for holding remunerated directorships in outside organizations; if so, of the details?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, all UGC-funded institutions are statutory autonomous bodies and have their own established and promulgated regulations governing outside practice of their staff. In general, prior approval by the relevant authorities (for example, Heads of institutions or Council Chairmen) will be required and conflicts of interest will be guarded against.

- (a) and (b)

According to the information provided by the UGC-funded institutions, we have set out at Annex A the number of senior academic and administrative staff who are holding remunerated directorships in outside organizations and the names of organizations involved. As the respective amounts of the directors' fees and other benefits received by these persons are information of a personal nature, we have not requested for such information. But we understand that all these remunerated directorships have been approved and/or reported in accordance with the promulgated regulations, and where appropriate the remuneration is subject to sharing arrangements with the institutions concerned.

- (c) Details of the relevant regulations governing outside practice of the staff of individual institutions are set out at Annex B.

## Annex A

Information on senior staff holding  
remunerated directorships in outside organizations

| <i>Institution</i>               | <i>No. of staff</i> | <i>Organization involved</i>   |
|----------------------------------|---------------------|--|
| City University of Hong Kong     | 1                   | - Pacific Century Insurance Holdings Limited   |
| Hong Kong Baptist University     | 2                   | - Hon Kwok Land Investment Company<br>- Start Technology Company Limited   |
| Lingnan University               | 1                   | - Asia Satellite Telecommunications Holdings Limited<br>- Eaton Vance Management Fund<br>- First Pacific Company   |
| Chinese University of Hong Kong  | 3                   | - Amoy Properties Limited<br>- China Telecom (Hong Kong) Limited<br>- Glaxo Wellcome Public Limited Company<br>- Perfect Treasure Holdings Limited<br>- Regal Hotel Group Public Limited Company<br>- Roly International Holdings Limited<br>- The Bank of East Asia Limited |
| Hong Kong Institute of Education | Nil                 | N.A.   |
| Hong Kong Polytechnic University | 3                   | - Automated Systems Holdings Limited<br>- Theme International Holdings Limited<br>- United Pacific Industries Limited  |

| <i>Institution</i>                             | <i>No. of staff</i> | <i>Organization involved</i>                       |
|--|---------------------|--|
| Hong Kong University of Science and Technology | 3                   | - BTA Technology Incorporated                      |
|  |                     | - First Shanghai Investments Limited               |
|  |                     | - Googol Technology Limited                        |
|  |                     | - Legend Holdings Limited                          |
|  |                     | - MAE Holdings Limited                             |
|  |                     | - Pericom Technical Incorporated (Shanghai)        |
|  |                     | - Sa Sa International Holdings Limited             |
|  |                     | - Shanghai Industrial Holdings Limited             |
| University of Hong Kong                        | 3                   | - The Commercial Press E-Business Holdings Limited |
|  |                     | - PC Cyberworks                                    |
|  |                     | - Sunevision Holdings Limited                      |

## Annex B

## Regulations Governing the Taking up of Remunerated Outside Service

| <i>Institution</i>           | <i>Regulations</i>  |
|------------------------------|---|
| City University of Hong Kong | - Staff have to seek the prior approval from their direct supervisors for undertaking outside practice with remuneration.   |
|                              | - The President has to seek the prior approval from the Council for undertaking outside practice with remuneration.   |
| Hong Kong Baptist University | - Staff must first consult the persons to whom they report about their intended outside practice to ascertain whether it will affect their work and performance in the University or cause actual or potential conflicts with the University. |

| <i>Institution</i>              | <i>Regulations</i>  |
|---------------------------------|---|
|                                 | <ul style="list-style-type: none"> <li>- The supervisors will then decide whether an application for official approval from the Head/Dean/Vice-President/Council Chairman, as the case may be (and in accordance with the reporting relationship), would need to be made.</li> </ul>  |
| Lingnan University              | <ul style="list-style-type: none"> <li>- Approval from the Council must be sought if the President wishes to take up remunerated outside service.</li> <li>- Approval from the President must be sought if any other staff wish to take up remunerated outside service.</li> </ul>  |
| Chinese University of Hong Kong | <ul style="list-style-type: none"> <li>- Staff who serve as remunerated directors on the boards of outside organizations using their professional knowledge are required to report to and seek prior approval from the University (Dean/Unit/Head/internal committees, and so on).</li> <li>- Staff who are engaged in activities which do not fall within the definition of outside practice (for example, where professional knowledge is not required or holding directorship of a family investment/business) are considered to be engaged on outside business activities, and are also required to observe the relevant University regulations which stipulate that they shall not be engaged in outside business activities to the detriment of their University duties or to the detriment of the good name of the University. They shall also observe the regulations on conflict of interest, and declare any possible conflict of interest where applicable. Whilst prior approval is not required, the staff concerned is required to provide relevant information at the University's request.</li> </ul> |

| <i>Institution</i>                             | <i>Regulations</i>  |
|--|---|
| Hong Kong Institute of Education               | - Prior approval from the Institute (by the Council for the Director, and by the Director for all other staff, through their respective supervisors as appropriate) has to be obtained if a staff member is going to be engaged in any remunerated outside work. This requirement is stipulated in the Staff Handbook.  |
| Hong Kong Polytechnic University               | - Staff must obtain prior approval from the President or his designated senior executive before taking up any outside service.<br><br>- The President has to obtain prior approval from the Council before taking up any outside service.   |
| Hong Kong University of Science and Technology | - The University requires its staff to report to their supervisors, on a six-monthly basis, their consultancy activities which include services on the board of directors of company. Where there are potential conflicts of interest, they are required to obtain prior written consent from their supervisors (Head/Dean/Vice President/President/Council Chairman, and so on). |
| University of Hong Kong                        | - The University considers each application on its own merits with the formal approving authority resting with the Vice-Chancellor.<br><br>- The Vice-Chancellor has to obtain prior approval from the Council before taking up any outside service.  |

### **Prosecution against Smoky Vessels**

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



- (a) *of the number of prosecutions instituted last year by the Marine Department against vessels emitting excessive smoke in the waters of Hong Kong; the number of convicted cases and the average penalties imposed by the Court in such cases, and*
- (b) *how the above figures compare with the corresponding figures in each of the previous two years?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, information regarding the number of prosecutions instituted by the Marine Department against vessels emitting excessive smoke in the waters of Hong Kong, the number of convicted cases and the average penalties imposed by the Court in such cases for the last three years is as follows:

|      | <i>Number of<br/>Prosecutions</i> | <i>Number of<br/>Convicted Cases</i> | <i>Average<br/>fine imposed<br/>by the Court</i> |
|------|-----------------------------------|--------------------------------------|--|
| 1999 | 6                                 | 6                                    | \$3,000  |
| 1998 | 2                                 | 2                                    | \$1,000  |
| 1997 | 1                                 | 1                                    | \$5,000  |

### **Cremation Services Provided by Food and Environmental Hygiene Department**

15. **MR LEE WING-TAT** (in Chinese): *Madam President, regarding the cremation services provided by the Food and Environmental Hygiene Department (FEHD), will the Government inform this Council of:*

- (a) *the average and the longest waiting times for the cremation services provided by the FEHD in the past three months;*
- (b) *the number of complaints about the prolonged waiting time for cremation services lodged with the FEHD in the past three months;*
- (c) *its performance pledge for cremation services; and*
- (d) *the measures in place to improve such services?*

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

- (a) Between January and the end of March this year, the FEHD handled 7 318 cremations. Depending on the time and the location of the cremation as selected by the bereaved, the average waiting time for arranging cremation service was 12 days. The longest time required for arranging such service was 15 days.
- (b) Over the past three months, the FEHD has received three complaints from the public regarding the waiting time for cremation service. One of them was a written complaint, and the other two were lodged through the media.
- (c) The performance pledges in connection with cremation services are as follows:
  - (i) cremation service to be arranged within 15 days of application; and
  - (ii) ashes should be ready for collection within four days after cremation.
- (d) Our goal is to provide an efficient and dignified cremation service to the public. To improve and enhance the quality of the service, the FEHD will adopt the following measures:
  - (i) monitor closely the demand for cremation service and provide additional cremation sessions whenever necessary; and
  - (ii) replace old and inefficient cremators and build new and more efficient cremators in existing crematoria. The FEHD plans to replace the four old cremators in the Kwai Chung Crematorium and will seek funding for the works from the Public Works Subcommittee during this Session.

**Road Sections with More Smoky Vehicles**

16. **MR ERIC LI** (in Chinese): *Madam President, will the Government inform this Council whether it has conducted investigations to identify the road sections in the territory where more vehicles have been found emitting excessive smoke over the past three years; if it has, of the number of such road sections, the number of roadside testing operations mounted on these road sections against smoky vehicles and the effectiveness of these operations; if it has not, of the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese): Madam President, the Environmental Protection Department (EPD) has identified about 90 major road sections where smoky vehicles are often found. In the past three years, over 71 000 smoky vehicles (that is, nearly half of the smoky vehicles spotted in the same period) were spotted at these locations. Under the Smoky Vehicle Control Programme, a smoky vehicle spotted by a trained spotter is required to undergo a smoke emission test in a designated emission testing centre. The vehicle will have its licence cancelled if it cannot pass the test within 14 days.

Since June 1999, the police have been conducting roadside operations against smoky vehicles at various locations in the territory including some of the road sections where smoky vehicles are often found. During these operations, police officers would stop vehicles suspected of excessive smoke emissions for a roadside smoke test with the use of portable smokemeters. Vehicles failing the smoke test will get a fixed penalty ticket. They will also be referred to the EPD for smoke emission test at designated emission testing centres under the Smoky Vehicle Control Programme. From June 1999 to February 2000, the police conducted 367 roadside operations which resulted in the issue of 4 644 fixed penalty tickets to smoky vehicles.

**IDC/World Times Information Society Index**

17. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, "IDC/World Times Information Society Index" (ISI) measures the ability of a country or territory to access and absorb information and information technology (IT), by reference to 23 variables which come under four infrastructure categories,*

*namely computer infrastructure, Internet infrastructure, information infrastructure and social infrastructure. Hong Kong's ISI ranking this year is 14th. In this connection, will the Government inform this Council:*

- (a) of the items among the 23 variables on which it collects relevant data regularly, and the channels through which the data are collected and the values of the variables concerning Hong Kong are released; and*
- (b) whether it will consider collecting data for all the 23 variables and publishing the values of the variables concerning Hong Kong?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President,

- (a) At present, there is not a set of benchmarking indicators for measuring and comparing the ability of different places to access and absorb information and to apply IT which is widely recognized internationally. The ISI is only one particular set of benchmarking indicators. Some IT advanced countries (for example, the United Kingdom and Finland) have, having regard to their own needs, developed their own set of benchmarking indicators to measure their IT development.

Based on Hong Kong's own situation and needs, and taking into account the benchmarking indicators adopted in other places, the Government has established a set of benchmarking indicators to measure IT usage and penetration in Hong Kong. Based on these indicators, we are now conducting extensive surveys to collect the information and relevant data. This set of indicators covers mainly the usage and penetration of IT, software application and use of the Internet in the community, business sector, educational institutions and the Government. The development of telecommunications infrastructure facilities is also covered.

Regarding the usage of IT in the community and business sector, the Census and Statistics Department is conducting a sampling survey which covers some 10 000 households and 5 000 commercial institutions. As for the other information, the Government is collecting the data internally. We anticipate that the survey and data collection work will be completed in the third quarter of this year and the results, after analysis, will be announced.

As regards the indicators adopted in the ISI, the following 11 indicators which are directly related to IT have already been included in our survey and data collection work:

1. Personal computers installed per capita
2. Personal computers installed per household
3. Personal computers installed in the Government and the business sector
4. Personal computers installed in primary and secondary schools
5. Expenditure in procuring hardware and software
6. Number of companies with Internet access
7. Number of households with Internet access
8. Number of students using the Internet
9. Value of electronic commerce transactions
10. Number of mobile phones per capita
11. Number of households with telephone line

Other variables in the ISI which can be measured objectively and quantified are also collected regularly by relevant government departments. For example, telephone line error rate for a particular network, enrollment in secondary schools and tertiary institutions, and so on.

- (b) As explained above, the ISI is only one particular set of benchmarking indicators for measuring and comparing IT usage in different places. The Government has, having regard to the situation and needs of Hong Kong, developed an appropriate set of indicators and will publish the relevant statistics at regular intervals.

### **Promotion of Fair Competition**

18. **MISS CHRISTINE LOH:** *Madam President, regarding the promotion of fair competition in Hong Kong, will the Government inform this Council of:*

- (a) *the criteria for selecting the trades in which anti-competitive practices should be prohibited through legislation;*
- (b) *the advantages and disadvantages of adopting an integrated approach, backed up by relevant legislation and regulatory mechanisms, as compared to the current fragmented approach in which only selected trades are regulated; and*
- (c) *the reasons for adopting the current fragmented approach but not an integrated approach?*

**SECRETARY FOR TRADE AND INDUSTRY:** Madam President,

- (a) The Government considers that competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. Hence, it adopts a sectoral approach

to the promotion of competition whereby individual bureaux and departments are responsible for overseeing competition issues within their portfolios. The Competition Policy Advisory Group (COMPAG) considers and advises on competition issues that carry major policy or systemic implications.

The "Statement on Competition Policy" provides some general pointers on when the Government should intervene in the market. The determining factor is whether a business, through abusing its dominant market position, is limiting market accessibility or contestability, and impair economic efficiency or free trade, to the detriment of the overall interests of Hong Kong.

Against the general pointers, individual bureaux and departments can decide on the most appropriate measures to be taken to safeguard competition. Such measures could be administrative or legislative. And in choosing the means, bureaux and departments are expected to take account of the unique market and economic conditions of the relevant sectors, and other policy considerations such as prudential supervision and service reliability.

(b) and (c)

The issues raised by Miss LOH in her questions (b) and (c) were thoroughly considered by the Government in 1997 in response to the Consumer Council's proposal for a comprehensive competition policy backed up by legislation and a regulatory body. Those considerations are still valid and, for the sake of completeness and accuracy, instead of providing a summary of them, I am attaching the relevant extract from the Government's response to the Consumer Council as an appendix to this reply.

## CHAPTER 5 DO WE NEED A COMPETITION LAW?

- 5.1 The Consumer Council believes that an effective competition policy must be supported by a legal framework to ensure anti-competitive practices are dealt with in a transparent and consistent manner and that the Government will have effective powers to investigate, stop or prevent such practices that stifle or distort competition. The Council also proposes that, as a start, the competition law should cover horizontal<sup>1</sup> and vertical<sup>2</sup> collusive agreements and abuse of dominant position<sup>3</sup>.
- 5.2 To enforce the proposed law, the Consumer Council has proposed setting up an independent Competition Authority outside the civil service. The Authority would advise the Government on competition policy, ensure compliance with the law, consider and suggest reforms to the relevant legislation, and recommend to the Government changes to regulation to facilitate competition in the public interest. The decisions of the Competition Authority would be subject to review by an Appeal Body (as against the courts).

### ADVANTAGES OF A COMPETITION LAW

- 5.3 We have critically reviewed the pros and cons of legislating against anti-competitive acts. The advantages that we may get out of this would be -

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<sup>1</sup> *Horizontal agreements* are agreements among competitors, typically for the purpose of raising or fixing prices (so-called "price-fixing"); compressing bid prices ("bid-rigging"); allocating specific customers or sales territories to particular firms and not competing over the territory or customers of other firms ("market sharing"); or not dealing with firms that supply other firms in their market ("collective boycott").

<sup>2</sup> *Vertical agreements* are agreements among suppliers and distributors or retailers, typically for the purpose of setting a minimum price at which the product may be sold to customers (so-called "resale price maintenance"); requiring a retailer or distributor not to sell products competing with the supplier's products ("exclusive dealing"); or requiring purchasers of one product to purchase other products from the same supplier ("tie-in sales").

<sup>3</sup> *Abuse of market dominance* would typically come in the form of price-cutting for the sake of driving out competitors ("predatory pricing") or selling to some customers on different terms ("discriminatory behaviour").



- (a) to demonstrate Government's commitment to promoting competition in Hong Kong and ensure that the requirements are applied consistently to all sectors, not just the Government;
- (b) to outlaw "unfair" business practices, promote healthy competition and protect consumer interests. We already have laws to protect consumers against unsafe consumer goods, unconscionable trading terms, etc. Enacting a law to restrict "unfair" trading practices is only consistent with the Government's committed policy of "protecting the legitimate interests of consumers";
- (c) to put in place legally enforceable sanctions against the outlawed activities; and
- (d) to place Hong Kong on a par with other trading partners in WTO and APEC, many of whom have domestic competition laws.

5.4 Against the foregoing, however, we note that -

- (a) there are clear examples whereby policy objectives can be applied consistently and in a transparent manner even without legislative backing, e.g. our free trade and open market doctrines. A competition law is not essential to a successful competition policy;
- (b) there are no clear rules or international standards on what constitute "fair" or "unfair" trade practices. Many jurisdictions assume that collusive agreements are per se bad and hence illegal; some subject these to the rule of reason. If we apply the market accessibility and contestability tests, the scope of activities that we would like and need to outlaw may not be in line with that of some other jurisdictions. Much of the finer details of the proposed competition law is bound to be subjective and debatable, opening up the possibility of legal challenges and protracted litigation;
- (c) an all-embracing law is not as flexible as administrative guides or sector-specific codes of conduct. A guide or code issued by an association can still be binding on members. We can still find ways to exert "teeth" short of draconian legislative measures;

- (d) we have examined the extent to which the absence of a competition law could, as the Consumer Council has argued, compromise Hong Kong's international standing in world fora like the WTO and APEC. While there is a view in these fora that Hong Kong and a few other economies should introduce some form of competition law, we believe we have a strong defensible case. A competition law is not the only means of achieving the WTO/APEC objectives of promoting free and open trade. We have been achieving our trade and competition policy objectives, rather successfully, despite the absence of a general competition law. We also note that most other APEC economies (e.g. Korea and New Zealand) that have enacted a competition law have done so when their economies were about to be transformed from a highly-regulated to a more liberalized mode. Our economy has been in a liberalized mode for a long time. Free market forces have worked well for Hong Kong. We should be very careful not to upset the business environment that has served us well.

## DISADVANTAGES OF A COMPETITION LAW

5.5 We have considered the disadvantages or constraints of a legislative approach. These would include -

- (a) ***An apparent overkill:*** Because of the diversity of factual circumstances in a market, the impact of business practices on competition cannot usually be pre-judged. We accept that certain forms of horizontal restraints like price fixing and bid-rigging may not be fair to consumers or other market participants. We would discourage these. However, their actual impact on economic efficiency or market contestability is less clear. An all-embracing competition law will not be able to take into account the specific concerns and reaction of individual sectors. For instance -
- (i) many firms entering into collusive agreements, which will be seen as anti-competitive, may have done so for the purpose of attaining economies of scale or scope, or for strengthening the quality of service, which is itself a form of allocative efficiency and should not be indiscreetly deterred by a narrow form of competition policy; and

- (ii) even though dominance of the market by established players tends to make it more difficult for newcomers to compete, it is not the Government's objective to specifically favour newcomers. We seek to protect the competitive process, not competitors. So long as the market is accessible and contestable, the free market forces will operate to determine who can enter, stay and leave the market.

In short, acts that appear to have the effect of preventing, restricting or distorting competition are *not* invariably unjustified. We have to analyze them more thoroughly in their particular context to ascertain whether they restrict market access or contestability, whether they are calculated to gain monopolistic power rather than to practise competition or raise efficiency from a different perspective. Restricting all of them in a blanket manner by law would be an overkill.

- (b) ***Create uncertainty:*** If an all-embracing competition law were to be drafted, it would probably have to limit certain acts first and authorize an investigation into the intention and effects of these acts before deciding on the sanctions. Since it is meant to apply across the board, it will not be able to pinpoint the particular sectors of concern. In practical terms, this will create a great deal of uncertainty amongst businessmen. Indeed, many chambers of commerce have expressed concern that a competition law would create uncertainty for them.
- (c) ***Implementation concerns and conflicts:*** The administration of anti-trust laws requires expertise and a large organization to support enforcement efforts. Given the uncertainties even over what exactly we want to outlaw, it is difficult to anticipate and justify a bureaucracy right from the start. Proliferation of protracted court cases is likely to occur, as very often the defendant will counter fiercely given the substantial business interest at stake. We will also need to examine how the proposed Competition Authority would co-exist with the other regulatory bodies. We prefer a step-by-step approach to a blanket hit.

- (d) ***Compromise free and open trade principles:*** If the Government were to introduce an all-embracing law to restrict certain forms of business activities across the board, this would risk undermining our free and open trade policy and ultimately our competitiveness. Judging from experience overseas, the extent of anti-trust legislation and related set-ups does ***not*** seem to be directly proportionate to the competitiveness of the economy. It is salutary that neither Singapore nor Hong Kong, often quoted as the most competitive economies in the world, has a general competition law. This is because free market forces have been allowed to operate in both.
- 5.6 We believe that, on balance, given the uncertainties that a general competition law will create, especially amongst the business sector, the merits of adopting Consumer Council's proposed package are outweighed by its demerits.
- 5.7 In line with our free trade and minimum intervention approach, we prefer a less intrusive but more in-depth alternative to promoting competition. This involves promulgating self-regulatory codes of conduct to monitor the practices of different sectors; and considering sector-specific legislative changes, if necessary, to deal with anti-competitive problems. We are not averse to legislative changes, but we do not believe the extent of horizontal and vertical restraints or abuse of market dominance is so pervasive as to merit general outlawing. Our alternative also has an additional merit of not having to be encumbered with a bureaucratic set-up in the form of a Competition Authority and Appeal Body.

### **New Measures to Improve Air Quality**

19. **DR RAYMOND HO** (in Chinese): *Madam President, towards the end of last month, the roadside air monitoring stations of the Environmental Protection Department in various parts of Hong Kong recorded air pollution index readings at very high or high levels for several days in succession. In this connection, will the Government inform this Council whether:*

- (a) *it will formulate new measures to improve air quality; if it will, of the details;*

- (b) *it will consider introducing legislation or drawing up guidelines to require motorists to switch off the engines of their vehicles while waiting; if not, of the reasons for that; and*
- (c) *it has conducted a survey on the months of the year and the weather conditions in which the air quality is comparatively poorer?*

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

- (a) In last year's policy address, the Chief Executive set out a series of measures aimed to remove the threat to our health from vehicle emissions. These measures are being put into effect. At the same time, we are looking into the use of clean fuel including ultra low sulphur diesel and natural gas, trolley buses as well as hybrid vehicles. We are also considering whether temporary measures should be introduced on days when the air pollution is very serious.
- (b) We are considering options for controlling idling engines and will consult the relevant Legislative Council Panels on these options shortly.
- (c) According to data collected by the Environmental Protection Department, Hong Kong generally has a higher level of air pollution in the winter months. In 1999, the average levels of respirable suspended particulates and nitrogen dioxide recorded in January, February and December were higher than those recorded in other months.

### **Complete Ban of Smoking in Restaurants**

20. **DR DAVID LI:** *Madam President, a survey commissioned by the Council on Smoking and Health found that 69% of the respondents preferred all restaurants to be smoke-free whilst 80% would patronize a smoke-free restaurant if they were to dine out with children. In this connection, will the Government inform this Council whether it will consider introducing legislation to completely ban smoking in restaurants in order to protect the health of the public and workers in the catering industry; if so, of the implementation timetable; if not, the reasons for that?*

**SECRETARY FOR HEALTH AND WELFARE:** Madam President, it is our declared policy to minimize public's exposure to environmental tobacco smoke (ETS) to the maximum extent possible. To this end, we have introduced various legislative and educational measures to protect the public from being affected by ETS in public places.

Under section 3(1B) of the Smoking (Public Health) Ordinance (Cap. 371), the manager of a restaurant may, at his/her discretion, designate the entire or part of the restaurant as a no-smoking area, and once this designation has been made, the manager has the authority to enforce the no-smoking requirement in the premises.

Section 3(1C) of the same Ordinance, which came into operation in July 1999, takes this effort one step further by requiring the manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding the area used exclusively for a private event and separated by full height partition, to designate not less than one third of the accommodation as a no-smoking area.

There are, hence, existing provisions in the Smoking (Public Health) Ordinance to enable the manager of a restaurant to impose total or partial banning of smoking in the restaurant. We are currently reviewing our anti-smoking strategy and framework. As part of this review, we will consider further measures such as more stringent anti-smoking requirements in restaurants and other indoor premises. In this context, we will also evaluate the effectiveness and impact of the legislative measures implemented so far, and the issues involved in enforcement.

## **BILL**

### **Second Reading of Bill**

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Security and Guarding Services (Amendment) Bill 2000.

**SECURITY AND GUARDING SERVICES (AMENDMENT) BILL 2000****Resumption of debate on Second Reading which was moved on 16 February 2000**

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

**MR CHAN WING-CHAN** (in Cantonese): Madam President, the Security and Guarding Services Ordinance, which came into effect in 1996, replaced the Watchman Ordinance. It stipulates that all persons engaging in security work must apply for licences before they can be employed in such posts. A number of technical problems have arisen after the implementation of this Ordinance.

These technical problems include fundamental issues like the definition of "security work" which covers areas that the Ordinance did not set out to regulate. One of the definitions of "security work" is "preventing or detecting the occurrence of any offence", and under this definition, it is doubtful whether investigations undertaken by professional accountants and lawyers for the purpose of detecting fraud are also included. It is, therefore, necessary for this term to be redefined. Moreover, it is only after this Ordinance came into effect that the Authority, with a membership of only five people, was discovered not being able to cope all with the work. Therefore, the Ordinance was amended to increase the membership of the Authority from five to seven. Furthermore, some minor problems are also found in the time limit for processing licence applications and payment methods, but all these are only normal. A piece of new legislation has to be actually implemented before its weaknesses can be identified, and the amendments under discussion today are also moved with the intention of solving this problem.

However, the Administration chose to overlook some problems that had been identified before the implementation of this Ordinance. In fact, before this Ordinance came into effect, we pointed out that many elderly watchmen would lose their jobs as a result of the new legislation. This is because the Ordinance stipulates that those who are aged 65 or above can only work as watchmen in single private residential buildings, but at that time, quite a number of such people are actually working as watchmen in buildings other than single private residential buildings. Upon the implementation of this Ordinance, these watchmen were dismissed by their employers, citing the new regulations introduced by the Government as an excuse.

In fact, those who are aged 65 or above should have retired and stayed home to enjoy life with their family and spend their time leisurely in planting flowers and keeping pet fishes. However, since there is no retirement protection system in Hong Kong, quite a number of elderly people still have to work for a living, for example, as watchmen for more than 10 hours daily. However, since the implementation of this Ordinance, these elderly people lost their chance to work hard for a meagre income.

In order to protect the interests of elderly people who were employed as watchmen at that time, I moved a private Members' Bill in 1997 to amend this Ordinance, so that elderly watchmen working in buildings other than single private residential buildings at that time could be exempted from the Security and Guarding Services Ordinance, and be allowed to keep their jobs. It was a pity that the amendment was not endorsed by the then Legislative Council.

As a matter of fact, those who are aged 65 or above may not necessarily be less capable than other people. I know a security guard who was promoted to the rank of supervisor shortly before the Ordinance was implemented, and just before he turned 65. Though he was physically fit enough to cope with his job, and the company he served would like him to stay on because his services were very much appreciated, the company was still forced to dismiss him under the provisions of this Ordinance. For the company, it has lost the service of a good and capable employee and for the employee, he has lost a job for which he is competent as well as his income.

The amendments currently proposed by the Administration only focus on technical problems which have arisen after the implementation of this Ordinance, without reviewing the elderly people's right to work. The fact that the Ordinance has deprived elderly people of their right to work has been totally disregarded. I hope that the Government can be more flexible in dealing with the age limit for security guards who are aged 65 or above. For example, the Commissioner of Police should be empowered to allow those who are aged 65 or above to continue to work as security guards on the strength of the endorsement and recommendation of security companies. Those who are physically fit and are capable in their work should be exempted from this Ordinance even though they may be over 65.



I think that the Administration should also review the procedures of applications for security personnel permits. At present, a security guard need to obtain an offer letter from his prospective employer before he can submit a first-time application. In this way, security guards cannot take the initiative to apply for permits before they set out to look for jobs. There are also certain small scale employers, such as the Owners' Corporations of private buildings, would rather employ security guards who have already obtained permits in order to avoid the trouble of applying for permits on their behalf. This will impose greater restrictions on those who are interested in joining this industry.

Madam President, I suggest that the Administration should review the above two issues which are related to workers' right to work, so that those who are interested in security work can apply for permits before they look for employers. Moreover, the job opportunities for those who are senior in age should no longer be restricted, that is, they should be allowed to stay on at their job as long as they can do their work properly.

Madam President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak? If not, I will call upon the Secretary for Security to reply. This debate will come to a close after the Secretary for Security has replied.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Security and Guarding Services (Amendment) Bill 2000 was introduced to the Legislative Council on 16 February 2000 for First and Second Readings. First of all, I wish to give a brief reply to the questions raised by the Honourable CHAN Wing-chan in relation to the rights of the workers. The first point raised by Mr CHAN was on the age of the security personnel. Actually, the question does not fall in the scope of the Bill. The Bill does not lay down any age limit, for it is laid down by the Security and Guarding Services Industry Authority (the Authority) according to certain criteria. As for the issue of permits, it is done by the police.

As to the question of whether permits can be issued before the applicant has found a job as a security guard, it has to be considered by the issuing authority. I will refer Mr CHAN's views to the relevant authority for consideration.

The main objectives of the Bill are, first, to clarify the scope of activities regulated under the Security and Guarding Services Ordinance so as to avoid any ambiguities in meaning; second, to improve provisions in the Ordinance on the operation of the Authority for the better implementation of the licensing scheme; and third, to clarify and improve provisions relating to the granting of licences to security companies and permits to security personnel.

When we were drafting the Bill, we consulted the Authority on the contents of the proposed amendments. The views of the Legislative Council Panel on Security and the major organizations in the security industry were also reflected in the Bill. The House Committee of the Legislative Council also discussed the Bill and gave its consent on the technical amendments to clauses 17 and 18 of the Bill. I will explain these amendments when we come to the Committee stage.

The Bill seeks to clarify and make technical additions to the related provisions on the scope of regulation and fees. It will make improvements on the operation of the Authority and the licensing scheme prescribed under the Ordinance. The Bill will also contribute to the better implementation of the renewal of permits for security personnel and licences for security companies soon to be carried out in mid-year and the third quarter respectively.

Madam President, I urge Honourable Members to support the Security and Guarding Services (Amendment) Bill 2000 and the amendments I will propose at the Committee stage. Thank you, Madam President.

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

Council went into Committee.

### **Committee Stage**

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

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

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Security and Guarding Services (Amendment) Bill 2000.

**CLERK** (in Cantonese): Clauses 1 to 16 and 19 to 24.

**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 17 and 18.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the amendments to clauses 17 and 18, that is, proposed sections 24 and 24A of the Ordinance, as set out in the paper circularized to Members.

The proposed amendments are of a technical nature and are aimed at amending the proposed section 24A. They seek to reflect the policy intent of the provision fully, putting beyond doubt the powers of the Authority to vary the conditions of a licence temporarily by issuing a written notice when the licensee has applied for variation of conditions of a licence and before the Authority has made a decision on the application. As for the amendment to proposed section 24, this is consequential to the amendment to section 24A and seeks to make the wordings used in the two provisions consistent.

Madam Chairman, I so move the above-mentioned amendments and urge Members to support their passage. Thank you.

*Proposed amendments*

**Clause 17 (see Annex)**

**Clause 18 (see Annex)**

**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 Security 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 17 and 18 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.

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

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

Security and Guarding Services (Amendment) Bill 2000

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 Security and Guarding Services (Amendment) Bill 2000 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): Security and Guarding Services (Amendment) Bill 2000.

**MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Discovery Bay Tunnel Link Ordinance.

**PROPOSED RESOLUTION UNDER THE DISCOVERY BAY TUNNEL LINK ORDINANCE**

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I move that the Discovery Bay Tunnel Bylaw be approved.

The 2.4-km Discovery Bay Tunnel, which includes a 630 m long single-tube two-way tunnel, will connect Discovery Bay with the utility service road parallel to the North Lantau Highway at Siu Ho Wan. It is a private road tunnel to be built, maintained and operated by the Discovery Bay Road Tunnel Company Limited at its cost. Upon completion, it will provide an additional access for Discovery Bay which is now served only by ferry service.

By virtue of the Discovery Bay Tunnel Link Ordinance, the Discovery Bay Road Tunnel Company Limited is vested with the power to construct, operate, maintain and manage the Discovery Bay Tunnel Link. The Company is also empowered to make bylaws to control and regulate the conduct of vehicles and people within the tunnel area of the Discovery Bay Tunnel Link.

The Company has made the relevant Bylaw on 29 February this year to deal mainly with the rules that drivers are required to comply with. Provisions in the Bylaw are largely the same as those in the bylaws of other private tunnels.

Apart from the Bylaw mentioned above, I have also exercised the power vested in me under the Discovery Bay Tunnel Link Ordinance to make regulations in relation to the obligations and powers of the Company in operating the Discovery Bay Tunnel Link. The Discovery Bay Tunnel Link Regulation was introduced to the Legislative Council on 14 July 1999 for negative vetting and has been approved.

The Discovery Bay Tunnel Link is scheduled to be open shortly. Therefore, the Bylaw has to be in place to provide for the Company's power in the management and operation of the Tunnel Link to lay down the rules to be observed by tunnel users.

Madam President, I beg to move.

**The Secretary for Transport moved the following motion:**

"That the Discovery Bay Tunnel Link Bylaw, made by the Discovery Bay Road Tunnel Company Limited on 29 February 2000, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Transport, 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 of the Members present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Proposed resolution under the Electricity Ordinance and Interpretation and General Clauses Ordinance.



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

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I move that the Electricity Supply Lines (Protection) Regulation (the Regulation), made under section 59 of the Electricity Ordinance (Cap. 406) by the Chief Executive in Council on 14 December 1999, be approved subject to the amendments set out in the proposed resolution circulated to Members.

Section 59(1) of the Electricity Ordinance provides that the Chief Executive in Council may make regulations for measures designed to ensure that activities performed in the vicinity of electricity supply lines owned by electricity suppliers are performed in a manner that minimizes causing an electrical accident or interruption to the supply of electricity. It also provides that such regulations shall be subject to the approval of the Legislative Council.

The Regulation aims to ensure that activities performed in the vicinity of electricity supply lines are performed without causing electrical accidents or interruption to the electricity supply. Briefly, it requires that works shall not be carried out in the vicinity of an electricity supply line unless, before the works are begun, all reasonable steps have been taken to ascertain the existence, alignment and other relevant particulars of any such line. It also requires that works shall not be carried out in the vicinity of an electricity supply line without all reasonable measures having been taken to prevent the occurrence of an electrical accident or interruption to the electricity supply. One of the steps to be taken is for a competent person to be engaged to locate and establish the alignment of any electricity lines on the site. The main provisions of the Regulation are set out in the relevant Legislative Council Briefs of 15 January 1999 and 23 December 1999.

The Regulation made by the Chief Executive in Council has been scrutinized by a Legislative Council Subcommittee. As a result, the Government agreed to propose certain amendments to the Regulation. These concern matters relating to the suspension of approval of a competent person and remedial notices.

The Government has proposed to amend section 6(1) of the Regulation, which relates to suspension of approval of a competent person, in two respects to avoid prejudicing any subsequent proceedings to overturn a suspension and to present more clearly the grounds on which a suspension may be made.

The Government has also proposed to amend subsections (7) and (8) of section 11 of the Regulation, which relates to the serving and content of remedial notices in respect of contraventions so that references to "instructions" or "instruction" as they may appear in a remedial notice, are replaced by references to "direction". These are drafting changes made for consistency with the wording of other sections.

In the interests of public safety and of ensuring the continuity of electricity supply, I urge Members to support and approve the Electricity Supply Lines (Protection) Regulations subject to the proposed amendments to it.

Thank you.

**The Secretary for Economic Services moved the following motion:**

"That the Electricity Supply Lines (Protection) Regulation, made by the Chief Executive in Council on 14 December 1999, be approved, subject to the following amendments -

- (a) in section 6(1), by deleting "that there is evidence";
- (b) in section 6(1)(b), by deleting "in good faith and with all due diligence" and substituting "to the standard reasonably expected of a competent person";
- (c) in section 11-
  - (i) in subsection (7), by deleting "instructions" and substituting "direction";
  - (ii) in subsection (8), by deleting "instruction" where it twice appears and substituting "direction"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Economic Services, as set out on the Agenda, be passed.

**DR RAYMOND HO** (in Cantonese): Madam President, as the Chairman of the Subcommittee on the resolution moved under section 59 of the Electricity Ordinance (Cap. 406), I rise to support the resolution which was just moved by the Secretary for Economic Services, to pass the Electricity Supply Lines (Protection) Regulation.

In view of the numerous casualties and economic losses arising from damages to electricity supply lines in the past, it is indeed necessary that the Electricity Supply Lines (Protection) Regulation be implemented as soon as possible. This will ensure that works contractors must adopt all reasonable measures, including the employment of competent persons to ascertain the alignment and depth of an underground electricity cable, before any works are carried out in the vicinity of electricity supply lines, to prevent such lines from being damaged.

In fact, the relevant Regulation was studied by the Bills Committee on Electricity (Amendment) Bill 1999 when it scrutinized the Bill last year. To address the concerns of the Bills Committee, the Administration has moved amendments to the Regulation to make the provisions on defence, the role of competent persons and the compliance with directions in remedial notices more explicit; and submitted this Regulation to the Legislative Council for "positive vetting".

The Subcommittee held two meetings with the Administration to scrutinize the amendment Electricity Supply Lines (Protection) Regulation, and to conduct an in-depth study on the submission of the Hong Kong Construction Association. The Administration has taken on board the recommendations of the Subcommittee, and agreed that further amendments should be moved to address some concerns of the Hong Kong Construction Association and the Legal Service Division about the drafting of the Regulation. This includes amendments to section 6(1) on the suspension of a person's approval as a competent person and sections 11(7) and (8), to replace references to "instructions" and "instruction" by "direction", so as to standardize the terminology in all sections of the Regulation. Since the Secretary for Economic Services has already given a detail explanation on these amendments, I am not going to repeat them here.

The Subcommittee supports the early implementation of the Electricity Supply Lines (Protection) Regulation so as to ensure that works to be carried out in the vicinity of electricity supply lines will not cause any electrical accidents or interrupt electricity supply.

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

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Economic Services, do you wish to reply?

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I have nothing particular to add apart from extending my gratitude to the Subcommittee of the Legislative Council for the work it has done in scrutinizing the Regulation. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Economic Services, 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 of the Members present. I declare the motion passed.

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance.

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

**DR LEONG CHE-HUNG** (in Cantonese): Madam President, in my capacity as the Chairman of the House Committee, I move the motion standing in my name, as printed on the Agenda.

The Chinese Medicine (Fees) Regulation seeks to prescribe various fees in relation to the registration of Chinese medicine practitioners under the Chinese Medicine Ordinance (Cap. 549). This subsidiary legislation will come into effect at a date to be specified by the Secretary for Health and Welfare.

At the House Committee meeting held on 31 March 2000, Members agreed that a Subcommittee should be set up to examine the subsidiary legislation. We held our first meeting this morning, but a few more meetings will have to be held before we can decide on the way to deal with this matter. In order to provide the Subcommittee with sufficient time to study this subsidiary legislation, Members agreed to extend the scrutiny period to the Legislative Council meeting of 3 May 2000.

Madam President, I urge Members to support this motion. Thank you.

**Dr LEONG Che-hung moved the following motion:**

"That in relation to the Chinese Medicine (Fees) Regulation, published as Legal Notice No. 69 of 2000 and laid on the table of the Legislative Council on 29 March 2000, the period referred to in section 32(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under 34(4) of that Ordinance to the meeting of 3 May 2000."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LEONG Che-hung, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr LEONG Che-hung, 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 by 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.

**PRESIDENT** (in Cantonese): 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. I believe Members are very familiar with such time limits, so I shall not repeat the recommendations.

First motion: Elderly persons settling in their hometown.

**ELDERLY PERSONS SETTLING IN THEIR HOMETOWN**

**MR CHAN KAM-LAM** (in Cantonese): Madam President, according to an earlier projection made by the Census and Statistics Department — Madam President, there are no officials in the Chamber right now — the number of elderly persons in Hong Kong will increase to over 1.1 million by the year 2006-07. With the ageing of Hong Kong's population, we really need to conduct in-depth reviews and studies on the issues regarding housing and services for the elderly, so as to work out long-term and satisfactory solutions and plans .....

**PRESIDENT** (in Cantonese): Mr CHAN, if you so request, I shall suspend the meeting until the Secretary arrives ..... the Secretary has just arrived.  
*(Laughter)*

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I wish to let the Secretary take his seat before I continue.

**PRESIDENT** (in Cantonese): Very well. You can wait until after the Secretary is seated to continue your speech.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, may I speak from the beginning?

**PRESIDENT** (in Cantonese): Yes, you may. Will the Clerk please reset the timer?

**MR CHAN KAM-LAM** (in Cantonese): Madam President, according to an earlier projection made by the Census and Statistics Department, the number of elderly persons in Hong Kong will increase to over 1.1 million by the year 2006-07. With the ageing of Hong Kong's population, we really need to conduct in-depth reviews and studies on the issues regarding housing and services for the elderly, so as to work out long-term and satisfactory solutions and plans.

The Democratic Alliance for the Betterment of Hong Kong (DAB) conducted two surveys, one in January last year and the other in early April this year, on the views of Hong Kong people about settling in the Mainland after retirement. Both surveys showed that 60% of the respondents thought that the current environment in Hong Kong did not suit elderly people who wanted to have a comfortable life after retirement, chief among the reasons being the prices of goods, the high rent and the serious pollution problems. At the same time, Hong Kong people have generally accepted going back to the Mainland for retirement life, or let their old family members do so. However, they also have some worries about living in the Mainland, mainly about the medical facilities there.

Madam President, according to another piece of information of the Census and Statistics Department, there are now over 1 million senior citizens over the age of 60 in Hong Kong, with 300 000-odd among them living alone or with other elderly persons. The Housing Authority (HA) has promised that the average waiting time for elderly people applying for rental public housing would be shortened to two years by 2007, and that 38 000 new small units and sheltered housing units for the elderly would be made available between 1998 and 2003. However, as moving into such units means the elderly people will have to leave the areas they have been living, there have been quite a number of adaptation problems in the relocation.

On the other hand, Hong Kong is over-populated, with excessive population density, a deteriorating environment, rising prices and cost of living, and an insufficient supply of elderly services to meet the demand. The Secretary for Health and Welfare disclosed just the other day that on average about 4 000 elderly persons died every year while waiting for their turns to get the various residential care places. Therefore, the citizens' wish to settle in the Mainland after retirement is understandable.

The Social Welfare Department (SWD) introduced the Portable Comprehensive Social Security Assistance (PCSSA) Scheme in April 1997 to allow grass-roots elderly recipients of Comprehensive Social Security Assistance (CSSA) to choose to live in Guangdong Province. This is a good scheme.

However, some restrictions and requirements of the Scheme are not necessary in our view. The DAB suggested to the SWD in 1997 to remove such restrictions; at that time the Department said that the scheme would be reviewed



after implementation for a certain period of time. Regrettably, three years after the introduction of the Scheme, there has not been any change to the requirements, other than some minor improvements on 1 April, including the payment of a maximum of \$6,000 as funeral subsidy.

According to the latest data, a total of over 1 900 elderly persons have settled in Guangdong under the PCSSA Scheme since April 1997, among them around 250 are already dead. So there are roughly 1 550 elderly CSSA recipients living in the Mainland. Owing to insufficient publicity of the Scheme and its numerous restrictions, coupled with the fact that the medical needs of the elderly are not fully catered for, many senior citizens are still hesitant and undecided about going back to the Mainland.

The Hong Kong Red Cross has been acting as an intermediary for the PCSSA Scheme in the past three years, assisting the SWD in following up cases and providing support services. The Hong Kong Red Cross has also conducted a survey on the participating elderly people. The findings of the survey showed that the majority of the old people interviewed thought that living in their hometowns brought improvements to their life in terms of living conditions, housing, family relations, personal care and daily expenses. Most of them have their own home and they thought that the environment and the air in the countryside are both better than in Hong Kong. 95% of the elderly interviewed agreed that the Scheme met their needs, but the medical services they got was far inferior to those in Hong Kong.

Nevertheless, that survey also found that the participating elderly are mainly the older and weaker ones who badly need the care of others. Among them, 60% are over 80; 34% are between 70 and 79; close to 15% of them have been assessed to be of 100% disability; and 4% have been assessed to need long-term care. Nearly half of the interviewees said that they needed regular medication or regular medical treatment; their monthly medical expenses ranged from several hundred to several thousand Renminbi yuan.

Medical expenses are the biggest worry of the participating old people. The findings of the Hong Kong Red Cross survey and the DAB one are quite consistent.

The DAB therefore thinks that the SWD should initiate discussions with mainland authorities with a view to solving the medical care problem of our

senior citizens in the Mainland so that they can receive suitable medical care for a reasonable fee which could still be paid by the SWD. Consideration can also be given to setting up a fund to be placed under the supervision of an intermediary organization to cover the medical expenses incurred by the elderly in the Mainland.

Further, under the present PCSSA Scheme, the SWD will only deposit the CSSA payment into the bank accounts held by the elderly in Hong Kong, thus they have to make their own arrangements to remit the money to the Mainland at their own expense. In this respect, we also suggest the Government to discuss with the banks to introduce direct remittance so as to save the trouble of the elderly as well as the unnecessary fees.

Madam President, one of the limitations of the present Scheme is that the participating old people must choose to settle in Guangdong. The DAB understands that the majority of the elderly people in Hong Kong would choose to settle in their own hometowns or certain big cities in Guangdong to spend their twilight years, and to restrict the Scheme coverage to Guangdong also facilitates the follow-up work of the SWD and the intermediary. However, among those old people we have contacted, some are natives of Fujian or other provinces, and they also wish to return to their hometown. But these old people can only continue their hard and lonely life in Hong Kong because of the restrictions of the Scheme. Therefore, the DAB proposes that the SWD should actively consider extending the Scheme to places on the Mainland outside Guangdong and strengthen communication and co-ordination with the mainland authorities so as to monitor the situation of the elderly people after their return to their hometowns.

Madam President, with the Government providing the favourable conditions for the elderly to choose to settle in the Mainland, not only will the quality of life of the old people be greatly upgraded, but the pressure on housing and the various residential care services in Hong Kong will also be reduced. Therefore, the DAB proposes that the Government should, apart from improving the current PCSSA Scheme, actively find ways in conjunction with the relevant mainland authorities to build "estates for the elderly" in cities where relatively more of our senior citizens have chosen to settle.

The current cost in Hong Kong of providing a residential unit for old people of good health is some \$300,000 to \$400,000, and the monthly expenses

for maintaining one long-term care place for the elderly amount to \$6,000 to \$7,000. The cost of providing a similar unit and services on the Mainland is a mere one fifth, or less, of that in Hong Kong. With obvious improvement to the quality of life on the Mainland and more material comfort there in recent years, the elderly normally can find satisfactory accommodation there. Many quality private housing estates in the Pearl River Delta are quite popular among Hong Kong people, and retirees from Hong Kong own a significant proportion of such property. However, such quality housing might not be within the reach of the elderly CSSA recipients; so, instead of having the old people separately finding their own accommodation, building "estates for the elderly" could be considered, for better management and follow-up on their cases.

The DAB thinks that the SAR Government should actively look into the feasibility of building "estates for the elderly" on the Mainland. The whole project must, in particular, be discussed with the mainland Government so as to get the latter's co-operation in areas of resources utilization and operation supervision. In these respects, the SAR Government has to fully rely on the assistance of the mainland Government.

The idea of "estates for the elderly" is rather common in other countries, and such estates has seen a trend of increase in recent years. "Estates for the elderly" in the United States cover a variety of categories with various services to meet the different needs of the old people, including those who require residential and medical care.

The "Elderly Housing Project" announced by the Housing Society earlier mainly focusses on constructing multi-storey residential buildings for the elderly, with various services and facilities to meet their needs. The HA also has elderly hostels in Ping Tin Estate and a number of other housing estates to provide suitable accommodation for the elderly.

The DAB proposes that the Government could refer to such models when examining the feasibility of building "estates for the elderly" with the mainland Government, so that those old people settling in the Mainland may have a good option.

Madam President, the DAB thinks that if the Government could relax the restrictions of the PCSSA Scheme, solve the problems concerning the livelihood of and medical support for our senior citizens living in the Mainland, and

implement the proposal for the "estates for the elderly", more of our senior citizens will be glad to return to the Mainland after retirement, particularly as more and more Hong Kong people are in recent years buying property on the Mainland for their retirement. For this reason, the Government must also remove the absence rule on recipients of old age allowance (what is commonly called "fruit grant") requiring them not to leave Hong Kong for more than 180 days every year. Indeed, the DAB already raised this suggestion many years ago. We hope that the Government would now give it serious consideration.

Thank you, Madam President.

**Mr CHAN Kam-lam moved the following motion: (Translation)**

"That, as the existing policy fails to meet the needs of the elderly persons who wish to settle in their hometown, this Council urges the Government to:

- (a) extend the "Portable Comprehensive Social Security Assistance Scheme" (PCSSA) to places on the Mainland outside Guangdong;
- (b) address the need for medical services of the elderly PCSSA recipients who settle in the Mainland;
- (c) explore actively the feasibility of establishing "estates for the elderly" in those mainland cities in which more elderly persons choose to settle; and
- (d) abolish the absence rule on old age allowance received by the elderly persons who settle in their hometown."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr CHAN Kam-lam, as set out on the Agenda, be passed.

Miss CHOY So-yuk and Mr Fred LI will move amendments to this motion. Their amendments have been printed on the Agenda. The motion and the two amendments will now be debated together in a joint debate.

I will call upon Miss CHOY So-yuk to speak first, to be followed by Mr Fred LI; but both Members shall not move any amendment at this stage.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, that the Hong Kong Progressive Alliance (HKPA) proposes an amendment today does not mean we are opposed to the original motion, we only wish to make up for its inadequacy so that the current government policy can benefit more elderly people, and give them more options over their post-retirement accommodation and way of life.

The cost of living in Hong Kong is high, and it is a particularly heavy burden to grass-roots retirees and the elderly recipients of CSSA. Therefore a recent survey found that over 1 million citizens wish to settle in the Mainland where the cost of living is lower, after their retirement. On the other hand, the government scheme to help people settle in their hometown has not attracted many participants. Since its launching in 1997, the PCSSA Scheme has managed to benefit only 1 900-odd elderly persons; not at all effective as hoped. That such a small number of elderly persons actually took advantage of the Scheme while so many people indicated a wish to eventually settle in their hometowns should be mainly due to the current government policy which has failed to effectively encourage people to do so.

In fact, we strongly support the PCSSA Scheme. With more elderly people settling in their hometowns, it will definitely help reduce our long-term burden in areas of medical and housing services. According to government statistics, elderly CSSA cases increased from 98 000-odd four years ago to the present over 133 000; and old age allowance cases from over 437 000 four years ago to the present 446 000-odd. The number of residents in homes for the aged and residential care institutions, and the memberships of multi-service centres for the elderly and elderly activities centres have steadily increased in recent years. Further, there are close to 1 million old people aged over 60 in Hong Kong, among whom 40% are living in public housing, accounting for 18% of the public housing population. It is projected that by 2016, one fifth of Hong Kong's population will be above 60. By that time, the demand of old people for public housing will drastically increase. To relieve the pressure brought about by our ageing population, the Government has to make use of the hinterland on the Mainland. On the other hand, many elderly people like to go back to live in their own hometowns and many of them indeed own property there. With relatives and friends speaking the same dialects and sharing the same diet,

adaptation will be easier. The consumer market in the Mainland will benefit from these new settlers as well. Therefore, the Scheme should be a three-win project, benefiting Hong Kong, the elderly persons as well as the Mainland, and with little drawback. As the Government in any case has to make grants to the eligible elderly CSSA recipients, and the Mainland will help remove the burden from us, there should not be that many restrictions in the Scheme to add to the worries of the senior citizens.

In view of this, we suggest that the Government should amend the requirement for the elderly people to be on CSSA for three consecutive years or more before they are eligible to apply under the PCSSA Scheme, and shorten it to one year or above. The Government once said that there was the worry that once this requirement was relaxed, certain old people who gave up CSSA and returned to their hometowns would come back to Hong Kong to apply to join the Scheme, turning public commitment in elderly CSSA into a bottomless pit. We think that those elderly people who went back to their hometown voluntarily in the past have not used any of the resources of the Hong Kong Government, so even if they become eligible again in the future for CSSA, the Government must be generous enough to grant them assistance. If the Government really worries that the expenditure so incurred will turn into a bottomless pit, it should show us the exact figures, and tell us the number of elderly people who have returned to their hometowns and had been, before that, recipients of CSSA for less than three consecutive years, to facilitate public discussion. The reason alone cannot be used to justify such restrictions.

Not only should the Government relax the eligibility of elderly CSSA recipients for the PCSSA Scheme, but the coverage area of the Scheme should also be extended from Guangdong to other provinces. In fact, right from the beginning of the Scheme, I opposed limiting the coverage area to Guangdong because many elderly people of other provincial origin also wish to return to their hometowns. Take Fujian as an example. Of the 1 million Fujian natives in Hong Kong, quite a number of them are old people and there is no reason why the CSSA recipients among them cannot go back to Fujian to resettle. For those who do not speak Cantonese, in particular, the way of life for them in Fujian will be better than in Hong Kong; for this reason, they have a stronger desire and bigger need to return to their hometowns. Further, because of the relatively long distances, once they have settled in Fujian, there is less chance for them to come back to Hong Kong. So, many of these people are willing to return to Fujian for good. The Overseas Chinese Association and Office of Overseas

Chinese Affairs there told me that they were prepared to help make the necessary arrangements for free if the number of returnees was not too large. And even if the number is large, the fees they will charge will be far less than the expenses at present incurred by the Government and the Hong Kong Red Cross. I think that the SAR Government should take advantage of the network of the overseas Chinese associations and offices of overseas Chinese affairs in the Mainland to assist more elderly persons to settle in their respective hometowns. If the SAR Government so needs, I am prepared to offer my assistance in areas of liaison and communication.

In order to facilitate reviews of the PCSSA Scheme or to ascertain the eligibility of the applicants, the Government can retain the requirement on the applicants to have been a CSSA recipient for one year or more. But in respect of old age allowance, the absence rule should not be applied. There are views that once the rule is removed, elderly people long emigrated or absent from Hong Kong might become eligible for the allowance, thus increasing government expenditure. On the other hand, it would not be easy for the Government to check if the recipients settling in their hometowns are still alive, resulting in waste of resources. The point, however, is that the old age allowance is a sort of payback to the elderly people for their contribution to Hong Kong. What is more, the expenditure involved is not large; so, as long as the elderly people meet the Hong Kong residence requirement, why should the Government bother about where they live? Furthermore, with the present advanced information technology and the increasingly close communication and co-operation between Hong Kong and the mainland authorities, it should not be too difficult to check whether such old people are still alive. I believe that removing the absence rule on old age allowance will cut government administrative work as well as further meeting the needs of the elderly people resettling in their hometowns, those destitute ones in particular.

With these remarks, Madam President, I seek to move my amendment.

**MR FRED LI** (in Cantonese): Madam President, there are 760 000 senior citizens aged over 65 in Hong Kong, among whom about 18% do not speak Cantonese in their daily life, and 83% were born outside Hong Kong. Many of them have relatives and friends back in their hometowns which they frequently visit. Many also wish to settle there to spend their twilight years, a wish not realized because of all the restrictions in the system.

The Democratic Party thinks that we should respect the choice of the elderly people. We should improve the system and provide support in various aspects so that the elderly people may choose to stay in Hong Kong or settle in their hometowns according to their wish. There should not be all the hurdles, making the elderly people settling in their hometowns to regularly come back to Hong Kong, or to even give up the idea of living in their hometowns for good. For this reason, the Democratic Party supports most of the proposals in the motion of Mr CHAN Kam-lam.

However, Mr CHAN's last proposal is for the total abolition of the absence rule on the recipients of the old age allowance, the commonly-called "fruit grant", we think that the proposal, as it now stands, does not seem to have been carefully thought out. Therefore, we suggest to delete the word "abolish" and substitute with "review", hoping that the proposal would be more practical and feasible.

I wish to cite some examples to show that abolishing this rule forthwith could give rise to certain significant problems. First, the SWD might be made to pay the allowance to deceased people.

At present, the various Births and Deaths Registries of the Immigration Department supply the SWD with information on deaths on a weekly basis. The payments section of the SWD will check if any deceased persons are on the recipient list of the old age allowance. If the personal particulars of the deceased match those of the recipients, payment will be stopped.

If the elderly people died while living in their hometowns, the Births and Deaths Registries of Hong Kong will not have that information, and there is no way the SWD can check. Because of the present absence rule, the SWD will check with the Immigration Department every month whether recipients of the old age allowance have left Hong Kong and for how long they have left. If the absence limit of 180 days a year is exceeded, the elderly persons concerned will be notified and payment will stop. This is the mechanism.

However, if the absence rule is abolished as Mr CHAN Kam-lam proposes, and if the elderly persons who settled in their hometowns pass away, our Births and Deaths Registries will have no record of such deaths, and the SWD, not knowing the absence of the recipients from Hong Kong, cannot contact the families of the deceased concerned. If such families do not take the initiative of



reporting the deaths to the SWD, or even deliberately withhold the information, the SWD will surely continue the payment. This results in a waste of public money. Among the present old age allowance recipients, 70% are over 70 who receive the higher rate of allowance, that is, \$705. The allowance for people from 65 to 69 is \$625. So the majority of the elderly people are receiving the higher rate, that is, \$705. Those elderly people who stay in their hometowns for long periods of time mostly intend to do so for good, because the older people become the more they wish to live in their hometowns. If they were still paid the allowance after they passed away there, they would make up a significant proportion of the recipients. I worry that this will result in a waste of resources.

The old age allowance is different from the PCSSA Scheme. This we must be clear. Firstly, when a CSSA recipient dies, his or her family must immediately report to the relevant departments for a funeral allowance. Recipients of the old age allowance are not eligible for such funeral allowance, but CSSA recipients are upon their death. This prevents the family of the deceased from continuing to receive the CSSA payment in the name of the deceased by withholding the information about the death of the elderly person. Further, there is a social service organization (the International Social Service Society now, and the Hong Kong Red Cross before it) following up on the cases of elderly CSSA recipients settling in their hometowns. The Government has required them to at least interview a sample of 5% of the elderly persons. But the Hong Kong Red Cross did better than that, they interviewed 17% of the elderly people in the past. We hope that there will be more such sampling interviews, just to show concern for the old people settling in Guangdong. If the old people pass away, the SWD should know. However, a similar exercise on old age allowance recipients will involve rather enormous administrative costs. There are over 130 000 elderly CSSA recipients, and under 2 000 of them have settled in Guangdong. I hope these figures are correct, if not, the Government may rectify me. But the number of old age allowance recipients is over 440 000. So there is a huge difference between the two figures. What is more, old age allowance recipients are mostly over 70. If the flood gate is opened, what will happen? I am not against further relaxation of the absence rule, but immediate abolition of the rule might give rise to some situation that could be difficult to control. We must not forget that the 440 000-odd old age allowance recipients do not necessarily live in Guangdong, their hometowns are not necessarily within Guangdong, and they may be all over the country, or even outside China proper, in Macao, Taiwan or Indonesia. If so, what then? How should these problems

be handled? Is it that those who returned to mainland China can continue to receive the allowance, while those who went to Taiwan and Macao cannot, that is, they are still subject to the absence rule? Is there a need for such a rule? I do not know. Therefore I think there must be a review, there must be discussions.

According to the bi-census of 1996, there are 14 054 elderly persons in Hong Kong who were born outside Hong Kong and China; some elderly persons have already emigrated to the United States, Canada and other countries. It will involve huge administrative expenses to confirm the personal particulars of these elderly persons and to arrange with banks in all the places for regular remittances. It is also very difficult for the SWD to carry out investigations. If the recipients are not in Hong Kong, how do we ensure that the allowance will really reach their hands? I have a suspicious mind. There are people who will cheat elderly people of their money. If the elderly persons are not in Hong Kong, how can we be sure that they can get the allowance? While we support most of the proposals of the original motion, if the absence rule is abolished, and the 404 000 old age allowance recipients can continue to receive the monthly \$600 to \$700-odd allowance whether they have settled in the Mainland or left Hong Kong, we still have our worries. Therefore, we think that the absence rule should be reviewed with a view to assisting the elderly persons, and that it should not be abolished forthwith because abolition might bring administrative problems and abuse, resulting in improper use of public money. With these remarks, therefore, the Democratic Party supports the amendment of Miss CHOY So-yuk and hopes Members would also support this small amendment to be moved by me.

**PRESIDENT** (in Cantonese): Are there any Members who wish to speak?

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, the population of Hong Kong is ageing rapidly. In 1996, there were 630 000 people aged over 65 in Hong Kong. By March this year, the figure reached 780 000, accounting for 11% of our total population. Among these elderly people, poverty is becoming more prevalent. The number of CSSA recipients alone has increased at an annual rate of 15% in the last two years. In the present fiscal year, the Government estimates that there will be 157 000 elderly persons on CSSA, representing one fifth of the age group concerned.

In order to raise the quality of life of elderly people, the Government must work hard to upgrade elderly services in Hong Kong, increase community care and residential care services. This is what it should rightly do, and this is the direction of the effort of the present Elderly Commission. On the other hand, it is also a moral obligation of the Government to facilitate those elderly persons who cherish the idea of "falling leaves from a tall tree rest with the roots" to settle in their hometowns in old age. In April 1997, the Government introduced the PCSSA Scheme, providing one more option to the elderly persons of Guangdong origin. When the scheme was introduced in 1997, I deemed that certain aspects of the scheme was not carefully thought out. Now that the Scheme has been in place for three years, certain of the problems have not had any particular progress. In my capacity as the Chairman of the Elderly Commission, I understand some of the difficulties involved. But it would not do justice to let things drag on. Mr CHAN Kam-lam has put the issue on the table today, I hope that Members of this Council could discuss it more. I think that the motion is a good one; it enables us to have more discussions on this issue. At present, the PCSSA Scheme benefits only those who settled in Guangdong. This is not logical. I think that it should be extended to cover other provinces, and other places.

Further, the issue regarding medical services must be addressed sooner or later. If the elderly persons still live in Hong Kong, we can provide them medical care. Once settled in the Mainland, they have to pay for their medical services out of their limited sum of CSSA payment, which must also cover their living expenses.

So, to seek a solution to the problem, I think we must discuss with the mainland authorities concerned, because Hong Kong alone cannot work out one.

Mr Fred LI just now said that he was very worried that the abolition of the absence rule on old age allowance recipients could give rise to big administrative problems and additional expenses. I think that if the Government wants to implement a certain policy, the officials concerned are wholly capable of resolving all the administrative problems. The point is whether or not they will do so.

I have also been concerned about the absence rule on old age allowance. After I became a Member of the former Legislative Council in 1985, I made repeated requests to the then Secretary for Health and Welfare. Eventually, the

absence rule was relaxed from 90 days to the present 180 days. But there has not been any change since. Since assuming the chairmanship of the Elderly Commission, I have been raising this issue, have been asking the Government to abolish this rule. As to all the technical problems, I believe they are not difficult to solve. Naturally, we might worry that once some of the elderly people pass away, their families might continue to receive the payment in their name. In this respect, there are actually many ways to solve the problems, including enlisting the help of notary organizations in the Mainland to produce certificates of survival, or asking the elderly persons to come back to Hong Kong at regular intervals to produce the proof. The problems are definitely not insurmountable.

Regarding the Government's position on the issue of old age allowance, insofar as I understand it, officials of financial management departments have wondered if the allowance should be reviewed. Under the current application requirements, elderly persons over 70 are eligible for the allowance without being subject to any means test, so these officials think that a review should be conducted in this respect. However, I think that the issue is a significant one, because disclosure of assets might be required after the review, and this could affect the eligibility of some people aged 70 or nearly 70 who are about to apply for the allowance. This will disappoint them. At present, nearly 70% of the elderly people are eligible for the old age allowance. I think that the Government could consider some award schemes for those elderly people who are eligible for old age allowance but have not applied for it, or those who donated the allowance they received to the community. I think that it is a more meaningful way to solve the problem in this respect.

Thank you, Madam President.

**DR LEONG CHE-HUNG** (in Cantonese): Madam President, traditionally Chinese cherish the idea of "falling leaves rest with the roots". Therefore, many elderly persons who have few or no relatives in Hong Kong to take care of them like to settle in their hometowns in their twilight years. In view of this, the Government has relaxed the restrictions on elderly CSSA recipients, allowing them to continue to receive CSSA payments after they have settled in their hometowns. This is really a good measure. However, it has been a number of years since its introduction, and it is now time for a review.

Apart from money, elderly persons in fact have other needs. Therefore, we must not suppose that once they have settled in the Mainland, we no longer need to be concerned about them.

Among the many needs of the elderly persons, medical services require our biggest attention.

First, elderly persons are likely chronically ill, so they require long-term medical care.

Second, elderly persons on average incur higher medical expenses. According to one estimate by the medical profession, the medical cost of a hospitalized elderly person is on average three times higher than that of an ordinary patient.

Third, fees for public medical services in Hong Kong are low, and CSSA recipients are also exempted from such fees. This has been made possible because the Government of Hong Kong subsidizes up to 97% the cost of public medical services. But mainland medical institutions, apart from a mere 10% to 20% of public subsidy, are responsible for their own profit and loss, and therefore cannot provide low-cost medical services.

Fourth, Hong Kong still lacks a satisfactory medical financing system that enables citizens to contribute to plans, when they are young and can afford to, that will take care of their medical expenses in old age either in Hong Kong or in the Mainland.

In fact, the findings of a recent survey show that, among those who indicated their unwillingness to settle in the Mainland after retirement, 30% said that it was because they were worried about the standards and operation of the medical services in the Mainland, or there was no free medical services there.

The community has come up with a number of proposals to help meet the medical needs of the elderly CSSA recipients who settle in the Mainland.

Some people have suggested that the Government should calculate the savings on medical expenses if the elderly persons left Hong Kong, and transfer such savings to the medical establishment in the Mainland for use on those elderly persons. I think that such a proposal is difficult to implement

administratively, and there could also be serious problems, such as: How do we prevent misuse of the money? How do we prevent the mainland establishment from raising their charges? Do we cap the expenses of each such elderly person? What do we do if there is excessive expenditure?

Other people have proposed that the Government should help the elderly people take out medical insurance policies for use in the Mainland. As everybody knows, insurance premium rises with age. So how do we arrive at a suitable premium? Or will the insurance companies accept these elderly people as their clients? There are a large number of problems. If these elderly people come back to Hong Kong, how do they make use of their insurance policies? Or are they then still entitled to the free medical services of Hong Kong? In that case, does the problem of double benefit arise? Why are the elderly CSSA recipients living in Hong Kong not given the choice of taking out medical insurance policies? These are all issues we have to consider.

I believe the Government will say that it has asked the Hong Kong Red Cross to help the elderly persons needing medical attention come back to Hong Kong. Naturally, serious illness can be treated in Hong Kong. This is good. But that will require the seriously ill to take the tiresome trip back to Hong Kong. Besides, what about minor illnesses? Do they have to come back to Hong Kong whenever they fall ill? Is this cost-effective? As I just mentioned, many elderly persons also have chronic illnesses, is it appropriate to ask them to come back to Hong Kong for treatment?

Madam President, I have asked a lot of questions. But I must apologize to Secretary E K YEOH that I have no good suggestions for him. Apart from a hope that certain charitable organizations will consider providing low-cost medical services in places outside Hong Kong where many of our elderly live, I really have no particular suggestions to make. Having said that, I think that when looking at the issue of elderly persons settling in their hometowns, the Government must at least consider several points:

First, the Government must consider how to handle the problem when the elderly persons settling in their hometowns become ill.

Second, the Government must bear the responsibility of explaining clearly to the elderly people the problems they might face when they settle in their hometowns, so that they could make the best decision for themselves.

Third, the Government must maintain sufficient communication with the mainland authorities concerned so as to provide such elderly persons the most basic attention. The Government should also assist Hong Kong charitable organizations that are interested in providing services to these elderly people, approach the mainland authorities concerned on their behalf for some support.

Lastly, Madam President, in the long term, it is very important to put in place at an early date a satisfactory medical financing system to help citizens save for their old age, and to help the whole community bear the heavy medical burden that comes with an ageing population. I expect that the Green Paper on Medical Policies soon to be published will put forward good recommendations to address this issue.

These are my remarks.

**MR HO SAI-CHU** (in Cantonese): Madam President, at present there are 970 000 people aged over 60 in Hong Kong; among them many came to Hong Kong from their hometowns many years ago to make a living. Now that they are old, they naturally hope to return to their hometowns, seek out their relatives and old acquaintances who can take care of them. What is more, given the high cost of living in Hong Kong, the elderly recipients of CSSA can enjoy better quality of life back in their hometowns.

Indeed, elderly persons settling in their hometowns can in a way benefit the whole of our community. We well know that Hong Kong's population is ageing. According to official estimate, by 2016, the number of our old people will increase from the present 970 000 to 1.62 million, and as a percentage of our total population, from the current 14% to 19.75%. Care for the elderly will become a growing burden to Hong Kong. If more elderly persons settle in their hometowns, the pressure in this respect will be partially relieved.

Hong Kong began exploring ways to assist elderly CSSA recipients to settle in their hometowns several years ago. The Government relaxed the residence rule on CSSA recipients, continuing to pay CSSA to those elderly recipients who have settled in the Mainland. So far nearly 2 000 people have benefited from the scheme, and among them about 1 600 are still living in the Mainland. However, this flexibility is only applicable to those who chose to settle within Guangdong; elderly people of other provincial origin, such as Fujian, cannot enjoy such benefit. Therefore we consider it appropriate to extend the places where the elderly people can settle to cover the whole country.

Another issue that seriously worries the elderly persons who are interested in settling in their hometowns is medical care. Unlike in Hong Kong, they will not enjoy free medical services in the Mainland. Mainland residents depend on their work units or medical insurance for medical services. The elderly CSSA recipients in Hong Kong worry that once they settle in the Mainland, they could not afford the high fees of medical services there. Dr LEONG Che-hung said a lot in this respect just now and I shall not repeat them. We all know that with advancing age come all sorts of illnesses and ailments, and medical expenses often account for a main portion of an elderly person's expenditure. If we do not try to work out proper solutions through discussions with the mainland Government and the authorities concerned, the desire of the elderly people to settle in their hometowns will be greatly dampened.

The Liberal Party is very much concerned about the rights and interests of the elderly people, and will fully support any effort to assist the elderly persons to settle in their hometowns. However, we have great reservations about the abolition of the absence rule on old age allowance. We are not miserly about the meagre \$705 each person receives; what we are worried is that a total abolition of the rule might lead to abuse of public resources, which is unfair to the vast taxpayers.

We must understand that all elderly people aged above 70, irrespective of their wealth, are eligible for the old age allowance. At present, there are a total of 440 000 old age allowance cases, involving \$3 billion of public expenditure annually. Among this huge number of recipients, many do not necessarily lack mobility as their CSSA counterparts do, and may travel around frequently for short durations. If the absence rule is abolished completely, they could stay in the Mainland or abroad for long periods of time, and the Government will then have no way to follow up on their cases; nor can the Government determine if they are still alive. By that time, some of the old age allowance payments will be made to people no longer living, resulting in waste of resources. Some Members have said that the Government could do some follow-up work, but I think that could involve even more resources and the objective does not justify the expenses. When we think about waste of resources, such work is even more unjustified. Therefore, the Liberal Party cannot support the original motion of Mr CHAN Kam-lam, nor the amendment of Miss CHOY So-yuk. On behalf of the Liberal Party, I support the amendment of Mr Fred LI.

Thank you, Madam President.



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

**MR NG LEUNG-SING** (in Cantonese): Mr Deputy, the present PCSSA Scheme is meant to give elderly CSSA recipients one more option in their choice of where to live, to let them benefit from the lower cost of living in the Mainland as well as enjoy cheaper domestic help service there. Therefore, the Scheme is merits our support in principle. Indeed, according to a Hong Kong Red Cross survey commissioned by the Government, the great majority of the participating elderly people think that the Scheme meets their needs because the cost of living in Guangdong is indeed lower. What is more, they can receive better care. With no language problem in communication, inter-personal relations for them are more harmonious. They also get better accommodation and living environment. All these show that the Scheme has its share of successes.

However, the number of participants in this Scheme is still small. This could be due to its restrictions. For example, it is only available to those settling in Guangdong, and an applicant must be on CSSA for three consecutive years or more. Apart from that, the problem of medical services in the Mainland has yet to be resolved. These are all the reasons that may have dampened the desire of the elderly to do so. When the Government first introduced this pilot scheme, certain restrictions were built in, mainly for technical and resources reasons. Firstly, the scrutiny of the eligibility for CSSA, the follow-up on cases, and the current information in respect of the recipients must all be subject to a rigorous mechanism so that the public social welfare resources are properly expended. Secondly, there must be a certain degree of communication and co-ordination between Hong Kong and the relevant mainland authorities for support in basic facilities before the Scheme can be implemented smoothly. Therefore, objectively speaking, apart from the restrictions, the Scheme still has room for improvement in respect of the provision of medical care.

Strengthening the co-operation between the Government and the relevant mainland authorities is essential in our effort to address the restrictions and inadequacies of the Scheme. Opportunities for administrative co-operation and involvement of organizations on both sides of the boundary should be explored with a view to extending the coverage area of the Scheme and to relaxing the eligibility. Besides, the Government could also examine the feasibility of providing policy guidance for non-governmental organizations to launch "estates

for the elderly" schemes that encompass a comprehensive support system including medical care and follow-up service, so that the market mechanism can be utilized to meet the long-term demand for services by the elderly.

Mr Deputy, since the introduction of the PCSSA Scheme, the overall public expenditure on medical and housing services has actually not seen any meaningful reduction. Of course, by its nature the Scheme does not involve any increase on top of the currently required resources. It is a scheme aiming at facilitating the elderly people with the present available resources so that they could have an alternative of living in their hometowns in old age instead of staying in Hong Kong. Therefore, the scheme itself should not affect the rigorous approval procedure for CSSA applications. I believe this is a principle the community will appreciate and accept. Having said that, I still think that the Government and the relevant departments need to, without deviating from this principle, considerably expand and improve the whole scheme.

I so submit. Mr Deputy.

**MR CHAN WING-CHAN** (in Cantonese): Mr Deputy, many elderly people came to Hong Kong to find a career when they were young. With the passage of time, they might now wish to return to their hometowns for reunion with their families, or relatives and friends, as "falling leaves rest with the roots". The Social Welfare Department introduced the PCSSA Scheme three years ago to give the elderly CSSA recipients a choice of settling in the Mainland to spend their twilight years there. However, the lack of matching measures in the area of medical care has discouraged many elderly people from doing so.

The findings of a survey released by the DAB last Sunday show that around 60% of the respondents indicated no desire to settle in their hometowns after retirement. Among them, 26% said that one of the reasons for not wishing to do so was the problems with medical services in the Mainland.

I moved a motion in respect of this Scheme in 1997. During the debate, I analysed the medical issue and pointed out that there was inadequate support in this respect. Unfortunately, the Government did not heed my words. And things remain exactly the same as they were three years ago. There has not been any progress and it is lamentable that we are still debating the issue here today!

It is a fact that one places increasing emphasis on medical services as one advances in age. If the needs in this respect are not met, people will give up the idea of settling in their hometowns; it is particularly true with elderly people.

Elderly CSSA recipients get free consultation at out-patient clinics and also free services in public hospitals in Hong Kong. Things are different in the Mainland where compatriots from Hong Kong and Macao have to pay high consultation and treatment fees. So the free medical services enjoyed by the elderly people will no longer be available once they live in Guangdong or other parts of the Mainland, resulting in their paying much more than other people. We all know that one needs to pay several thousand Renminbi yuan as deposit before one is admitted into a hospital, and the bill could be a big one when the patient is finally discharged. So, how can one on a mere \$2,000-odd CSSA monthly payment afford such high fees? Therefore, they are scared off by the costly medical services. Thus it can be seen that it is extremely important that the medical problem be resolved for them.

During the debate in 1997, I proposed that the Government should put in place adequate support measures for such elderly persons, in the form, for example, of medical insurance to cover their medical expenses when they fall ill, or hospitalization for them in co-operation with the relevant business units in the Mainland. Mr CHAN Kam-lam has proposed in his motion to provide relatively high quality and low-cost medical services to the elderly persons in conjunction with hospitals in the Mainland and to take out medical insurance policies for them. This proposal merits our support. With the elderly persons receiving care in specified hospitals, they can enjoy low-cost medical services, and a network of medical services for the returned elderly persons can be established. It is like moving the public hospitals of Hong Kong to the Mainland to extend to the elderly the kind of medical services they used to get in Hong Kong. Further, after negotiations between the Government and the mainland business units, there could be uniform fees; this will prevent any abuse in charging the elderly. Naturally, when the medical units are selected, their medical and care services as well as facilities must be ensured to meet the required standards so as to achieve the desired results.

Apart from that, the Government must set up a work team to work out the overall plan and to provide comprehensive services to the elderly persons returning to the Mainland for settlement. So far, since its introduction, the Scheme has merely been a sort of "remittance scheme", with only the objective

of paying CSSA to the elderly persons who have settled in the Mainland; little attention has been paid to their other adaptation problems. The most the Government did was to get the Hong Kong Red Cross as an intermediary to check on the elderly persons by sampling; to escort them back to Hong Kong in case the elderly people fall ill or fail to adapt to the life in the Mainland. The elderly people are finding it extremely inconvenient when they fall ill and need medical attention. What surprises me recently is that these arrangements seem to have stopped, but I have not been able to confirm it. When my assistant called the Hong Kong Red Cross Headquarters to make an inquiry about the Scheme, he was told that the Hong Kong Red Cross was no longer the agent or intermediary for the Scheme. I do not know if this is true and hope that the Government could offer an explanation as to what actually transpired. Is there still an organization following up on this elderly service?

Lastly, I think that many elderly CSSA recipients are not natives of Guangdong; they came from other provinces, or even from the north. If the Scheme is limited to Guangdong, it is unfair to the elderly people of other provincial origin. Therefore, the Government should extend the Scheme to cover all provinces and cities outside Guangdong, so that there will be equal opportunities for all concerned.

With these remarks, Mr Deputy, I support the original motion. Thank you, Mr Deputy.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, with an ageing population in Hong Kong, care and services for the elderly has become an issue we must face. Though many private organizations have indicated an interest in providing services for the elderly, their target clients are those better-off ones. To those elderly people who are limited in means, or are living alone in Hong Kong, settling in their hometowns is an alternative if they still have relatives there. The introduction of the PCSSA Scheme has benefited the elderly people who frequently travel between Hong Kong and the Mainland; they can continue to receive CSSA payments and live in the Mainland.

The elderly people opting to settle in the Mainland also benefit Hong Kong. On the one hand, the demand for public rental housing from the elderly drops; on the other, expenditure on elderly care and medical services is also reduced. But the Scheme has its limitations. First of all, the Scheme only benefits those

elderly persons who settle in Guangdong. Some elderly people, who have to settle in places outside Guangdong because of family connections, cannot join the Scheme. Therefore, the authorities concerned could consider extending the Scheme to places outside Guangdong. Further, the elderly persons settling in the Mainland now face the problem of medical expenses which, according to some surveys, amount to several hundred to several thousand dollars per month. To meet the needs of the elderly people, the authorities concerned should provide more support, so that those who settle in their hometowns can enjoy their twilight years there with nothing to worry about.

In fact, when a relatively large number of our elderly persons settle in a city in the Mainland, the Government could consider providing them more specific services and support, including the establishment of "estates for the elderly" and comprehensive medical and care services. This will also provide an alternative to those elderly persons who have no family connections in their hometowns. This idea merits our active study. The authorities concerned could also explore the possibility of co-operation with relevant units in the Mainland.

To facilitate elderly persons settling in the Mainland or going there for a short stay, the Government should also consider abolishing the absence rule on old age allowance. Surely, the authorities concerned should put in place some mechanism whereby we can ensure that the allowance reaches the elderly's hands, and we can prevent misuse of the allowance.

Mr Deputy, elderly people contributed tremendously to our society. For this, they are entitled to a peaceful and worry-free old age. These are my remarks.

**DR YEUNG SUM** (in Cantonese): Mr Deputy, a recent survey indicates that because of the high cost of living in Hong Kong, many people wish to settle in the Mainland after retirement. The Commission on Strategic Development under the chairmanship of the Chief Executive has observed, in a report published by it, that in view of the lower cost of living in the Pearl River Delta Region, more and more Hong Kong people will move to live there. Considering that this trend can relieve the pressure on Hong Kong, the Commission has also recommended that the Government should provide support facilities to the Hong Kong people who have so moved. Political parties have

also suggested recently that in order to reduce the pressure brought about by the existing and future demand for elderly services, the PCSSA Scheme should be extended to cover places outside Guangdong.

If the elderly people are forced to settle in their hometowns because the high cost of living in Hong Kong makes their life in Hong Kong difficult, and if they do so even they might not like it very much and solely because living in the Mainland is in any case better than being poor in Hong Kong, then this is a form of elimination and is unfair, unhealthy, and is not worth encouraging. The correct approach in the case is to solve the poverty problem of the elderly by establishing, for example, a universal retirement protection scheme, rather than sending them back to the Mainland, thus keeping them from our view. To achieve the objective of cutting public expenditure through reduced elderly services, medical services and housing demand in Hong Kong by encouraging the elderly people to settle in their hometowns is absolutely unacceptable.

The decision of the elderly people to settle in their hometowns should not be the result of the punishing cost of living in Hong Kong or the lack of support here; rather it should be made because they like the life in the Mainland better. For example, an old woman over 70 who lived alone in Hong Kong wanted to apply to bring her daughter to Hong Kong to take care of her. However, her daughter is married with children and cannot leave her family to come to Hong Kong where she might not be able to get a job. Eventually, the old woman decided to return to her daughter and live with her family for better care. Some elderly people have mobility problems and find it inconvenient to live in the multi-storey buildings in Hong Kong. When they return to the Mainland, they live on the ground floor which affords them easier mobility and thus better social life. Still some elderly people cherish the traditional idea of "falling leaves rest with the roots" and wish to spend their final years in their hometowns. We must do our best to support them, let them choose to live in places that will best suit them.

The PCSSA Scheme allows the elderly people settling in Guangdong to continue to receive the CSSA payments. This definitely offers them one extra choice. But judging from the way the Government has administered the Scheme in the past three years, its main aim has not been to assist the elderly persons to lead the life they prefer, but to reduce public expenditure.

First, elderly CSSA recipients are at present entitled to some subsidies, such as rent subsidy, traffic subsidy and medical goods subsidy apart from the basic payment. When they join the Scheme, they lose all these subsidies. It was only after repeated arguments that the Government reinstate the funeral subsidy to the elderly. However, this subsidy, when paid in Hong Kong, fetches a maximum of over \$10,000, but the most that will be paid in respect of a participant of the Scheme is only \$6,000. We should know that after the elderly persons settled in Guangdong, certain of their expenses could be more than when they lived in Hong Kong. Medical expenses in the Mainland for example are high, and the elderly people falling ill have to come back to Hong Kong for treatment. The travelling expenses so incurred are a burden to the elderly CSSA recipients. But the Government has taken away their traffic subsidy without considering the old people's needs in this respect.

Besides, 60% of the participants of the Scheme are over 80, and the physical state of 15% of them has been assessed to be of 100% disability; 90% of the elderly people said that they lived with relatives after settling in their hometowns, being taken care of by those living with them or living close by. It can therefore be seen that most of the Scheme participants are older people, with rapidly deteriorating health, who require constant care. After they settled in their hometowns, the responsibility of caring for them is taken over by their families living with them. This reduces demand for elderly services in Hong Kong. However, the Government has not ploughed the resources thus saved back on these elderly people or strengthened the support to them, such as supplying the elderly people and their families in the Mainland information about local social services, and assisting their families in handling the care and attention problems when the elderly people grow weaker, so as to ensure that they receive due attention after their return to Guangdong.

The problem of utmost concern is medical care for the elderly persons after their return to their hometowns. Most of these people have chronic illnesses, and they have to receive regular medical attention. With the standard rate of CSSA payment of \$2,000-odd, they can in no way afford the local medical expenses. At present, before one is admitted into a hospital in the Mainland, one has to pay several thousand Renminbi yuan as deposit; and the final bill could amount to several thousand or several ten thousand yuan. The return of the elderly persons to their hometown reduces Hong Kong's public medical expenditure, but the Government has not used such savings to help meet the medical needs of the elderly persons in the Mainland by, for example,

providing them medical subsidy and introducing practical medical insurance in consultation with the Guangdong authorities. As a result, when they fall ill, they have to come back to Hong Kong for treatment. Some even let their conditions deteriorate because they could not get proper treatment.

On the whole, there is much room for improvement in the current PCSSA Scheme. The Democratic Party agrees with the proposals of Mr CHAN Kam-lam to extend the Scheme to cover other places in the Mainland. However, the original motion has left out many areas that also need improvement. Nevertheless, the Democratic Party does not intend to move amendments for all of them. I hope that this debate will provide us the chance to raise questions and put forth proposals to urge the Government to consider, from the perspective of the elderly persons concerned, what their needs are and then make the Scheme a better one, in the area of medical care in particular.

With these remarks, I support the amendment of Mr Fred LI.

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

**MR LAW CHI-KWONG** (in Cantonese): Mr Deputy, I wish to focus on a number of issues. Since the other Honourable colleagues have discussed many of the details, I would not repeat them here.

Many Members mentioned "estates for the elderly" today. To build "estates for the elderly" in the Mainland for retirees from Hong Kong, particularly for those elderly recipients of CSSA referred in today's motion, we must consider two different objectives: first, it is to lower the cost, as many Members have said; and second, when we consider helping the elderly persons settle in their hometowns, we would very often start from the more human considerations, such as family care and the traditional idea of "falling leaves rest with the roots". So the two objectives are different.

It is a good thing to build housing estates in the Mainland for the elderly persons from Hong Kong, for this will give one more option to Hong Kong retirees. However, from a policy point of view, as Dr the Honourable YEUNG Sum just said, we must stress that such projects are not for cost reduction, nor should it be a choice dictated by the Government; it must be an option for the



elderly persons. I hope that this would be spelled out clearly policy-wise, to the effect that the Government does not encourage the building of elderly housing estates just to reduce cost. The purpose of such projects is to let the elderly persons have one more choice. This principle must be stated strictly unequivocally.

Another question is: Can the elderly persons apply to join the Scheme to settle in their hometowns after receiving CSSA for three years or just one year? In principle, the Democratic Party supports the current eligibility criteria, that is, apart from the financial position, the applicants must be permanent Hong Kong residents and have lived in Hong Kong for at least seven years, and so on. We have of course considered some other possibilities. As some Members have pointed out, if the CSSA recipient rule is lowered from three years to one year, certain elderly persons who have already returned to their hometowns might come back to Hong Kong to live a year's hard life to become qualified under the Scheme before returning to the Mainland. This is a possibility, but we think that it does not cause too big a problem. Furthermore, such a scenario is only our worry, and is not supported by objective evidence. It is a worry out of conjecture. Therefore, we think that in principle we can consider along the following line: if such a scenario really appears after the rule is relaxed, we can then carefully examine the issue and we can also always review the Scheme.

The Democratic Party does not oppose in principle the relaxation of the absence rule on old age allowance. Therefore, what Mr Fred LI has raised are mainly technical matters. I think that no action should be taken before such matters are resolved. Further, if we are to review the issue, there are many other things to consider apart from focusing on relaxing the absence rule. At present, Hong Kong residents having lived in Hong Kong for five years are eligible for old age allowance. If they are between 65 and 69, some financial qualifications also apply. If we relax the absence rule to require the people concerned to come back to Hong Kong only once a year, or to seek the assistance of some notaries or mainland authorities in certifying the survival of the people concerned, then we must clearly consider what the objective of the entire scheme is, and how we hope to administer it in the future. In the past, few people went back to the Mainland for settlement, but more and more people are doing so now. Therefore, when we review the scheme, we should also consider other issues, including the question of adding the status of permanent resident as one condition. At present, old age allowance applicants need not be permanent Hong Kong residents. Consideration must be given to the residence requirement, that is,

whether it should be five years or seven years. Reference can be drawn from the rules in overseas countries. In Canada, for example, elderly persons must have been economically active in the country for 10 years or more before they are qualified for pension. In fact, this allowance of ours is not a pension, but it is very close to being a pension because the old age allowance is paid to elderly persons aged over 70 regardless of their financial position, and is a so-called non-means-tested allowance. To a certain extent, it is a form of payback to the elderly persons by society. In that case, do we need to consider the system in Canada or Australia? Under the circumstances, I think that we must not merely look at the absence rule and make a hasty decision. We must also consider other criteria for application. Therefore, in principle, we are not opposed to the idea and direction. But with regard to the approach we should take, we think that the issue cannot be settled through a simple discussion.

Mr CHAN Wing-chan raised a point which I would also like to talk about, and that concerns the service of the Hong Kong Red Cross. This is also a matter arising from the scheme for the elderly person settling in their hometowns. I think the Secretary is prepared to answer that. The present case is not that there is no such service provided, only that the service has been taken over by the Hong Kong Branch of the International Social Service. What I wish to raise is: we discussed last September the issue of elderly CSSA recipients settling in their hometowns, and a review was to be conducted; but there has not been any change so far. Apart from the funeral subsidy, everything is as it was before. The Hong Kong Red Cross had all along provided some extra or supplementary services and had developed a very good network to support those elderly persons. But in September, before the conclusion of the whole review, the Social Welfare Department put the service to tender, and the contract was awarded to the lowest bidder, that is, the International Social Service. So this Services Society has to build its own service framework anew, and all the resources and manpower used for building the previous network were thus all wasted. Therefore, when we deliberate these questions, we must consider it not as a service alone, we must look at the complete picture to see how the whole policy is implemented with a view to giving the elderly people the best services.

Thank you, Mr Deputy.

**MR RONALD ARCULLI:** Mr Deputy, I think it would be remiss of me not to rise and say a few words on this very important subject about the future of the elderly of Hong Kong.

First of all, I would like to declare an interest in two respects. My wife is involved in a pilot scheme project in Shaoxing in Guangdong Province on behalf of a Hong Kong charitable organization called the Helping Hand, which is funded by the Hong Kong Jockey Club of which, as Members would know, I am on the Board of Stewards. My fellow colleagues here today have already expressed some of the concerns, and we are really looking very much in the future that the pilot scheme would be well undertaken. I am happy to say that the pilot scheme will probably come to fruition towards the latter part of this year. This scheme is aimed at encouraging — and I use the word "encouraging" — the Hong Kong elderly to actually consider moving to the Helping Hand facility in Shaoxing where, I think, there are about 300 to 350 beds while the Helping Hand Organization in Hong Kong, I believe, is looking after about 800. Thus, it is quite an incremental increase. Anyhow, it is an effort that can only succeed if all of us in Hong Kong, particularly the Government, are prepared to consider a lot of the difficulties that my colleagues have mentioned today.

I have lived in some ways first hand with the pilot scheme because of my wife, and she has to cover a lot of areas. But it certainly is an avenue that I do not believe that anyone of us should overlook. It is an avenue that we ought to encourage. But I emphasize again, whilst we can encourage, I hope that there would be no suggestion. I do not think that any Honourable Member here would suggest that, due to panic, our elderly should move onto the Mainland or go back to the villages. But one thing is very clear. For the resources that the Hong Kong Government applies, if we use that money within the Mainland — I do not restrict it to Guangdong Province, as Guangdong Province is simply a historical accident or simply because of its proximity to Hong Kong — if there is the will, I believe there is a way of allowing them to choose wherever they wish to go to within the Mainland. They may have family members and distant relatives in the Mainland. Nothing could be more comforting for our elderly, in their old age, to return to their roots and to be looked after by their friends or family members.

However, of course, there are many hurdles that we have to overcome. One of which is the attention that all our elderly would need to have in their declining years, and that is, to look after their health. I think from that point of view, clearly, any assistance that the Hong Kong Government can give in that respect in terms of the allowances that the elderly are entitled to in Hong Kong is useful. And perhaps, the Mainland can also give consideration to the charges that would be imposed on the Hong Kong elderly returning to the Mainland

during their latter part of the years. Again, it is a practical and a necessary step for them to be assured of.

Last but not least, I have also heard that there are some concerns that if they wish to return to Hong Kong, how are we going to cope with this particular problem? Whilst the intention of the proposal is good, there is no easy solution to this problem, and that involves an awful lot of hard work. But however hard the work is, I believe that it is really worthwhile for us and for the Government to try it out. I hope that the Government will take a very open-minded and generous attitude in approaching this particular subject.

Thank you.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Deputy, everybody wants to have a comfortable old age. However, this is not to be taken for granted. Some elderly persons came to Hong Kong when they were young. At that time, they could barely make their ends meet. They were never under the protection of any retirement scheme. Now they are old. If they have children, they might depend on them; if they do not have any, or their children are not well off, they will lead a hard life, and must rely on CSSA or old age allowance.

In fact, like well-off elderly people, they wish to enjoy their twilight years. Some of them have a strong desire to be with their families. We know that many people came to Hong Kong from China after the war, leaving their families on the Mainland. Now that they are old, they wish to return to their hometowns. They came from many places, apart from Guangdong. In the few years after the war, many people came from Shanghai, Shandong, Chaozhou, Guangdong and many other places. They cherish strong hope to reunite with their families when they are old. We know that those affluent ones among them do not think there is any problem doing that, for they can easily travel between Hong Kong and the Mainland, or simply go to live in their hometowns. But the poor ones have to face some problems, and it is particularly difficult for those on CSSA or those who rely on old age allowance, the so-called "fruit grant", as an extra source of income. With the many problems, they often yearn to go back to their hometowns but cannot do so. We see that some CSSA recipients discover a lot of problems when they wish to settle in their hometowns. This was pointed out just now by Members. One of the problems was discussed at meetings of the Panel on Welfare Services or the Panel on Housing and that is, when they leave

Hong Kong, they have to surrender their public housing units. Very often, they meet bigger problems because they have to surrender their public housing units.

What is more miserable for them is that the Government has the wishful thinking (which has been the basic view of the Government in the past several years when it had discussions with us) that the CSSA can basically support the recipients' living in Hong Kong, or is even "more than enough", leaving some "savings", and that the Hong Kong dollar has a bigger purchasing power in the Mainland. For this reason, the Government has cancelled the special subsidies for the elderly CSSA recipients, and will stop paying old age allowance to the elderly people who have left Hong Kong for more than three months. We have received many complaints in this respect. The elderly people wish to go back to their families in their hometowns, like "falling leaves rest with the roots", or they think that life in the Mainland is better and so wish to settle there. However, if they choose to do so, they have to give up all the benefits they are enjoying here as residents of Hong Kong, and will have to face the two big problems of medical care and housing.

At present, elderly CSSA recipients enjoy free services in public hospitals in Hong Kong. Where there is a need, they can also apply to the Social Welfare Department for special subsidies. However, if these elderly persons, I mean those elderly persons with financial difficulties, choose to settle in the Mainland, they have to pay high fees for medical services. Apart from that, as the survey report released by the Federation of Trade Unions last Sunday indicates, the elderly people have no confidence in the medical system in the Mainland. In fact, it is not that they have no confidence in the medical system in the Mainland, it is only because they do not have the financial means and also have to pay high fees for medical services as new settlers. What could they do? This is also one of the obstructions that bar them from settling in their hometowns.

We had many discussions on these problems in the past within this Council, and had put forward some proposals to the Government. We found out upon inquiry recently that, as Mr CHAN Wing-chan said, the services originally provided by the Hong Kong Red Cross are now provided by the Hong Kong Branch of the International Social Service. Mr LAW Chi-kwong also said that there was a change to the network. That network was not expanded, rather, it is now tightened. When we asked the social workers, they said, "There is nothing, everything is done as it was before." If the services are contracted out, and the organization has to assume the responsibility for its profit and loss, they cannot

afford to do more, but must work according to the resources available. I think that despite our many discussions within this Council, the Government did not seem to have heeded our views. It even awarded the contract for providing such services by tender. Thus the service is subject to a big constraint. This problem has nothing to do with the organization providing the services. Since the resources given by the Government are so limited, they have to lower the cost to the minimum in order to win the contract. This worries me because the network of housing, medical services and traffic as we talked about have not been built, or expanded; on the contrary, the scope of services might have been reduced because of this change.

I would also like to talk about housing for the elderly. We have talked about this issue many times within this Chamber. At present, the Government does not have any support plan in this respect. Very often the Government would say that if the elderly persons settled in the Mainland, they would have to surrender their public housing units; after that it would involve very complicated procedures if they wish to get back the housing unit in the event they come back to Hong Kong. I think some problems will emerge here.

For various reasons, we can see that there is only lukewarm response to the PCSSA Scheme that encourages the elderly persons to settle in the Mainland. At present, there are 131 000 elderly CSSA cases, but there are only 1 600-odd participants in the Scheme. In other words, only about 10% of the recipients have settled in the Mainland. As our survey last week shows, there is a large number of people wishing to settle in the Mainland, but they have been hesitant for the reasons just mentioned by me. Some of them are hesitant because of the recent unfavorable economic climate. I feel that after the Government introduced the Scheme the other year, what it is doing now is not promoting the Scheme, but is just "putting on some show" to give people an impression that one extra option has been provided for the elderly people. I opine that the Scheme should come with a comprehensive support package and an idea for its long-term development. I hope that the Government would consider including housing and medical facilities in the Scheme, and to abolish the rule of stopping payment after the recipients are absent from Hong Kong for three months. I do not support the study or "review" as proposed by Mr Fred LI. We have discussed the issue with the Government for years. Why do we still need a study? It is only right for us to force the Government to abolish the rule now.

Thank you, Mr Deputy. I so submit.

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

**MR JAMES TIEN** (in Cantonese): Mr Deputy, insofar as this motion today is concerned, its second, third and fourth proposals in particular sound good but are not easy to implement. Indeed, while we think it is absolutely possible to implement the first proposal "to extend the PCSSA Scheme to places on the Mainland outside Guandong" (irrespective of the requirement for a CSSA case history of one year or three years), the other three proposals are just high-sounding propositions; if they are to be put into practice, we must ask if the Government of Hong Kong can really be able to do so. Is it that a view raised by a Member is always practicable? I think this is something very difficult.

Take the second proposal which aims to address the problem of medical care for these elderly persons as an example. Many Hong Kong citizens have settled in a number of nearby cities in Guangdong; well, we can say that they have reunited with the Motherland. Those cities have their own population, their own old people who have to use the services of their hospitals. Now we are talking about Hong Kong asking the Mainland to solve the problem of medical care for our elderly citizens there, are we thus asking those several cities to build more hospitals? And do we pay for the construction? Or is it to be paid by the cities concerned? Hospitals have to be staffed with doctors, nurses and others, do we also bear the costs? There are difficulties in every respect. Now there are proposals that our Government initiates discussions with the many cities on the Mainland, then should we discuss with the provincial authorities or the municipal authorities? After the discussions, do we again simply use Hong Kong taxpayers' money to pay each elderly person an extra \$500 or \$1,000 in public assistance? Having received this extra sum meant to cover their medical expenses, will they use the money instead to pay for their rent or meals? Indeed, the original motion and the two amendments all use the words "this Council urges the Government", that is, the Government is asked to handle all these issues. But I cannot see how the Government can discuss with the mainland business units for solutions to the medical care issue.

The third proposal asks the Government to explore actively the feasibility of establishing "estates for the elderly" in those mainland cities in which more elderly persons choose to settle. This is even more difficult. How are such "estates for the elderly" to be built? At present, only 1 000-odd elderly persons are involved, but there could be as many as over 1 million in the future. If the plan is well administered, it would be like the Hospital Authority, the better it gets, the more people will want to use its services; in other words, more and more elderly persons will demand to move in. By that time, we will have to forget the estates we are now talking about, for it is likely that even a whole city would not be able to accommodate all the applicants.

On the other hand, do we wish to give other places an impression that the several hundred thousand elderly people of Hong Kong think that they can live very adequately and comfortably in the Mainland with several thousand dollars, that for this reason they will try best to leave Hong Kong after retirement and settle in the Mainland. I believe that many Hong Kong citizens do not share such a view, nor do many other countries. Every country has its own elderly people who should be taken care of by the country. We should not build "estates for the elderly" on the Mainland to accommodate our own elderly people. This so-called "estates for the elderly" of Hong Kong might originally plan to house 1 000 people, but it might have to take in 10 000, 100 000 people after completion, or might even become a whole city. If this scenario really comes true, cities on the Mainland might say that as long as you are willing to pay, there is no harm here. They can always find the staff through their labour services companies to serve the "estates for the elderly". And their cities can accept thousands or tens of thousands of elderly people from Hong Kong. However, is it a practical approach of solving the elderly problem in Hong Kong? I think there are big problems here. "Estates for the elderly" is an enchanting term. As Mr LAW Chi-kwong just said, the number of such estates should be small, and they are housing estates, not huge ones the size of villages or townships, or even cities. But my worry is that in respect of all things, the better they get, the bigger will be the demand. Right now, only 1 000-odd elderly persons chose to settle in the Mainland; there could be over 10 000 elderly people wishing to do the same some time later. If the Scheme progresses even better, there could then be several hundred thousand, one hundred thousand or two hundred thousand elderly people eager to settle in the Mainland. By that time, how are we going to handle the matter?



As to the fourth proposal, Mr HO Sai-chu has indicated that the Liberal Party does not support it. We support the amendment of Mr Fred LI. We think that the absence rule should be reviewed because once it is abolished, it would involve not only the elderly persons settling in the Mainland; and Hong Kong's elderly people do not all settle in the Mainland. There are arrangements now in place between the Mainland and Hong Kong, so that once elderly persons from Hong Kong died in the Mainland, Hong Kong will be notified. If the absence rule is abolished, the Government will have no way to know if those who emigrated to Canada, Australia and other places are still alive. How are we going to communicate with the countries all over the world, asking their governments to tell us when the immigrants they received from Hong Kong pass away five, 10, 20 or even 30 years from now, so that we can stop paying the allowance to those elderly people? We cannot ask the governments of these countries to supply us the information about their death so that their cases will be closed. If we do not have such information, the Hong Kong Government will continue to pay old age allowance to these elderly emigrants to other countries. Indeed, if we really wish to abolish the absence rule on old age allowance, the Government must first study the issue very carefully. The Liberal Party thinks that this proposal has some inherent problems. Insofar as today's motion is concerned, two Members advocate its abolition, while Mr Fred LI suggests a review. We hope that when the Government reviews this rule, it would bear in mind the point that if the rule is abolished, it must be satisfied that it will be duly notified once an elderly person passes away in his or her resident city or country. If that is in Canada or Australia, can we get the information about the elderly persons from such countries, so that we know when the elderly people left Hong Kong and reached there, and then when they pass away in future, we are duly notified so as to stop the old age allowance payments. This is exactly the point we are very much concerned about.

Thank you, Mr Deputy.

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

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, you may now speak on the two amendments. You have five minutes.

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, the DAB supports the amendment of Miss CHOY So-yuk. We think that as we can allow elderly persons eligible for CSSA to continue to receive CSSA payments after they have settled in the Mainland, there is no need to impose the requirement that such applicants must be on CSSA for a consecutive three years or more.

Indeed, we all know that when an elderly person of 60 has to apply for CSSA, firstly, he has lost the ability to work; secondly, he has passed the Government's eligibility test in that he has reached the end of his rope in terms of income and asset. We also know that the CSSA payment he gets, if used in Hong Kong, can only enable him to get by at subsistence level. Therefore, if we require him to live such a life in Hong Kong for three years before he is allowed to choose to live in a so-called lower cost place, I think that the policy is too inflexible.

About the amendment of Mr Fred LI, I believe we all know that it is impossible for us to list in a motion all the things we strive for and itemize in great detail all issues to be addressed as well as their solutions. Just like the other motion we shall also discuss today, the proposals in Members' motions always point out the main direction, objective and aim. Of course we understand that before we achieve our goals, much work needs to be done. We fully understand some of the worries of the Members. For example the Hong Kong Government has no way to know the death or otherwise or other problems of the elderly persons who have settled in their hometowns, and there could be abuse of CSSA. However, we also know that if we implement certain policies that may involve the Mainland, the Government of the Hong Kong Special Administrative Region will have to communicate adequately and co-ordinate with the mainland Government if such policies are to be successful. The same applies to the PCSSA Scheme. It will not be successful if we fail to get the full assistance from the mainland Government.

On the issue of the "fruit grant", Members all know that in Hong Kong that money can only enable one to have dim sum in a restaurant or to buy some fruit. This is a form of payback to the elderly people by society. We must not require the elderly people to stay in Hong Kong to receive the allowance, particularly many elderly people are at present relying on this meagre sum for their livelihood. While this \$705 is really for buying fruit in Hong Kong, for an elderly person with some savings of his own, the sum helps towards meeting his daily expenses when living in the Mainland. I therefore think that if we can

take a longer-term view, and if the Government in any case will pay the elderly the allowance if they stay in Hong Kong for more than 180 days, why do we not let them settle in their hometowns? We must not merely look at the number of this group of people and calculate, at 400 000-odd, how much the Government must pay out in allowance annually, and then examine how much will be saved if those absent from Hong Kong for more than 180 days are deprived of the "fruit grant". I think that it is a very big mistake indeed if we look at the issue this way.

Besides, each elderly person did contribute to society during their prime. Now the Government is paying them the "fruit grant" as a token of gratitude for their past contribution to society. Our proposal to abolish the absence rule on old age allowance naturally needs to be followed up. But I hope Members will think about it again, and again. I hope there is a common goal within this Chamber.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, first of all, I would like to thank the Honourable CHAN Kam-lam for moving the motion, thus giving us this opportunity to listen to Members' valuable views on the issue of elderly people settling in their hometowns or villages.

According to the 1996 bi-census, 80% of our elderly population (aged 65 or over) were born in other parts of China, mainly in Guangdong. Most of them speak Cantonese or other dialects of Guangdong (92%) and 2% of them speak Fukienese (the second largest group). Many of them still maintain family ties and social connections in their hometowns or villages and often travel there to visit them. Nevertheless, not many of them would like to settle there permanently.

According to a survey reported in the press recently, about 16% of Hong Kong people may consider moving across the boundary to live in Shenzhen within the next 10 years, because of the lower cost of living and property prices

there. Some of them are elderly persons. We are trying to obtain the survey report for reference. As some of them are planning to establish a second home in Shenzhen, their financial situations are rather different from those who retire to their hometowns or villages, on CSSA.

The PCSSA Scheme has been in place for three years. The objective of the PCSSA Scheme is to provide a choice to elderly CSSA recipients who wish to return to their hometowns or villages in Guangdong to live. About 1 900 applications have been approved by the Social Welfare Department during the past three years.

The Hong Kong Red Cross was commissioned to assist in implementing the Scheme between April 1997 and March 2000. Here, I would also like to respond to the questions asked by Mr CHAN Wing-chan just now. After April this year, the Hong Kong Branch of the International Social Service will be commissioned to assist us in implementing the Scheme. The Hong Kong Red Cross pointed out in an evaluation report that most of the elderly PCSSA recipients were elderly people suffering from social isolation when they were living in Hong Kong. After settling in Guangdong, over 90% of them live with their families or relatives and are cared for by them. The difference in the cost of living was not a major reason for their participation in the Scheme.

To be eligible for participation in the PCSSA Scheme, an elderly CSSA recipient must satisfy two conditions. First, the elderly person must be a permanent resident of Hong Kong and has lived in Hong Kong for at least seven years. This is to ensure that the privilege of portability of the non-contributory social security benefit will be enjoyed only by long-term residents of the community. Second, the elderly recipient must have received CSSA continuously for no less than three years before he applies to join the PCSSA Scheme. The second requirement is necessary to target public resources at those in genuine financial need.

I understand that the issue of whether PCSSA recipients can afford the medical expenses in the Mainland has been a matter of concern to Members of this Council since the introduction of the Scheme. According to the Hong Kong Red Cross' survey findings, PCSSA recipients can well afford the usual fees for curative treatment for minor illnesses charged in Guangdong. There are however concerns that the elderly recipient might not be able to afford hospital care there.

I would like to reassure Members that CSSA recipients, whether they are on the PCSSA Scheme or not, are always eligible to receive free medical treatment in public hospitals in Hong Kong. Furthermore, the implementation agent of the Scheme is required by contract to provide escort services to the elderly beneficiaries, where necessary, so that they can come back to Hong Kong for medical treatment.

On the other hand, the elderly beneficiaries of the PCSSA Scheme are receiving on average about \$2,700 to \$4,500 a month. According to the survey commissioned by the Hong Kong Red Cross, the basic living expenses of an PCSSA recipient are no more than RMB¥1,000 a month. If they put aside a reasonable proportion of their benefit as saving they would accumulate a decent sum within 12 to 18 months, which should go a long way in meeting emergency hospital expenses that they might incur.

We have in the past three years received requests from Members that we should extend the PCSSA Scheme to other provinces. A number of factors will have to be taken into consideration if we are to extend the PCSSA Scheme to other provinces. First, there must be a sizeable number of CSSA elderly recipients who are willing to move to live in the province to be covered. Second, there must be a competent implementation agent which would help administer the Scheme in the designated province in a cost-effective manner. We are prepared to consider the case for extending the PCSSA Scheme to places outside Guangdong if the above criteria are fulfilled. Since the Scheme has been put in place for three years, I also agree that it is now the right time for us to review the other requirement, that is, the requirement that the applicant must have received CSSA continuously for no less than three years beforehand.

Noting that most elderly people would like to age in Hong Kong and those who wish to settle in the Mainland would prefer to live with their relatives in their hometowns or villages, the Government has no plan to build estates for the elderly in the Mainland. In the light of Members' concerns, the Housing Bureau will explore the feasibility of providing assistance to elderly people who wish to settle in the Mainland. Meanwhile, the Government will continue to accord priority to allocation of public housing to elderly people in need, the target being to allocate public housing units to elderly people on the Waiting List two years after their submission of applications.

Nevertheless, if there is a demand for residential properties across the boundary by Hong Kong people, I am sure that private developers will respond quickly to satisfy this demand.

The Old Age Allowance (OAA) is a form of non-contributory social security assistance payable to elderly people. Elderly people aged 70 or over are eligible for a monthly payment of \$705 without having to make any asset declaration, while elderly people between the age of 65 to 69 are eligible for a monthly payment of \$625 subject to a simple declaration of means.

In view of the non-contributory nature of the old age allowance, we have a duty to ensure that the public funds paid out under the scheme will be targeted at meeting the needs of our local elderly population. So we think the OAA should only be granted to elderly people whose principal place of residence is Hong Kong. Nevertheless, in recognition of the travelling habits of our elderly population, we have since 1993 relaxed the permitted period of absence to allow OAA recipients to leave Hong Kong for up to 180 days a year. This is already very generous by international standard for a non-contributory scheme funded entirely by general revenue.

There have been demands in the community in the past few years for review of the old age allowance. We recognize that providing adequate financial support for our elderly is an important issue that deserves thorough discussion in the community, and the OAA is an important component of the financial support for the elderly. We are gathering relevant information and conducting in-depth analysis. I look forward to engaging Members in future discussions on this very important subject. It is not our current policy objective to encourage elderly people to move their homes back to the Mainland, but we are prepared to consider various feasible means to assist those elderly people who choose to live their twilight years in the Mainland.

Thank you.

**PRESIDENT** (in Cantonese): I now call upon Miss CHOY So-yuk to move her amendment to the motion.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, I move that Mr CHAN Kam-lam's motion be amended, as set out on the Agenda.

**Miss CHOY So-yuk moved the following amendment: (Translation)**

"To add "and relax the requirement, that applicants under the Scheme must have been in receipt of CSSA for at least three consecutive years, to at least one year" after "to places on the Mainland outside Guangdong"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss CHOY So-yuk to Mr CHAN Kam-lam's motion, be passed.

I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for three minutes.

**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, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Miss Margaret NG, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG and Mr Howard YOUNG voted against the amendment.

Mr Eric LI, Dr LUI Ming-wah and Dr LEONG Che-hung abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr David CHU, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted for the amendment.

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, 22 were present, 11 were in favour of the amendment, eight against it and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, 21 were in favour of the amendment and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.



**PRESIDENT** (in Cantonese): Mr Fred LI, you may move your amendment.

**MR FRED LI** (in Cantonese): Madam President, I move that Mr CHAN Kam-lam's motion be amended, as set out on the Agenda.

**Mr Fred LI moved the following amendment: (Translation)**

"To delete "abolish" from "abolish the absence rule on old age allowance received by the elderly persons who settle in their hometown" and substitute with "review"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Fred LI to Mr CHAN Kam-lam's motion, be passed.

I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Kong-wah rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Mr Michael HO, Dr Raymond HO, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG and Mr LAW Chi-kwong voted for the amendment.

Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr WONG Yung-kan and Dr TANG Siu-tong voted against the amendment.

Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah and Dr LEONG Che-hung abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG and Mr SZETO Wah voted for the amendment.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

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, 22 were present, 12 were in favour of the amendment, six against it and four abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present, 11 were in favour of the amendment, eight 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 amendment was carried.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, you may now reply and you have three minutes 30 seconds.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I would like to thank the Secretary for Health and Welfare for his detailed explanation of the progress of the PCSSA. I would like the Government to know that this Scheme will have the support of members of the public as well as the elderly persons.

Recently, I went to Guangzhou and discussed the issue with the Civil Affairs Department of the Guangdong Province. My impression is that the mainland authorities are very much aware that it is a growing trend for the elderly persons from Hong Kong to settle in their hometown. The mainland authorities are also trying to foster co-operation with their counterparts in the SAR Government so that the PCSSA can be implemented smoothly.

We know that societies nowadays only want to admit more talents and there is no place which wants to admit more elderly persons, for they will become a burden to the local community. If the SAR Government really wants to make this Scheme a success, it must engage in more exchanges of views with the mainland authorities. This will in the end benefit the elderly and sound arrangements can hope to be made.

Madam President, I would like to explain also why we did not support the amendment moved by Mr Fred LI in the voting earlier. We know that in my motion I propose to abolish the absence rule on old age allowance received by the elderly persons who settle in their hometown. If we are to substitute "abolish" by "review", it may lead to a misconception that another proposal has to be drawn up before the absence rule applicable to the elderly can be abolished. We have frequent contacts with the elderly persons in our work at district level. We know that they are very dissatisfied with the existing absence rule. Many of them are displeased because their old age allowance is forfeited when they have

been absent just a few days more than allowed. We have brought this problem to the attention of the Government a number of times and I hope that the motion debate we have had in the Council will serve to urge the Government to undertake a review of the issue and bring us some good news very soon.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion, moved by Mr CHAN Kam-lam, as amended by Mr Fred LI, 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 amended motion passed.

**PRESIDENT** (in Cantonese): Second motion: Sexual violence.

## **SEXUAL VIOLENCE**

**MR JAMES TO** (in Cantonese): Madam President, I move the motion which has been printed on the Agenda. In Hong Kong, one woman is indecently assaulted or raped every seven hours. According to the crimes reported and the figures of crimes detected, the number of rape cases reported annually is about 100 and the number of indecent assault cases reported annually is about 1 000. The figures for 1999 are 91 rape cases and 1 047 indecent assault cases. Sexual offences are different from other offences in that most of the victims are unwilling to report to the police. The number of reported and recorded cases is

therefore far below the actual number. Findings of a survey indicate that only 20% to 30% of these cases are reported to the police, with those unreported cases remaining as much as 70% to 80% of the total. It can therefore be seen that sexual violence is indeed a very serious problem. According to a survey on the victims of sexual violence, there were 4 900 cases of indecent assault in 1994 and the number rose to 12 500 in 1998.

The procedures involved in the handling of sexual violence cases cover many professions and departments, including the police, doctors, nurses, forensic pathologists and social workers. All of these should work in close partnership and they should provide assistance and counselling to the victims of sexual violence. It is amazing that there is a total absence of links between these professions and departments and there is no special services geared for the victims of sexual violence. Such a low crime reporting rate shows to some extent the fact that the existing reporting and prosecution procedures fail to effectively encourage the victims to report crime. On the other hand, these figures will help in analysing the problem and in devising more appropriate procedures and better measures to handle the cases. As prevention is better than cure, it is also important to alert the public to sexual violence through education and publicity efforts.

I am proposing this motion debate because I hope that a review can be made of the above situation and that better and more comprehensive measures can be adopted.

First of all, I call for the provision of a comprehensive and timely "one-stop" emergency support service, and enhancing the training of relevant professionals.

Victims of rape are often beset by fear, guilt, shame, loss of self-confidence, depression, and in serious cases, inclinations to commit suicide. The provision of timely interference is a very important step to post-trauma therapy. Crimes of sexual violence can happen at any time and according to studies, more than 60% of these would happen at times other than the normal office hours of 9 am to 5 pm. So it is important to offer timely service and a round-the-clock operation is desirable.

The present arrangements in crime reporting, medical inspection, collection of evidence and appearance in court require the victim to repeat the descriptions of the crime to different people, hence the victim is compelled to undergo the same traumatic experience repeatedly. It will only lead to another

form of trauma and increase the pain and suffering. Therefore, if this process can be simplified by the setting up of a kind of "one-stop" crisis handling centre for sexual violence, it will be a desirable approach to take because it will spare the victim of the need to go to different places to seek help and receive treatment after undergoing such a traumatic experience.

Another example is the fragmented nature of the relevant medical services provided to the victims. Under the present arrangement, doctors in the casualty ward will examine the wounds of the victim, but follow-up actions such as post-coital contraception, tests for venereal diseases, abortion and so on would be referred to the Family Planning Association (FPA). The office hours of the FPA are from nine in the morning to five in the afternoon. Therefore, I suggest that the hospitals should provide treatment as well as follow-up checks. Services presently provided by the casualty wards and the FPA do not include HIV tests. I suggest that the HIV testing service provided by the public hospitals to their staff be extended to victims of sexual violence.

Victims of sexual violence will have to contact professionals from many different fields. The expertise of such professionals is very important. In the course of providing treatment to the victims, these professionals must be able to understand the emotional reactions of the victims before the victims can receive the treatments without being under any emotional agitation. Hence training for these professionals should be enhanced to enable them to cope with problems they may encounter in the course of their work.

The setting up of an "one-stop" crisis centre can let those in need of help know where to go. It can also help accumulate related experience so that the services offered and the policies formulated can be improved. The setting up of this kind of "one-stop" crisis centre is an indication of the attention given to the problem of sexual violence in our society and that is an important step towards the prevention of sexual offences.

Secondly, the authorities should study and collect data on this issue. There are only very few statistics currently available on sexual violence cases. The official figures are those provided by the police on the cases reported. But as I have mentioned before, the number of cases reported is far lower than the actual number of cases.

The survey on victims of crimes published by the Census and Statistics Department does have a breakdown of sexual violence cases, but this kind of survey is not done on a regular basis. The figures available are from the last survey which was done in 1999 and the subjects were the victims of 1998.

As sexual violence is a rather sensitive issue, factors like the design of the survey questions, the skills and gender of the interviewers and so on will have a bearing on the accuracy of the data so obtained. We suggest that an independent and comprehensive survey should be conducted on this issue.

Thirdly, the relevant laws and procedures should be reviewed and amended. Under the Crimes Ordinance, the definition of rape is a man "has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it". The implications of "unlawful sexual intercourse" may lead to the misunderstanding that acts of violence are permitted in lawful marital relationship. Therefore, though the Court of Appeal in Britain has made some important precedents in about 1991, I think we should enact relevant legislation on this point before they can be applied to Hong Kong. That will provide the base for the enactment of legislation and law enforcement.

The existing definition of rape does not include cases like coerced oral sex and penetration by objects other than the male penis, nor does it include the possibilities of male being a victim of rape. I therefore propose to make a review of the definition of sexual intercourse to include coerced oral sex and penetration by objects other than the male penis, and to abolish the gender element in the definition.

Under the existing legislation on sexual offences, anyone aged 14 or below committing such offences will be absolved from any criminal liability thereof. I propose that this age limit be reviewed given the occurrence of acts of sexual violence committed by youngster gangs in recent times.

In addition to the above, the existing procedures of collecting evidence only after the victim has reported the crime should also be reviewed. The authorities should consider the alternative of collecting evidence from victims with their consent and the keeping of scientific evidence before the case is reported. Should the victims subsequently decide not to proceed with the prosecution, the information so obtained will still help the police in taking preventive measures and to fight sexual crimes with the information and

intelligence gathered. More importantly, this will enable the victims to have ample time to decide whether or not to report the case. This will prevent the victims from succumbing to any pressure and abandoning the right to proceed with the prosecution, or leading to non-availability of evidence should a prosecution is contemplated afterwards.

Lastly, public awareness should be enhanced on sexual violence. Preventive measures can be taken to step up community publicity, school education and control of obscene and indecent articles. The existing guidelines on sex education issued by the Education Department are confined only to physiological knowledge and ways to make friends and so on. There is nothing on topics like sex, sexual violence, reflections on gender roles and respect for the opposite sex and so on. Education on gender equality at the post-secondary institutions is seldom included in elective courses and general education programmes. Talks and seminars also fail to achieve the aims of an all-round education. The establishment of gender equality and mutual respect in society is an important step towards the prevention of sexual violence. Such subjects should be given greater weight in the curriculum. As for the control of obscene and indecent articles, Mr Andrew CHENG of the Democratic Party will elaborate on that later.

On the other hand, residents of a community are the ones who know best about the buildings they live in and their surroundings. They are the ones who are most capable of improving their living environment and make it a safe one. Measures like the promotion of public awareness of and concern about sexual violence, the improvement of the living environment and the enhancement of security facilities aimed at building a community free from sexual violence are effective steps towards the prevention of the occurrence of sexual violence.

With these remarks, I beg to move.

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

"That, as the problem of sexual violence has all along been neglected in Hong Kong and there has been a lack of integrated measures to appreciate the actual situation, provide services, render legal protection and train the supporting personnel, resulting in appropriate assistance not being effectively provided to the victims, this Council urges the Government to:



- (a) provide comprehensive and timely "one-stop" emergency support service, and enhance the training of relevant professionals;
- (b) conduct a study on the issue and collate the relevant data;
- (c) review and amend the relevant legislation and procedures; and
- (d) step up community publicity, school education and the control of obscene and indecent articles, so as to enhance public awareness and prevent the occurrence of sexual violence."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That The motion moved by Mr James TO, as set out on the Agenda, be passed.

Miss Emily LAU will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Miss Emily LAU to speak and move her amendment.

**MISS EMILY LAU** (in Cantonese): Madam President, I move that Mr James TO's motion be amended, as set out on the Agenda.

Madam President, I support Mr James TO's motion. However, since some women's groups have made some suggestions to me, so I would like to propose a minor amendment. I agree very much with Mr James TO that the topic of sexual violence under debate today is one which has been neglected by many people. If we talk with some women, the victims or some professionals, we will know that the experience of these victims is very tragic indeed. I therefore support the motion moved by the Democratic Party and I hope all Honourable colleagues can lend their support to the motion as well.

Madam President, you may be aware that some women's groups are assembling outside this Chamber this afternoon, hoping that Honourable Members will speak on their behalf. They want to solicit their support to urge the authorities to do more in this and give more help to this disadvantaged group. As we know, the topic of sexual violence is in fact related to women, because more often than not, they are the victims. Madam President, last year when we went to New York to attend an inquiry of the United Nations Committee on the Elimination of Discrimination Against Women, there was a similar item on our agenda. People are very concerned about this issue. It is my wish that Honourable colleagues can voice out the concerns from all parties so that the two Policy Secretaries attending this meeting can know clearly and take some practical measures.

Mr James TO has just cited some figures and I do not wish to repeat them here. I agree with Mr James TO's point that the gravity of the issue has been underestimated. Mr TO has cited the figures for 1998 and 1999 and I would like to add a few words here. For the year 1998, according to figures given by the police, there are 1 300 cases of indecent assault and rape. However, as Mr TO has said, in the figures for 1998 released by the Census and Statistics Department in 1999, there are 12 500 cases of indecent assault alone, which is an increase of many times over the previous year. Therefore, I agree with what Mr TO has said, and that is, very often when these things have happened, the victims will only bear their suffering in silence and will not report the case for they are ashamed of it and they may fear discrimination once their case is known. As Mr TO has said earlier, they fear that once the case is known, the police, the social worker and the psychologist will give them an "interview" and they will have to repeat their nightmarish experience again and again. Madam President, telling the experience once is difficult enough. If the victim has to tell the experience of the rape time and again, just imagine what she will feel, especially when other people accuse her of being inconsistent as she may get the details wrong or forget some of them. So I fully support the "one-stop" service proposed by Mr TO so that those victims who have undergone such traumatic experience will need to tell their experience only once and the details will be recorded. In addition, we hope that there will be some kind of outreaching services and there will be people to help the victims and take follow-up actions. We hope that these victims, be they men or women, will not have to describe the same unfortunate experience so many times to different people, for that is really inhuman.

Madam President, the amendment I am proposing seeks to set up an inter-departmental working group to deal with this issue. I know that some Honourable colleagues may be displeased when they hear the very word "inter-departmental", for they may think that this would just mean getting some people to sit together and they will only talk but fail to do anything. If this is the case, I would certainly object to it. As we have heard from the Honourable Member just now, the issue would involve many different departments. Madam President, there are two Policy Secretaries sitting here, you will know that this issue is certainly being tackled by more than one bureau. I believe there are more people involved than just the two Policy Secretaries. As some of my Honourable colleagues have said, people like doctors, social workers, security personnel and police officers will also be involved. Apart from that, there may be housing arrangement. Why? It is because there are victims raped by their relatives or even their husbands, and so they will not like to live with the offender any more. But very often the victims do not have money and they may not have a place to go when rents are so expensive in Hong Kong. Some people may suggest giving them compassionate housing, but often that is not possible. We know that there is in fact an inter-departmental group in existence right now, and that is the Working Group on Battered Spouse under the Social Welfare Department. This Working Group has a bad reputation and it is also because of its existence that some women do not want to have any inter-departmental groups at all. As the Chinese name for that group has the meaning of "prevention of battery", it is mainly engaged in preventive efforts, that is, publicity work. As to those battered women, they are not receiving any assistance. This Working Group only engages in educational efforts to prevent battery to women, but when women are battered, they will have no place to turn to. Despite all these, battered women will hope to get some help. We do not want to set up a group like this which aims only at the prevention of sexual violence. We hope that the group to be set up will not just engage in publicity and educational work, but it will be able to offer help to the victims. Although I am proposing to set up an inter-departmental working group, I do not know exactly how it will go about doing its job. For the Policy Secretaries are all directorate grade officers at the D8 scale. So it will be impossible for any one of them to give directions to the others. I do not know if the two Policy Secretaries will be able to convince the women's groups here that they are sincere about it when they make a reply later. It is important that they can show some sincerity. If there is a Policy Secretary who will head this inter-departmental working group and convince people that they have the sincerity of doing this, then we will certainly give our support to the group.

Madam President, I have mentioned the United Nations earlier and the United Nations proposed previously that governments should set up a central mechanism to handle issues related to women, not just the issue of sexual violence alone. However, many countries said in reply that they were considering the proposal. And that is all. I would like to raise this point again and I think that is also a wish of many women, that is, to set up a central mechanism to co-ordinate all issues related to women. As to sexual violence, since most of the victims are women, some of them would think that once this mechanism is set up, all the problems which we have raised today will be dealt with. I think the two Policy Secretaries will not speak on the issue of setting up a central mechanism for women's issues today. But I would like to raise this point again in the hope of making people more concerned about women's issues. On the topic of sexual violence under discussion today, since so many people have suffered for so long, I really hope that the Legislative Council can voice a strong and unanimous opinion on this issue and let those who suffer know that we do care. I also hope that the authorities will be urged to make a positive response as well.

With these remarks, I beg to move.

**Miss Emily LAU moved the following amendment: (Translation)**

"To add "expeditiously set up an inter-departmental working group to enable the relevant government departments to work in conjunction with non-government organizations, so as to" after "this Council urges the Government to"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Miss Emily LAU to Mr James TO's motion be passed.

**MR BERNARD CHAN:** Madam President, the crime rate in Hong Kong has increased in the first two months of the year, with the number of indecent assaults alone rising by more than 30%.

Sexual violence has long been the concern of the community. More parents are living in fear that their children may become victims one day. And those who are so unfortunate to be attacked usually have the rest of their lives

haunted by the nightmare. Adequate counselling and support from society must be offered before the problem gets out of hand.

The debate that we have today touches not only on the security aspect, but also on the social and moral issues. Our focus should not only be on the number of police officers that we should have but also on education, media and family planning.

Sex has long been considered a taboo in Chinese society. Sex education in Hong Kong is inadequate compared with the Western countries. Poor sexual education together with the wide publication of obscene materials by mass media resulted in the deteriorating moral standards and incorrect attitude toward sex among youngsters.

I wonder if any of my colleagues have the same experience as mine of feeling embarrassed when newspapers purchased are being put next to pornographic magazines in the news-stand. In a free society, we should allow people the choice to select. But I believe that certain adjustments should be made to keep the social moral standard at a respectable level.

We try to prevent young people from accessing pornographic materials, but how about the soft pornographic supplement in some Chinese newspapers? They contain obscene photographs, brothel guides and articles that describe the services and the women on offer.

Madam President, such mass circulation of unhealthy information does not only pollute the mind of young people, but more seriously, it seems to justify that visiting brothels is socially acceptable.

If self-discipline fails to work, the Government has the responsibility to take necessary action to protect young people from such mental poisoning. Effective solutions to many social and ethical problems start from education. Sex education should begin at an early age.

Counselling services should be offered to families having marital problems, or wives suffering from sexual abuse or violence. It is a pity that some people who have been victimized choose to keep silent instead of reporting to the police. Only by reporting their cases to police and giving heavy sentences of punishment to the offenders can sexual violence be brought under control. We should

encourage the victims to come forward and speak of their mishaps. Silence will only encourage more sexual violence.

More information should also be provided to the public such as the legal definition of marital rape, and the rights that a lawful wife would enjoy in a marriage. I believe that the provision of more mediation services for problem couples will help alleviate the unnecessary emotional turmoil and possibly rebuild family harmony.

Last but not least, the services suggested above should be user-friendly. It is both cruel and torturous for a person who has suffered sexual violence to repeat his or her story to different officers-in-charge in different departments in order to seek necessary assistance.

Madam President, with all these comments, I support both the original motion and the amendment. Thank you.

**DR LEONG CHE-HUNG:** Madam President, sex violence is indisputably a devastating and forever haunting experience for the victims both physically and mentally. It is not my intention to go through the details as most of them have been vividly discussed by the Honourable James TO. What I would like to address this Council and the Administration today is that whilst we want to help the victims and to assure that justice is being done, this society should not add further pressure on the distress of the unfortunate molested.

In short, there has to be a proper streamlined, simple, "one-stop" service to examine, investigate, treat, and counsel these victims in a well co-ordinated manner and in complete privacy.

What is actually happening now to a victim?

The victim is usually accompanied by a police officer to the Accident and Emergency (A&E) Department of a public hospital. That person then goes through a procedure no different from the other patients. He or she — I use the word "he" as many victims are actually male and are pretty young boys — will be triaged and, depending on the medical condition, be seen immediately by the medical officer or has to wait. There is no special channel, nor is there any priority.

Let me stress immediately that this is not the wish of hospital staff. Instead, this is what the current system depicts.

After the examination in the A&E Department when medical conditions are taken care of, the victim will be referred to the Forensic Department for taking evidence and the necessary forensic investigation. When this ordeal is over, the victim will be referred — and I stress the word "referred" — to the Family Planning Association for tests on sexually transmitted diseases, dealing with possible unwanted pregnancy, and proper psychological counselling.

Madam President, in short, the medical staff, the police, the forensic pathologists, the staff of the Family Planning Association, the social workers and the staff of the Social Welfare Department and so on will all be involved to provide the best for the patients. Yes, all these are done in good faith, but are we comforting, or actually adding further stress to the unfortunate victims?

Let me elaborate. Firstly, the victim has to repeat his or her horrible ordeal again and again at every station which intends to help. And secondly, referral from one sector to another is by no means equating to proper co-ordination.

Worse, in the scenario when the victim does not want to report to the police or press charge, he or she is left alone and left completely at a loss as regards the way to seek help.

What can we do? There needs to be a "one-stop" service as stressed by Mr James TO. The needed services must be brought to the victim instead of the victim being taken on a merry-go-round amongst the various services. There needs to be a proper co-ordination of all the services concerned. Madam President, let me stress that a proper co-ordination is not merely a proper referral. Accounting the horrible incidence by the victim should be done once to all service sectors in a secluded environment with complete privacy. Public hospital may well be the best venue.

Madam President, the public doctors are working together with the Association Concerning Sexual Violence Against Women to set up such a "one-stop" service. This is much welcomed by the medical profession.

Such a co-ordinating service is by no means new. In fact, we, as an advanced metropolis, are actually lingering far behind. Such a set-up has been in existence in the United Kingdom, for example, for more than a decade. Our neighbour, Malaysia, where Dr YEOH comes from, also has such a set-up. Why should Hong Kong be lagging behind?

Madam President, such "one-stop" approach is not new even to Hong Kong. A few years ago, the Social Welfare Department has spearheaded discussion with various departments involved and worked out a co-ordination protocol for handling domestic violence cases, following that of the Hospital Authority. My friend, the Honourable Miss Emily LAU, said that this was not enough. But surely, we have to agree that this is a good beginning of a central co-ordinating effort. There is no reason why the same machinery cannot be triggered off for handling sexual violence problem, only if the Government has the will.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, although the Tuen Mun rapist was caught long ago, his like has not disappeared. From time to time, we still hear about some rapists with cutters, a certain West Kowloon rapist and rapists in school uniform. In an MTR station, one sexual assaulter did not know a plain-clothes policewoman when he saw one and walked right into the trap when he sexually harassed her. Most shocking of all, a retired policeman turned out to have sexually assaulted his young daughter for seven years. Such sexual violence cases which have been reported are said to be merely the tip of the iceberg in respect of the problem of sexual violence in Hong Kong. It is discouraging that the Administration still lacks a comprehensive and thorough grasp of the problem of sexual violence.

According to statistics of the Security Bureau, among the reports of sexual violence received by the police in 1998, there were 90 cases of rape and 1 214 cases of indecent assault. However, according to the report of a study on crime and victims of crime carried out by the Census and Statistics Department in 1998, there were 12 500 cases of indecent assault, 10 times the number of reports received by the police. Even so, in view of the technical flaws in this kind of study, many people believe that this number still falls far short of the real figure.



Actually, the problem of sexual violence has always been neglected and there are also many preconceptions in the community about it. Moreover, the present system and services fail to provide comprehensive support and protection to the victims. Thus, most victims are forced to endure their physical and mental pain after the assault by "keeping silent". Doubtless sexual violence is getting more common and serious in Hong Kong, although there is as yet no substantiated study to show how common and serious it is. The Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that the Government should co-ordinate and fund a large scale and comprehensive community survey on the problem of sexual violence by academic organizations and the relevant service organizations, in order to gain a thorough understanding of this hidden but long-standing social problem. After grasping the situation fully, it should formulate a corresponding policy and strategy in order to effectively combat sexual violence crimes.

Madam President, at present, the services for victims of sexual violence in Hong Kong overlap and are compartmentalized. Victims have to run around visiting different departments, with disastrous effects on their physical and mental recovery. Imagine that in the whole process of reporting, the victim has to describe the assault repeatedly not only to the police, but also to the forensic pathologists and doctors of the accident and emergency department and the Family Planning Association. Such a repetitive and lengthy process might cause the victim more serious psychic trauma and slow down the victim's physical and mental recovery. This explains why the number of reports of sexual violence is much lower than the actual number of cases and why most victims remain silent about it. The victims are put off not only because of the discrimination against victims of sexual violence in the community. The insufficient care and support for victims in our reporting mechanism is also another important reason.

In the United States, rape crisis centres were set up to deal with sexual violence cases and to support victims 30 years ago. At present, there are more than 800 rape crisis centres in different states and cities of the United States. There are also similar centres in countries and regions such as Canada, Western Europe and Taiwan.

The DAB is of the view that Hong Kong cannot continue to ignore the seriousness of the social problem of sexual violence. A rape crisis centre should be set up promptly, employing full-time experienced staff to provide

comprehensive one-stop and outreaching services to victims and their families. Specifically, it should include a 24-hour hotline service; provide counselling and information so that victims can act immediately; and in terms of medical consultation, counsellors of the centre can accompany the victims to the hospital for medical services such as treatment, tests for venereal diseases and postcoital contraception measures, as well as accompany them to see the forensic pathologists for the collection of evidence for future legal proceedings. In terms of legal procedures, counsellors of the centre can accompany the victims to report to the police, as well as give them support and encouragement in the process of giving evidence. When the victims have to testify in court, the counsellors can also accompany them to the Court and play an important supporting role. The centre should organize therapeutic support groups to make the victims feel less isolated and cure their trauma. It should provide referral service and refer victimized women to refuges for women.

As for the police, it would be best if a trained policewoman could be assigned to take the statement from the victims. Female victims who have suffered from sexual assault would feel wretched and embarrassed when they have to recall and recount the events, especially if they have to do so in front of a police officer of the opposite gender. Moreover, the victims should be given a choice as to the place for giving the statement. They should be allowed to give their statement in a place where they feel comfortable as far as possible. Even if it is in the police station, it should be done in a separate room so that the victims do not have to recount the story in public.

In terms of school education, the DAB thinks that the Government should increase resources to enhance sex education and sex moral education, so that young students would have the right ideas of sexual morality. The problem of sexual violence has caused alarm at schools in recent years and several indecent affairs have occurred. Apart from the inadequate effort that schools put into moral and sex education, the influence of the culture of pornography and violence in the community is also a main reason. The numerous pornographic comic strips and VCDs portray women negatively, twist ideas about sex and encourage perverted sex, violence and fighting. They are very harmful to young people. In the DAB's view, we should enhance education through the media and encourage the media to exercise self-discipline in order to eliminate the negative impact of the culture of pornography and violence on young people and create a good social environment for young people to grow up.

Lastly, I hope the Government will set up a high-level advisory framework to develop and co-ordinate the policy on women and give advice to the Government on the protection of the rights and dignity of women and children. I hope our children can grow up healthily and happily in an environment without sexual violence.

These are my remarks. Thank you, Madam President.

**MRS SELINA CHOW** (in Cantonese): Madam President, sexual violence can take place in any corner of the community; however, the most serious and hidden cases of sexual violence are those that take place inside families. More often than not the victims concerned can turn to nowhere for help but suffer in silence.

What is the definition of domestic sexual violence? Perhaps some will immediately associate it with sexual abuse, rape, or even incest. However, I believe domestic sexual violence should include also violent assault and emotional abuse. This is because in most domestic sexual violence cases, the abusers are mostly the male spouses, who, failing to force the victims concerned to satisfy them sexually, will usually resort to violence or emotional abuse as a means of threat or revenge. As such, these several factors can hardly be separated from each other. In talking about addressing and resolving domestic sexual violence, we must also deal comprehensively with activities of these kinds.

According to the centralized information of the Government, an average of more than 1 000 cases of domestic sexual violence have been recorded annually over the past few years. However, we must bear in mind that under the influence of the traditional thinking that "family disgrace should not be made known to outsiders", only a sheer minority of the families concerned are willing to seek help in this respect. I believe the number of families faced with problems of sexual violence in Hong Kong is far greater than the statistics kept by the Government. As a matter of fact, our existing laws, law enforcement situation and the family support system may have failed to encourage or induce the victims concerned to seek help.

In this connection, the wording of section 118 of the Crimes Ordinance is not clear or precise enough to protect women from being sexually abused during the subsistence of a marriage. Some concern groups told me that even if the

poor women should seek help from the police, their cases would usually be treated as cases of domestic dispute and dealt with hastily. Out of their wish to pour oil on the troubled waters, the police officers responsible for the cases would keep on reminding the complainants that it would need a lot of evidence and would be very time-consuming to institute any prosecution. At most, they would only issue to the parties being complained against a Domestic Violence Advice Card which does not have any legal effect, or issue notices of family matters giving advice to the parties concerned. The cases reported would very seldom be accepted by the police for judicial proceeding purposes.

On the front of family support, the existing social services relating to family problems are provided in a piecemeal manner. The different needs of the victims concerned, such as Comprehensive Social Security Assistance, housing, medical care and legal services, are provided by different government departments in an inefficient manner due to the complicated bureaucratic procedures involved. Upon occurrence of the cases, the victims concerned would usually be sent to hospitals to undergo medical examination; however, if they should need other forms of support, they must later on visit in person the various government departments concerned. In short, they would not be provided with immediate and comprehensive support.

Actually, victims of domestic sexual violence usually include not only women but also children. Without a doubt, the Government has made some improvement over the past few years to the investigation procedures and to its efforts to encourage the children concerned to testify in court. Strictly speaking, however, the specialized training provided by the police for their officers to investigate the relevant cases and to obtain evidence from child victims is not professional enough. Hence, the Government should make improvements in these respects expeditiously.

Another even more serious problem is that the counselling services provided for child victims are far from adequate. Being sexually abused in their tender age, the child victims concerned would naturally be traumatized. Without meticulous counselling, their childhood nightmares would just linger on and affect their future development in a grave manner. For this reason, I urge the Government to comprehensively enhance the counselling services for child victims facing domestic sexual violence and even other members of the families concerned.

In particular, the Liberal Party urges the Government to consider seriously the measures taken by other well-developed countries and introduce thorough reforms on the legislative, law enforcement and family services fronts. In the United States, for example, measures taken by the Federal Government in dealing with domestic sexual violence are rather comprehensive. In concluding cases in this respect, the courts in the United States would order the abusers concerned to receive counselling for a specified period of time. The duration of such mandatory counselling may last as long as a year. In order to prevent the abusers from resorting to tricks to quit attending the counselling sessions, the relevant counselling agencies will report the situation to the courts at any time, so that the courts may sanction those who violated the court order. I hold that since the causes for sexual violence can be very complicated, it is by no means adequate just to offer support to the victims concerned; one advisable approach is to offer counselling services to the abusers as well.

As regards the amendment proposed by Miss Emily LAU today, it urges the Government to set up an inter-departmental working group to work in conjunction with non-government organizations. However, as far as I understand it, actually the Government has already set up an inter-departmental working group on prevention of spouse battering the membership of which comprises also non-government organizations. If Miss LAU should consider the existing terms of reference of the working group too limited, we could look into ways to enhance its functions and extend its terms of reference instead of setting up another similar structure which would only serve to duplicate efforts and waste resources. Hence, the Liberal Party will support the original motion but not the amendment proposed to it.

**MISS CYD HO** (in Cantonese): Madam President, any person would consider it an affliction to be forced to do something against his or her will. In particular, if sexual contact should be involved, the nightmarish experience would continue to haunt the victims to the detriment of their future marital lives and their confidence in other people. In a male-centred society, the victims would more often than not be required either intentionally or unintentionally to bear part of the responsibility for the trauma. For example, the victims might be criticized for wearing revealing or provocative clothing; and if the victims happen to know the abusers concerned, they might even be criticized for being promiscuous or leading an unrestrained life. Such kinds of view are in fact appeasing the abusers; by putting the abusers in a passive position, these views are in effect saying that it is only out of their failure to resist temptation that the abusers have sexually assaulted or raped the victims. On the other hand, given that the real

victims will usually be subject to some apparently right but actually wrong ethical criticism, most victims just do not dare to make their cases known or seek help from the police. Even if the victims should report their cases to the police, the existing procedures in this respect are too torturous for them. This is because the entire process simply pays no regard to the feelings of the victims concerned. In particular, victims are required to repeat their horrible experience again and again before they are emotionally composed. As such, they are unable to co-operate fully with the officers-in-charge concerned during the statement taking or evidence collecting procedures. In the end, while it may not be possible to successfully convict the abusers, some victims may just give up during the early stage of the investigation process due to the unbearable pressure involved, thereby making it impossible for the investigation to continue.

I support very much the provision of "one-stop" service for victims. That way, they would not need to visit, on their own, different government departments like police stations, hospitals, the Family Planning Association and the Social Welfare Department just to seek assistance. What is more, they would not need to go around repeating their nightmarish experience to strangers. However, I all the more hope that the provision of "support counsellors" proposed by Prof Cecilia CHAN of the University of Hong Kong could be implemented. What on earth are support counsellors? A support counsellor is a professional social worker appointed to handle a victim's case immediately after it has been reported to the police. Upon joining the police officer concerned to listen to the case related by the victim, this social worker will be accompanying the victim to the various government departments to proceed with the necessary procedures like going to hospitals for medical examination, seeking assistance at the Social Welfare Department, visiting the Family Planning Association for contraceptive advice, meeting with lawyers to discuss the case and so on. When necessary, like in situations where the victim is unable to handle on her own so many questions raised, her support counsellor will be answering the questions on her behalf. The victim only needs to play a passive role to confirm or supplement slightly the answers given by the support counsellor. As the victim continues to recover gradually, the support counsellor shall draw on his or her expertise to make judgment and encourage the victim to relate the whole story again, with a view to gradually enabling her to face at ease the unhappy past. This approach is completely different from the existing one, which requires the victims concerned to repeat for many times their stories irrespective of their emotional state.

Madam President, the approach to eradicating violence, whether involving sex or not, must begin with education. First of all, we must understand that fisticuffs and violence cannot help to resolve problems, and that answering violence with violence will only serve to intensify the use of violence; in the end, the most violent would become the most powerful. Secondly, we should learn to respect each other and try to be in other people's shoes to identify with the painful experience they have. Thirdly, care must be taken to perfect the sex education provided in schools, with a view to clearing young people's curiosity in this respect on the one hand, and teaching youngsters and children ways to protect themselves on the other.

Actually, sexual violence involves not only the use of violence by abusers to force other people to satisfy their sexual desire, sometimes it is employed by abusers as a means to punish other people. As far as adolescents are concerned, the latter case is a far more common motive. In one case, a Primary Five pupil was forced by his classmate to masturbate on a bus just because he owed him \$5. In another case, a student was sexually molested by her schoolmate and other associates just because she had not returned the compact disc borrowed from that schoolmate. From these examples we can see that many adolescents who are too young to have any sexual desire would still resort to sexual abuse as a form of violence. They regard sexual abuse as an effective means of punishment simply because they think sex is shameful, rather than a way to show affection.

In fact, parents are the first teachers from whom young children learn such issues as mutual respect between the sexes, relationship between the sexes, and models of sex and love. If parents should be used to resorting to violence to resolve problems or using corporal punishment at home to force their young children to submit immediately, and if there should only be sex but no love between parents, what messages would young children receive then?

I can lend my support to the motion as a whole, albeit I wish very much to raise questions on the point which urges the Government to step up community publicity, school education and the control of obscene and indecent articles. What kind of publicity and education are Honourable Members talking about? If we think that the problem of sexual violence could be resolved simply by putting obscene and indecent articles under control and sealing the soft porn supplements of newspapers in separate plastic bags, I am afraid we have missed the crux of the problem. Actually, what we need to do is to help our young children understand the relationship between love and sex, as well as teaching

them not to use violence to resolve problems. While parents may respond actively to the appeals of some organizations to stop buying newspapers with soft porn supplements, to boycott pornographic magazines or to not bring home the soft porn supplements, so long as there are parents demonstrating at home acts of violence or even sexual violence, the problem would remain unresolved even after all pornographic materials have been banned.

Thank you, Madam President.

**DR RAYMOND HO** (in Cantonese): Madam President, as reported in the newspapers earlier, the Association Concerning Sexual Violence against Woman received around 900 cases seeking assistance last year. Among these callers, 20% reported that they had been raped or indecently assaulted, but only 15% of those being counselled would report such cases to the police. For various psychological and mental reasons, many victims choose not to report to the police. In many cases, the victims and abusers know one another or are even relatives, so, it is even harder for the victims to seek assistance. Therefore, the rape and indecent assault figures recorded by the police each year fail to reflect the actual figures and seriousness of these cases.

Although some people still regard sexual violence as a taboo, the problem does exist and we must address it without delay. Influenced by traditional ideas, some victims think that it is shameful to be sexually abused, and as there is a lack of suitable social assistance, the victims are at a loss after being abused and they do not know how they should face and handle the situation. Thus, they can only silently suffer the mental pains and psychological trauma brought by the sexual abuse throughout their lives. I was a juror of a disgusting rape case in a foreign country and understand that even though the foreign country is more open, the situation is just the same as that in Hong Kong.

Taking into account the situation of victims of sexual abuse after the incidents, the authorities concerned should provide them with comprehensive "one-stop" emergency assistance services as soon as possible. These include emotional counselling by professionals, medical treatment and legal assistance. Civil servants such as policemen and medical personnel who will approach the victims should receive suitable professional training so that they can take better care of the feelings of the victims and give them suitable assistance.



Sexual violence also involves the sexual abuse of victims by their spouses. As the police often regard such cases as family disputes, the cases are not properly dealt with and we may even say that the victims are helpless. Therefore, the Administration should explore and formulate legislation on "marital rape" as soon as possible to prevent sexual violence more effectively.

In order to reduce sexual violence more effectively in the long run, we must instill in the younger generation correct knowledge of sex. In addition to school education, parents should help their children grasp correct ideas of sex. The authorities concerned must tighten control of pornography to avoid poisoning the youth further. The Government can also co-operate with the relevant bodies and step up publicity in communities so that the public will address sexual violence squarely, become more alert and take suitable preventive measures.

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

**MISS MARGARET NG** (in Cantonese): Madam President, I am grateful to Mr James TO for moving this motion today. Last month, I read a press report about a press conference where a woman recounted her experience of suffering from marital sexual violence for 10 years. This victim described that her life back then was worse than hell; the humiliation, the shame and the trauma shattered even her slightest sense of dignity. She was so helpless and desperate, and felt all the more miserable for she was abused in her family. When I learned of her experience, I was infuriated. But at the same time, I noticed a misunderstanding on the part of the woman who told her ordeal at the press conference for she mistakenly thought that marital rape is not recognized in law so she urged for legislative amendments.

Madam President, I purposely speak in Cantonese today in the hope that women in Hong Kong are clearly aware that a husband has no right to force sexual intercourse on his wife, and that the wife has the right to sue her husband for rape. This is already provided for in law, so we do not have to wait for legislative amendments to this effect. Under section 118(3) of the Crimes Ordinance, a man commits rape if: (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to

whether she consents to it. To put it simply, disregarding whether the man and the woman are husband and wife, it constitutes rape if the woman does not consent to the sexual intercourse, and the man, who knows that she does not consent to it or simply does not care whether she consents to it, has sexual intercourse with the woman against her will.

Madam President, why do people mistakenly think that the husband cannot be guilty of rape against his wife? It is because for over 150 years, there was a rule in common law which dictated that after a woman has got married, an "implicit consent" is thus given by the woman. That is, the woman is taken to have given her consent even without saying so. By this implicit consent, which cannot be retracted, the woman consents to sexual intercourse with her husband so long as their marriage does not lapse. Hence, a woman's consent to sexual intercourse with her husband is taken for granted. Nevertheless, this was the thinking that prevailed in old society. In old society of the 18th century or even in Europe in the 19th century, women belonged to their husbands. The body or properties of a woman belonged to her husband, which explained why there was this rule and why it was accepted then. The modern society has long rejected this thinking. In fact, since the beginning of the 20th century, this common law rule has time and again been challenged in court. Finally in 1991 there came a case law "R v R". Why was the letter "R" used? It was because the victim requested for anonymity, and since the accused was the victim's husband who bears the same family name as the victim's, an alphabet was used instead. In this case, the House of Lords formally abrogated the rule of implicit consent in marriage. Whether the woman consents to it or does not consent to it is a matter of evidence and a matter of fact, irrespective of whether a husband-and-wife relationship is involved. Regrettably, this precedent did not arouse much attention so there is still this misunderstanding in the community.

Madam President, while the law fully recognizes that the husband can be guilty of rape against his wife, I still support Mr James TO's earlier request for legislative amendments. It is because the existing ordinance provides that a man commits rape if he has unlawful sexual intercourse with a woman, and the word "unlawful" has caused many misunderstandings. Many think that marital sexual intercourse does not constitute unlawful sexual intercourse and therefore, marital sexual intercourse does not constitute rape. However, according to the 1991 precedent cited by me earlier on, the ruling made by the court was very clear. So, the word "unlawful" is actually superfluous and carries no special meaning. Since the word is unnecessary and may lead to misunderstandings,

we should amend the ordinance in order to delete this word, or we should make it more explicit by providing in express terms that rape charges against husbands are permissible in law. Therefore, I support Mr James TO's proposal.

I think the law should be clear and explicit. I also hope to put across a message to the victims that there is no reason for them to put up with such torments. More importantly, we must also convey the same message to the law enforcement officers so that when a complaint of this sort is received, the police officers will not take it as a family dispute, but rape which amounts to a serious offence, and handle the case properly. Those who committed the offence will also understand that they would not be spared for the crime they committed is a very serious one.

Having said that, Madam President, it still takes great courage to report a case and it takes even greater courage to face the Court. But we have at least taken the first step. In this connection, I will follow up the matter in the Panel on Administration of Justice and Legal Services. It is hoped that the Government will consider making legislative amendments to add clarity to the law and to enable the victims to fully understand their position. Thank you, Madam President.

**MR ANDREW CHENG** (in Cantonese): Madam President, before reading out my speech, I would like to respond to what Miss Cyd HO said just now. She said the Control of Obscene and Indecent Articles Ordinance was one of the items of Mr James TO's motion today. I hope Members will understand that we are not saying that amending the law will solve all the problems. But since there is a mechanism for protecting young people in the existing legislation, we have made some suggestions seeing that there are some loopholes in this Ordinance. Certainly, sex education, family education and the law should complement one another.

Madam President, as Mr James TO pointed out just now, one woman is raped or indecently assaulted every seven hours in Hong Kong. However, this is just the tip of the iceberg. There may be many more unreported cases. While sexual violence is extremely serious in reality, the sexual violence depicted in the fictitious world of comic strips with triad or vice establishment settings is so excessive that something must be done about it.

Of course, some may say that these comic strips merely reflect what happens in the real world. However, when we analyse in depth the outlook of these comic strips, we only see a serious perversion of social values and the relations between men and women. Each scene is filled with violence and sex. In many comic strips, men and women do nothing but have sex. In many comic strips, men play a dominant role. Apart from being the sex slaves of men, women only play two roles, as bad girl or prostitute. In many comic strips, women end up being raped by some triad "big brother" or by a child gang and become the victims of sexual violence and the object of assault.

Madam President, I wish to point out that the majority of these comic strips comes under Class II of publications under the present Control of Obscene and Indecent Articles Ordinance. However, due to inadequate control, these comic strips have openly entered the ordinary household and are sold to our young people month after month, year after year.

Each week, young people have easy access to these comic strips. The impact of their content and message on youth cannot be gauged. If young people read these comic strips every day, it will probably affect their relationship with women in future.

As for publications classified as Class I, they are theoretically suitable for the whole family. According to the present criteria for classification of publications, publications like "古惑仔" and "少年陳浩南" are in the same class as "McMug" and "Yellow Bus". This shows that there is something wrong with our classification system. Besides, I do not think that the present system reflects the standards of the community regarding obscene and indecent articles.

Madam President, apart from comic strips, the pornographic supplements and prostitute guides in newspapers have also been the target of sharp criticism from members of the community in recent years. Some people say that Hong Kong is a sexually liberal community with freedom of information and that there is no need to deliberately monitor the content of newspapers in order not to hamper press freedom. However, Madam President, sexual liberation does not mean excessive sex or encouraging loveless sexual transactions. Sexual liberation does not mean exaggerating the figures of prostitutes and the features of their services in newspapers accessible by everyone. Such so-called sexual liberation will only lower the social status of women and make women appendages of men and the object of sexual violence. Madam President, "sex"

is not sinful in itself and sex organs should not be portrayed as the instrument with which men control women. Real sexual liberation should be about the exploration of issues about sex and the enjoyment of sexual pleasure based on gender equality.

In the Democratic Party's view, in order to protect our young people from being bombarded by erotic information all the time, we suggest that the Government should amend the existing Control of Obscene and Indecent Articles Ordinance, while retaining the principle of having publications submitted for censoring after they have been published. We propose three main amendments.

First, the classification criteria of the Ordinance should be made to conform with those of the Film Censorship Ordinance, that is, Class I articles are suitable for everyone, Class II is not suitable for persons under 18, while Class III is only suitable for persons of or over the age of 18.

Second, regarding the composition of the Obscene Articles Tribunal, it is now made up of adjudicators. However, they fail to truly reflect the standards of the public. For instance, while the sculpture "New Man" is classified as Class II, numerous comic strips which have Class II content are sold as Class I publications. We suggest changing the present mode of operation to a jury system instead of having the same group of adjudicators checking publications as in the present case, so that the Tribunal can truly reflect the standards of Hong Kong people.

Third, once there are three classes of classification, we suggest that articles classified as Class III should be sold in designated licensed establishments. Those licensed establishments should be located in shopping malls in the commercial areas, in order not to affect the ordinary residents.

I know that the Government has undertaken to issue a consultation paper before June to collect views of different sectors on amending the Ordinance. However, the Government has postponed the issue date of the consultation paper more than once. Although the Ordinance is extremely controversial, the Government should quicken the pace of dealing with this issue. Recently, there have been repeated calls in the community to amend the law. We realize that the message conveyed by some media and the publications of some publishers is affecting our children every day.

Madam President, I take exception to the view of some sexologists that there is no direct relationship between an excessive amount of sex information and sexual violence. Information is the source of thought and thought drives action. Numerous defendants in indecent assault and rape cases have admitted that they were affected by unhealthy information. I hope that our spiritual food will not become spiritual drugs. I also hope that our comic strips and newspapers will not become an accessory to the next sexual violence crime.

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

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, whenever we read the newspaper, we can always find news related to sexual violence. From time to time we could see newspapers using prominent headlines to highlight reports on offences against decency. But then more often than not those reports tended to concentrate on the details of the offences, some even directly pointed out that the victims were attacked simply because they "came home very late at night" or "were thinly clad", hinting that the victims had invited trouble themselves. However, we must not forget that the obscene materials in their supplements are corrupting the community.

Some people consider the mass media to be society in miniature. Then, we can see that if our society is not playing up cases of sexual violence, it tends to discriminate against victims of sexual violence or consider sexual violence a taboo and thus adopts an indifferent attitude towards the problem, paying no regard for the fact that a woman is sexually assaulted every seven hours in Hong Kong. Victims of sexual violence are forced to remain silent and left alone to face the pain. When I was drafting this speech, someone told me a few cases that made me feel very indignant.

Apart from our society, the existing judicial proceedings are also paying no regard for the feelings of victims. Suffering from serious abuse physically and mentally, it is just natural for the victims to be very unstable emotionally. Yet, in seeking to take statements expeditiously, police officers tend to overlook the feelings of victims. Moreover, in the event that the victims reporting the case to the wrong police district, they would be referred to the relevant police stations for statement taking purposes. Hence, they would have to repeat the

nightmarish experience to strangers again and again. What is more, according to some organizations, in the event that the victims were young people at risk, or that they knew or even were married to the suspects concerned, some police officers might even be doubtful about the cases concerned and thus adopted a sceptical attitude towards the victims.

Furthermore, the arrangement for forensic examination has also been a subject of criticisms by victims of sexual violence and other relevant bodies. At present, since there is only one female Forensic Pathologist in Hong Kong, a vast majority of the victims will receive body check-up by male Forensic Pathologists. However, even if we were having a general check-up, we would request that the examination be conducted by a doctor of the same sex as ours to avoid embarrassment. So, we can imagine just how distressing it would be for someone who has just been sexually abused to be examined by a stranger of the opposite sex!

As regards the laws concerned, they are also discriminating against victims of sexual violence. For all cases involving sexual violence, the Court would require the victims or the prosecutors concerned to provide corroboration evidence. Yet, due to emotional problems some victims may not have reported the cases concerned to the police immediately, while some others may consider their bodies very dirty after being assaulted and thus wash themselves thoroughly, thereby removing any corroboration evidence that could otherwise have been collected. Does the relevant legal provision imply that so long as there is no corroboration evidence, we could deny the crime has been committed; or that we could turn a blind eye to the harm done to the victim concerned? Given the definition of the term, and the fact that the corroborating evidence requirement is applicable to cases of sexual violence only, it is obvious that the statements taken from victims of sexual violence are not being trusted.

At present, because of the ambiguity and narrowness of the definitions of "unlawful sexual intercourse" and "rape" in law, there is utterly no protection for wives. What is more, some suspects may even make use of the loopholes in law to escape criminal liability. For these reasons, the relevant laws and proceedings should be reviewed duly in no time to prevent more innocent people from being hurt.

Apart from legal protection, Madam President, physical assistance and psychological counselling provided for victims of sexual violence are also very important. Just now a number of colleagues have referred to "one-stop" emergency support. In the United States, more than 800 sexual violence crisis centres have been set up to provide victims with "one-stop" support service. I consider such kind of service very important, since it could enable victims to recover as soon as possible. Besides, if we are to offer "one-stop" support service, it must be offered on a 24-hour basis to provide victims with immediate assistance.

In Hong Kong, however, only a few voluntary agencies are offering piecemeal services at the moment. Since these agencies are providing the services on a voluntary basis, asking them to provide "one-stop" services would cause them to incur considerable resources constraints. In the face of the piecemeal kind of services, victims of sexual violence will have to seek help from the many different agencies despite their mental and physical weariness. On the other hand, perhaps due to financial constraints, no publicity has been given to the services concerned. As such, victims are usually unaware of the services available and naturally will not seek help from the relevant agencies. All in all, the agencies have indeed been doing a great job; it is only due to their resources constraints that they can only offer piecemeal services which may not be very effective. So, the Government should consider the relevant issues in a practical manner.

Further still, I should also like to point out that in discriminating against victims of sexual violence and turning a deaf ear to their pleads, the Government and our community are no different from being accomplices of the criminals concerned. Some of the victims consider themselves "dirty" persons after being assaulted and thus abandoning themselves in despair, and many of them are teenagers with a future. It is indeed distressing to see such things happening. Besides, I must point out that criminals involving in sexual violence tend to decrease in age but increase in number. As such, the Government must take practical actions to tackle the situation instead of paying lip service only. As regards the major factor leading to such a trend, the blame should be put on the wide publication of obscene materials which have been poisoning us and our next generation continuously.



For these reasons, I urge the Government to expeditiously address the problems by providing greater support for victims and amending the outdated laws concerned. In addition, efforts must also be made to step up community education as well as to monitor and further control the circulation of obscene materials, with a view to creating a better and more harmonious environment for the next generation where they will be protected from sexual violence.

Madam President, the Hong Kong Federation of Trade Unions and I support the motion and the amendment proposed to it today.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, women have undoubtedly been able to enjoy much more rights in the 21st century than before. With the promotion of the awareness of equality, women in more and more places now have the right to vote and are able to take an active part in politics and political discussion. As our cultural and social values have become increasingly rationalized, we can see a decline in such unreasonable phenomenon as supremacy of men over women and discrimination against women. But to date, female is still considered to be a weaker group as far as the relationship between the two sexes is concerned. We can still find female being suppressed and discriminated against everywhere. One obvious example is that the number of cases in which women are subject to sexual violence has tended to rise in recent years.

According to a report published by the Johns Hopkins Institutions, in collaboration with a centre on health and sex equality, in the United States, the use of sexual violence against women has reached an extremely serious level throughout the world. At least one third of the women have had the experience of being subject to assault, violence or other forms of sexual violence in their lives. In Hong Kong, the figure relating to the use of sexual violence against women is also appalling. According to the figures provided by the Association Concerning Sexual Violence Against Woman, there were 889 help-seeking and inquiry cases in 1999 alone, representing a sharp rise of more than four times over 1998. Leafing through newspapers, we can also easily find reports on indecent assault and rape of women, or even underage female, almost every day. In recent years, we can even find a constant occurrence of such incidents as peeping, intimidation, indecent assault and even taking of nude pictures of female students for releasing through the Internet on the campuses of tertiary institutions.

What worries us is that most victims are not willing to seek help from the police or women's organizations afterwards. According to the figures provided by the police, there are about 1 200 rape and indecent assault cases each year. However, according to the presumption made with respect to the cases handled by the Association Concerning Sexual Violence Against Woman, only 15% of victims will report to the police. This may be attributed to the fact that the victims find it too embarrassed to report the incidents, or they fear the incidents might be publicized, or they have no idea as to how to protect their own interests, or they consider it not too useful in seeking help. Another major reason we must not overlook is that the Government is still unable to put in place a mechanism for providing comprehensive assistance to victims.

Let us imagine a woman who has been tormented by sexual violence and suffered badly from traumas, both physically and emotionally. Under the existing mechanism, however, she will often be required to go to different places to receive treatment and counselling. If she reports her case to the police, she will have to face complicated administrative procedures and even repeat again and again her painful experience of being abused. For a woman who has suffered badly from traumas, this is extremely cruel.

For these reasons, I greatly support the setting up of an emergency support centre to provide services for women who have been subject to sexual violence. The centre should employ full-time and experienced staff to provide victims and their family members with "one-stop" and comprehensive support services on an outreaching basis. Specifically, the services provided should include medical treatment, psychological counselling, assistance in completing reporting procedures, financial and legal support services, and so on. This will enable the victims to fight for their reasonable interests and heal their spiritual traumas expeditiously so that they can lead a new life as soon as possible.

The Government should also note that while it is important to take follow-up action after the occurrence of sexual violence incidents, it is also essential for the Government to take action beforehand in order to avoid the occurrence of sexual violence incidents. As the saying goes, "it is always better to prevent trouble before it happens". Particular attention must be paid to the problem of domestic sexual violence. Actually, as pointed out in a report published in the United States, domestic sexual violence has become an

increasingly serious problem globally. According to two counts of data published by the Association Concerning Sexual Violence Against Woman, Hong Kong is faced with an extremely serious domestic sexual violence problem. In last year alone, cases of rape by friends, incest and marital rape accounted for 46%, more than double the cases of rape by strangers. Furthermore, more than 40% of the victims were abused at home, which is 10% higher than another 30% of cases that occurred in public places.

Domestic sexual violence cases are much harder to deal with than general sexual violence cases. This is mainly because most victims often find it too embarrassed to report the incidents or seek help from outsiders owing to their mentality of "concealing domestic shame" or because of the family relationship. Even if some of them were brave enough to report the incidents, most law enforcement officers had failed to deal with the cases properly owing to the thinking that this is a "family affair". In order to address the problem, I think the Government must enhance publicity and education among women so that they will have a better understanding of the sexual violence problem and greater awareness of their own rights and obligations for the purpose of protecting themselves. On the other hand, the Government should consider setting up a women commission to take up such responsibilities as formulating long-term policies on women and promoting gender equality in order to help raise the status of women in concrete terms.

Furthermore, the Government must also step up control of obscene and indecent articles. At present, there are numerous loopholes in the Control of Obscene and Indecent Articles Ordinance. As a result, publishers who disregard social justice have been able to make use of the "legal loopholes" to sell obscene publications and objects in public. One prominent example is that an adult comic company even went so far as to hand out masturbation devices for women alongside comic books for the purpose of attracting readers. In doing so, not only women's dignity was humiliated in public, an adverse impact was also produced on society. It is therefore necessary for the Government to plug the relevant legal loopholes as soon as possible.

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

**MR LAW CHI-KWONG** (in Cantonese): Madam President, people seldom talk about sexual violence and when I proposed a motion on sexual violence for debate in this Council by the end of last year, many men asked if the problem was that serious. Sexual violence seems to be a taboo. Women may sometimes discuss among themselves topics like sexual abuse and violence, but I seldom heard these discussed among men.

Does the neglect of this problem by the community and the Government today reflect that this is a male-dominant society? I hope that gradual adjustment to such a deviation will be made now that women of the new generation are generally more educated than men. As a man, I am quite uneasy when I advocate the establishment of a Child Support Agency and call upon the community to show concern for sexual violence, and I am a bit uncomfortable when we discuss the problem of sexual violence. Besides, I am unhappy when I read the relevant reports in newspapers or look up the relevant academic studies. After a victim told me her personal experience a long time ago, I could not sleep throughout that night. I cannot explain why I responded that way but it may be because most of the problems are caused by men. When the topic was discussed on other occasions, I unwittingly used such expressions as "bad and beastly men", but I found it quite weird for a man to use such expressions.

The fact that the victims of sexual violence are mostly women indirectly reflects another problem. As some colleagues have just said, the community does not respect the female body and I do not know how long it will take to change this.

I would like to discuss an issue which a few Members have just discussed, and that is, "one-stop" services. I would avoid repetition as far as possible but I would like to make one point still. As "rape" victims seldom report to the police or seek assistance, when professionals handle assistance seeking cases, they generally do not have enough experience and knowledge to provide the victims with suitable services. The establishment of "one-stop" services will make the clients less perplexed and we can actually provide suitable venues for training up professionals and gathering the relevant professionals together. With the gradual development of "one-stop" services, the relevant professionals can provide assistance and training to counterparts providing services elsewhere. Thus, to solve the problem and provide more relevant services, we must gather the professionals together for the provision of "one-stop" services. In the long run, I believe the proposal will certainly be helpful to the entire system including the provision of effective and suitable services.

I would like to add one point. Members have just discussed at length about the development of the relevant services, but it seems that colleagues have not mentioned one point. Quite a number of websites in the United States have been set up for battered women and they provide services to the victims of domestic violence and rape. It is actually quite difficult for victims to muster their courage and seek assistance from outsiders, and they are taking a risk even if they call for assistance. The fact that the telephones they use at home or outside may have caller display functions actually places an obstacle. Although the provision of 24-hour hotline service is a good way to make the victims less perplexed, victims are very often in greater need of experience sharing with others, mutual encouragement and help. Setting up websites is one of the effective channels to provide instant services to victimized women so that they can get mutual support from people who have similar experience in cyberspace whilst the danger or risk so involved is minimized. Certainly, professionals can also provide the relevant services at these websites.

I support this motion. Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr James TO, you may now speak on Miss Emily LAU's amendment. You have up to five minutes to speak.

**MR JAMES TO** (in Cantonese): First of all, Madam President, I would like to thank more than 10 Members for their remarks, and I would also like to briefly respond to Miss Emily LAU's amendment.

I am very grateful to Miss LAU for her amendment because my ideas must be co-ordinated or implemented by an inter-departmental working group. As Mrs Selina CHOW has just said, "the Government has a working group and we can consider how we can strengthen its functions and extend the scope of its terms of reference without setting up a similar new structure" and I find this absolutely feasible. However, if we concentrate on handling the problem of sexual violence but not the problem of battered spouse at the same time (because

the problem of battered spouse can have different levels and sexual violence may not necessarily happen within families), the original working group may have to be expanded by a very large extent. If the Government is willing to do so, I believe it should be able to find a good solution. However, if the Government utterly opposes this motion and thinks that the situation cited in the motion and what several Members have just said are not true or the actual situation is not as serious as depicted by us it will certainly not set up an inter-departmental working group or expand the terms of reference of the existing working group.

Nevertheless, having understood the problems, most Members certainly have some reasons for agreeing to the provision of "one-stop" services, whether from the point of view of enforcement or legislation. I hope that the Government will look squarely at the problem. I would also like to say that, just as some Members have said, and indeed Miss Cyd HO has noted in particular, that Prof Cecilia CHAN's proposal about support counsellors definitely merits our consideration. As we are only discussing the amendment on setting up an inter-departmental working group at this stage, I will continue to discuss the support counsellor issue in detail later.

I hope that this inter-departmental working group will comprise the representatives of various departments. As Miss Emily LAU has just said, under certain circumstances, the Housing Department may need to implement housing policies in a flexible manner. For instance, if some people forcibly occupy a public housing flat and refuse to surrender it, there will be delays and difficulties in handling the case. The same also happens when we handle the cases of victims of violence. Very often, we will not only encounter difficulties when handling cases in which people ask for the allocation of another public housing unit but we will also encounter great difficulties when handling cases in which people ask for trawling. Thus, there must be representatives of the Housing Department in the inter-departmental working group.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, as a member of the women community, I wish to thank Mr James TO here for raising this issue which serves to arouse public concern over the seriousness of sexual violence.

As the Secretary for Security, I am very happy to have the opportunity here to explain to Honourable Members what steps we have taken in respect of law enforcement to combat sexual violence. To begin with, I would like to respond to Mr TO's motion. Regarding the available information, many Members mentioned just now that our information on hand which shows, among other things, 91 cases of rape and 1 047 cases of indecent assault in 1999 may not fully reflect the picture, and asked about the number of cases which were not reported. We have discussed this with the police and we admit that there are always unreported cases, be it in Hong Kong or other parts of the world. As the police mainly deal with reported cases, it is difficult to tell the number of victims who did not report their cases simply based on the information retained by the police which is just one single law enforcement agency. In spite of this, the police believe that their ongoing publicity efforts in recent years should be able to encourage women to come forth bravely to report their cases. I agree that this matter requires more in-depth study. Perhaps we may further look into the matter in the central-level Fight Crime Committee with the Census and Statistics Department and non-official members of the Committee.

Now, I wish to respond to a point made by Members earlier, and that is, there may be a large number of unreported indecent assault cases. According to the report of the survey entitled Crime and Its Victims in 1998 published in 1999, there were over 10 000 cases of indecent assault. I wish to point out that the methodology used in this crime victimization survey is different from that used by the police in collating crime figures. The former is purely based on interviews with crime victims by asking them whether they had reported crimes such as robbery, theft and indecent assault. Therefore, the findings of the survey do not necessarily match with the classification of the police. In that survey, some victims might regard certain acts, such as someone else bumping into them accidentally, as indecent assault. Let us look at another example. For rape cases, the same survey of crime victimization showed that the number of such cases was zero, with none of the interviewees admitted to have been a victim of rape. This is a lot different from the police records of 90 rape cases in 1998. Therefore, while the number of reported cases may be less than the actual figures, I think we cannot conclude that the number of reported indecent assault cases only accounted for 10% of the actual number of such cases judging from the crime victimization survey. I believe that this is not really the case. I agree that we must further study the matter, and the Fight Crime Committee may be an appropriate avenue.

Earlier on a number of Members said that victims of these crimes had undergone abhorrent traumas, so the police should put in place special reporting procedures for them and police officers handling these cases, preferably female officers, should be specially trained. I wish to emphasize that the police do have a set of special procedures and guidelines for handling cases of sexual violence. The Headquarters Order, for instance, sets out the procedures that police officers should follow in handling domestic cases; the guidelines on criminal investigation also set out the ways to handle sexual crimes against women. These guidelines explained in detail the steps and attitude that police officers should take when handling complainants of such sexual crimes as rape and indecent assault, advising police officers on how to understand the psychology and emotions of the victims, how to take statements properly, how to collect and retain evidence carefully, as well as the points to note when carrying out investigation on the scene. The guidelines also stated that arrangements for medical examinations should be made for the victims. If pregnancy is suspected, police officers should immediately refer the victims to clinics of the Family Planning Association for check-ups and medical treatment as appropriate. The victims will also be referred to the Social Welfare Department (SWD) for appropriate assistance and counselling if necessary. I wish to point out in particular that it is usual police practice to send a specially trained female police officer to attend to the needs of a female victim, including interviewing the victim, taking statements from her, and arranging for referrals to other departments. In general, the police officers responsible for these cases will be sympathetic and kind to the victims, and will treat the victims in a most friendly and discreet manner.

Besides, a working group has been set up within the police to review all the procedures for reporting and for cases to be referred for criminal investigation. The review aims at streamlining the current reporting procedures so as to obviate the need for the victim to recount the incident, in order to improve the service quality of the Police Force.

The police also have in place a set of special procedures for victims who are minors. A set of special procedures has been drawn up by the police and other departments for underage victims below 17 years of age. The victim does not need to report the case at the police station in person. Upon referral by doctor, social worker or teacher, the police will contact the victim to make arrangements for statement taking and forensic examination. If joint intervention by the police and the SWD is required, say, in cases of incest or



sexual violence involving family members, a Child Protection Special Investigation Team will be set up to deal with the case in question together. The victim may have his or her statement taken at home or in a specially designed video-recording room with a household setting. The victim and the victim's parents or guardian have the right to decide whether the statement is to be taken in writing or by video recording. Relevant professionals will hold meetings on the case concerned to draw up a plan for the well-being of the victim. The Criminal Procedure (Amendment) Ordinance and the Evidence (Amendment) Ordinance enacted in 1995 provided safeguards for vulnerable witnesses, including children and the mentally handicapped by, *inter alia*, allowing their statements taken by way of video recording to be admissible in court, allowing them to give evidence and be cross-examined in court by way of a live television link, and allowing the witness to be accompanied when giving evidence in court in order to reduce the pressure on the witness in the process.

Moreover, in respect of law enforcement, Mr LAW Chi-kwong said just now that the Government appeared to have neglected the problem of sexual violence. I wish to point out that the Government, in fact, has not neglected this problem. Over the past few years, the Government has continuously proposed legislative amendments or new legislation to step up efforts against sexual violence. In 1997, for example, the Crimes (Amendment) Bill 1997 was enacted to impose heavier penalties on many common sexual offences. For instance, the maximum term of imprisonment for incest was doubled from seven to 14 years, and additional protection is provided for female victims who are under the age of 16 years but are of or above the age of 13 years in that the offender is liable to a longer term of imprisonment for 20 years at the maximum; the maximum term of imprisonment for any person who caused others to engage in prostitution was increased to 10 years; the maximum term of imprisonment for keeping a vice establishment was increased to 10 years; any person who committed the offence of letting premises for use as a vice establishment, or permitting premises or vessel to be kept as a vice establishment or used for prostitution is liable on conviction on indictment to a heavier penalty of a maximum term of imprisonment for seven years; the maximum term of imprisonment for displaying signs advertising prostitution was also increased to 12 months.

Last year, the Security Bureau introduced the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999. The Bill seeks to empower the law enforcement agencies to take

intimate and non-intimate samples from suspects of serious arrestable crimes to conduct forensic analysis with a view to strengthening the anti-crime capabilities of law enforcement agencies. This corroboration method is particularly effective for investigations on offences involving sexual violence.

Meanwhile, in 1999 the Department of Justice also introduced the Evidence (Amendment) Bill 1999. The object of the Bill is to abrogate the evidence rule in sexual offence cases that corroboration evidence is required or the judge is required to give a warning or reminder in respect of the dangers of convicting on the uncorroborated evidence of a single witness. It is believed that the legislation will facilitate conviction of suspects involved in sexual violence.

Furthermore, the Security Bureau also introduced the Prevention of Child Pornography Bill to prohibit the production, possession and distribution of child pornography. Advertisement of child pornography and employment of children for production of child pornography are also prohibited under the Bill. Along with the Prevention of Child Pornography Bill, we also introduced the Crimes (Amendment) Bill 1999 which proposed to prohibit the arrangement of child sex tourism. So, the Government has in fact spared no efforts in formulating legislation to tackle sexual violence.

I also wish to briefly respond to Members on question of marital rape. I entirely agree with the professional opinion given to us by Miss Margaret NG who pointed out that marital rape is unlawful under section 118 of the Crimes Ordinance. As advised by the Department of Justice, section 118 of the Crimes Ordinance provided in express terms that a man commits an offence if he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it. The relationship between the man and the woman carries no implication and the provision is applicable to marital rape. The word "unlawful" does not affect the intended meaning of the provision either.

Just now Mr James TO opined that apart from efforts to combat common instances of sexual violence, we should also review the definition of sexual intercourse to see if it is necessary to include acts which actually involve sexual violence? We fully share his views and we can conduct studies in this regard.

On community publicity, the Police Public Relations Branch will continue to give advice to the public through radio and television programmes on crime prevention measures as well as on actions to be taken in the event of misfortunes.

Madam President, as Mr TO has pointed out in the beginning of his speech, it requires the concerted efforts of many parties in order to clamp down on sexual violence and the work of law enforcement agencies constitutes only a part of them. We need to continuously foster co-operation with other government departments, including the SWD, departments overseeing medical matters, and also with non-governmental organizations. Later on, the Secretary for Health and Welfare will respond to Mr James TO's motion and the amendment moved by Miss Emily LAU, particularly with reference to the proposal of providing "one-stop" services. All I can say is that the Security Bureau will support the Health and Welfare Bureau to take effective measures to address the issue. If assistance from the Security Bureau and law enforcement agencies is required, we will certainly spare no efforts to throw weight behind them.

Thank you, Madam President.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, following on from the Secretary for Security's remarks, I should like to inform Honourable Members of the assistance available to victims and the training provided to professionals in the medical and welfare fields.

Given that the experience of victims in such cases will always be traumatic, the relevant authorities handle victims as sympathetically and sensitively as possible with the aim of helping them to recover as soon as possible. In most instances, a victim approaches one of the following — the police or health and welfare services — for assistance. The assistance may take many forms including testing for pregnancy (and post-contraception) and sexually transmitted diseases, treating injuries sustained which may require hospitalization; counselling, collection of forensic evidence for prosecution purposes, and so on.

Whether a victim goes to the police or health and welfare services for assistance, the authorities concerned will adopt a co-ordinated multi-disciplinary approach in the treatment of the victim. For example, in the case of the Hospital Authority, there is a set of comprehensive guidelines on management of victims of sexual assaults in its hospitals, including services to be provided by

accident and emergency department doctors, as well as co-ordination in the collection of forensic samples by forensic pathologists and provision of psychological and counselling support by clinical psychologists, psychiatrists and medical social workers. In the case of the Social Welfare Department (SWD), social workers will provide counselling with the assistance of clinical psychologists if necessary, assess the victim's need for medical service and advise the victim to report to the police. They will escort the victim to hospitals or the police and liaise with medical social workers or the police, as the case may be. They will also arrange temporary accommodation (if required), other welfare assistance and follow-up services to the victim and other family members.

A multi-disciplinary approach is adopted between the various authorities and efficient co-operation stressed. By way of example, I should like to highlight the fact that since 1995, the police and the SWD have instituted a system to assist victims under 17 or who are mentally incapacitated. Police officers from the Child Abuse Investigation Units and social workers from the Family and Child Protective Service Units conduct joint investigations into cases. When required, clinical psychologists also take part. The purpose of this joint multi-disciplinary intervention is to minimize the trauma of the victim from having to repeat the experience to different professionals during the investigation process.

Some adult victims of sexual violence are also victims of domestic violence. The SWD has recently strengthened and streamlined the services available for this group. Social workers in the Family and Child Protective Service Units provide a one-stop service for victims of domestic violence thereby handling victims' needs in a more focused manner. Victims and/or families are provided with co-ordinated assistance, including a package of social, financial, medical, legal services, and so on, so that their needs can be addressed in a holistic manner.

The training available for the professionals involved is clearly of great importance. In the health care setting, clinicians focus on ensuring victims' physical and psychological well-being and this is adequately reflected in their training. Social workers handling these cases are provided with specialized knowledge and skills through regular in-service training, both in Hong Kong and overseas. Caseworkers and clinical psychologists in the SWD and police officers involved in Child Protection Special Investigation Teams have all

received specialist training in the various aspects of their work with particular emphasis on handling victims in a sympathetic manner. Training programmes are jointly organized by the SWD and the police not only for their staff but also for non-government organizations, the Hospital Authority and Education Department personnel. Regular refresher courses are organized to upgrade the standards of these professionals.

Some Members have suggested that a rape crisis centre should be established. In fact, we are currently processing the proposal of a non-government organization for the setting up of such a centre for rape victims. Being a pilot project, the centre provides a package of co-ordinated services including 24-hour hotline counselling, escorting victims to the police or hospitals, support groups, training and support for professionals, and organizing publicity and promotional activities.

The procedures adopted by the various authorities are kept under regular review with the aim of bringing about further improvement, achieving better co-ordination and minimizing unnecessary duplication. However, I agree that there is a case to formalize these arrangements and I have therefore asked the Director of Social Welfare to set up an inter-departmental working group to address this issue. This will ensure greater co-ordination between the relevant authorities and provide a forum for discussion with concerned non-government organizations.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Miss Emily LAU to Mr James TO's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**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 amendment passed.

**PRESIDENT** (in Cantonese): Mr James TO, you may now reply and you have up to six minutes nine seconds.

**MR JAMES TO** (in Cantonese): First of all, Madam President, I wish to express my gratitude once again to the 10 Members or so who have spoken in this debate. I believe the Government should have learnt clearly that those Members who have spoken actually share many viewpoints in common; they all share the same views with respect to their analysis of the situation, the difficulties and lack of co-ordination relating to the current delivery of services, a "one-stop" service and the need for more education on this matter. I am most gratified that the reply given by the Government just now has at least affirmed several points, the first point being the need for an in-depth analysis of the situation. However, I also find the query made by the Secretary for Security questionable. When referring to the crime victimization survey in 1998, she queried whether there were really as many as some 12 000 cases of indecent assault. She wondered whether some of these cases actually involved mere accidental physical contacts. There is actually a problem here, because she also mentioned that in the same survey, no rape cases were reported. Here, I must point out the underlying reason. The survey interviewed 20 000 households, and the statistics of the police show that there were about 100 rape cases in 1998. In terms of statistical probability, if none of these 20 000 households experienced any one of the 100 cases of rape in question, then, on records, there would be no rape cases. Besides, in terms of statistical implications, there is not much difference between one case and nil. And, the fact is that the number of cases was so small. Well, if there had been several thousand rape cases, then there would have been a greater chance for these 20 000 households chosen at random to encounter such cases, but this is definitely not what we wish to see. Since the sample was very small and the number of cases recorded by the police was also small, there was a high probability that rape cases did not occur to any of these 20 000 households. Precisely because of this reason, we cannot use this situation to prove that the record of 12 500 indecent assault cases was statistically

questionable. Moreover, Members can also refer to the survey conducted in 1994 using the same method of random sampling. The number of indecent assault cases recorded in the 1994 survey was about 4 000. So, this tells us that we really need to look into this phenomenon.

This afternoon, I rang up the Commissioner for Census and Statistics, and he told me that since there had been no change in survey methodology, he would think that the findings were reliable. Besides, he also found it hard to explain the drastic increase in the number of cases, saying that this might require further investigation. Also, I would think that if we are to relieve the pain suffered by crime victims having to repeat their bitter experiences, it is simply not enough to rely solely on the police. So, I hope that an inter-departmental group can be set up to handle the work in this respect. The first thing to do, I think, is for those government departments responsible for providing assistance and non-government organizations like the Family Planning Association to work out a way to reduce the number of times that a crime victim is required to recount his or her bitter experiences.

The Secretary also said that she was prepared to conduct some studies on abnormal sexual behaviour or sexual violence. I think such studies are indeed necessary, because given the current development in society, we may need to consider cases of women raping men, cases which have so far received relatively little attention. We may need to consider whether such cases would really occur in reality. In the United States, there was a case of collective sexual violence, and the court verdict has become a precedent. This shows that such cases may really occur. In a society upholding gender equality, the police should really work out a more comprehensive proposal in this connection.

The last point I wish to raise is about the "one-stop" service application now being processed by the Government. Whatever the outcome of this application may be, I hope that the Government can do far more than simply considering the application from one single non-government organization; it must consider whether the effect of "one-stop" service can really be achieved, because even with such a centre or pilot scheme, if there is no co-ordination from other bodies, it will still be impossible to achieve the desired "one-stop" effect. As for Miss Cyd HO's reference to the idea of support counsellors put forward by Prof Cecilia CHAN, I think that the idea really merits our consideration, for it is actually in line with the rationale behind outreaching social work. I also agree with Dr LEONG Che-hung that we must bring the necessary services to

the victim at the time of the crisis instead of taking him or her on a merry-go-round amongst the various services.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Mr James TO's motion, as amended by Miss Emily LAU, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 3 May 2000.

*Adjourned accordingly at three minutes past Nine o'clock.*



**Annex**

## SECURITY AND GUARDING SERVICES (AMENDMENT) BILL 2000

**COMMITTEE STAGE**Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

17

By deleting the proposed section 24(2) and substituting -

"(2) After an application has been made under subsection (1), the Authority or any member of the Authority authorized by the Authority to do so may, by notice in writing to the Commissioner and to the licensee, vary the conditions of the licence pending determination of the application."

18

In the proposed section 24A -

(a) in subsection (4), by deleting everything before "before -" and substituting -

"(4) Subject to subsection (11), no step shall be taken by the Authority in respect of an application made under subsection (1)";

(b) by deleting subsection (11) and substituting -

"(11) After an application has been made under subsection (1) (including the period before the material date), the Authority or any member of the Authority authorized by the Authority to do so may, by notice in writing to the Commissioner and to the licensee, vary the conditions of the licence pending determination of the application."