OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 31 May 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 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 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.

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 KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

THE HONOURABLE FUNG CHI-KIN

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

MEMBERS ABSENT:

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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE LAU CHIN-SHEK, J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

MR CHAU TAK-HAY, J.P.
SECRETARY FOR TRADE AND INDUSTRY

MR DOMINIC WONG SHING-WAH, J.P.
SECRETARY FOR HOUSING

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

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE

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

MR KEVIN HO CHI-MING, J.P.
SECRETARY FOR TRANSPORT

MR GREGORY LEUNG WING-LUP, J.P.
SECRETARY FOR HEALTH AND WELFARE

MRS REBECCA LAI KO WING-YEE, J.P.
SECRETARY FOR FINANCIAL SERVICES

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	*L.N. No.*
Air Pollution Control (Asbestos) (Administration) (Amendment) Regulation 2000	190/2000
Optometrists (Registration and Disciplinary Procedure) (Amendment) Regulation 2000	191/2000
Road Traffic (Traffic Control) (Amendment) (No. 2) Regulation 2000.....	192/2000
Firearms and Ammunition (Amendment) Ordinance 2000 (14 of 2000) (Commencement) Notice 2000.....	193/2000
Firearms and Ammunition (Amendment) Regulation 2000 (L.N. 146 of 2000) (Commencement) Notice 2000.....	194/2000
Shipping and Port Control (Amendment) Regulation 2000 (L.N. 107 of 2000) (Commencement) Notice 2000.....	195/2000
Electricity Ordinance (Cap. 406) (Commencement) Notice 2000.....	196/2000
Electrical Products (Safety) Regulation (Cap. 406 sub. leg.) (Commencement) Notice 2000.....	197/2000
Electrical Products (Safety) (Amendment) Regulation 2000 (L.N. 77 of 2000) (Commencement) Notice 2000.....	198/2000
Securities (Stock Lending) Rules	199/2000

Other Papers

No. 102 — Securities and Futures Commission Approved Estimates of Income and Expenditure for the financial year 2000/01

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 1999

Report of the Bills Committee on Trade Marks Bill

Report of the Bills Committee on Road Traffic (Amendment) Bill 2000

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Determination of Public Housing Rentals

1. **MR LAU KONG-WAH** (in Cantonese): *Madam President, the Housing Ordinance stipulates that whenever the Hong Kong Housing Authority (HA) has revised the rents of public rental housing (PRH) units, the overall median rent to income ratio (MRIR) after revision shall not exceed 10%. Regarding the determination of PRH rentals, will the Government inform this Council:*

(a) of the MRIR for all PRH households in Hong Kong for each quarter of the past 12 months and how these figures compare to those of the preceding four years;

(b) when the family income of PRH households has generally decreased, whether the HA is required to lower the rent as the case may be so as to ensure that the MRIR of PRH households does not exceed 10%; if not, whether the Administration will consider making amendments to the Housing Ordinance to that effect; if this will not be considered, of the reasons for that; and

(c) whether it knows if the HA, in determining PRH rentals, will consider ensuring that the MRIRs applicable to various types of PRH blocks (not just the overall MRIR) do not exceed 10%; if it will not, of the reasons for that?

SECRETARY FOR HOUSING (in Cantonese): Madam President, I have now laid on the table for Members' information the MRIR for households living in public rental flats of the HA in the last four quarters of 1999, compared with those in the preceding four years.

MRIR(%)

Year	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*
1995	8.4	8.5	8.4	8.7
1996	8.6	8.6	8.7	8.9
1997	9.0	9.1	9.1	8.9
1998	8.8	8.9	9.3	8.6
1999	9.4	9.8	9.6	10.0

The Housing Ordinance provides that the determination of any variation of rent shall be of such amount that the overall MRIR for all PRH households shall not exceed 10% at the time of determination. The Ordinance does not require rent reduction subsequently even if the overall MRIR exceeds 10%.

The Government and the HA do not intend to seek amendment of the Housing Ordinance to allow for rent reduction since public housing rents, which at present also cover rates and management fees, are already heavily subsidized.

As regards part (c) of the question, the HA does not intend to apply the MRIR limit to public rental blocks by type for the same reason that rents are already heavily subsidized. The prime considerations for setting rents are tenants' affordability, facilities provided and location of the housing estate.

MR LAU KONG-WAH (in Cantonese): *Madam President, in the past, whenever the HA intended to revise rents, it decided to freeze the rents at the most. However, recently, the market rents have kept falling. In the middle*

part of the main reply, the Secretary said that the Housing Ordinance did not require rent reduction even if the overall MRIR exceeded 10%. However, the Ordinance also does not provide that rent may not be reduced. In other words, it is possible for the HA to reduce rent. Why is it that the HA is not prepared to reduce rent now when the MRIR has almost exceeded 10%?

SECRETARY FOR HOUSING (in Cantonese): Madam President, as I said in the main reply, the HA is of the view that the rents of PRH households are already heavily subsidized. For instance, the rates and management fees are covered in the rents. Therefore, even if the overall salaries have been slightly adjusted or if the general situation has slightly changed, the HA has no intention to reduce rent at this stage.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, I would like to ask the Secretary to explain the definition of the MRIR. Does the Housing Department calculate the MRIR on the basis of the median income of all households in Hong Kong or the median income of PRH households? Is there a difference between them? If so, which one will be used by the Housing Department in setting rents, the higher or lower median income? If rents are not set according to the lower median income, why is that so?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in this connection, the HA bases on the overall MRIR of PRH households to set rents. Although the Government can collect the statistics of the overall income of households in Hong Kong, we are now talking about PRH rentals. The HA uses relevant statistics to find out the income of PRH households and determines how to adjust PRH rentals after calculation.

MR LEUNG YIU-CHUNG (in Cantonese): *I wonder if the Secretary can provide a written answer later on ……*

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

MR LEUNG YIU-CHUNG (in Cantonese): *Just now, the Secretary did not tell us whether there is a difference between the median income of all households in Hong Kong and that of PRH households or indicate which is higher and which is lower.*

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

SECRETARY FOR HOUSING (in Cantonese): Madam President, the two figures are of course different, since the target households chosen are different. I only have the figures of the HA, that is, the MRIR of PRH households. If the Member wishes to have the statistics of all households in Hong Kong, I can try to obtain them from the Census and Statistics Department. (Annex I)

MR ALBERT HO (in Cantonese): *Madam President, of course, we know that public housing rents are subsidized to a certain extent. However, the reason why the Housing Ordinance provides that the ratio should not exceed 10% is to ensure that the subsidy meets certain requirements and benchmarks. I wonder if the Secretary agrees that the provision in the Ordinance that the MRIR of PRH households should not exceed 10% embodies the spirit of the overall policy and should not be applied merely at the time when rents are adjusted? The Secretary now refuses to lower rent. Is he trying to bypass the objective of the original policy by using a technicality, because the law is too narrowly written?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I believe Mr HO is talking about the background. During the drafting of the law, that is, during the greater part of the year before the reunification, the Government, the HA and Members held very in-depth discussions. At that time, the Government and the HA were strongly against this proposal. Although the Government was very much against it, the law was passed in the end. At present, the HA acts according to the provisions of the law and has no intention of making additional allowances beyond the law. That is why the HA has no such plan so far.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, from the information provided in the main reply, we can see that the MRIR has almost reached 10%, that is, the peril point. Although the ratio has reached 10%, the Secretary said just now that rent would not be reduced. How will the Secretary ensure that the MRIR will meet the requirements of the law and not exceed 10% in future? What will the HA do? Will it freeze all rents and lower the rents of newly completed public housing estates, so that the overall MRIR will not exceed 10%? What strategies will the Secretary adopt to ensure that it does not exceed 10%?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, setting PRH rentals is the HA's responsibility and not the Government's responsibility. Members should distinguish between these two points.

The HA has certain criteria for setting the rents of newly completed public housing estates. The law does not place restrictions on the determination of rents of newly completed public housing estates. It only places restrictions with regard to the variation of rent. Thus, if the HA considers revising rents, it will consider the income of PRH households. If it wants to increase rent, it has to take into account the overall MRIR of PRH households. If the MRIR exceeds 10%, rent cannot be increased. However, if the MRIR is lower than 10%, the HA can decide whether to consider increasing rent. Of course, all decisions are made by the HA.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I was very surprised at the Secretary's answer earlier. When the Housing Ordinance was passed by the former Legislative Council, I was a Member of the Council. It was clearly laid down then that the rents of the PRH could only amount to 10% of the median income at the most. The present figures show clearly that the ratio reached 10% in the fourth quarter of 1999. Now, with salary going down and prices showing signs of increasing again, theoretically speaking, the ratio has already exceeded 10%. Why is it that the Government still does not reduce rent under these circumstances? I do not understand why the Government insists that it is under no obligation to reduce rent. The objective facts show that the MRIR might have exceeded 10%. Under these circumstances, the Government should lower the rent.*

PRESIDENT (in Cantonese): Miss CHAN, your question is: you do not understand why the Government is doing this.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in answering Mr LAU Kong-wah's question, the Secretary said that the Government was under no obligation to reduce rent. However, when the law was drafted, it was clearly stated that the MRIR could not exceed 10%.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I wish to point out that I have answered this question in the main reply. I reiterate that when revising the rents of PRH, the HA will certainly ensure that the overall MRIR of PRH households does not exceed 10%. The HA can vary rent as long as the MRIR does not exceed 10%. This ratio must not be exceeded and the decision lies with the HA.

MR LEE WING-TAT (in Cantonese): *Madam President, this law was passed before 1997 mainly to protect low-income tenants against massive increase of rent. Despite the former Government's objection to the 10% ratio, it was ultimately passed. It is a law that has been passed. Will the Secretary inform us whether the Government has a legal responsibility to instruct or advise the HA to consider reducing rent when the ratio has exceeded 10%? According to the Secretary's reply just now, even if the ratio reaches 11%, 12% or 13%, the HA can continue to do nothing as long as it does not revise rent. Is it not breaking the law deliberately?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the HA is not breaking the law deliberately, since it has not broken the law at all in this matter. The law only requires the HA to follow its stipulations that when revising rents, the overall MRIR of PRH households shall not exceed 10%. After the revision of rent, if this ratio changes because of changes in the economy, it is another matter. Of course, when the changes are too great, the HA may take them into account, but the Government will not interfere. The HA is empowered to deal with such situation. However, the law does not require the HA to do so.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, which part of your supplementary question has not been answered?

MR LEE WING-TAT (in Cantonese): *I did not ask what the HA would do, but what the Secretary would do. Although the Secretary objects to this piece of legislation, it has been passed and has become law. It is the Secretary's job to enforce the law. Is the Secretary aware that the HA may be breaking the law by not taking any action, when the MRIR has kept rising? Has the Secretary instructed the HA to look into this matter? The Secretary did not tell us what the Bureau would do.*

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

SECRETARY FOR HOUSING (in Cantonese): Madam President, I wish to stress that I have answered this supplementary question already. The HA has not broken any law. As far as the Government is concerned, the HA has complied with the law. As for whether the HA will do anything extra, it is up to the HA.

PRESIDENT (in Cantonese): Last supplementary question.

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary provided figures up to the fourth quarter of 1999. Actually, I believe the figure for the first quarter of this year should be ready. I wonder if the Secretary can reveal this figure. The Secretary's answer was unconvincing. If the ratio has exceeded 10%, the law has been breached, even though the Secretary said the Government did not break the law. If the HA insists on not reducing rent even if the ratio has exceeded 10%, how in the Secretary's view can the Ordinance be enforced?*

PRESIDENT (in Cantonese): Mr LAU Kong-wah, you have asked two questions. However, Members can only ask one supplementary question at a time.

MR LAU KONG-WAH (in Cantonese): *Madam President, I only asked one supplementary question. I wonder if the Secretary has the figure for the first quarter. If not, this opportunity would be wasted. If he has, I hope the Secretary would tell us.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, we do not have the figure for the first quarter yet. We have to wait for the Census and Statistics Department and the Housing Department to process the data in order to obtain the figure.

MR LAU KONG-WAH (in Cantonese): *The Secretary did not answer the second part of the supplementary question.*

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

SECRETARY FOR HOUSING (in Cantonese): Madam President, as I said, when revising the rents, the HA will certainly ensure that the MRIR of PRH households does not exceed 10%. As long as the ratio does not exceed 10%, the HA can decide what to do.

Medical and Health Care Staff of Public Hospitals Taking up Outside Jobs

2. **DR LEONG CHE-HUNG** (in Cantonese): *Madam President, it has been reported that there are nurses of public hospitals taking up outside jobs without obtaining permission at private hospitals outside working hours. Regarding medical, nursing and allied health staff (medical and health care staff) of public hospitals taking up outside jobs, will the Government inform this Council whether it knows:*

(a) the respective numbers of applications received by the Hospital Authority (HA) from staff of various medical and health care professions for permission to take up outside jobs and among them, the number of approved cases, in each of the past three years;

(b) if the HA has assessed the seriousness of the problem of medical and health care staff taking up outside jobs without permission, and its impact on the quality of medical and health care services provided by public hospitals; and

(c) the measures the HA has in place to stop medical and health care staff from taking up outside jobs without permission?

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

(a) All employees of the HA must obtain prior approval from the relevant Hospital Chief Executive or Chief Executive/Hospital Authority before undertaking outside work, except for unpaid outside work outside normal working hours. While the HA hospitals and the HA Head Office maintain proper record of applications for permission to take up outside jobs and approval thereof, the statistics on the number of applications received and approvals granted are not centrally collated. Nonetheless, within the time available, the HA has carried out a quick search of the relevant files for the year 1999-2000, which shows that the number of applications approved for outside work in 1999-2000 is 2 446, including 1 240 from medical officers, 715 from nurses and 491 from allied health professionals.

(b) There is no evidence to suggest that there is a problem of the HA staff engaging in unauthorized outside work. According to the HA's record, there were only two incidents of health care staff taking up unauthorized outside work in the past three years, involving a medical officer and a registered nurse respectively. Supervisors in the HA monitor the performance of their staff closely, ensuring that a high standard of patient care is consistently delivered.

(c) All HA employees are reminded, from time to time, of the HA's outside work policy which requires them to seek prior approval before taking up paid outside work or unpaid outside work during normal working hours. Employees who do not comply with this

rule are liable to disciplinary actions, which include warning, suspension of salary increment, deduction of salary and dismissal.

DR LEONG CHE-HUNG (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said that there were over 2 000 applications approved for outside work last year. At the same time, we hear staff of the HA say that they work under great pressure and that there is inadequate staff. May I ask the Secretary whether these two situations are in conflict? If so, why is there such a conflict and how will the Government deal with it?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, as far as we know, the abovesaid outside work mainly involves teaching related to the applicants' profession and public service, such as joining the Auxiliary Medical Service. At present, the HA has laid down stringent criteria, so that only those kinds of outside work which fulfil these criteria will be approved. There are three main criteria: first, the hours of outside work must not be too long and it must not be too frequent, in order not to affect staff's performance in their principal employment. Second, the outside work must not give rise to any conflict of interest on the part of staff. Third, the outside work undertaken must not damage the HA's reputation or cause the HA embarrassment. In the HA's view, there is no conflict as long as they employ these three criteria.

MR BERNARD CHAN (in Cantonese): *Madam President, will the Secretary tell us whether the staff undertaking approved outside work divide their income from such outside work with the public hospitals and the HA? If so, what is the ratio?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, as far as I know, if staff engage in outside work outside normal working hours, they can retain the whole amount earned from the outside work. However, if staff need to engage in outside work during normal working hours, such as teaching, they have to divide their income from the outside work with the HA. For instance, if the outside work concerned requires the use of the equipment of the HA, the income from the outside work must be given to the HA.

As for the income from other kinds of outside work, half of it must be given to the HA. If staff engage in teaching, they can very often retain the whole amount earned. However, we have set a ceiling for this. As far as I know, at present, the income from each job may not exceed $1,200.

PROF NG CHING-FAI (in Cantonese): *Madam President, it is said that some public hospitals allow medical staff to treat their private patients in the hospitals. May I ask how many such cases there are? If there are such cases, do the relevant medical staff have to divide their income from this with other departments or the hospital? How will it be divided? How do the authorities ensure that medical staff will not misuse public resources in treating their private patients and will the quality of public services be affected as a result?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, as far as I know, it is mainly in the hospitals of the two universities that teaching staff of the universities are allowed to treat private patients and charge fees that are close to the market rates. However, the income does not go to the employees at all. Part of the income will be given to the HA, while the rest will go to the university for scientific research and so on.

MR MICHAEL HO (in Cantonese): *Madam President, first, I wish to declare interest. I am an HA employee and also one of those engaging in approved outside work. I take no pay leave in order to perform my duties as a Legislative Council Member.*

Madam President, will the Government inform this Council whether it has assessed whether the performance of staff in their principal job in different hospitals or grades, or even that of certain staff has been affected due to outside work? If so, is the situation serious?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, as I said just now, if staff apply for permission for outside work, they must satisfy certain stringent criteria before their applications will be approved. One of the main criteria is that the hours of outside work must not be too long and it must not be too frequent, so that the employee's performance during

daytime will not be affected. In the HA's view, after these criteria have been set, the outside work undertaken by staff so far has not adversely affected the services they provide.

MR JAMES TIEN (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said that among the applications approved for outside work in 1999-2000, over 1 000 came from medical officers, over 700 came from nurses and over 400 came from allied health professionals, who applied to work at private hospitals. I would like to know that among these figures, whether there are any medical staff who applied to do outside work in individual households, such as for a few hours at night. Do medical staff need to apply for such kind of outside work? If so, are these applications included in the above figures?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, since we carried out the search within a very short time, I do not have a breakdown of the figures on hand. However, we know approximately that among the over 2 000 applications approved for outside work, 80% have to do with professional work or teaching related to the professions. In the case of medical officers, 90% undertook teaching as outside work. As for nurses and other health staff, about 70% engaged in teaching as outside work, while other kinds of work were mainly related to public service, as I already said. I do not have a more detailed breakdown on hand.

MR JAMES TIEN (in Cantonese): *Madam President, the Secretary did not answer my supplementary question. I asked him whether there were medical staff who did outside work in individual households during nighttime for a few hours, rather than applied for permission to do outside work at hospitals. For instance, they might take care of an elderly person in some family for a few hours at night in return for a few hundred dollars. Do medical staff have to apply for permission for such outside work and will the Government give its approval?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, if an employee wishes to do this, he has to apply. The authorities will decide whether to give its approval on the merits of individual cases. When the HA decides whether to approve an application to take up such outside work,

one of its considerations is whether the outside work engaged in will give rise to conflict of interest. For instance, if the medical staff works as a nurse at a private hospital, I believe there is conflict of interest. As for whether there will be conflict of interest if the staff works as a private nurse in individual households, I think we can only decide by looking at the merits of the individual case.

MR ANDREW WONG (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said that the over 2 000 applications approved for outside work mainly do with teaching, that is, paid teaching, while the cases of unpaid outside work were not included. Just now, Mr Michael HO mentioned that he was employed with the HA, while working as a Legislative Council Member by taking no pay leave. In the main reply, the Secretary said that unpaid outside work was excepted. Does it mean that if any employee of the HA engages in unpaid voluntary work in the Government's advisory committees, there is no restriction whatsoever and approval will certainly be granted? As far as I know, this is not the case. One has to apply in order to undertake any outside work, whether paid or unpaid, and may not engage in such work unless permission has been given. This is my understanding. Can the Secretary confirm this?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, with regard to unpaid outside work undertaken outside normal working hours, if the employee considers that the relevant work fulfils the three criteria mentioned just now, no application has to be made. This applies to unpaid outside work undertaken outside normal working hours. However, if an employee wishes to undertake outside work during normal working hours, he has to apply whether it is paid or unpaid.

MR ANDREW WONG (in Cantonese): *Madam President, can we simply say that my assumption was wrong and the Secretary's answer ……*

PRESIDENT (in Cantonese): Mr WONG, please keep to the supplementary question you asked. (*Mr Andrew WONG sat down*)

Secretary, do you have anything to add?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, if Mr WONG was asking about work related to public office, as I said, if the work is unpaid but needs to be undertaken during normal working hours, the employee has to apply.

MRS SOPHIE LEUNG (in Cantonese): *Madam President, as the Secretary mentioned in his reply, when employees apply for permission for outside work, one of the criteria to be considered is that the outside work will not affect their principal job. I would like to ask the Secretary if guidelines are issued now to let employees know that if they engage in paid or unpaid outside work outside normal working hours, it must not affect their principal jobs too much. As we all know, health care work is very complicated. Employees must be extremely concentrated when they are working. If they spend too much effort on outside work outside normal working hours so that they cannot concentrate on the work of the HA, it might affect the quality of health care and patients' health. I would like to ask the Secretary if such guidelines are issued to staff or whether the HA would consider establishing such guidelines.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, since each employee works in a different capacity and the nature of their work is different, it is difficult to formulate a comprehensive set of guidelines for colleagues responsible for approving the applications for taking up outside work. However, in principle, colleagues responsible for approving such applications will certainly consider whether the working hours of the outside jobs to be approved are very long, whether such work is very frequent, and whether it will unnecessarily affect staff performance in their principal jobs. As far as I know, they will also consider whether the income from the outside work is too high. If it is too high, it might undermine staff's interest in their principal jobs. These are factors that we must consider.

PRESIDENT (in Cantonese): Last supplementary question.

MR NG LEUNG-SING (in Cantonese): *Madam President, I would like to ask the Government when this mechanism for approving outside work was first implemented and when a review will be conducted.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I do not have the information on hand when this mechanism was first implemented. However, the rules that I have on hand were revised in 1998. I believe these rules were adopted when the HA was established in 1990 and they were revised in 1998. This shows that they are constantly reviewed.

Prevention of Abuse of Power by Senior Civil Servants

3. **MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, regarding the Secretary for Transport's contacting officials of the Education and Manpower Bureau (EMB) and the Education Department (ED) concerning the redevelopment of La Salle Primary School and the prevention of abuse of power by senior civil servants, will the Government inform this Council:*

(a) of the capacity in which the Secretary made such contacts and the details of such contacts;

(b) whether it has assessed if the Secretary has acted appropriately or transgressed his authority; and

(c) of the existing legislation and mechanisms for preventing senior civil servants from abusing their powers and seeking personal gains by such acts?

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

(a) The Secretary for Transport, Mr Nicholas NG, has, in his capacity as the vice-chairman or the acting chairman of the La Salle Primary School Redevelopment Committee, contacted officials of the EMB and the ED who were responsible for the redevelopment of the La Salle Primary School, to discuss procedural matters relating to the redevelopment project and to provide technical information on the project. Details of these contacts are at Annex.

(b) The Government encourages schools to work in partnership with the EMB and the ED. For government-subvented school projects involving school sponsoring bodies, it is the usual practice for the EMB and the ED to be in close contact with the responsible persons of these sponsoring bodies. This is in line with the notion of partnership that we have been advocating. It is therefore absolutely appropriate for Mr Nicholas NG, who is the vice-chairman (or the acting chairman) of the La Salle Primary School Redevelopment Committee as well as one of the responsible persons of the school authority for the redevelopment project, to discuss the project with officials of the EMB and the ED and to explain to them details of the project. Indeed, the procedures which have been followed in processing the funding application for the redevelopment project are no different from those for other similar projects. The funding application has not only obtained clearance from the Administration internally, but also the approval of the Public Works Subcommittee and the Finance Committee of the Legislative Council.

Mr Nicholas NG has acted appropriately and has not transgressed his authority, as his discussion with the officials concerned was made in his capacity as the vice-chairman (or the acting chairman) of the La Salle Primary School Redevelopment Committee, not the Secretary for Transport.

(c) We attach great importance to upholding a high standard of integrity and conduct in the Civil Service. In discharging official duties, civil servants are required to do so in a fair and accountable manner. They should not put private interests above official duties. Furthermore, they should avoid taking part in activities which may conflict with their official positions at all times.

Civil servants found abusing power for personal gains are liable to prosecution under the Prevention of Bribery Ordinance (Cap. 201) if corruption or related offence is involved. Abuses involving criminal elements would be subject to criminal investigation and prosecution.

Apart from the legislative framework, we have been working with the Independent Commission Against Corruption in assisting departments and bureaux to put in place mechanisms to ensure that there are clear policies, guidelines and procedures to steer the exercise of authority at various levels, and that there are proper checks and balances.

In addition, the Civil Service Regulations impose requirements on officers to avoid and to report potential conflict of interest situations, and to seek permission for acceptance of advantages or undertaking outside work. Senior officers are also required to report their investments. These requirements ensure the accountability of civil servants. Officers who fail to comply with these requirements are subject to disciplinary action which may result in punishment ranging from reprimand to dismissal.

I would like to reiterate that insofar Mr Nicholas NG's involvement in the redevelopment of the La Salle Primary School is concerned, there is no question of Mr NG transgressing authority, abusing power, or seeking personal gains.

Annex

Details of discussion between Mr Nicholas NG (as the vice-chairman or acting chairman of La Salle Primary School Redevelopment Committee) and the responsible officials in the EMB and the ED regarding the redevelopment of the La Salle Primary School

Date	*Details of discussion*
11 December 1998	The school authority of the La Salle Primary School, together with Mr Nicholas NG, had a meeting with representatives of the ED and the Architectural Services Department (Arch SD), to give a preliminary presentation on the proposed redevelopment of the La Salle Primary School, and to enquire about the procedures involved.

Date	*Details of discussion*
Early 1999	Mr Nicholas NG verbally asked the EMB whether it was possible, under current policy, to redevelop the La Salle Primary School into a 36-classroom primary school (since, according to the latest Year 2000 design for standard schools, a primary school will normally have 24 or 30 classrooms only). According to the redevelopment plan, since the existing La Salle Primary School comprises a morning session and an afternoon session each of which has 18 classes, the school authority hopes that the redeveloped school premises can accommodate 36 classrooms so as to enable the school to convert into whole-day operation in the existing premises. The Government is actively implementing the whole-day primary schooling policy. To this end, we need to make the best use of land resources to build a large number of schools. In the light of this, the EMB explained to Mr NG that it had no objection in principle to school sponsoring bodies constructing primary school premises with more classrooms. Indeed, the School Building Design Committee, chaired by the Assistant Director of Education (Planning & Research) and comprises representatives from the architectural sector, was examining and developing various school designs, including one with 36 classrooms.
Third quarter of 1999	Mr Nicholas NG verbally asked the EMB when the Government would upgrade the redevelopment project to Category B of the Public Works Programme, as there was a need to draw up a fund raising schedule for the project and to provide the architect with sufficient lead time to carry out the preliminary works. At that time, the EMB explained to Mr NG that the Government was still considering the redevelopment project as well as other public works projects. A number of public works projects, including the redevelopment of the La Salle Primary School, were eventually upgraded to Category B in October 1999. The ED informed the La Salle Primary School of this subsequently.

Date	*Details of discussion*
	It is the usual practice for the ED, as in the present case, to inform the relevant school authorities once their school projects have been upgraded to Category B, so that the school authorities could proceed with site investigations, topographical surveys, as well as preparing detailed drawings and tender documents.
End 1999 to early 2000	Mr Nicholas NG made several verbal inquiries with the ED on matters relating to the redevelopment project, including the ED's requirement that school sponsoring bodies of all new schools should enter into service agreements with the ED, and the procedures for appointing consultants. Mr NG once again explained to the ED why a 36-classroom primary school premises was needed. Mr NG also explained to the ED the planned timetable for the redevelopment project. He pointed out in particular that since the school would be redeveloped in-situ, part of the existing school premises would need to be demolished and piling works would be required. If such works could commence in July 2000, its impact on students and the daily operation of the school could be kept to a minimum. In addition, the new school premises could also be completed before August 2002; in other words, it could be completed before the Government's target date for meeting the interim policy objective of enabling 60% of pupils in public sector schools to study on a whole-day basis. In processing school projects, the interests of students are always regarded by the ED as the most important factor. In line with this spirit, the ED verbally indicated that it would as far as practicable facilitate the timetable, provided that the school's consultant was able to complete the necessary works on time.

Date	*Details of discussion*
March 1999	Mr Nicholas NG and some members of the La Salle Primary School Redevelopment Committee held a meeting with representatives from the EMB, the ED and the Arch SD, during which Mr NG and members of the Redevelopment Committee explained to the Government the latest development as well as the technical details (including the desired timing for commencement of works) of the redevelopment project.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, it is really shocking that the main reply indicates that Mr Nicholas NG has openly contacted officials of the EMB and the ED at least eight times from end 1998 to March 2000 to pursue the redevelopment of the La Salle Primary School. In the proposed redevelopment, some facilities, such as an underground car park, are not to be found in any other schools in the territory. According to the main reply, civil servants "should avoid taking part in activities which may conflict with their official positions at all times". As Secretary for Transport, Mr Nicholas NG is occupying a high position and in great power. If he makes frequent telephone calls to lower-ranking officials of the EMB and the ED, will they succumb to the pressure exerted by Mr NG and make unnecessary concession for he is actually a senior official, though he is apparently a representative of students' parents? How can the Secretary for Education and Manpower avoid giving the public an impression that Mr NG was using his power to bully others? Furthermore, the Government considered that Mr NG had acted absolutely appropriately and had not transgressed his authority. Were government officials trying to protect one another in this case?*

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, perhaps I should make a reply first. If the Secretary for the Civil Service has anything to add, he can give a supplementary reply later. Although I have provided a detailed main reply, I still want to make it clear that it was strictly in his capacity as the vice-chairman (or the acting chairman) of the

La Salle Primary School Redevelopment Committee that Mr NG had, in this incident, discussed redevelopment matters with relevant officials of the EMB and the ED. This is appropriate regardless of the number of discussions held. There is absolutely no conflict with Mr NG's authority as Secretary for Transport. I hope Members can understand clearly that the whole process has been conducted in accordance with the Government's established procedures and is completely in line with government policies. The whole funding application has also been approved by the Public Works Subcommittee and the Finance Committee of this Council. In other words, there is absolutely no evidence indicating that Mr NG has acted inappropriately throughout the whole process. On the contrary, there is nothing wrong for Mr NG to help his old school to carry out this task in his capacity as an old student.

DR YEUNG SUM (in Cantonese): *Madam President, the main reply has given us the impression that the Government is trying to defend government officials. Instead of reviewing whether senior officials of the Government have misused or even abused their power, the Government insists that the Secretary for Transport can, in his capacity solely as a member of the La Salle Primary School Redevelopment Committee, discuss with senior officials of the Government matters related to the redevelopment of the School. Under such a suspicious situation, perhaps Mr NG should pay a bit more attention for, on the one hand, he is Secretary for Transport and, on the other, the redevelopment of the La Salle Primary School involves the construction of an underground car park, which is related to policies of the Transport Bureau! Will the Government inform this Council whether it will further formulate and tighten internal guidelines and even rules and regulations to prevent senior civil servants from transgressing their authority to interfere in the policies and decisions of other government departments?*

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for the Civil Service.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, we will review the Civil Service Regulations from time to time. In particular, we attach great importance to the integrity in the Civil Service. As Members who have joined the Legislative Council Panel on Public Service are aware, we

will discuss this topic from time to time and solicit Members' views. We will initiate improvement when necessary. Nevertheless, with respect to the reply made by the Secretary for Education and Manpower to the supplementary questions raised by Members, I would like to reiterate that after reviewing the whole incident, we do not think the Secretary for Transport has contravened any part of the Civil Service Regulations and there is no question of abuses.

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

DR YEUNG SUM (in Cantonese): *Madam President, will the suspicious situation I mentioned lead to doubts?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, as far as I understand it, the proposed construction of an underground car park by the La Salle Primary School has been discussed in great detail by both the Public Works Subcommittee and the Finance Committee of this Council. Both Committees agree that the matter is of no relevance to transport policies. The main reason for the Government to have finally accepted the proposed construction of the car park in the La Salle Primary School is that, without an underground car park, the open area entitled by each student will be as little as 0.9 sq m only, much smaller than the current standard of 2 sq m. With an underground car park, however, the open area entitled by each student will increase to 1.2 sq m. Although this is still not up to the standard, there has been a substantial improvement. Our colleagues have also undertaken in meetings of the Finance Committee of this Council that, if the open area entitled by students is less than our standard, we will continue to explore all options, including the feasibility of building an underground car park, no matter a new school is to be built or the school is to be redeveloped. This matter has indeed been discussed at some length and detailed explanation has been given. As far as I understand it, this recommendation was unanimously agreed by the Finance Committee of this Council eventually.

MISS EMILY LAU (in Cantonese): *Madam President, regarding the entitled open area for each student, no one has actually mentioned the standard of 2 sq m then. We have built a number of schools before; some of them are not up to this standard too. So far, this point has not been mentioned in the papers submitted in relation to the redevelopment of the La Salle Primary School. The fact that the Secretary raised this standard today has given us the impression that some people were given privileges. Although both Secretaries insisted in their replies that the Secretary for Transport had acted absolutely appropriately and that he had not transgressed his authority, he was actually negotiating with government officials in another capacity, that is, as a member of a non-governmental body and was fighting for the interests of the body. Under such circumstances, what has been involved is a senior government official, not any one of the civil servants. Will the Hong Kong Government inform this Council whether it will encourage senior officials to serve as members of such committees for the purpose of negotiating with civil servants? Is the Government aware that civil servants will be embarrassed in some instances or even subject to pressure? Just now, Dr YEUNG Sum raised the question related to the availability of guidelines. As Members are all aware, officials serving as Policy Secretaries are subject to a lot of constraints. However, this is inevitable for we will have high expectation for them because of their senior positions. After the exposure of this incident, will the two Secretaries consider providing clear guidelines to let senior officials know that they should not be involved in certain situations?*

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for the Civil Service.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, after going through the information on the whole incident, we firmly believe Mr Nicholas NG has throughout the whole discussion process: first, absolutely not made use of his official capacity; second, absolutely not involved any personal interests; third, absolutely not involved other interests for, strictly speaking, he was only trying to pursue improvement for a school — a public facility — in discharging his voluntary duty. Therefore, the whole incident is only heading to one direction, that is, whether civil servants can take part in public affairs in their personal capacities in pursuing public interests. I think the answer should be affirmative. I believe a lot of my colleagues, no matter they are high, middle or low ranking officials, who are in this Chamber at the moment, have taken part

in community affairs. Provided that there is no involvement of personal interests and that the Government has acted in strict accordance with established procedures throughout the whole process, there will be no question of abuses.

MR SZETO WAH (in Cantonese): *Madam President, the G.C.E. Past Students' Association is also a school sponsoring body. We have made several attempts in the past to nominate civil servant to serve as its governor but have failed to gain approval from the ED. As a result, we could only switch candidates or leave the post vacant. May I know the reason why?*

PRESIDENT (in Cantonese): Mr SZETO Wah, I wonder if you can link your supplementary question to the main question. Otherwise, I will be unable to let you raise your question.

MR SZETO WAH (in Cantonese): *Madam President, is Mr Nicholas NG a governor of the La Salle Primary School?*

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, according to the information I have on hand, Mr Nicholas NG is the vice-chairman or acting chairman of the La Salle Primary School Redevelopment Committee. I will check whether Mr NG is a governor of the La Salle Primary School immediately after this meeting. (Annex II)

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, both Secretaries agreed after going through the whole process that the incident reflected that the Secretary for Transport had not transgressed his authority, abused his power or made personal gains. Nevertheless, the crux of the problem actually lies in whether the Secretary for Transport, in his official capacity, will pose pressure in the course of meetings? Both Secretaries have failed to make a reply in this aspect. As members of the community have expressed concern about this matter,*

will the two Secretaries consider setting up an independent working group to examine the issue to see whether the Secretary for Transport has acted appropriately and whether a comprehensive review should be conducted?

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, regarding the question of whether a person will pose pressure on our colleagues by virtue of his identity, I think it has nothing to do with the fact that the person in question is a Policy Secretary. Even a Member of this Council or a member of the general public can pose pressure on us too. Therefore, it is most important for us not to make groundless speculation as to whether a person will pose pressure by virtue of his identity. Rather, the whole procedures, overall information and final result have shown that we have acted in full compliance with established policies and procedures and have been given approval. All these indicate that Mr NG has not done anything inappropriately throughout the incident. Actually, Members so far have failed to produce concrete evidence in their supplementary questions to show what has gone wrong. I think I have explained very clearly why we have come to this conclusion.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question……

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, my supplementary question is: will an independent working group be set up for the purpose of investigating this matter?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add with respect to this question?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I will absolutely not consider doing anything to follow up this issue.

PRESIDENT (in Cantonese): Last supplementary question.

MR JAMES TIEN (in Cantonese): *Madam President, I also agree that the Secretary for Transport has not gained any personal gains in this incident. Nevertheless, I would like to raise a simple supplementary question. Did the Secretary for Transport talk to the Secretary for Education and Manpower over the telephone in his official or private capacity, during or outside office hours, in his office or the La Salle Primary School?*

PRESIDENT (in Cantonese): Which Secretary is to make a reply? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, Mr NG and I have not come into any direct contact throughout the whole process. The officials from the EMB whom Mr NG contacted did not include me. I hope I have already answered the first part of Mr TIEN's supplementary question. Actually, when giving approval for the papers, I had no idea that Mr NG was the vice-chairman or acting chairman of the La Salle Primary School Redevelopment Committee. As far as I am concerned, this is totally irrelevant. As regards the question of where the telephone calls were made, I have no such information on hand. However, I do not consider it necessary to check where each of the telephone calls was made. Frankly speaking, I do not consider it inappropriate even if Mr NG, in his capacity as the vice-chairman or acting chairman of the Redevelopment Committee, contacts us to discuss relevant matters through telephone in his office during office hours. I am sure Members will understand that the working hours of civil servants, particular those holding senior positions, are very long. There is virtually no distinction between so-called office hours and non-office hours. If Mr NG does some voluntary work during office hours, I am sure he will make up for it in the evening or in holiday.

Shortfall of IT Personnel with Degree Qualifications

4. **MR SIN CHUNG-KAI** (in Cantonese): *Madam President, according to the findings of a study commissioned by the Education and Manpower Bureau on the manpower and training needs of the information technology (IT) industry, there will be a shortfall of 7 000 to 50 000 IT personnel with degree qualifications in Hong Kong by 2010 if the supply of such personnel remains at the existing level. In this connection, will the Government inform this Council:*

(a) of the number of places in IT degree courses run by tertiary institutions funded by the University Grants Committee (UGC) in the next academic year, the increase of such places as compared to those offered in the current academic year, and the guiding policy as well as the mechanism for determining the number of places in IT degree courses;

(b) of the approving mechanism and the time required for revising the existing number of places in courses run by various tertiary institutions; and

(c) whether the UGC-funded tertiary institutions have taken the initiative in recent years to increase the number of places in IT courses to cater for market demands; if so, of their specific plans in this regard; if not, of the measures it will take to encourage and ensure that such institutions will increase the number of places in their IT courses, so as to tie in with the Government's policy to actively promote IT development and to meet the future demand on IT personnel?

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

(a) The number of places in IT and related programmes funded by the UGC currently accounts for 23% of the total number of funded places. It is expected that the student intake at different levels (that is, sub-degree, degree and postgraduate level) of IT and related programmes offered by the institutions in the 2000-01 academic year will be around 5 730, representing an increase of about 3%

compared with that of the 1999-2000 academic year. In addition to funded programmes, the institutions also offer self-financed IT and related programmes at sub-degree to post-graduate levels. The student intake of these programmes in the current academic year is about 1 350, representing a substantial increase of 65% compared with that of the previous academic year. Besides, the continuing and professional education units of the institutions also offer short-term IT courses. There were over 10 000 students enrolled in these courses last year.

The UGC-funded institutions conduct an overall planning on a triennial basis. In determining the number of places in various programmes (including IT and related programmes) for the next triennium, the Government and the UGC will consider the specific manpower needs of relevant professions and those of Hong Kong as a whole, the academic development proposals submitted by the institutions and the balance in the distribution of places among various disciplines.

(b) As I have just explained, the number of places in different programmes run by the UGC-funded is normally determined before the commencement of each triennium allowing sufficient time for preparation by the institutions. Within each triennium, however, the institutions have considerable freedom to adjust the planned number of places in different disciplines, provided that no additional resources are involved, that there is no deviation from their agreed roles and missions, and the adjustment is in line with the student number targets set by the Government for specific professions. Such freedom allows the institutions greater flexibility in their operation to meet changes in society's manpower needs.

(c) In view of the rapid development of the IT industry, the Government has written to the UGC suggesting that the number of places in programmes relating to science and technology, in particular IT, should be increased in the next triennium. We have also sent a copy of the report of the Consultancy Study on the Manpower and Training Needs of the Information Technology Sector to the UGC and the institutions for their reference in determining the student numbers and curriculum of the relevant programmes.

The institutions plan to launch 18 new IT and related programmes (for examples, Bachelor of Engineering in Internet Engineering and Master of Science in E-Commerce) on a funded or self-financed basis in the next triennium, providing about 3 600 places. Specific plans of individual institutions are still being finalized.

Apart from the UGC-funded institutions, the Open University of Hong Kong and some non-local institutions also provide more than 800 IT and related training places every year at degree or above levels. Besides, there are also IT personnel returning from overseas to Hong Kong each year. These are additional manpower sources for the development of IT industry in Hong Kong.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, according to part (a) of the main reply, the number of funded places in IT and related programmes to be offered in the 2000-01 academic year will be increased by about 3%. I would like to ask whether such an increase is made possible through re-deployment of internal resources or use of additional resources by various tertiary institutions. Can such an increase meet the market demand?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, it is the usual practice to determine the number of places of UGC-funded institutions on a triennium basis. Therefore, resources needed for the increase in number of places in the 2000-01 academic year have already been reserved from the funds allocated for the current triennium and there is no additional resources implication this year.

As regards whether our assessment can meet the future market demand, I believe it is necessary to look at it from two aspects. Firstly, the IT industry is subject to tremendous changes and the demand is very great. Apart from government-funded places, it heavily relies on talents provided by the market to meet its demand. In this connection, it is pointed out in the main reply that local universities have offered many self-financed IT and various related programmes to cater for the market demand. I believe as long as there is such demand, there will certainly be a supply in the years to come. Besides, as many

companies, in particular overseas companies, are setting up offices in Hong Kong for promoting the development of IT industry, they can also provide some internal training for their staff to keep abreast of IT technology. Nevertheless, I can assure Members that the Government has been very concerned about the issue and will keep an eye on the market demand. The Government will also examine the issue with the industry or the training institutions when necessary to ensure market demand will be met as far as possible.

MR AMBROSE LAU (in Cantonese): *Madam President, according to the findings of the study, there will be a shortfall of 7 000 to 50 000 IT personnel with degree qualifications by 2010. In part (a) of the main reply, the Government mentioned that the student intake in the 2000-01 academic year would be around 5 730. I would like to ask whether all these 5 730 places are at degree level or other programmes are included. If other programmes are included, what is the actual number of places at degree level?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, among these 5 730 places, some are at sub-degree level. There are over 4 000 places which are at degree or above level.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, the figures provided by the Secretary indicate that there is still a very large shortfall. Has the Government considered adopting any contingency measures such as importation of IT professional?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, first of all, I would like to point out that the main question is about the situation in 2010. We are talking about the figures in 10 years' time. The figures mentioned in my main reply, however, are those for the year 2001 or the coming three years. They are certainly different from the figures in 10 years' time. As regards whether IT talents will be imported outside Hong Kong in view of the great demand, I will answer this question in two aspects. Firstly, under the Admission of Talents Scheme, outstanding IT personnel can in fact be

imported from the Mainland; secondly, as regards talents imported from places other than the Mainland, we have in fact been importing many IT personnel on the merits of their profession. As regards whether there is a need to further relax the policy in the short run, we may take this into consideration. Members may express their views to the Government if they have any comments.

MR LAW CHI-KWONG (in Cantonese): *Madam President, I would like to follow up the supplementary question raised by Mr SIN Chung-kai just now. In the main reply, the Secretary has stated a lot of figures, for example, there will be an increase of 3%. After doing some calculation, it is found that there will only be an increase of over 1 000 IT personnel in 10 years' time. I hope the Secretary can tell us directly whether the Government is satisfied with the response made by the tertiary institutions on the increase of number of places to meet the market demand. Is the Government satisfied? Does the Government think that the future demand in Hong Kong can be met? If it is not satisfied, what can the Government do to motivate them?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, we are keeping an eye on the demand for IT personnel. We have also made a lot of efforts within our ambit, which include encouraging the universities to increase the number of places offered. Meanwhile, the Employees Retraining Board and the Vocational Training Council have also made a lot of efforts.

In view of the rapid development of IT all over the world, manpower shortage is not a unique phenomenon in Hong Kong. It happens everywhere in the world, including the Silicon Valley in the United States. We are most willing to take positive steps in the coming years to increase places in this discipline. Apart from the Government's efforts, the market also has to tie in to achieve the target. In fact, the report of the Consultancy Study mentioned in the main reply has already been sent to the relevant industries and all the academic and training institutions, whose responses are still awaited. I am most willing to follow up the issue and to see what we should do to ensure that the development of Hong Kong's IT industry will not be impeded by manpower shortage in the next five to 10 years.

MR LAW CHI-KWONG (in Cantonese): *Madam President, I do not know whether the Secretary has answered my supplementary question. He seems to say that continuous effort will be made to increase more places. Does the Secretary mean that he is not very satisfied with the response of the tertiary institutions? Is he trying to answer my question in an indirect manner or is he reluctant to answer my question?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I prefer my way of answering the question, that is, to inform the Members in a more positive and active manner that we have understood the situation and we will make more efforts.

MR ANDREW CHENG (in Cantonese): *Madam President, according to the information provided in the main reply, I believe the Secretary has to admit that, compared with the shortfall of 7 000 to 50 000 IT personnel with degree qualifications by 2010 stated in the consultancy report, the IT courses now provided by the UGC-funded institutions or universities are utterly inadequate to meet the demand. I would like to ask the Government whether it will set up an accreditation mechanism on IT to enable those who aspire to join the sector to acquire recognized IT qualifications through the mechanism so that manpower supply can be increased.*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, we have great reservation about the setting up of an accreditation mechanism on IT since IT moves ahead in leaps and bounds. Although we are now talking about personnel with degree or higher qualifications, during the development process, many people who have substantial potential will also join the sector even though they do not have a degree or before completing a degree programme. Therefore, in an industry which changes every day in terms of skills and technology, we think that a so-called accreditation mechanism will soon fail to meet the technological requirements. We therefore opine that it is more desirable to discuss the issue with the industry, the academic and training sectors in order to see how to meet the demand in a more flexible way.

PRESIDENT (in Cantonese): The last supplementary question.

DR RAYMOND HO (in Cantonese): *Madam President, due to the recent fluctuation in share prices of some high-technology companies, it is reported that some outstanding IT personnel in the Silicon Valley of the United States are worried about losing their jobs. Does the Government have any channel to acquire the number of IT personnel who will consider working in Hong Kong? Besides, has the Government taken any measures to encourage them to do so?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, under our existing policy, outstanding personnel in the United States can easily obtain approval to work in Hong Kong once they are employed by Hong Kong's companies. With the development of Hong Kong's IT industry in recent years, our companies have established an extensive connection with many companies in the United States, including those in the Silicon Valley. I believe this message can be fully reflected in the market, which will respond accordingly.

Economic Benefits Derived from Exhibitions Held in HKCEC

5. **DR LUI MING-WAH** (in Cantonese): *Madam President, will the Government inform this Council whether:*

(a) it knows the respective numbers of exhibitions held in the Hong Kong Convention and Exhibition Centre (HKCEC) and its extension in each of the past two financial years, the exhibition area and the number of booths in each exhibition, as well as the respective revenue received by the HKCEC operator and the Hong Kong Trade Development Council (TDC) from each exhibition; and

(b) it has assessed the economic benefits that Hong Kong has derived from the exhibitions held in the HKCEC and its extension during the above-mentioned period?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, according to the information provided by the TDC, the HKCEC held 84 exhibitions in 1998-99, of which 43 were held in the Phase 1 and 22 in Phase 2. There were 19 which took place in both Phases 1 and 2. In 1999-2000, it held 105 exhibitions, of which 55 were held in the Phase 1 and 27 in Phase 2. There were 23 which took place in both Phases 1 and 2.

In respect of the areas of these exhibitions, the exhibition area of each exhibition is set out in the Annex attached. In brief, the total gross area rented amounted to 5.89 million sq m for the year 1998-99, with 1.98 million sq m in Phase 1 and 3.91 million sq m in Phase 2. The average gross area per exhibition was 70 000 sq m. In 1999-2000, the total gross area rented amounted to 6.04 million sq m, with 1.96 million sq m in Phase 1 and 4.08 million sq m in Phase 2. The average area was 57 500 sq m.

On the number of booths of each exhibition, we understand that individual exhibition organizers do not normally provide such information to the HKCEC management company. As for exhibitions organized by the TDC, given that some of the exhibitors may occupy two or more booths, the TDC in general only records the number of exhibitors of each exhibition for statistical purpose. The relevant information is also set out in the Annex attached.

The gross income of the management company of HKCEC generated from these exhibitions, before deducting any expenses, amounted to $280 million and $294 million in 1998-99 and 1999-2000 respectively. As for the income generated from each exhibition, the management company is not in a position to disclose such information as it involves the contents of commercial contracts signed with individual exhibition organizers.

On the income of the TDC generated from these exhibitions, the management company of HKCEC has to pay the TDC an annual fee equivalent to 6.211% of its gross revenue in accordance with the agreement with the TDC. The fees received by the TDC for these exhibitions were $17.42 million and $18.24 million respectively in the last two financial years.

In respect of the second part of the question, the Government has not conducted any comprehensive assessment on all these economic benefits arising from exhibitions in the HKCEC in the past two financial years.

Generally speaking, certain economic benefits of holding exhibitions are more readily quantifiable, such as income arising from the spending of overseas exhibitors and participants in Hong Kong and the business revenues generated by the exhibition industry. But there are other real economic benefits which cannot be so easily quantified. These include:

(i) transfer of knowledge and ideas conducive to the long-term development of local industry and trade through the holding of exhibitions and international conventions;

(ii) stronger external trade and business ties; and

(iii) more inward investment, business opportunities, and tourists brought to us through word-of-mouth recommendations by overseas exhibitors and participants.

As regards the benefits arising from tourist income, according to the information provided by the Hong Kong Tourist Association, of all tourists coming to Hong Kong in 1998, about 174 815 came for the purpose of attending exhibitions in Hong Kong (about 10% of them were exhibitors), accounting for about 1.8% of total visitors. Their average spending in Hong Kong amounted to $12,400, which was double that of an average tourist. The total spending of these visitors were estimated at $2.1 billion. In 1999, about 211 344 came for exhibitions, accounting for 2% of total visitors. Their average spending amounted to $10,400, which was again more than double that of an average tourist. The total income from this was estimated at $21 billion. Not all such visitors attended exhibitions in the HKCEC. But the HKCEC, being the most prominent full-scale exhibition venue in Hong Kong, had been host to a large number of exhibitions and visitors. We therefore believe that it had contributed considerably to Hong Kong's overall economic benefits.

Furthermore, the TDC and the Hong Kong Exhibition and Convention Organizers' and Suppliers' Association have just jointly commissioned a consultancy study on the overall economic benefits of the convention and exhibition industry. I am sure the results of the study will help us understand even better the economic benefits generated by exhibitions and conferences.

Annex

Area of each exhibition held in the Hong Kong Convention and Exhibition Centre

A. For the period from 1 April 1998 to 31 March 1999

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[1]
			Phase 1	*Phase 2*	*Total*	
1.	#	MHK Gallery	1 289	-	1 289	-
2.		Interstoff Asia '98 Spring – International Fabric Show	27 067	-	27 067	-
3.		Spring/Summer Wedding Expo 1998	14 236	-	14 236	-
4.	#	Disney Showcase	27 157	-	27 157	-
5.	#	Asian Consumer Electronics Show 98	22 280	-	22 280	-
6.	*	Hong Kong Gifts & Houseware Fair '98/Hong Kong Premium Show	174 005	262 475	436 480	2 403
7.		Asia Pacific Leather Fair '98 – Raw Materials & Manufacturing	138 176	239 476	377 652	-
8.	#	Tax Free Asia Pacific	2 889	120 962	123 851	-
9.	#	Voice Asia 1998	24 018	-	24 018	-
10.	*	MoneyWorld Asia Hong Kong 1998	23 176	-	23 176	37
11.	#	UK Further Study Exhibition	377	-	377	-
12.		International Travel Expo HK 1998	4 505	-	4 505	-
13.	#	Australian Secondary School Exhibition	996	-	996	-
14.	#	IBEX 1998 – the 15th Int'l Building & Construction Exposition	63 244	-	63 244	-
15.	#	Hong Kong Wedding & New Home Expo '98	17 824	-	17 824	-
16.	*	HK International Film Market 1998	19 908	-	19 908	62
17.	#	Pharmaceutical Ingredients Asia 1998	14 229	-	14 229	
18.	#	Chinese Painting Exhibition	9 095	-	9 095	-

[1] For exhibitions organized by the Trade Development Council only as private exhibition organizers do not normally provide such information.

* Organized by the Trade Development Council.

\# Exhibitions that carry no official Chinese names.

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[1]
			Phase 1	*Phase 2*	*Total*	
19.	#	Asia Pacific Int'l Motor show / Asia Pacific Int'l Marine Expo	71 336	-	71 336	-
20.	*	HK Fashion Week for Spring / Summer 1999	551	81 360	81 911	318
21.	#	Design First Exhibition	5 457	-	5 457	-
22.	#	NetAsia + Internet Commerce Expo Hong Kong '98	18 927	-	18 927	-
23.	#	Entrepreneur, Investment & Franchise Expo '98	10 000	-	10 000	-
24.		Australian Education Exhibition 1998	12 345	-	12 345	-
25.		12th Wedding Fashion Expo '98	17 824	-	17 824	-
26.	*	Food Expo '98	80 253	-	80 253	179
27.	#	FILASIA 1998	16 739	-	16 739	-
28.	*	MarCom Asia '98	581	23 469	24 050	105
29.	*	Hong Kong Watch & Clock Fair '98	22 240	285 565	307 805	811
30.	#	Amway Expo	5 613	-	5 613	-
31.		9th Asian information Technology Exhibition	54 378	-	54 378	-
32.		Hong Kong Jewellery & Watch Fair	71 336	282 794	354 130	-
33.		Cosmoprof Asia '98	136 847	164	137 011	-
34.	#	US University Fair 1998	2 163	-	2 163	-
35.	*	ElectronicAsia '98	70 536	-	70 536	318
36.	*	HK Electronics Fair '98	55 607	258 363	313 970	1 388
37.		Interstoff Asia Autumn '98 – International Fabric Show	45 845	3 592	49 437	-
38.		HK International Toys & Gifts Show '98 / Asian Gifts, Premium Show	26 375	173 040	199 415	-
39.		International Audio & Visual Show 1998	87 458	-	87 458	-
40.	*	Pen & Paper '98	22 280	-	22 280	109
41.	*	Hong Kong International Hardware Show 1998	22 280	-	22 280	155
42.	#	UK Schools Expo	513	-	513	-
43.	*	Hong Kong Optical Fair '98	2 566	84 420	86 976	319

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[1]
			Phase 1	*Phase 2*	*Total*	
44.	#	Kodak Exhibition	1 732	-	1 732	-
45.		Fall/Winter Wedding Expo '98	17 824	-	17 824	-
46.	#	Hong Kong Postgraduate Fair 1998	1 981	-	1 981	-
47.	#	Sign & Screen Printing Asia '98	31 192	-	31 192	-
48.		Software Exhibition 1998	27 408	-	27 408	-
49.	#	Chinese International Invention Expo '98/Quality of Life Show	22 280	-	22 280	-
50.	#	CINE Asia 1998	16 604	740	17 344	-
51.		IT In Education Exhibition Hong Kong 1998	22 988	740	23 728	-
52.		13th Valentine's Wedding Expo '99	17 824	-	17 824	-
53.	*	Hong Kong Toys & Games Fair '99	133 750	215 044	348 794	1 460
54.		British Education Exhibition	14 368	-	14 368	-
55.	*	Education & Careers Expo '99	30 829	-	30 829	216
56.		1999 Hong Kong International Fur & Fashion Fair	5 869	38 640	44 509	-
57.	*	Hong Kong International Jewellery Show '99	69 443	170 291	239 734	792
58.	#	Hong Kong Wedding and Beauty Expo '99	17 824	-	17 824	-
59.	#	12th Clothing Industry Fair '99 / The 2nd South China Int'l Textile Exhibition 99	31 192	-	31 192	-
60.	#	Techworld '99	22 732	740	23 472	-
61.		Australian Education Exhibition	307	-	307	-
62.		Interstoff Asia Spring '99 – International Fabric Show	44 901	59	44 960	-
63.	#	Asian Securities and Investment Automation Congress Exhibition	-	4 574	4 574	-
64.		Asia Pacific Leather Fair '98 – Fashion & Finished Products	-	193 172	193 172	-
65.		The 14th International Computer Expo 1998	-	97 395	97 395	-
66.		ASIAN ELENEX / LUMINEX / SECURITEX / AIRVEX / IBS 1998	-	85 238	85 238	-

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[1]
			Phase 1	*Phase 2*	*Total*	
67.	#	V & S By VINEXPO	-	119 195	119 195	-
68.		Hong Kong Jewelry & Watch Fair	-	80 028	80 028	-
69.		Asia's Fashion Jewellery & Accessories Fair	-	46 368	46 368	-
70.	*	HK Book Fair 1998	-	206 511	206 511	353
71.	#	International Studies Festival 98	-	1 292	1 292	-
72.		The 6th Int'l Baby/Children Products Expo & The 10th HK Baby Crawling Contest	-	17 550	17 550	-
73.		HKTDC Market Day 1998	-	31 704	31 704	-
74.		Asia Pacific Leather Fair '98 - Fashion & Finished Products	-	135 367	135 367	-
75.	#	First UITP Asia/Pacific Congress & Exhibition 1998	-	68 040	68 040	-
76.	#	AsiaFlor 1998	-	25 272	25 272	-
77.	#	Zung Fu Car Show	-	31 040	31 040	-
78.	#	Asiafit 98	-	10 223	10 223	-
79.	#	Fire Asia 1998	-	23 453	23 453	-
80.		HK Jewelry Manufacturers' Exhibition	-	21 060	21 060	-
81.	*	Hong Kong Fashion Week for Fall / Winter '99	-	236 906	236 906	714
82.	#	Billion Stock New Car Show - '99	-	6 318	6 318	-
83.	*	Hong Kong Information Infrastructure Exposition & Conference	-	69 720	69 720	125
84.		11th Hong Kong Int'l Machine Tool – Linkage Industry Exhibition	-	159 437	159 437	-
		Total	1 975 569	3 911 797	5 887 366	9 864

B. For the period from 1 April 1999 to 31 March 2000

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[2]
			Phase 1	*Phase 2*	*Total*	
1.		Spring/Summer Wedding Expo 1999	14 596	-	14 596	-
2.	#	Billion Dollar International Motor Show	10 000	-	10 000	-
3.	*	Hong Kong Gifts & Houseware Fair '99 / Hong Kong Premium Show	189 124	292 215	481 339	3 376
4.		Asia Pacific Leather Fair 1999 - Raw Materials & Manufacturing	129 294	199 385	328 679	-
5.	#	HOFEX 99 / HOFEX 99 - Food & Drink, HOFEX 99- Hospitality Equipment & Services/Wine & Spirits Asia '99/Bakery & Confectionery Asia '99/ Hospitality Interiors '99/Asian Int'l Seafood Show/HOTEX '99	71 646	162 331	233 977	-
6.	#	Design Standards for Modern Living	8 285	-	8 285	-
7.	#	TexEurHome Asia	277	8 000	8 277	-
8.	#	Tax Free Asia Pacific 1999	1 021	121 946	122 967	-
9.	#	Richburg Car Show	6 000	-	6 000	-
10.	*	Money World Asia - Hong Kong 1999	11 016	-	11 016	25
11.	#	IBEX '99 - The 16th International Building Materials & Products	63 524	-	63 524	-
12.		ITE Hong Kong '99 - 13th International Travel Expo Hong Kong	242	52 214	52 456	-
13.		Hong Kong Wedding Expo '99	17 824	-	17 824	-
14.		Richburg Car Show - '99	6 000	-	6 000	-
15.	*	Filmart 1999 - Hong Kong International Film and TV Market	13 675	400	14 075	82

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[2] For exhibitions organized by the Trade Development Council only as private exhibition organizers do not normally provide such information.

* Organized by the Trade Development Council

\# Exhibitions that carry no official Chinese names.

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[2]
			Phase 1	*Phase 2*	*Total*	
16.		15th Wedding Fashion Expo '99	17 824	-	17 824	-
17.		Australian Education Exhibition	1 192	-	1 192	-
18.		Richburg Motor Show	6 000	-	6 000	-
19.	#	Overseas Education Information Days 99	1 743	-	1 743	-
20.	#	Internet Commerce Expo HK '99	12 649	-	12 649	-
21.		Digital World '99	17 720	-	17 720	-
22.		Richburg Motor Show	6 000	-	6 000	-
23.		Richburg Motor Show	4 000	-	4 000	-
24.		Australian Education Exhibition '99	12 345	-	12 345	-
25.	*	Food Expo '99	71 336	-	71 336	193
26.	#	Richburg Motor Show	4 000	-	4 000	-
27.		Hong Kong Wedding And Banquet Expo '99	14 176	-	14 176	-
28.	*	Hong Kong Watch & Clock Fair '99	224	273 240	273 464	780
29.	*	MarComAsia '99	13 866	-	13 866	80
30.	#	Richburg Motor Show	4 000	-	4 000	-
31.		Asian IT Expo '99 - 10th Asian Information Technology Exhibition	54 788	-	54 788	-
32.		Asian Industrial Expo '99	22 479	-	22 479	-
33.		Hong Kong Jewellery & Watch Fair	72 214	279 910	352 124	-
34.	#	Call Centres Hong Kong 1999	4 393	-	4 393	-
35.	#	Richburg Motor Show	2 000	-	2 000	-
36.		16th Wedding Fashion Expo '99	14 668	-	14 668	-
37.	#	Richburg Motor Show	4 000	-	4 000	-
38.	*	Hong Kong Electronics Fair '99 / Lighting Fair	70 362	253 888	324 250	1 643
39.	*	ElectronicAsia '99	66 875	-	66 875	380
40.		8th HK International Toys & Gifts Show '99 / 7th Asian Gifts	142 134	147 528	289 662	-
41.	*	Hong Kong Optical Fair '99	651	76 209	76 860	323
42.	*	Pen & Paper '99	17 720	-	17 720	73
43.	*	Hong Kong International Hardware & Home Improvement Fair '99	22 280	-	22 280	187
44.	#	Zung Fu Car Show 1999	12 733	-	12 733	-

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[2]
			Phase 1	*Phase 2*	*Total*	
45.		Heimtextil Asia Asiaflor-International Trade Fair for Hometexfiles, Floor Coverings and Interior Furnishings	44 585	-	44 585	-
46.		Internet World 1999	26 702	-	26 702	-
47.	#	Hong Kong Postgraduate Fair '99	1 985	-	1 985	-
48.	#	Richburg Motor Show	4 000	-	4 000	-
49.	#	REPLItech Asia 1999	64 938	-	64 938	-
50.		Cosmoprof Asia '99	82 089	53 790	135 879	-
51.		Hong Kong Wedding Expo for 2000	14 176	-	14 176	-
52.		Innovation 2000 – The Millennium Frontier	1 019	96 398	97 417	-
53.	#	Visual Communication Asia '99	25 368	-	25 368	-
54.	#	CINE ASIA 1999	21 413	528	21 941	-
55.	#	Richburg Motor Show	4 000	-	4 000	-
56.		Millennium Christmas Wedding Expo '99	18 048	-	18 048	-
57.		聖誕卡通精品特惠嘉年華	30 000	-	30 000	-
58.		IT in Education Exhibition Hong Kong '99	23 693	-	23 693	-
59.	#	Richburg Motor Show	4 000	-	4 000	-
60.	*	Hong Kong Toys & Game Fair 2000	133 750	203 451	337 201	1 565
61.	*	Hong Kong Fashion Week for Fall/Winter 2000	224	169 170	169 394	785
62.	#	Richburg Motor Show	4 000	-	4 000	-
63.		British Education Exhibition 2000	11 819	-	11 819	-
64.		Asian Dentech & Asian Medex 2000	28 543	-	28 543	-
65.		Valentine Wedding Expo 2000	14 176	-	14 176	-
66.	#	Nokia 2000 Technology	1 008	21 181	22 189	-
67.	#	India into the New Millennium	507	12 000	12 507	-
68.	*	Education & Careers Expo 2000	31 361	-	31 361	275
69.	*	Hong Kong International Jewellery Show 2000	67 031	178 082	245 113	885
70.		2000 Hong Kong International Fur & Fashion Fair	6 020	38 640	44 660	-
71.		Web@xpo	8 000	-	8 000	-
72.	#	MPF Expo 2000	8 000	-	8 000	-

		Event Name	*Area (SQM Day)*			*No. of Exhibitors*[2]
			Phase 1	*Phase 2*	*Total*	
73.	#	MPF Seminar - by Chase	4 000	-	4 000	-
74.	*	Hong Kong Information Infrastructure Exposition & Conference	3 037	86 909	89 946	213
75.		Safety and Health Exhibition	13 398	-	13 398	-
76.		12th HK Int'l Machine Tool-Linkage Industry Exhibition 2000/8th Hong Kong Int's Plastics Exhibition 2000/7th Hong Kong Packaging Exhibition 2000/4th Measure Exhibition 2000	121	121 301	121 422	-
77.		SME Business Solutions Expo	14 176	-	14 716	-
78.		Hong Kong Wedding & Banquet Expo 2000	14 176	-	14 716	-
79.		Asia Pacific Leather Fair 1999 - Fashion & Finished Products	-	178 068	178 068	-
80.		The 15th International Computer Expo	-	101 554	101 554	-
81.		Hong Kong Jewellery & Watch Fair	-	77 310	77 310	-
82.		Asia's Fashion Jewellery & Accessories Fair	-	46 368	46 368	-
83.	*	Hong Kong Fashion Week for Spring / Summer 2000	-	74 204	74 204	344
84.	*	Hong Kong Book Fair 1999	-	185 407	185 407	363
85.		The 7th Int'l Baby/Children Products Expo & The 11th Hong Kong Baby Crawling Contest	-	14 040	14 040	-
86.	#	Saleslink Super Car Show	-	4 000	4 000	-
87.	#	FILASIA 1999	-	17 062	17 062	-
88.	#	TransAsia '99 – World Expo	-	16 762	16 762	-
89.	#	Inchcape Greater China Millennium Motor Show	-	23 874	23 874	-
90.		International Tourism Asia 1999	-	52 342	52 342	-
91.		Asia Pacific Leather Fair 1999 - Fashion & Finished Products	-	96 912	96 912	-

	Event Name	*Area (SQM Day)*			*No. of Exhibitors*[2]
		Phase 1	*Phase 2*	*Total*	
92. #	International Property Exhibition 1999 (IPEX '99)	-	2 454	2 454	-
93.	Interstoff Asia Autumn 1999 – International Fabric Show	-	68 573	68 573	-
94. #	Richburg Motor Show	-	4 000	4 000	-
95. #	Hong Kong '99 - The World Tobacco Symposium and Trade Fair	-	49 508	49 508	-
96. #	Worldwide Property Exhibition	-	446	446	-
97. #	Asiafit 99	-	15 163	15 163	-
98.	The 7th Hong Kong Jewelry Manufacturers' Exhibition	-	39 281	39 281	-
99. #	Richburg Motor Show	-	4 000	4 000	-
100. #	CASBAA '99 - Asia's Cable and Satellite Convention	-	20 673	20 673	-
101. #	Richburg Motor Show	-	4 000	4 000	-
102. #	Mandatory Provident Fund Exhibition	-	2 890	2 890	-
103. #	Richburg Motor Show	-	4 000	4 000	-
104.	Asia Pacific Leather Fair 2000 – Fashion & Finished Products	-	120 453	120 453	-
105. #	Call Centre Exhibition & Conference	-	3 684	3 684	-
	Total	1 966 359	4 075 744	6 042 103	11 569

DR LUI MING-WAH (in Cantonese): *Madam President, the Secretary mentioned in the fifth paragraph of his main reply that the TDC only gets about $10 million-odd from the exhibitions each year, how can this amount sustain the operations of the TDC? I understand that the TDC rents raw spaces from the management company and builds the superstructure itself, how much revenue has the TDC actually received in this respect? The Secretary has not provided us with any figures on this, but I understand that the revenue which the TDC has derived from this source is far more than $100 million or $200 million.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the figures which I have just quoted are the revenue which the TDC has directly received from getting a share of the rent from the exhibitions. I have just mentioned that the gross revenue received by the TDC from the HKCEC, and that is, the total revenue which it has received from the rentals in accordance with its agreement with the management company in the past two years, amounted to 6.211%. We have arrived at this figure by referring to the share of revenue received by the TDC from Phases 1 and 2 of the HKCEC in 1997-98, and that is, $42,628,543 and the share of revenue it received in 1998-1999, and that is $40,282,387. However, we cannot provide Members with the figure for 1999-2000 for it is still under calculation.

As regards the sources of the TDC's revenue, the Government does offer an annual grant to the TDC, the amount of the grant is calculated at 0.025% of the total value of Hong Kong's import and export in the previous year. However, this only constitutes a quarter of the TDC's total annual expenditure. For example, the total expenditure of the TDC was $1.48-odd billion in 1999-2000, but it has only got a grant of $394-odd million, which only covered 26.6% of its total expenditure, from the Government. The remaining 70% and more of the TDC's operating expenses have to be covered by the revenue which it received through the provision of other services such as organizing exhibitions and publishing trade magazines.

PRESIDENT (in Cantonese): Dr LUI Ming-wah, which part of your supplementary question has not been answered?

DR LUI MING-WAH (in Cantonese): *Madam President, the Secretary has not answered my question on how much revenue the TDC has received from these exhibition in total. We understand that part of its revenue was from the management company, but the Secretary has not provided us with the figure on the amount paid by the exhibitors. If the Secretary cannot provide us with such information at the moment, can he give us a written reply later on?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, perhaps I have missed part of Dr LUI's supplementary question. As regards to those figures, in the year 1998-99, 84 exhibitions were held at the

HKCEC, and 19 of those were organized by the TDC. The total revenue which the TDC received through organizing these exhibitions amounted to $458 million. Sources of such revenue include exhibitors' fees, admission fees, fees for printing advertisements in the programs, and the revenue for providing exhibitors with value-added services. In the year 1999-2000, 20 out of the 105 exhibitions held at the HKCEC were organized by the TDC, and the total revenue received from the same sources was $492 million.

MISS CHOY SO-YUK (in Cantonese): *Madam President, I would like the Secretary to clarify some information. It was listed in the Annex to the main reply that 20 to 30 exhibitions occupied exhibition areas of more than 100 000 sq m. However, I understand that the HKCEC only has an area of not more than 60 000-odd sq m, and with regard to the above figures, I cannot understand the reason why the exhibitions can occupy a space of more than 400 000 sq m in an area of not more than 60 000-odd sq m.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, at hand I do not have any information on the size of the area in Phases 1 and 2 of the HKCEC which can be rented out for holding exhibitions, but I believe that the figure mentioned by Miss CHOY So-yuk is incorrect. By common sense, we know that if the HKCEC has only got an area of 60 000-odd sq m, then how can 400 000-odd sq m be rented out for exhibitions? If Miss CHOY so-yuk is interested in that figure, I can provide her with a written reply after the meeting. (Annex III)

MISS CHOY SO-YUK (in Cantonese): *Madam President, what I mean is that the figures provided by the Secretary are as high as 300 000 to 400 000-odd sq m, I wonder whether he can clarify on this?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): I have clarified that the figure of 60 000 sq m as mentioned by Miss CHOY So-yuk should be incorrect.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I hope that the Secretary can provide us with some simple figures on the utilization rate of the HKCEC in the year of 1998-99 and 1999-2000. The reason being, I would like to find out about the overall rental situation of the HKCEC.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I have got such information. Upon the completion of the extension of the HKCEC, its utilization rate for the year of 1997-98 was 48% and for the year of 1998-99, it was 38%. Generally speaking, if the utilization rate of the HKCEC reaches 70%, it is said to be upon saturation. So, the utilization rates of 48% and 38% are quite favourable given the extent of the extension of the HKCEC.

MR NG LEUNG-SING (in Cantonese): *Madam President, the Secretary mentioned in the second paragraph of his main reply that for the year 1998-99, the average gross area per exhibition was 70 000 sq m, while that for the year 1999-2000 was 57 500 sq m; there was a difference of 20% between the two years in the average gross area per exhibition, and that means for the year 1999-2000, the area occupied by each exhibition has decreased by 20%. I wonder whether the Administration has analysed the causes of this change, and has this got anything to do with the rental price level?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, we have not done any analysis in this regard, but I do not think that this has got anything to do with the rental prices. I think this is related to the demand.

PRESIDENT (in Cantonese): The last supplementary question.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary has mentioned in the ninth paragraph of the main reply that the "TDC and the Hong Kong Exhibition and Convention Organizers' and Suppliers' Association have just jointly commissioned a consultancy study on the overall economic benefits of the convention and exhibition industry". In the past, some people said that the*

TDC has enjoyed a monopoly in the convention and exhibition industry, will the Administration consider commissioning an independent study instead of relying on the consultancy study which the TDC is involved, so as to achieve a fairer result, and will the Administration invite other interested persons to join the trade so as to lessen the chances for monopolization?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the assessment which I have just mentioned was on the overall economic benefits generated by the convention and exhibition industry. Therefore, the outcome of this study should not have any impact on the rental policy of the HKCEC, nor should it involve the question of which exhibitors can or cannot take part in the exhibitions.

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

DR RAYMOND HO (in Cantonese): *Madam President, my supplementary question is that whether the Administration will commission an independent consultancy study, so that it can seek independent advice, instead of merely relying on a study which the TDC has a part in commissioning the consultant?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, we will not do so, because we have no reasons to believe that in assessing the overall economic benefits of the convention and exhibition industry, the TDC will have any conflict of interest. Moreover, this study is jointly commissioned by the TDC and the Hong Kong Exhibition and Convention Organizers' and Suppliers' Association, and I know that this Association has lodged a complaint to the Legislative Council about the TDC's acts of monopolization and its pricing policy. Since there are contradictions between the two organizations, I do not think that they will "join hands" in producing a report which will be to the benefit of the TDC.

Sha Tin – Central Rail Corridor

6. **MR ANDREW CHENG** (in Cantonese): *Madam President, the Railway Development Strategy 2000, announced two weeks ago, proposes that a Sha Tin - Central rail corridor be built under a project comprising the Tai Wai to Diamond Hill Link, the East Kowloon Line and the Fourth Rail Harbour Crossing. Both the Mass Transit Railway Corporation (MTRC) and the Kowloon-Canton Railway Corporation (KCRC) will be invited to submit proposals to develop this project. In this connection, will the Government inform this Council :*

(a) of the anticipated phased completion date of each rail line of the rail corridor;

(b) of the date on which the selection of the railway corporation to undertake the project is expected to complete; and

(c) whether, in deciding to accept the proposal of a railway corporation, it will place emphasis on balancing the competitiveness of the two railway corporations in the future railway transport market, as well as consumers' right to choose?

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, the Government has announced on the 16th of this month the Railway Development Strategy 2000 which maps out a blue-print for the expansion of the railway network in the next 15 years. The Strategy also sets out an indicative programme for the completion of the various new railway lines and recommends that the actual implementation timing of individual new railway projects would depend on the growth of transport demand. To better match the actual transport demand, some of the railway projects can be completed in phases. The Sha Tin to Central Link is one of the six new railway projects recommended in the Strategy. This will be a new strategic railway corridor formed by three railway line sections, namely the Tai Wai to Diamond Hill Link, the East Kowloon Line and the Fourth Rail Harbour Crossing. This strategic corridor will increase significantly the cross-harbour and Sha Tin-Kowloon rail capacities, and redistribute the flows better on the other railway lines in Hong Kong and Metro Kowloon.

At this stage, the Government has not made a final decision on whether the Sha Tin to Central Link should actually be completed in phases. From transport planning perspective, the Fourth Rail Harbour Crossing will be needed first to meet the demand. However, the actual implementation will be affected by the programme of the Central and Wan Chai Reclamation. As for the East Kowloon Line, its implementation has to integrate with the Southeast Kowloon Development. I note that the Southeast Kowloon Development consultation yesterday has received very positive response. We hope that an early agreement can be reached on the development plan to enable the East Kowloon Line to integrate with the development. Lastly, for the section of the existing East Rail between Tai Wai and Kowloon Tong, the RDS-2 consultant forecasted that it would become saturated in 2011 and the new Tai Wai to Diamond Hill Link will be needed then. Nevertheless, we are mindful of the strong wish of the residents in Sha Tin District for an early second link from Sha Tin to Kowloon and the additional pressure which will be brought by the Fourth Rail Harbour Crossing. We therefore feel we should adopt a pragmatic and open approach on the timing of the Tai Wai to Diamond Hill Link. In addition, the implementation programme will be affected by the proposals of the railway corporations. On the other hand we shall also take into account their proposed timing in making a final choice on the operator.

As the Sha Tin to Central Link is a new project, which is not a natural extension of any existing railway line, we will invite both Corporations to bid for the Link on a level playing field basis. We will also welcome proposals from any other parties to take part in the bidding. In order to better time the provision of the Link to serve the planned developments, we will start the bidding process as soon as practicable. Given the importance of the Link to the railway network development and the travelling public, comprehensive bidding proposals will be vital, which reasonable time has to be allowed for its preparation and assessment. Our preliminary programme is to complete the bidding process and select the operator around the end of next year with a view to a completion date of 2008.

In deciding on the bidding proposals, we will consider all relevant factors based on the guiding principles of maximizing the benefits of the entire rail network to the community and the cost-effectiveness of the investment. To this effect, the bidding proposals will be assessed in terms of the operational aspects (including integration with the existing KCR and MTR network, and convenience of interchanges with public transport), ease of construction, capital

cost, financial arrangement, fare level and so on. Our assessment will also take into account any better alternative proposal and the consideration of healthy competition.

MR ANDREW CHENG (in Cantonese): *Madam President, at present the three rail harbour crossings are operated by the MTRC. If the fourth one is also built and operated by the MTRC, how would the Government deal with the issue of monopoly by the MTRC over the four rail harbour crossings; and how could consumers be protected against unfairness? In its reply, the Government also mentioned consideration for healthy competition. However, if the Fourth Rail Harbour Crossing is eventually built and operated by the MTRC, will this run against the government policy for healthy competition?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, as I have just mentioned, the two Corporations should bid for the new project on a level playing field basis. So, I do not think there should be any prejudice before the bidding, favouring either one of them.

As regards competition in railway business, apart from the rails operated by the two Corporations, there are other public transport services, so I do not think competition is confined to the two Corporations. Competition has long existed between the railways and the buses as well as other public transport services. Apart from the factor of competition, our main concern in the selection of the operator for the Fourth Rail Harbour Crossing is which operator can provide the greatest benefit to the community. I have already mentioned this point in my main reply.

MR FRED LI (in Cantonese): *Madam President, the Strategy announced this time straddles several districts and is integrated with the timetable of the Southeast Kowloon Development and the Central Reclamation, and all these projects affect each other. Will the Government inform this Council whether the tempo of these developments and that of the construction of the railway can achieve a complete temporal match?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, the Railway Development Strategy 2000 provides a network of routes and other individual items which intend to integrate with the pace of development of each developing zone as far as possible. Mr LI asked whether the construction of the railway could tie in with the development of Southeast Kowloon and the Central and Wan Chai Reclamation. This is in fact what we aim at in the planning stage. As regards the timing of the completion of projects, that all depends on the progress of the projects. However, we are confident the timing of the two projects can tie in with each other.

MR LAU KONG-WAH (in Cantonese): *Madam President, basically, the new railway is divided into three sections. I notice that the Secretary said in the second paragraph of his main reply that the Government would adopt a pragmatic and open approach to one of the sections, that is, the Tai Wai to Diamond Hill Link. The Secretary also knew we strongly requested in the Panel meeting that this section be completed ahead of schedule, preferably before 2008. I do not know whether the wording of the main reply hinted at this. Would the Secretary state in the tender document that this section should be constructed in advance?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I said the Government would adopt an open approach and so we would not say at this moment that we must complete the construction of this section by a certain date. I would like to remind Members that in January last year, when we conducted a consultation on the interim report, there was a suggestion at the time for a second railway from Tai Wai to Kowloon to be completed not earlier than 2011. We are now aware of the strong wish of the people and we would try to complete the railway as soon as possible. However, whether the railway can be completed before 2088 depends on the pace of development of a railway. At the planning stage, there is a simple method of calculation. A railway usually takes eight years from planning to completion. So, the possibility of completing this section of the railway before 2008 is rather remote.

MISS EMILY LAU (in Cantonese): *Madam President, fortunately the Secretary corrected himself by saying the date of completion was 2008, not 2088; otherwise, it is absolutely unacceptable and I believe a commotion might even arise. I am glad to hear the Secretary say once again that he understood the strong wish of the Sha Tin residents.*

Madam President, in the main reply, the Secretary said that the implementation programme would be affected by the proposals of the railway corporations. On the other hand, the Government would also take into account their proposed timing in making a final choice on the operator. Does that mean a company is chosen because it can complete the project earlier than the other one? Would the Secretary please clarify?

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, in respect of this point, as we have not yet received any proposals from the Corporations and so we cannot ascertain whether they will have their own plans to integrate with their own networks so that one of the three sections of the railway will be completed earlier than the rest of the sections. Such details can only be obtained when the railway corporations submit their proposals. However, we do not rule out the possibility that the two Corporations might propose different completion dates for different sections of the railway in their proposals.

DR RAYMOND HO (in Cantonese): *Madam President, at the meeting of the Panel on Planning, Lands and Works on 18 May, we have held a lively discussion on the Sha Tin to Central Link. The Secretary told us then that it took 12 years to plan and build a railway. I said it took eight years at most. Today the Secretary told us in view of the urgency of the project, it was possible for the Sha Tin to Central Link to be completed in 2008. Does that mean the timetable for tendering the Sha Tin to Central Link in 2008 to 2012 as stated in paper number 97 tabled at the 18 May Panel meeting has been advanced? If that is the case, I surely welcome the move. Will the Secretary clearly tell us whether the Government has decided in these few days to advance the bidding of this railway project?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I do not know what the confusion is. The consultancy report has stated that the planning and building of a railway takes eight to 10 years. The consultant has considered the possibility of shortening the time required, but under the present circumstances, they think it is not possible to do so. Therefore, we accept the time frame of eight to 10 years. Other railway links, that is, not just the Sha Tin to Central Link, are also expected to be completed one after another from 2008. So we think it is acceptable to complete a railway in eight years' time.

MR ANDREW CHENG (in Cantonese): *Madam President, I want to follow up the question on the Tai Wai to Diamond Hill Link mentioned in the second paragraph of the main reply, which was raised by the two Honourable Members. The reply given to us by the Secretary is hitherto unheard of and that is, the Government would adopt a pragmatic and open approach on the timing of the Tai Wai to Diamond Hill Link, and the implementation programme would be affected by the proposals of the railway corporations and the Government would take into account their proposed timing in making a final choice on the operator. In the past, we often said that there was an urgent need to have a railway to link Sha Tin with Kowloon. Today the Secretary held the same view and he said that the implementation programme would be affected by the proposals of the railway corporations and the Government would take into account their proposed timing in making a final choice on the operator. As we all know, there are only the MTRC and the KCRC in Hong Kong as our railway operators. In this connection, will the Government inform this Council whether it will be determined to complete the railways as soon as possible, or even it will discuss with the two Corporations for joint construction of the entire Sha Tin to Central Link so that the project can be expedited?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, whether the two Corporations will join hands to build the railway is a matter better left to them to decide because this is their commercial decision. We do not rule out the possibility; nor the possibility that other institutions are interested in the project. If there are suggestions which can make the Tai Wai to Diamond Hill Link complete at an earlier date — I have said in the second paragraph of the main reply that the proposed implementation programme will affect our choice on the operator for the construction project — we will take them into consideration. This is one of the factors, but not the only factor.

MR LAU KONG-WAH (in Cantonese): *Madam President, I thought the word "pragmatic" used in the main reply means the project might be completed early, but then the Secretary has said just now the possibility was remote. So, "pragmatic" is in fact "inconsistent". Why did the Secretary say that? When the Secretary picked this section of the railway to demonstrate the Government's "pragmatic" approach, does he mean the Government is going to be pragmatic after 2008 but not before?*

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I have already stated clearly in the second paragraph of the main reply that the consultant forecasted the railway would be completed in 2011, but we think we should adopt a pragmatic approach towards the completion date. So we consider completion of the railway between 2088 (sorry, this is the second time I have made a mistake) between 2008 to 2011 acceptable. As to whether the project can be completed before 2008, I have already mentioned there might be constraints in the actual development. Therefore, from a practical point of view, I think the possibility of completing the railway before 2008 is rather remote, but that does not deter us from adopting a pragmatic and open approach.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. Although a number of Members are queuing for questions, I hope they can follow up through other channels. This is the end of the session for oral questions.

WRITTEN ANSWERS TO QUESTIONS

Use of Precast Paving Slabs for Pavements

7. **MRS SOPHIE LEUNG** (in Chinese): *Madam President, regarding the use of precast paving slabs for pavements, will the Government inform this Council:*

(a) how the cost per square metre for pavements using such materials compares to that for pavements using cement;

(b) of the average frequency of repair required for these pavements and the average cost per square metre for such repairs; and

(c) whether rugged surfaces or damaged slabs are common on these pavements; if so, of the reasons for that and the improvement measures that can be taken?

SECRETARY FOR WORKS (in Chinese): Madam President,

(a) The average construction costs of concrete footpath and ordinary paving block footpath are $58 per square metre and $97 per square metre respectively, based on the current contract price. In spite of the large difference in direct unit cost, paving block footpaths present the following benefits, particularly in the environmental aspects:

(i) Paving blocks can be re-used in subsequent pavement reinstatements and should be adopted at locations susceptible to excavations by utility undertakers.

(ii) Paving blocks can be lifted and re-laid quietly. On the other hand, the reinstatement of concrete pavement is nosier and dusty as it involves the breaking up of existing concrete.

(iii) Paving blocks result in less construction waste than concrete, which needs to be disposed of at public filling outlets or landfills. At present, the Government is paying landfill operators about $125 for each tonne of demolished material disposed of at the landfills. This represents about $27 per square metre of 75 mm thick of concrete footpath. Compared to concrete pavement, this is an additional cost savings if paving blocks are used.

(iv) Paving blocks are easy to lay and can be walked on instantly without having to wait for the concrete to harden.

(v) Paving blocks have unique aesthetic benefits, particularly when special patterns and colours are designed.

(b) Under normal load conditions, all paving blocks footpaths are serviceable within their life expectancy. Even in the case of excavation for utility installations, the existing paving blocks are not supposed to be easily damaged. However, where the design load capacity is exceeded, footpaths would be susceptible to damage and

may need to be repaired. Such overloads may arise from a number of external factors such as heavy usage, illegal parking, frequent loading and unloading activities.

The cost of repair is basically similar to the construction cost. However, if the existing paving blocks can be reused (for example, overloading by illegally parked vehicles causing uneven surfaces) the cost of repair can be reduced by about 35% (that is, about $65 per square metre).

(c) There should be no rugged surface on paving block footpaths that are built in compliance with standards. The cases of damaged paving blocks are also uncommon. The Highways Department has been carrying out regular road inspections (including footpaths) and operating a telephone hotline around the clock. Should any defects be identified or reported, the Highways Department would arrange for them to be repaired as soon as possible. From past experience, cases involving damaged pavements or rugged surfaces have been very often associated with illegal parking overloading the footpaths. Depending on the circumstances, the Highways Department can take a number of measures to curb illegal parking such as installation of bollards or railings along the footpaths.

Impact of Rising Borrowing Rate on Economy

8. **MR KENNETH TING** (in Chinese): *Madam President, will the Government inform this Council whether it has assessed the adverse impact of the persistent rise in Hong Kong dollar lending rates in the past several months on Hong Kong's export, industrial and commercial sectors as well as Gross Domestic Product (GDP); if it has, of the details and whether it will consider lowering the profits tax rate, the percentage charge for rates and the fees and charges for various government services relating to the industrial and commercial sectors, so as to reduce the adverse impact of the persistent rise in Hong Kong dollar lending rates on the local economy; if it has not, whether such an assessment will be made expeditiously?*

SECRETARY FOR THE TREASURY (in Chinese): Madam President, generally speaking, our assessment is that the rise in local interest rates in the past several months could have some negative impact on Hong Kong's export, industrial and commercial sectors and hence its GDP, but any negative impact may be cushioned to a large extent by the present strong growth momentum in economic activity.

As the rise in local interest rates was primarily caused by the interest rate increase in the United States, the dampening effect of the latter on the domestic demand and thus import absorption in the United States economy could adversely affect Hong Kong's export performance, given that United States is one of our leading export markets. However, the effect of higher interest rates on exports should be assessed against the improvement in Hong Kong's external competitiveness upon the local cost/price adjustment over the past two years and the rebound in currency values elsewhere in the region from their troughs in the Asian financial turmoil. Meanwhile, exports of goods and services in the months ahead should continue to benefit from sustained demand from Europe and from within East Asia, even allowing for some moderation of demand from the United States later in the year.

The rise in local interest rates could also have some direct curtailing impact on local investment, by raising the interest cost of the business community and dampening investor sentiment. In addition, there could be some negative impact on consumer demand, should the interest rate hike induce uncertainty and volatility in the local asset markets, thereby hitting consumer sentiment. Yet steadier employment and income stemming from the continued economic revival should lend support to local consumer spending. Moreover, the effective supply of funds to borrowers in Hong Kong has eased as banks are competing aggressively for loan business and intermediation spreads have fallen.

Moreover, it should be noted that while borrowing cost is likely to affect domestic demand, it is not necessarily the overriding factor. In recent months, improved business outlook is more likely to have been the key factor influencing investment decisions. That is probably why, notwithstanding the successive interest rate increases in Hong Kong since the latter part of last year, investor sentiment has actually strengthened over the period, in line with the strong pick-up in the economy. At the same time, consumer sentiment has also firmed.

All recent economic indicators show a broad-based upturn in the Hong Kong economy. On the external front, total exports of goods, having attained a 12.3% increase in real terms in the fourth quarter of 1999 over a year earlier, accelerated even further to a 20.7% growth in the first quarter of 2000. Exports of services likewise picked up further, with a 16.4% growth in real terms in the first quarter of 2000, as compared to an 11.2% increase in the fourth quarter of 1999. Locally, consumer spending strengthened markedly with an 8.3% growth in real terms in the first quarter of 2000, as compared with a 4.4% increase in the fourth quarter of 1999. Overall investment spending has also resumed growth, at 5.6% in real terms in the first quarter of 2000, as opposed to the double-digit decline of 10.4% in the fourth quarter of 1999. There was in particular a sharp pick-up in machinery and equipment acquisition in the first quarter.

Taking all these together, the GDP grew strongly by 14.3% in the first quarter of 2000, from the already highly robust growth of 9.2% in the fourth quarter of 1999. The GDP growth in the first quarter of this year was the fastest recorded since the third quarter of 1987.

As the current strong growth momentum of the economy could cushion the negative impact arising from the interest rate increase in the near term, we do not see a need to reduce profits tax rate, percentage charge for rates, government fees and charges, or implement any other revenue concessions for the industrial and commercial sectors as redress.

We will continue to consider all revenue proposals (including but not limited to profits tax, rates and fees and charges) in the context of formulating budget measures each year, taking into account our overall fiscal needs, as well as the latest changes in the social and economic environment in Hong Kong.

Possible Existence of Underground Wartime Bombs

9. **MISS CHOY SO-YUK** (in Chinese): *Madam President, on 21 February this year, a 500-pound bomb dropped during the Second World War was unearthed at a construction site in Yau Ma Tei. There are speculations that there might still be wartime bombs lying in areas such as Yau Ma Tei, Tsim Sha Tsui, Lei Yue Mun, the Peak and Western District. In this connection, will the Government inform this Council whether:*

(a) it has kept records of cases in which undetonated bombs were found lying underground in the aforesaid districts since the end of the War; if it has, of the number of such cases and the casualties caused by accidental explosion of such bombs; and

(b) it has plans to make use of detecting devices to find out if there are still bombs lying underground in the aforesaid districts; if it has, of the details; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): Madam President,

(a) Police records regarding cases of undetonated bombs found in the territory since 1982 are available. The breakdown of those cases found in the aforesaid districts in the past five years is as follows:

District	*Number of cases*
Yau Ma Tei	5
Tsim Sha Tsui	1
Lei Yue Mun	0
The Peak	1
Western District	2
Total:	9

All nine cases did not involve any casualties.

(b) The assessment of the Explosive Ordinance Disposal Bureau of the Hong Kong Police Force is that it is impractical to use detecting devices to locate Second World War undetonated bombs because:

(i) such bombs tend to be buried deep under the ground and are difficult to detect; and

(ii) construction sites, where most of these bombs are located, are littered with ferrous objects which make detecting devices of little or no value.

Members of the public are reminded that they should report to the police immediately of any item suspected to be undetonated bomb. The Explosive Ordinance Disposal Bureau of the Hong Kong Police Force is on 24-hour standby to render safe all finds of suspicious items.

Senior Government Official Allegedly Breaching the Buildings Ordinance

10. **MR LEE WING-TAT** (in Chinese): *Madam President, it was reported in several newspapers on 7 May this year that the owner of a residential property at Bowen Road on Hong Kong Island, which is currently owned by a senior government official, had made unauthorized structural alterations to and erected an unauthorized structure in the property. In this connection, will the Government inform this Council whether it has investigated if such unauthorized works exist in the property; if the investigation result is in the affirmative:*

(a) of the details of the works;

(b) whether the works have affected the structural safety of the building concerned; and

(c) whether it has assessed if the present owner of the residential property breaches the relevant provisions of the Buildings Ordinance (Cap. 123); if there is a breach, of the follow-up actions it will take; if no breach has been committed, of the rationale for it?

SECRETARY FOR PLANNING AND LANDS (in Chinese): Madam President, in response to press reports, staff of the Buildings Department conducted an investigation of the premises in question and found a number of alteration works at variance with the approve building plans of the building. The major ones are:

(a) the balcony of the concerned premises has been enclosed by windows;

(b) the internal staircase between the concerned premises and the floor below which formerly constituted a duplex residence has been removed;

(c) the floor opening for that staircase has been floored over with concrete slabs;

(d) a door opening has been made from the premises onto the common front staircase; and

(e) in addition, the openings on top of the parapet walls surrounding the two parking spaces belonging to the same owner have been enclosed by walls and windows, and a partition has been erected inside the enclosure.

The works listed in paragraph 1 above are unauthorized building works but they do not affect the structural or fire safety of the building. In accordance with the present enforcement policy, the Buildings Department has issued letters to the present owner of the concerned premises and the two parking spaces, advising the owner that the works are unauthorized building works and should be rectified as soon as possible. According to the Authorized Person appointed by the owner, the partition mentioned in para. 1(e) above had already been removed. The Buildings Department will liaise with the appointed Authorized Person and provide, where necessary, advice on the remaining rectification work required.

New Admission Mechanisms for Primary and Secondary Schools

11. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, regarding the proposals of the Education Commission to allocate 85% of Primary One places on the principle of "vicinity" and to encourage primary and secondary schools to link among themselves to facilitate direct admission of Primary Six students to the linked secondary schools, there are comments that such proposals will result in more parents giving false residential addresses or moving to districts which fall within the school nets of their preferred schools so as to enhance the chance of their children being admitted to those schools. In this connection, will the Government inform this Council:*

(a) of the number of complaints received in each of the past five years about parents giving false residential addresses; the ways these complaints were handled and the results thereof; and

(b) whether any measures are in place to prevent parents from giving false residential addresses; if so, of the relevant details; if not, the reasons for that?

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

(a) At present, the Education Department (ED) allocates Primary one places in government and aided schools through the Primary One Admission System. Under the System, the whole of Hong Kong is divided into a number of school nets, and applicants are assigned to one of these school nets according to their residential addresses. The whole process is divided into two stages, namely the "Discretionary Places Admission" stage and the "Central Allocation" stage. During the "Discretionary Places Admission" stage, each primary school may, at its own discretion, select among the applicants to fill up to 65% of its total Primary One places, while the remaining 35% of places will be centrally allocated by the ED to children residing in the same school net. In allocating discretionary places, schools are required by the ED to offer at least 30% of their Primary One places to children residing in their own school nets.

Parents have an option of applying for a discretionary place. Applicants who do not wish to apply for a discretionary place will be allocated a place by the ED through the central allocation. Those who have not secured a place at the "Discretionary Places Admission" stage will also have their applications automatically transferred for central allocation by the ED. During the "Central Allocation" stage, places are allocated according to the school nets to which the applicants belong. Thus, an applicant's residential address is a relevant factor in the "Primary One Admission" System (including both the "Discretionary Places Admission" stage and the "Central Allocation" stage).

Upon receiving complaints about parents giving false addresses, the ED will check the application forms and copies of documentary proof of the reported residential addresses (such as water/electricity/town gas/telephone bills, stamped tenancy agreements, demand notes for rates, public housing tenant's rent cards and so on) submitted by the parents concerned during application. If there is any doubt, the ED will interview the parents concerned or ask them to provide other documentary proof. If parents are found to have given false addresses, the applicants will be disqualified from applying for a discretionary place and will only be allocated a school place in their own school nets based on their genuine residential addresses at the "Central Allocation" stage.

The number of complaints about parents giving false residential addresses in the past five years and the investigation results are as follows:

School Year	*Number of Complaints*	*Investigation Results*
1995-1996	1	Not substantiated
1996-1997	4	Not substantiated
1997-1998	2	Unable to conduct investigation since complainants failed to provide sufficient information
1998-1999	4	Two complaints were not substantiated. Two complaints were substantiated. The applicants were disqualified from applying for a discretionary place.
1999-2000 (up to 22 May 2000)	1	Not substantiated

(b) Under the existing Primary One Admission System, we have the following measures to prevent parents from giving false addresses:

(i) Parents are required to declare in the "Application Form for Admission to Primary One" that the information (including residential addresses) contained is true and correct. If it is found that there is false information, the applicant concerned will be disqualified from applying for a discretionary place and will only be offered a place through the central allocation.

(ii) If a parent wishes to apply for a discretionary place, he is required to submit to the government or aided primary school of his choice in person the "Application Form for Admission to Primary One", bringing along the original and photocopy of documentary proof of the reported residential address (such as water/electricity/town gas/telephone bills, stamped tenancy agreements, demand notes for rates, public housing tenant's rent cards and so on). The school will check the relevant documents on the spot. Separately, the ED will conduct sample checks on schools in November and January each year to verify application forms and documents collected. If any documents are found to be inappropriate or insufficient, the ED will interview the parents concerned or ask them to submit other documentary proof.

(iii) If a parent does not apply for a discretionary place and opts to join the central allocation arranged by the ED, he is required to submit to the ED in person an "Application Form for Admission to Primary One", bringing along documentary proof of the reported residential address (as set out in part (ii) above). The ED will check the relevant documents on the spot to ensure the information provided is correct.

Regulating Chinese Patent Medicines Sold in Hong Kong

12. **MR NG LEUNG-SING** (in Chinese): *Madam President, it has been reported that the tests conducted by the California Department of Health Services (CDHS) of the United States on the composition of Chinese patent medicines sold*

there have found in some of the samples the presence of heavy metals exceeding the relevant standards or of western pharmaceutical ingredients. Some of these Chinese patent medicines are sold or manufactured in Hong Kong. In this connection, will the Government inform this Council whether:

(a) it has approached the relevant United States authorities for the findings of the tests; if so, of the details of the findings; and the follow-up measures taken or to be taken by the Government to regulate the Chinese patent medicines sold or manufactured locally which have been found to contain heavy metals in excess of the relevant standards; and

(b) it has assessed the adequacy of the measures to regulate the Chinese patent medicines sold in Hong Kong, and the basis on which the Government determines the regulatory standards?

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

(a) The Department of Health (DH) has approached the CDHS in the United States to seek information on the proprietary Chinese medicines which are reported in the press to have been found by the CDHS to contain western medicine ingredients or excessive heavy metal. The CDHS has released part of the information.

Some of the products identified were available for sale in Hong Kong. The DH has taken samples of the relevant products for testing. The test results indicated that one of the products contained western medicine ingredients and another excessive heavy metal. At the DH's instruction, traders concerned have already recalled their products from the local market. The DH is seeking legal advice on whether from prosecution action should be taken against the concerned traders. The DH will follow up with the United States authorities to obtain the remaining information.

(b) At present the DH tests about 120 samples of proprietary Chinese medicines monthly. Traders will be instructed to recall those products which are found to be adulterated with western medicine

ingredients or contain excessive heavy metal. They may also be prosecuted.

The Chinese Medicine Ordinance was enacted in July 1999 to regulate the practice of Chinese medicine, and the trading, manufacture and use of Chinese medicines. The Chinese Medicine Council of Hong Kong established under the Ordinance is working on the detailed framework for the regulation of Chinese medicines, with a view to making relevant subsidiary legislation in the near future. Under the proposed system, all proprietary Chinese medicines in future will need to fulfil the requirements on safety, efficacy and quality before the products may be registered and sold in Hong Kong.

The Green Cancer Issue

13. **MR HOWARD YOUNG**: *Madam President, I have received a complaint from some Southern District residents about "Green Cancer" which refers to climbing plants killing any healthy tree they cover. In this connection, will the Government inform this Council:*

(a) whether it knows the cause of the death of healthy trees which are covered by Green Cancer;

(b) of the areas in which Green Cancer is prevalent;

(c) whether it has received any similar complaints about Green Cancer covering trees grown in public places; if so, of the follow-up action that it has taken;

(d) of the impact of Green Cancer on the environment;

(e) of the measures to contain the growth of Green Cancer; and

(f) of the action that it would advise the public to take should their trees be covered by Green Cancer?

SECRETARY FOR THE ENVIRONMENT AND FOOD: Madam President,

(a) A site inspection conducted by staff of the Agriculture, Fisheries and Conservation Department revealed that the climbing plant in question was the Climbing Bauhinia (Bauhinia glauca). The Climbing Bauhinia is a native woody climber. Similar to other climbers, the Climbing Bauhinia climbs up other plants in order to reach the tree canopy to receive more sunlight. Whilst so doing, the plant that is covered by the Climbing Bauhinia may suffer from impaired growth due to reduction of sunlight for photosynthesis.

(b) The Climbing Bauhinia is a common native local species. It grows in woodland and shrubland in low-lying areas such as some areas in Southern District.

(c) The Agriculture, Fisheries and Conservation Department, the Lands Department and the Leisure and Cultural Services Department have not received any complaint regarding the effect of the Climbing Bauhinia on other growing plants.

(d) Although the Climbing Bauhinia and other climbers may affect the growth of other plants, it is a natural phenomenon which reflects the diversity of the ecosystem.

(e) It is a natural phenomenon in some woodland habitats for trees to interact with climbing plants. For this reason, we do not consider it appropriate to suppress the growth of the Climbing Bauhinia.

(f) Any plant owners who wish to control the growth of the Climbing Bauhinia may consider cutting off and weeding out the climber.

Rising Trend of Tuberculosis Cases

14. **MISS CHRISTINE LOH**: *Madam President, in view of the fact that the number of notified tuberculosis (TB) cases in Hong Kong has increased over the last few years to 115 per 100 000 persons in 1998, will the Administration inform this Council:*

(a) of the types of people more susceptible to TB;

(b) whether it has evaluated the reasons for the persistently high incidence of TB cases in Hong Kong in the last decade and the rising trend in the past three years;

(c) whether Hong Kong has been placed by the World Health Organization in the category of "highly affected" countries or places in respect of TB; if so, of the reasons for that;

(d) whether the Department of Health has put in place a comprehensive information collection system to monitor the incidence of the disease and the effectiveness of treatments for TB patients, including those treated by private medical practitioners; if not, of the reasons for that;

(e) whether it will review its policy and priorities relating to the management of TB; and

(f) whether the Administration will put in more resources to fight the persistently high incidence and the rising trend of TB cases?

SECRETARY FOR HEALTH AND WELFARE: Madam President,

(a) The elderly, persons with chronic or debilitating medical illnesses, and persons with immunodeficiency or on medications like steroid and cytotoxic drugs are more susceptible to TB.

(b) The TB notification rate has been generally on the decline during the past few decades but has remained steady in the last decade with some fluctuations. This pattern in the last decade is shown in the table below:

Year	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*
Notification Rate per 100 000 population	117.9	114.1	109.2	112.6	110.8	104.7	100.9	103.0	108.8	114.7	109.8

There were slight declines between 1993 to 1995 followed by a slight rising trend between 1996 to 1998 and reversing in 1999, in which the TB notification rate has reverted to 109.8 per 100 000 persons, the level generally observed during the decade. The highest notification rates are among the elderly. The persistent notification rates in the last decade may be related to our increasing ageing population and overcrowded living conditions.

(c) Hong Kong has not been placed in the category of "high tuberculosis burden". According to the "TB Control In World Health Organization Western Pacific Region 1999 Report", Hong Kong is classified, alongside Japan, Singapore, Republic of Korea and others, under the category of "intermediate TB burden with good health infrastructure".

(d) Medical practitioners are required under the Quarantine and Prevention of Diseases Ordinance (Cap. 141) to notify suspected TB cases to the Director of Health. The majority of TB patients (about 80%) are being treated at the chest clinics of Department of Health and the effectiveness of treatment is being closely monitored.

(e) The control of TB is given the highest priority and is one of our major communicable disease control programmes. Surveillance of TB and examination of the control strategies is an on-going activity within the Department of Health. A TB Control Co-ordinating Committee comprising members from Department of Health, Hospital Authority and the Universities meet regularly to discuss issues relating to TB control, such as notifications, explicit standards for care, standardization of clinical records and interface with private sector. Hong Kong also networks with experts and health authorities in other parts of the world in relation to TB control. The TB Control Committee has been asked to examine the factors contributing to the incidence of TB and review the current control programmes for further scope of enhanced control.

(f) Hong Kong has in place a good infrastructure for the prevention and control of TB including vaccination, surveillance and treatment programmes, with significant resources deployed. We will continue to carry out these programmes vigorously, in particular,

BCG vaccination for new born babies, provision of freely available treatment and contact tracing and, as mentioned in (e), will review the existing programmes for further scope of enhancement. The Department of Health will step up its collaboration with the Hospital Authority, non-governmental organizations and the private sector on relevant public health education programmes and evaluation of TB control.

Patient Record Systems of Public Hospitals and Clinics

15. **MISS EMILY LAU** (in Chinese): *Madam President, will the executive authorities inform this Council whether patient record systems have been installed in all public hospitals and the Department of Health (DH)'s clinics; if so, of the details and the costs incurred; if not, the scheduled timing for such systems to be set up and the costs required?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Madam President, at present, the Hospital Authority (HA)'s patient medical records are essentially in paper form, stored in hospitals and clinics where the patients receive treatment. A computerized Medical Record Tracing System has been installed in 16 major HA hospitals to assist the staff in locating individual , I believe Mr HO

Over the years, the HA has given priority to developing the data communication networks and the various electronic clinical information and patient management systems required for the treatment and management of patients so as to provide all essential data in electronic form. These include various online systems enabling speedy access to the patients' clinical case summary, diagnosis/procedure information, medication history, laboratory and X-ray results. So far, some $761 million from the HA's Information Systems Block Vote has been spent on the hardware, software, data communication networks as well as design and development of various clinical information systems.

The HA will proceed shortly to study how to further enhance and evolve the systems in order to build up a system of life-long electronic patient record for individual patients, which could also incorporate clinical information on patients

from other health care providers. It is too early at this stage to ascertain the cost of developing such an electronic patient record system.

The DH's patient medical records in its outpatient clinics are also in paper from. The DH will conduct a study in the near future on the feasibility of computerizing its patient medical records and the applicability to the DH of the systems already developed by the HA. We will ensure that the development of the DH and HA systems is well co-ordinated to avoid unnecessary duplication of expenditure and efforts. It is not possible at this stage to ascertain the cost of this computerization project.

Indoor Air Quality of Government Office Buildings

16. **MR MA FUNG-KWOK** (in Chinese): *Madam President, will the Government inform this Council:*

(a) of the number of air quality tests conducted in government office buildings in the past three years and the results of the tests, as well as the number of such tests in which the air quality was found to be poor; and

(b) whether it has formulated or will commence any plan to improve the air quality inside government office buildings; if so, of the details, and whether it has considered replacing or improving the air-conditioning systems that have been in operation for a long time?

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

(a) Between 1997 and 1999, the Electrical and Mechanical Services Department (EMSD) carried out 74 surveys in 45 government office buildings against the Environmental Protection Department's interim indoor air quality guidelines. Of the 22 000 measurements taken, over 90% were in compliance with the guidelines.

(b) The Administration is implementing an Indoor Air Quality (IAQ) Management Programme the objective of which is to protect public health and to promote public awareness of the importance of indoor air quality.

Under the IAQ Management Programme, the EMSD is carrying out a survey of indoor air quality in all government buildings served by mechanical ventilation or air conditioning systems in phases to assess whether they meet IAQ objectives under the Programme. In the case of those government buildings which do not meet the IAQ objectives, the EMSD would make recommendations to the departments concerned on the improvements required. The EMSD plans to complete surveying 10% of the government buildings by the end of this year. Subject to a review of phase 1 and availability of resources, the EMSD plans to complete the survey on all government buildings by the end of 2002.

Management of Exchange Fund

17. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, regarding the management of the Exchange Fund, will the Government inform this Council whether:*

(a) the situation will arise in which the fiscal reserves deposited by the Government in the Exchange Fund will be frozen and cannot be withdrawn in order to pay for public expenditure, when a substantial amount of the assets of the Exchange Fund has been utilized for stabilizing the monetary and financial systems of Hong Kong;

(b) any criteria have been set to specify the respective ratios in respect of which the assets of the Exchange Fund could be allocated for such purposes as defending the exchange value of the Hong Kong dollar, maintaining the stability of the financial system and safeguarding the long-term purchasing power of the assets and so on during crises in the financial market; and

(c) any guidelines are in place to specify the prime purposes and asset allocation of the various components of the Exchange Fund, as well as the ceiling of the Exchange Fund assets transferable by the Financial Secretary in case of emergency and the principles he should follow?

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Madam President,

(a) A main objective in the management of the assets of the Exchange Fund is to ensure sufficient liquidity to meet the objective of the Fund in maintaining the monetary and financial stability of Hong Kong and other obligations of the Fund, including the withdrawal of fiscal reserves by the Government. Withdrawal of funds from the Exchange Fund can be satisfied by the cash holdings of the Exchange Fund, or by short-term borrowing from the interbank money market, or by liquidating the Exchange Fund's Hong Kong dollar or foreign currency denominated assets. Past experience suggests that the situation envisaged in the question is highly unlikely to arise.

(b) The whole of the Exchange Fund is available to the Financial Secretary for use to meet the primary and other purposes in accordance with sections 3(1) and (1A) of the Exchange Fund Ordinance. The assets of the Exchange Fund are grouped under two portfolios (Backing Portfolio and Investment Portfolio) to facilitate the management and investment of the assets. There are no specific ratios governing the division of the portfolios within the Exchange Fund, other than the requirement that the Backing Portfolio provides full backing of the monetary base of Hong Kong to the extent of 105% to 112.5% of the monetary base.

(c) Apart from the provisions of the Exchange Fund Ordinance and the requirement on the Backing Portfolio mentioned in part (b) above, there are no guidelines on the prime purposes and allocation of assets among the various portfolios within the Exchange Fund.

The transfer of Funds from the Exchange Fund is governed by section 8 of the Exchange Fund Ordinance. The Financial

Secretary may consider a transfer only when he is "satisfied that such transfer is not likely to affect adversely his ability to fulfill any purpose for which the Exchange Fund is required to be or may be used under section 3(1) or (1A)" of the Exchange Fund Ordinance. There is an additional requirement that such transfer will need to maintain the assets of the Exchange Fund at a minimum threshold equal to 105% of the liabilities of the Exchange Fund. The Financial Secretary may proceed with such transfer only after consultation with the Exchange Fund Advisory Committee and with the approval of the Chief Executive in Council.

Release of Dioxins by Tsing Yi Chemical Waste Treatment Centre

18. **MR LEE WING-TAT** (in Chinese): *Madam President, it is learnt that on two occasions in November 1998 and February 1999, the dioxin concentrations in emissions from the Chemical Waste Treatment Centre (CWTC) on Tsing Yi exceeded the permitted level prescribed in the operating licence. In this connection, will the Government inform this Council:*

(a) of the reasons for not instituting prosecutions against or imposing penalties on the CWTC operator in respect of the two incidents;

(b) whether it has plans to amend the relevant legislation to prohibit emissions with dioxin concentration exceeding the prescribed limit and stipulate penalties for non-compliance with the requirement; and

(c) whether it will consider providing health screening for residents nearby to ascertain if excessive dioxins have accumulated in their bodies?

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

(a) The CWTC is operated under a contract signed between the Government and the CWTC operator. The operator has also obtained a licence from the Director of Environmental Protection

under the Air Pollution Control Ordinance (Cap. 311) (APCO) for incineration of chemical waste at the CWTC. The CWTC operator is therefore bound by both the contract and the licence in regard to the emission limit for dioxin and other substances.

The contract requires the CWTC operator to perform some 4 000 tests each month, including tests on dioxin emissions. Operation fees will be deducted if 10 or more of these tests fail. Since the CWTC commenced operation in 1993, over 300 000 tests have been performed and only the two cases in question failed the tests. Accordingly, no penalties can be imposed on the operator.

Separately, the licence granted under the APCO stipulates that the emission of dioxins and furans should not exceed a concentration of 0.1 nanogram per cubic metre of exhaust gas and a rate of 3 224 nanograms per hour. It also requires the CWTC operator to report any incidents of exceedence beyond the emission limits and take all practical steps to avoid recurrence. As regards the two incidents, the Environmental Protection Department conducted detailed investigation and found that there had been errors in the sampling method. The Department concluded that there was little chance of a successful prosecution based on the evidence collected. The CWTC operator was however required to take immediate steps to rectify the errors, and to take additional samples to establish the level of dioxin emissions. None of the additional samples revealed breach of the provisions of the licence.

(b) The CWTC's operation is governed by a licence issued under the APCO. Contravention of the licence conditions would involve a fine of $100,000 on conviction of a first offence, and a fine of $200,000 and imprisonment for six months for the second and subsequent offences. We believe that these penalties are sufficient and we do not see the need to amend the legislation.

(c) According to a recent study "Assessment of Dioxin Emissions in Hong Kong", the ambient dioxin levels in the vicinity of the CWTC are similar to the other areas of Hong Kong. We do not consider it necessary to conduct special medical examinations for residents living near the CWTC. However, the Administration will be sponsoring a territory-wide study on the levels of dioxin in the human population.

East Rail Extension - Sheung Shui to Lok Ma Chau Spur line

19. **MISS CHRISTINE LOH**: *Madam President, regarding the construction of the East Rail Extension – Sheung Shui to Lok Ma Chau Spur Line which was gazetted on 8 October 1999 and the proposed amendments to the scheme which were gazetted on 28 April 2000, will the Government inform this Council:*

(a) of the studies that have been undertaken to justify the construction of the railway extension;

(b) of the reasons for gazetting the alignment of the spur line before the relevant planning and environmental studies were completed and whether a mechanism is in place to ensure that all relevant planning and environmental studies must be completed before rail and road projects are gazetted;

(c) whether alternative alignments that do not encroach on the ecologically valuable Long Valley have been considered; if not, of the reasons for that; and

(d) whether other alternative alignments have been considered and of the environmental and planning merits of each alignment?

SECRETARY FOR TRANSPORT: Madam President, to cope with the double-digit annual growth of the cross boundary passenger traffic between 1996 and 1999, and the urgent need for a second rail passenger crossing, the Government decided to implement the Sheung Shui to Lok Ma Chau (the Spur Line) ahead of a decision on West Rail Phase II and to fast track the planning of the project. In June 1999, we accepted a proposal from the Kowloon-Canton Railway Corporation (KCRC) to construct the Spur Line by 2004 as an additional rail passenger crossing at Lok Ma Chau to ease the congestion at the Lo Wu crossing and asked the KCRC to proceed with detailed design and planning. The Spur Line is a designated project under the Environmental Impact Assessment Ordinance (EIAO) and a full environment impact assessment (EIA) is required. To facilitate early consultation and discussion on key environmental issues at an early stage, the KCRC prepared and submitted an initial environmental assessment to the Advisory Council on Environment (ACE) EIA Subcommittee in September 1999. On 27 April 2000, the KCRC

submitted a full EIA report to the Director of Environmental Protection for review under the EIAO. If the report meets the requirements in the EIA study brief and the relevant technical memorandum, it will be exhibited for the public to comment and submitted to the ACE for consultation. Construction cannot commence until the full EIA report has been approved and an environmental permit issued under the EIAO.

Given the need for fast-tracking the Spur Line project to cope with the sharp increase in cross-boundary traffic, this priority project has to be urgently implemented by the KCRC in a fast track manner and it has become necessary for gazettal and EIAO procedures to proceed in parallel. In practice, the railway scheme will not be submitted to the Chief Executive in Council for authorization before approval of the EIA report by Director of Environmental Protection and discussion with the ACE. Under the internal government procedures, the approval of the relevant EIA reports for government projects shall be obtained by the proponent department before the gazettal of such projects under the relevant legislation.

In recognition of the ecological importance of Long Valley, the KCRC has carefully studied alternative alignments in addition to the gazetted alignment for the eastern end of the railway project, having regard to important factors including potential environmental impact, land use, planning requirements, engineering and operational feasibility as well as impact on local community. An analysis on these alignment options and the proposed measures to mitigate the impact on the ecology of the area have been included in the EIA report submitted by the KCRC which is under review in accordance with the EIAO.

Management of Public Housing Estates Sold under Tenants Purchase Scheme

20. **MISS EMILY LAU** (in Chinese): *Madam President, regarding the management of the public housing estates sold under the Tenants Purchase Scheme (TPS estates), will the executive authorities inform this Council:*

(a) whether they have found management companies set up by members of political parties bidding for management contracts of the TPS estates;

(b) whether they have assessed if a conflict of interests or roles will arise should the TPS estates be managed by such management companies; if the assessment result is in the affirmative, of the counter-measures it will adopt; if the assessment result is in the negative, the rationale for that; and

(c) of the measures in place to assist the owners' corporations concerned to formulate a definite and transparent tendering mechanism for the maintenance and repair works of their buildings?

SECRETARY FOR HOUSING (in Chinese): Madam President, up to the present, flats sold under the Tenants Purchase Scheme (TPS) are managed by the Housing Department. No tenders for private management contracts have yet been invited for these flats.

As in the private sector, owners' corporations are responsible for appointing management companies through tenders for the future management of TPS estates. Successful tenderers will undertake management duties for and on behalf of owners' corporations. The Housing Authority does not see any relationship between the political affiliations of management companies and the quality of services provided.

The Secretary for Home Affairs has issued a Code of Practice on Procurement of Supplies, Goods and Services in accordance with the provisions of the Building Management Ordinance. Copies are available at Public Enquiry Service Centres of District Offices and Building Management Resource Centres of the Home Affairs Department. To enhance the transparency of maintenance projects undertaken by owners' corporations, the Independent Commission Against Corruption has produced a guide entitled "Corruption Prevention Checklist on Building Maintenance and Improvement Works". If owners' corporations have queries in future about tendering procedures, they may also approach any Building Management Resource Centre for advice.

BILLS

First Reading of Bill

PRESIDENT (in Cantonese): Bill: First Reading.

ARBITRATION (AMENDMENT) BILL 2000

CLERK (in Cantonese): Arbitration (Amendment) Bill 2000.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

ARBITRATION (AMENDMENT) BILL 2000

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I move that the Arbitration (Amendment) Bill 2000 be read the Second time.

The Bill seeks to amend section 2GG of the Arbitration Ordinance. That section makes it possible for arbitral awards to be summarily enforced in Hong Kong with the leave of the court. It was recently held that the section applies only to awards made in Hong Kong. The amendment provides that the section applies to awards whether made in or outside Hong Kong.

Awards made on the Mainland by a recognized mainland arbitral authority, and awards made in a state or territory (other than China) which is a party to the New York Convention on the Recognition and Enforcement of Foreign Awards 1958, can be enforced summarily under other Parts of the Ordinance. However, in the light of the recent court decision, awards made elsewhere are not summarily enforceable in Hong Kong under section 2GG. These awards include non-Convention awards made in such countries or territories as Albania, Brazil, Iraq, Newfoundland, Taiwan and Macao.

In response to the recent decision, the legal and arbitration professional bodies proposed, when the Arbitration Ordinance was last amended earlier this year, that section 2GG be amended to make it clear that it does apply to awards made either in or outside Hong Kong. This would enable awards made in non-Convention states or territories to be summarily enforced in Hong Kong with the leave of the court.

The Administration agreed to consider that proposal after it had the chance to study a forthcoming judgment of the Court of Final Appeal (CFA) on the enforceability in Hong Kong of a bankruptcy order made by a Taiwan court.

The CFA delivered its judgment on 27 January 2000. It held that the bankruptcy order made by a Taiwan court, which related to private rights of the parties concerned, and was not for the benefit of the Taiwan Government, was enforceable in Hong Kong. This followed the common law principle that particular acts of a government that is not recognized either in law or in fact may, in the interests of justice and common sense and for the preservation of law and order, be recognized by domestic courts where private rights are concerned and where no consideration of public policy to the contrary has to prevail. As was explained by the CFA, that common law principle does not involve recognizing any unrecognized entity; it only goes purely and simply to protecting private rights.

Following the enactment of the Bill, if an application is made under the amended section 2GG for summary enforcement in Hong Kong of an award made in a state or territory with an unrecognized government, the CFA's recent judgment will provide guidance to the court in dealing with the application. The amendment, if passed, would not alter the position under the current section 2GG whereby the granting of leave to enforce an award is a matter of discretion for the court, and is subject to established grounds of refusal.

This legislative proposal has the support of the legal and arbitration professions. This Council's Panel on Administration of Justice and Legal Services and the House Committee also extended their support to it and agreed to study the Bill despite tight schedules. I am grateful to them. The Administration considers that section 2GG should be clarified as soon as possible since it will further enhance the Hong Kong Special Administrative Region's reputation as an international arbitration centre. Madam President, I commend this Bill to this Council for early passage into law.

Thank you, Madam President.

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

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Statute Law (Miscellaneous Provisions) Bill 1999.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1999

Resumption of debate on Second Reading which was moved on 23 June 1999

PRESIDENT (in Cantonese): Mr Albert HO, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MR ALBERT HO (in Cantonese): Madam President, as the Chairman of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 1999, I now table this Report.

The Bill has proposed a number of amendments. I would now report to Members on the key deliberations of the Bills Committee.

At present, there are no provisions governing what happens to an existing detention order, supervision order or recall order when a detainee in a Detention Centre, or a Drug Addiction Treatment Centre, or a Training Centre, is further sentenced to one or other of the centres for a separate offence.

The Administration proposed that the Drug Addiction Treatment Centres Ordinance and the Training Centres Ordinance be amended to empower the Boards of Review established under the Drug Addiction Treatment Centres Ordinance and the Training Centres Ordinance to deal with relevant orders.

Members were concerned that these empowering provisions might conflict with the power of the Commissioner of Correctional Services (the Commissioner) under the Drug Addiction Treatment Centres Ordinance and the Training Centres Ordinance, and would be inconsistent with the functions of the Boards of Review for the Commissioner was expressly empowered to vary or cancel a supervision order at any time under the Drug Addiction Treatment Centres Ordinance, whereas the Boards of Review were only tasked under the respective Regulations to make recommendations to the Commissioner.

After considering members' views, the Administration agreed to empower the Commissioner to provide for the treatment of concurrent orders under Part II of the Bill and would move Committee stage amendments (CSAs) to such effect.

Under existing legislation, a mortgagor of an interest in land would be unable to repay even an insignificant amount of mortgage money if the mortgagee could not be found, the mortgage documents were missing, or the due date for the repayment of mortgage was not known. The Bill therefore proposed that amendments be made to the Conveyancing and Property Ordinance to allow payment into court under these circumstances of the amount outstanding under the mortgage. The court might subsequently make a declaration to prove that the property was free from encumbrance.

Upon the request of the Bills Committee, the Administration consulted the Hong Kong Conveyancing and Property Law Association Limited (the Association), which expressed support for the Administration's proposed amendments. It even further proposed that the relief be extended to cases of untraceable mortgage to situations where no sale or exchange was involved, where the property owner only wished to further mortgage or charge the subject property to secure fresh finance. The Law Society of Hong Kong (the Law Society) has also indicated support for the Association's recommendations.

The Administration advised that there might be merit in the Association's proposal. Members had also expressed consent to the view held by the Administration, which would move CSAs to such effect. At members' suggestion, the Administration also agreed to amend clause 7(b)(2) to the effect that the court is to, upon payment of the amount in question, make the requisite declaration to free encumbrance.

The Bills Committee noted that the Administration had accepted the proposal of the Law Society by allowing the costs of the application to be deducted from the amount to be paid into the court and would move CSAs to such effect.

Section 159E of the Crimes Ordinance was ambiguous as to whether acts of conspiracy committed before the effective date of that section (that is 2 August 1996) could be prosecuted. The Administration proposed that savings amendments be made to clarify and ensure that such acts remain an offence and subject to prosecution.

The Bills Committee queried why the savings amendments were necessary because the Court of Appeal had recently clarified in a conspiracy case that section 159E(7)(b) of the Crimes Ordinance should not be construed as providing for the only situation in which proceedings for a conspiracy at common law could be commenced after 2 August 1996.

The Administration explained that the statute law relating to conspiracy was based on the provision in the English legislation, which provides for retrospectivity but such provision was omitted in the Hong Kong legislation. The Court of Appeal also accepted that this was an error in drafting. The Administration was of the view that the savings amendments were needed so that it would no longer be necessary to refer to the existing provision, together with the judgment of the Court of Appeal, in order to discern the true legislative intent.

As the appellants of the relevant case had applied to the Court of Final Appeal for leave to appeal, members expressed concern that enactment of the proposed amendments would have an impact on the appellants' right to appeal. Upon members' request, the Administration agreed to move CSAs to remove the proposed amendments from the Bill.

Some items of subsidiary legislation gazetted in 1997 were not laid before this Council, thus contravening section 34 of the Interpretation and General Clauses Ordinance. A Subcommittee was formed on 22 January 1999 under the House Committee to study issues relating to the tabling of subsidiary legislation in this Council. Although the Subcommittee took the view that the tabling requirement should not affect the effect of subsidiary legislation, it raised no objection to the Administration's proposal to clarify the matter for there were at

the same time conflicting but equally respectable views. The Administration's current proposal was to enact provisions to deem those items of subsidiary legislation as having been duly laid.

The Bills Committee was of the view that although Members of this Council and the Administration had taken different views on the legal effect of the subsidiary legislation which were not laid before this Council, it acknowledged that it was a matter of legal technicality and the Administration's proposal sought to settle any doubt on the legal effect of the subsidiary legislation. The Bills Committee therefore held no objection to the Administration's proposal.

Madam President, the Bills Committee supported the resumption of the Second Reading of the Bill. I so submit. Thank you.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Justice, please reply.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, as I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill into this Council in June 1999, this Bill is part of the on-going process of statute law reform directed at repealing obsolete statutory provisions, removing anomalies and inconsistencies in legislation and making a variety of minor improvements which do not justify the introduction of separate bills.

Since the introduction of the Bill, the Bills Committee, chaired by the Honourable Albert HO, has thoroughly examined the clauses which relate to a wide variety of issues in different areas of law. I am most grateful to the Chairman and the members of the Bills Committee, namely the Honourable Miss Margaret NG, the Honourable Jasper TSANG, the Honourable Martin LEE, the Honourable Andrew WONG and the Honourable Ambrose LAU, for their hard work and helpful contributions. Some changes to the Bill have been proposed and agreed. As a result, I will be moving a number of Committee stage

amendment (CSAs) later this afternoon. For the moment, I will give a brief outline of the more important of these CSAs.

Clauses 4 and 5 of the Bill relate to recall orders and supervision orders made under the Drug Addiction Treatment Centres Ordinance or the Training Centres Ordinance. The clauses provide for the treatment of concurrent orders where a person still subject to such an order is further sentenced to a Training Centre or a Drug Addiction Treatment Centre. It was originally proposed that a Board of Review set up under the Drug Addiction Treatment Centres Ordinance should be given the power to decide on the matter. It is now agreed that such power should instead be given to the Commissioner for Correctional Services, as he is already empowered to suspend or waive orders given pursuant to the two Ordinances.

Clauses 6 and 7 of the Bill pertain the discharge of encumbrances where the mortgagee cannot be traced and the mortgagor therefore cannot redeem the mortgage. The original proposal was that, where a sale or exchange of mortgaged property is contemplated, the owner could apply to the court for an order that the property is freed from such encumbrance, upon payment into court by him of an amount sufficient to discharge the mortgage plus any interest accrued thereon. The intention is to remove an unnecessary clog on title, and to facilitate the smooth transfer of ownership and, where appropriate, redevelopment.

After thorough discussion by the Bills Committee and consultation with the Law Society and the Conveyancing and Property Law Association Limited, it was decided that the impending sale or exchange of the property should not be made a condition precedent for the relief. Any owner with a property so encumbered may apply for relief. It will be for the owner to prove to the satisfaction of the court that it is appropriate to grant the order sought.

Clause 14 was introduced to remove a possible ambiguity in section 159E of the Crimes Ordinance, which abolished the offence of conspiracy at common law. The implication of this section may lead to misunderstanding. The purpose of clause 14 was to ensure that acts of conspiracy committed before the commencement of the section on 2 August 1996 could still be prosecuted under the common law.

In view of the concerns expressed by the Bills Committee and the fact that, because of pending proceedings, the issues could not be resolved at this stage, it was decided that the proposed amendment be withdrawn. The Administration will consider whether it is necessary to introduce a similar amendment in a future bill.

Apart from the above more major amendments, the Administration will also be moving other CSAs to deal with minor and technical issues. I am grateful to the Chairman of the Bills Committee for his detailed account of the issue, and I am not going to repeat the points here.

Madam President, with these remarks and subject to the CSAs proposed by the Administration, I commend the Bill to Honourable Members.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Statute law (Miscellaneous Provisions) Bill 1999.

Council went into Committee.

Committee Stage

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Statute Law (Miscellaneous Provisions) Bill 1999.

CLERK (in Cantonese): Clauses 1, 2, 3, 6, 8 to 12, 13 and 15 to 50.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 5, 7, heading of Part VI and clause 14.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to clauses 4, 5 and 7 and the heading of Part VI and the deletion of clause 14, as set out in the paper circularized to Members.

Just now I already explained the purposes of the amendments to clauses 4, 5, 7 and 14. The proposed amendment to the heading of Part VI of the Bill is consequential upon the deletion of clause 14.

Madam Chairman, I beg to move.

Proposed amendments

Clause 4 (see Annex IV)

Clause 5 (see Annex IV)

Clause 7 (see Annex IV)

Heading of Part VI (see Annex IV)

Clause 14 (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 14, which deals with deletion, has been passed, clause 14 is therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 4, 5 and 7 and heading of Part VI as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1.

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): Schedules 2 and 3.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to Schedules 2 and 3, as set out in the paper circularized to Members.

The amendment to item 44 of Schedule 2 rectifies a discrepancy between the Chinese title and English title used in the specified forms.

The amendments to Schedule 2 by way of addition of new items 91 and 92 are to ensure that the reference to section 5(1)(e) in the Mutual Legal Assistance in Criminal Matters (Italy) Order and the Mutual Legal Assistance in Criminal Matters (South Korea) Order, both approved by the Legislative Council after the introduction of the present Bill, are consistent with the section as amended.

Schedule 3 to the Bill lists the enactments that are to be repealed by clause 50. Item 5 of Schedule 3 proposes the repeal of the Smuggling into China (Control) Ordinance. An additional item 5A is proposed to repeal the subsidiary legislation made under that Ordinance, namely the Smuggling into China (Control) Specification. Although the repeal of the principal ordinance would render subsidiary legislation enacted pursuant to it ineffective, it was decided that it would be best to expressly repeal the subsidiary legislation.

Madam Chairman, I beg to move.

Proposed amendments

Schedule 2 (see Annex IV)

Schedule 3 (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 2 and 3 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.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1999

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the

Statute Law (Miscellaneous Provisions) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Statute Law (Miscellaneous Provisions) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Trade Marks Bill.

TRADE MARKS BILL

Resumption of debate on Second Reading which was moved on 5 May 1999

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

MISS MARGARET NG: Madam President, as Chairman of the Bills Committee on Trade Marks Bill, I wish to report on the work of the Committee.

The Trade Marks Bill is a complex and technical piece of legislation. It seeks to replace the Trade Marks Ordinance and ushers in a new, modern trade marks regime. Given the scope and far-reaching impact of the Bill, it is not surprising that the Bills Committee has spent almost one year to study in detail both the policy and technical aspects of the Bill to ensure that the balance is right and that the end result is a clear, workable and user-friendly piece of legislation, from the view of practitioners as well as the wider public. We have held a total of 23 meetings, considered 46 written submissions from professional groups and interested parties and met 22 deputations. Before embarking on this mammoth task, the Bills Committee has taken the unusual step of voting on whether the Bill should be supported in principle in the first place. This was because of strong concerns expressed by practitioners that the existing law which has been working reasonably well, would be replaced by something problematic and perhaps unnecessary if the Bill is passed. I am happy to report that that step cleared the air, and enabled members to go forward with resolution. There was also an initial concern that the Bill might have adopted too extensively the United Kingdom Trade Marks Act 1994 which reflects European Community directives. However, having considered the matter, the Bills Committee has come to accept that there is a real advantage in allowing the United Kingdom precedents to be applicable to Hong Kong, thus making our new trade marks law more certain.

In considering whether there is an immediate need for introducing the Bill, we note that the enactment of the World Trade Organization Amendments Ordinance 1996 before the change of sovereignty has ensured the compliance of the local intellectual property laws with the relevant World Trade Organization requirements. However, as most provisions of the Trade Marks Ordinance have largely remained unchanged since its enactment in 1995, we accept the need

to amend the law to provide transparency for meeting the standards for the protection of intellectual property under the Agreement on Trade-Related Aspects of Intellectual Property Rights. Moreover, many common law jurisdictions have reformed their trade mark laws in recent years. If Hong Kong does not follow suit, it will be lagging behind by international standards.

Apart from the need for introducing the Bill, the main focus of our study has included the scope of registration and protection of trade marks, registration criteria and application procedures, and infringement of registered trade marks.

On registrable trade marks, we welcome the broadening of registrable trade marks to include not only visual but also sound and smell marks which are hitherto unregistrable. We welcome also the basic approach of making registration more liberal. Broadly speaking, a sign which is capable of distinguishing the goods of one undertaking from those of other undertakings would be registrable, subject to any opposition from owners of registrered trade marks. Further, under the Bill, a mark which is in itself not distinctive could be registered if it has become distinctive through use before application for registration.

Together with a more open view of registrability, the registration procedure is streamlined and made more brisk under the Bill by means of clearer and tighter time limits. Members of the Bills Committee appreciate the anxiety of trade mark practitioners about the lack of specific provisions in the Bill itself on the time limits within which an applicant may respond to the rejection of a trade mark registration. We understand their objection to the Administration's original proposal to leave time limit specifications to the work manual which could easily be amended by the Registrar of Trade Marks. We are pleased that the Administration has accepted our request and agreed to specify all time limits and extensions of time in relation to trade mark application, opposition and proceedings in the Trade Marks Rules which require this Council's approval. Amendments to the Bill will be moved to achieve that effect.

We also support the protection of well-known trade marks in Hong Kong. We are pleased that the Administration has taken on board our suggestions to set out a list of non-exhaustive factors for determining whether a trade mark is well-known in Hong Kong. This reflects the international consensus in this area. Amendments to the relevant provisions will be moved by the Administration during the Committee stage.

Madam President, in the course of scrutiny of the Bill, issues relating to the infringement of trade marks have attracted the widest interest and understandably heated controversy. I refer particularly to the issue of parallel importation of trade mark articles and the adoption of the concept of international exhaustion of rights. As I will later move amendments in this respect on behalf of the Bills Committee, I do not intend, at this stage, to address this subject in any detail or explain why we have found it necessary to move an amendment to clause 19 of the Bill to require the identification of the importer of goods put on the retail market.

Apart from parallel importation, two other issues concerning infringement were discussed extensively in the Bills Committee.

The first issue is the proposal to legitimize comparative advertising. Comparative advertising is advertisement in which a trader uses a competitor's trade mark to identify his product for comparison purposes. The Bill allows comparative advertising provided that the use of the competitor's trade mark is honest. We accept the need for an express provision on comparative advertising in the local law to enshrine the principle to outlaw unfair competition in Article 10 *bis* of the Paris Convention on Protection of Industrial Property. We consider it reasonable to allow product or service providers to inform consumers of the relative merits of competing products provided that the advertisement is honest.

In this regard, we considered the objective of clause 17(7) could be more explicit to avoid misunderstanding. We are glad that the Administration has accepted our suggestion and will revise the provision accordingly. Amendments will be moved in this respect.

The second major issue concerning infringement is the inclusion of provisions in the Bill on the remedy against groundless threats of infringement proceedings. The Bill provides for relief from groundless threats of infringement proceedings by way of declaration that the threats are unjustifiable, injunction against continuance of the threats and damages.

In examining the need for such provisions, we do recognize the pernicious nature of threats of intellectual property and their ability to inflict commercial damage even where the claims are not pursued, because of the fear of high cost of defending, and therefore, there is some justification for the provisions for

relief from groundless threats. However, we are also persuaded that it is necessary to provide exemption from liability for lawyers acting in their professional capacity. For, otherwise, lawyers, rather than the party they act for, will become the target for actions for damages. This follows the approach adopted in Australia and India.

There being as yet no registration system for trade mark agents in Hong Kong, we agree with the Administration that exemption should be provided only for barristers and solicitors at this stage. The Administration will move amendments to the Bill to achieve the purpose. I should mention in passing that it has been strongly urged upon us that provisions should be made in the Bill for the future development of Registered Trade Marks Agents. While the Bills Committee generally supports such a development, it is also clear to us that this is beyond the ambit of our responsibility. We believe that the possibility can, with benefit, be pursued in another forum.

Madam President, before I conclude my speech, I wish to take this opportunity to thank all the deputations which have made written submissions or oral presentation to the Bills Committee. Many of these submissions have been extensive and meticulous. Their participation has alerted us to potential problems as well as enriched our discussion. I would also like to thank the Administration for their patience and good humoured assistance throughout the scrutiny process — or at least most of it. The fact that we have come up with different views on the issue of parallel import in no way diminishes my deep sense of obligation.

With these remarks, I support the Second Reading of the Bill.

MR CHAN KAM-LAM (in Cantonese): Madam President, the DAB supports the Second Reading of the Trade Marks Bill.

The object of the Trade Marks Bill seeks to make the legislation regulating the registration of trade marks clearer and more in line with international requirements, such being, for example, the recognition of parallel importation of goods in order to foster competition and market liberalization. The spirit behind the Bill deserves our support.

However, in the course of deliberating on the Bill, there was heated debate on whether parallel imports should be subject to labelling requirement. Licensed importers attended the meetings of the Bills Committee many times and expressed their views. They also lobbied outside the meeting rooms and solicited the support of members on their proposal to add a label to parallel-imported goods. The label should state the name and address of the importer so that consumers can identify mainstream goods and parallel-imported goods and trace the origin of the goods. The licensed importers presented many reasons for this proposal. They said that they had put in a lot of efforts and advertising to establish the reputation of the products. The quality of parallel-imported goods is also one of the reasons for attaching labels onto products. The parallel importers rely on grounds such as market liberalization and reduction of monopoly. They point out that the labelling requirement would only put an end to their business and will do no good to competition. Both the licensed importers and parallel importers have grounds to back up their arguments and the former have repeatedly stated that they are not opposed to the importation of parallel-imported goods.

Madam President, the DAB is for parallel importation because parallel-imported goods can give more choices to the consumers. This will encourage competition and bring our economy more in line with the trend of the world market. For the consumers, parallel-imported goods are also in their interests.

In the Committee stage, some members thought that an amendment should be made to clause 19 of the Bill to require all imported goods to be affixed with a label to mark the English and Chinese name and address of the importer so as to enable the consumers to have a better knowledge of the product. The DAB is not against the proposal to provide more product information to the consumers, but we are concerned that the way and means may not be effective and necessary. As Miss Margaret NG, the Chairman of the Bills Committee, has said, we would not legislate any unjust laws, nor shall we legislate any laws which are useless. Therefore, the DAB remains open to Members' proposals to enforce a labelling system under the Trade Marks Ordinance. We shall lend our support to anything which will be beneficial to consumers. However, as the five selective labelling methods proposed by the Bills Committee are made in haste, so after careful considerations, we find that the amendment proposed by Miss Margaret NG is not acceptable. It is because the amendment cannot meet the

requirements of the Honourable Members as well as the business sector in terms of the actual commercial activities related to the products or in a technical sense and the amendment cannot be expected to achieve its intended legislative effect.

The DAB thinks that the selective labelling proposed by the amendment and leaving the Government to impose the rules of the specifications of affixing the label are apparently deferring the contentions we have now to the time when these rules are to be made. It remains an unknown if these rules are strict or lenient, and whether they are feasible or not. So the contentions cannot be resolved. As to the requirement proposed in the amendment to make all products comply with the labelling requirement, it is quite ineffective. It is because generally speaking, litigations concerning trade marks are initiated by trade mark owners or their authorized dealers, so even if they do not affix labels onto the mainstream goods, they will not initiate ligitations on themselves. It can therefore be envisaged that in future, there will be labels on parallel-imported goods but not on mainstream goods. So the purpose of labelling cannot be achieved. If there are some unscrupulous importers of parallel goods not affixing any labels onto their goods, the consumers may be misled to think that these parallel goods are mainstream goods. Besides, since imported goods will have labels and the locally produced goods will not have any, it can be seen that confusions will arise and the consumers will be at a loss. Litigations on unlabelled parallel goods will still be civil litigations after the amendment and will not be very much different from the present situation. If litigations are further complicated by the issue of whether labels have been affixed, it can be seen that there will be a lot of litigations and disputes in the business sector which can otherwise be avoided. In fact, the labelling requirement as proposed in the amendment cannot offer any comprehensive information and system of protection to the consumers. For example, the requirement to show the name of the parallel goods importer on the shelves or places where goods are to be displayed can offer the consumers nothing to help them in case they want to find the dealers or importers for after-sale services. It is because goods sold from the shelves have no labels showing the information of the importers. Moreover, the requirement to show the name of the importers on the shelves is in fact shifting the responsibility to the retailers. Will that be fair to them? As seen from the above, there are many loopholes in the labelling system proposed in the amendment. The passage of such an inadequate amendment will only lead to more litigations and disputes. It will bring no good to the licensed importers, the parallel importers and the consumers.

The issue of whether to impose any labelling requirement on parallel-imported goods is a contentious one. When the Trade Marks Bill is to be passed, the Government will still need to enact subsidiary legislation to put all the provisions of the Trade Marks Ordinance into force. The DAB suggests that before the Trade Marks Ordinance is to be put in force in the middle of next year and when subsidiary legislation is to be enforced, the Government should discuss with the industry on how to further protect the interests of the consumers. This will allay the doubts of the industry. Education on market information should be given to consumers under an environment of full-scale liberalization and competition. Such an education will enable consumers to develop a sense of product differentiation and will help them seek redress from those who produce or sell products which do not meet safety requirements.

On the other hand, the Government should make a review of the existing labelling requirement of certain products to safeguard the interests of the consumers. In this month's meeting of the Trade and Industry Panel, members made a review of the labelling requirements of various government departments and areas which should be improved were pointed out. The DAB has always been making severe criticisms on the selling of food when its expiry date has been passed. I urge the Government to make a thorough review of the labelling requirements in various departments and to step up its law enforcement efforts to ensure that consumer interests are protected.

Madam President, the making of clear requirements in trade mark registration is consistent with the protection of the interests of both the trade mark owners and the consumers. The DAB is in support of this. Competition between products is keen in a free market. It is more so between regional markets in this era as the prevailing trend is for more international and global markets. The business sector is well aware of this. With free trade, the consumers will be provided with goods at good quality and attractive prices; for the businessmen, it will mean more room for market development and more business opportunities.

Madam President, I so submit to support the Second Reading of the Bill.

MR JAMES TO (in Cantonese): Madam President, I will discuss the rationale for supporting parallel importation during the Committee stage later. I support the Second Reading of the Bill. However, I feel a need to describe to everyone here some of the experiences I have gained during the past few years as I received quite a number of complaints. Sometimes some trade mark owners took very harsh actions and therefore I hope to call on them to act more reasonably.

In the past, many of those involved in the complaints were small businesses or even hawkers. They obtained some articles with, for instance, a small trade mark sign, which looked attractive, printed on stationery items such as rulers. Sometimes the print was on clothes, shoes or socks. Then they might later find that such articles had infringed some trade marks or copyrights, or they belonged to the category of infringing articles. In such cases, some big groups or companies or owners of the trade marks acted very harshly towards the small businesses. Among the small businesses, some did it on purpose, knowing such articles just could not have been bought at the low price. The behaviour of these small businesses was surely not forgivable. However, some other small businesses were recommended some articles of less well-known brands, articles with less well-known signs printed on them, that is, articles which were second-liners. They might be persuaded to believe that the articles would sell well and so they agree to sell such articles. But irrespective of the value of the articles, owners of the relevant trade marks would employ private detectives to investigate so long as they thought there were acts amounting to infringement of trade marks or copyrights. Then they would buy articles from these small businesses; the transactions might involve only a few dollars each. Using the receipts from the small businesses, they could request their lawyers to send letters to the small businesses and seek compensation. The costs for legal charges and charges for private detective might be as high as a hundred thousand or several hundred thousand dollars. My experience has been that the small businesses would need to pay at least $5,000 or $6,000 as compensation to get themselves out of trouble.

So, despite the legal rights the trade mark owners have by law, I still want to take the opportunity at the Second Reading stage to urge these owners to be considerate. If the small businesses had tried their best to trace the suppliers for the trade mark owners, should the trade mark owners still force the small businesses to lose all their money by claiming huge sums of compensation? There are indeed good grounds for regulation by law, but after the law is passed,

I hope the Government will take a sympathetic stance towards retailers (that is a group belonging to the Wholesale and Retail Functional Constituency represented by Mrs Selina CHOW. I think many retailers must have spoken to Mrs CHOW). The Government should help them find goods more easily, or when salespeople sell goods to them, help them further by facilitating their searches for trade marks, although it is not easy to ask them to identify the trade mark of all the goods. Please remember the small businesses operate on a small scale. If they have to conduct searches for trade marks for every item they sell with certain signs, a lot of time and effort will be consumed and this will not be beneficial to the sector as a whole. Hence once they sell such articles, they will be haunted with lawyers, private detectives and trade mark owners who will continually claim compensation from them. Regrettably, compensation is not claimed from the relevant suppliers ultimately. Thus, before the law is passed, I want to make this phenomenon in the community known. I also hope trade mark owners can exercise their rights conferred upon them in a more reasonable manner so that they will not give the community the impression that they are acting too harshly. However, the phenomenon is due not just to the mindful actions of the trade mark owners, but to some professionals who make a living out of such activities. These professionals collect charges from whoever takes legal action.

MRS SELINA CHOW (in Cantonese): As everyone knows, clause 19 of the Trade Marks Bill tabled today has given rise to much controversy. Someone said to me sympathetically, "Selina, would you not find yourself in a dilemma since you are representing both the wholesale and retail sectors, both of which are confronting each other?" This kind of mentality has got the crux of the controversy wrong. Although clause 19 of the Trade Marks Bill is undoubtedly meant to legitimize parallel importation, the conflict arising therefrom is not a conflict between retailers and wholesalers but a conflict between parallel importers and licensed importers. But because a small number of retailers also carry out parallel importation, the above mentality was formed.

Madam President, in many of the deliberation of bills in the Legislative Council, it is not uncommon to encounter heated debates, for different people and groups may have different points of view and their interests involved are different. Officials concerned need to be objective and rational in the stance they take in listening to varying views. They should also try their best to find out a proposal acceptable to all. Unfortunately, during the deliberation of this

Bill, the conflict regarding parallel importation has not been contained but magnified. In this connection, I think the attitude and the way officials dealt with the matter may require some improvement. Once clause 19 of the Trade Marks Bill is passed, when registered trade mark products are put on the market anywhere in the world, trade mark owners will lose their right to institute legal action against parallel importers in Hong Kong for trade mark infringement.

Madam President, the value of a brand lies in the investment incurred for development, promotion and quality control of its products. A brand has to go through a series of "push" or promotion before it can gain confidence among consumers. Hence it can be seen that the establishment of a brand and the efforts of the trade mark owner are closely related. Therefore, when a certain brand has gained significant popularity, one will have to pay a certain price to become its sole agent. This stands to reason. The authorized agent has to give the consumers certain guarantee too. The agent has to ensure quality is maintained and to provide after-sale service. All these are just steps to protect the prestige and value of the brand. The return for all this work is ownership of the trade mark in the market.

Under the existing section 27(3) of the Trade Marks Ordinance, trade mark owners may sue parallel importers for infringement of trade marks without having explicitly or impliedly consented. But as time changes, amendments to the Trade Marks Ordinance are needed from time to time. This is very natural, just like other Ordinances. But when a reform takes place, if some negative results emerge because of a lack of open attitude, a disregard of market order and the views of those affected, and an incomplete consideration for the interests of the consumers, the officials concerned should shoulder responsibility. Clause 19 of the Trade Marks Bill under scrutiny intends to legitimize parallel importation and this will indeed deprive licensed importers of their sole right to trade marks. In the deliberation process, some officials dealt with the conflict between parallel importers and licensed importers with an aggressive attitude and biased words. This is unacceptable.

Madam President, I have always been consistent in my views and attitude about parallel importation. Although liberalization of the market is an inevitable trend and a request of consumers in a free economy, we can ill-afford to ignore possible unfairness arising from the process. We need to act rationally to avoid or stop the unfairness as far as we can. From the point of view of trade mark owners, to legitimize parallel importation is something

difficult to accept. However, after lengthy negotiations, trade mark owners face the reality, with great reluctance. They also come to accept that this is a demand of the community and a trend that cannot be stopped. Finally, they just asked that amendments be made to the Bill to build in a requirement for the labelling of the importers of parallel goods so that consumers could identify the person who should be responsible for the quality of the goods. This can at least prevent the unfair transfer of responsibility for substandard imported goods onto them. I think this is a reasonable request. It is fair to licensed importers, it facilitates consumers and it helps to relieve retailers who sell parallel imported goods of unnecessary responsibility. About this point, I will respond to some of the cases cited by Mr James TO later. But during deliberation by the Bills Committee, we also understood that asking every product to be labelled would cause inconvenience to parallel importers who purchase goods in large quantities. As a result, we came to agree that as far as importers could provide the identity and information of the persons supplying the goods to consumers, or as far as consumers could identify the goods as parallel imports, then it would not constitute infringement of trade marks. Most of the members of the Bills Committee have reached an agreement on this. In view of the above reason, the Liberal Party and I support Miss Margaret NG's amendment without reservation.

Madam President, the Government's view in this matter is hard to understand. On the one hand, it maintains a high profile in safeguarding intellectual property, but on the other hand it deprives, without hesitation, people of their right to intellectual property. Furthermore, the Government reiterates that legitimizing parallel importation is beneficial to consumers; however, when we discuss ways to protect the rights of the consumers to information and to hold people responsible, the Government raises objection. If, as the relevant bureau indicates, parallel importation has only advantages and no disadvantages, then all parallel importers will be prophets who open up markets and heroes who please consumers. Why should the Government conceal the identities of these prophets and heroes? The stance taken by the Consumer Council also puzzles me. I have always appreciated the efforts of the Consumer Council in fighting for the right of the consumers to information, and so, theoretically, it should not object to any action that will reinforce the interests of the consumers. But this time it objects to labelling. When it was asked about ways consumers could identify the responsible persons of the goods, it only said that consumers were smart. No matter how smart consumers might be, how can they be smart without the necessary information? Madam President, the Liberal Party objects

to only one of the parts of the Trade Mark Bill, which is clause 19 thereof. We very much support the rest of the Bill. We applaud the Chairman, Miss Margaret NG's superb leadership and her always admirable standards. We very much praise the officials who have acted in a responsible manner but we deeply regret their failure to skilfully mitigate the confrontation caused by clause 19. We will however support the Second Reading of the Bill.

Madam President, I would like to spend some time in response to some of the cases cited by Mr James TO. He said these were cases he had received. I think what Mr James TO said exactly provides grounds for supporting the amendments proposed by Miss Margaret NG. That is because if importers, be they importers of parallel goods or mainstream goods, can take up statutory responsibility by providing information to identify who import the goods, the retailer would not be unnecessarily encumbered with responsibilities or losses that may arise. If there is such a requirement, no matter who supplies goods to them for sale, they only need to make sure there is identification on the goods and they can go ahead to sell the goods without worrying because undue responsibilities would not be thrown upon them. What Mr James TO said however slightly confuses me because he seemed to have mixed up counterfeits with parallel importation. Parallel imported goods are what we want to legitimize and this is a consensus reached in the Bills Committee. I heard no dissenting voice from other Members. The question is that in the process of legitimizing whether we should do something so that all parties can identify the importers. But according to what Mr James TO said, some trade mark owners were taking actions which he regarded as too harsh against retailers or hawkers who did not know they had stocked counterfeits or been selling goods which might be counterfeits. In this regard I agree both importers and retailers have a responsibility to identify the status of the goods in relation to counterfeits. I do not think we have problems with this as we all agree counterfeits should never be allowed. But the clause 19 we are talking about is related to parallel imported goods, not counterfeits. Parallel imported goods do not generate infringement of intellectual property rights or copyrights. They are different from counterfeits. So, as far as parallel importation is concerned, I think if there is identification, if there is labelling, the scenario Mr James TO described will not arise. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr James TO, do you want to explain the part of your speech which has been misunderstood?

MR JAMES TO (in Cantonese): My speech is simple. As I have said at the beginning of my previous speech, I will discuss the issue of parallel importation later during the Committee stage when clause 19 is discussed. I will explicate all my rationale then. What I mentioned earlier was about the situation with respect to counterfeits and some excessively harsh enforcement actions and therefore I do not have any misunderstanding about counterfeits at all.

MR KENNETH TING (in Cantonese): Regarding the Trade Marks Ordinance, the Federation of Hong Kong Industries would have one point to add. We think the right of consumers to be informed should be protected in the first place. The people should be able to know clearly all information about the goods they are purchasing before buying.

Goods imported by licensed importers enjoy service by the manufacturers and therefore sell at a higher price. But consumers may think the value of service for goods imported by licensed importers far exceeds the price difference between that of such goods and the price of parallel imported goods. Or they may think the service provided by the licensed importers is not good enough and prefer parallel imported goods despite their lack of service. Before making such choices, the consumer must have clear information in order to find a choice that best suits him or her. For this reason, the Federation of Hong Kong Industries is of the view that the best and most effective measure to protect consumers and their right to information is proper trade mark labelling to assist consumers to distinguish between the two kinds of goods. Therefore, we support Miss Margaret NG's amendment. Thank you.

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

MR NG LEUNG-SING (in Cantonese): Madam President, regarding the requirement to label parallel imported goods mentioned in the Bill, there has been an in-depth and heated discussion between the Government, the Legislative Council and the relevant industries. The general consumer should also take note of the issue. Although I am not a member of the Bills Committee, I would like to put forward my views.

No one can deny it is a trend to open up markets and liberalize them. It is a desirable act to legitimize parallel importation through legislation. It is also a trend to allow consumers to be informed as far as possible. A large part of protection of the interests of the consumer lies in the right of consumers to be informed. Under normal circumstances, parallel imported goods lack the kind of service guarantee for the so-called "goods imported by licensed importers" and their quality might be affected by the way they are imported and handled. Hence, I believe it would help consumers to be better informed of the major backgrounds to the sale of such goods on the local market if we enact laws to require that information be provided by parallel importers. If a problem arises, the relevant regulatory department of the Government will find it easier to trace the source and devise measures to cope with emergencies. This would go a long way in regulating the market of consumer products.

The Government has put forward an argument saying that even if the identity of the importer is known it will not be possible for the consumer to make claims for compensation as there is no contractual relationship between the consumer and the importer. In fact, in a paper provided by the Government to the Panel on Trade and Industry last December, it indicated the Administration was proposing to table a bill before the Legislative Council on civil liability for unsafe products, holding importers and manufacturers responsible for a large part of the responsibility for unsafe products. Thus consumers need no contract to claim against not only retailers who have a contractual relationship with them, but also directly against importers and manufacturers. If this is going to be the real legislative intent of the Government, the requirement of the present Trade Marks Bill for parallel importers to provide information will surely go side by side with the upcoming statutory requirement of the bill on civil liability for unsafe products. There will then be greater protection for the consumers.

All parties agree that labelling can lead to a rise in the cost of goods. However, this is relatively minor and would not outweigh the benefit in terms of consumer protection. Indeed, the Government fails to point out the extent of the effect of the increase in cost on the competitiveness of parallel imported goods in price terms. Under most circumstances, with advanced technology, the addition of a label would not involve too much difficulty or added costs. The amendments of the Bills Committee have already taken into consideration the varied characteristics of a range of goods and therefore allow flexibility in labelling. In fact, the Government may make reference to the technology employed by other countries in continually revising their labelling methods, and

then comparing the pros and cons of such methods in regard to the enhancement of market openness and competition. The Government may adopt a prudent and open stance by trying for a while with flexibility the labelling system as proposed in the Bill, and then conducting a review on the effects thereof. It may then confirm or amend the system after gaining some basic consensus from the community. This would be a more appropriate course of action to take.

Madam President, I so submit.

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

(No Member responded)

PRESDENT (in Cantonese): Secretary for Trade and Industry, please reply.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, on 5 May last year, the Government submitted the Trade Marks Bill to the Legislative Council. The purpose of the Bill is to modernize Hong Kong's trade marks law, simplify the complicated procedures to facilitate the registration of trade marks, broaden registrable trade marks and provide for enhanced protection.

I am very pleased that the Bills Committee has completed the mammoth task of scrutinizing the Trade Marks Bill. The Bills Committee Chairman Miss Margaret NG and other Members have done a lot of work and studied trade marks registration in detail. They have also given much useful advice on many extremely technical points in the relevant procedures. I wish to express to them my heartfelt thanks here. I also thank the public and private organizations which have made submissions. Their views have made the Bill submitted to Members today more refined.

In the course of scrutiny, the first important point that the Bills Committee had to clear was to ascertain the necessity of enacting a new trade marks law. While the existing Trade Marks Ordinance fully complies with the relevant international treaties on the protection of intellectual property, it is modelled on a law enacted by the United Kingdom in 1938, which has not seen many major

amendments over the past 50 years or so. With continuing progress through the years and in view of the international development in the protection of intellectual property, it is necessary to enact a modern Trade Marks Ordinance. Actually, Hong Kong is one of the few common law jurisdictions which have not yet reformed the trade marks regime. I am very pleased that after discussion, both the Bills Committee and the legal sector have agreed that there is such a need.

Madam President, in the course of scrutiny of the Bill, the provisions on parallel importation have given rise to more discussions. Parallel imports are neither counterfeits nor substandard goods. They are genuine articles legitimately produced and marketed abroad with the consent of the trade mark owner. The Government's basic stand is not to obstruct the free flow of genuine articles and to abolish restrictions as far as possible in order to encourage fair competition. However, like other goods, parallel imports must comply with all the statutory requirements, such as safety and hygiene requirements, before they can be freely traded. Parallel imports appear mainly because the local prices of the relevant goods are higher than the overseas prices. Thus, there is room for discounts and this creates business opportunities for parallel importers. In addition, non-mainstream or minority interest products which are not available under an exclusive licence system or exclusive dealing system may be marketed in Hong Kong through parallel importation, thus offering consumers a wider choice. At present, parallel import goods are widely accepted in the market. Cars, household electrical appliances, audio-visual equipment, cosmetics or even designer clothes have become a part of our daily lives. I am very glad that the Bills Committee agrees with us and accepts parallel importation. However, our views differ from those of some members of the Bills Committee in that we do not think that we should attach any unnecessary conditions to parallel importation. However, Miss Margaret NG will move an addition to clause 19 of the Bill at the Committee stage to provide that the importer of parallel import goods must be identified. We do not agree with this technical amendment. I will explain the relevant reasons later on.

Madam President, the Trade Marks Bill mainly deals with the rights of trade mark owners and the relevant registration procedures and criteria. Most of the provisions of the Bill are of a technical and uncontroversial nature. After the passage of the Bill, the Government will continue to draft the relevant trade marks rules to provide for the technical details and procedures of trade mark registration and the register of trade marks. We are now consulting the legal

profession on the relevant rules. In addition, to tie in with the operation of the Bill, the Intellectual Property Department will instal new computer supporting systems to facilitate access to information on trade mark registration. After the completion of these tasks, the new law is expected to be implemented in 2001.

Madam President, I will move a number of amendments to the Bill in the Committee stage to resolve the questions raised by various parties during the process of consultation and the deliberations of the Bills Committee. All the proposed amendments have been discussed and agreed by the Bills Committee. After the passage of these amendments, I will move that the Bill be passed by this Council. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Trade Marks Bill.

Council went into Committee.

Committee Stage

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

TRADE MARKS BILL

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

CLERK (in Cantonese): Clauses 5 to 8, 10, 14, 15, 16, 20 to 23, 26 to 36, 38, 39, 41, 42, 45, 46, 47, 53, 54, 56, 57, 61 to 67, 69, 71, 72, 74 to 77, 79, 80, 82, 83, 84, 86 to 90, 92, 93, 94 and 98.

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 1, 3, 9, 11, 12, 17, 18, 24, 25, 37 and 40, subheading after clause 41, clauses 43, 44, 48, 49 to 52, 55, 58, 68, 70, 73, 78, 81, 85 and 95.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to clauses 1, 3, 9, 11, 12, 17, 18, 24, 25, 37 and 40, subheading after clause 41, clauses 43, 44, 48, 49 to 52, 55, 58, 68, 70, 78, 81, 85 and 95 and the deletion of clause 73, as set out in the paper circularized to Members.

These amendments are mostly of a technical nature and are made in accordance with the views of legal professionals and members of the Bills Committee. The relevant amendments can solve some problems in the drafting

of the law and clarify the policy objectives of the provisions. All the amendments are consistent with the obligations that Hong Kong has to fulfil under the relevant international treaties and conventions on the protection of intellectual property. I wish to point out in particular that the proposed amendment to clause 58 of the Bill on defensive trade marks is consistent with the provisions of section 55 of the existing Trade Marks Ordinance. Under section 55 of the existing Trade Marks Ordinance, only a trade mark which is exceptionally well known in Hong Kong may be registered as a defensive trade mark.

Madam Chairman, the Bills Committee has deliberated on and approved these proposals and amendments.

Proposed amendments

Clause 1 (see Annex V)

Clause 3 (see Annex V)

Clause 9 (see Annex V)

Clause 11 (see Annex V)

Clause 12 (see Annex V)

Clause 17 (see Annex V)

Clause 18 (see Annex V)

Clause 24 (see Annex V)

Clause 25 (see Annex V)

Clause 37 (see Annex V)

Clause 40 (see Annex V)

Subheading after clause 41 (see Annex V)

Clause 43 (see Annex V)

Clause 44 (see Annex V)

Clause 48 (see Annex V)

Clause 49 (see Annex V)

Clause 50 (see Annex V)

Clause 51 (see Annex V)

Clause 52 (see Annex V)

Clause 55 (see Annex V)

Clause 58 (see Annex V)

Clause 68 (see Annex V)

Clause 70 (see Annex V)

Clause 73 (see Annex V)

Clause 78 (see Annex V)

Clause 81 (see Annex V)

Clause 85 (see Annex V)

Clause 95 (see Annex V)

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 Trade and Industry 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.

CHAIRMAN (in Cantonese): As the amendment to clause 73, which deals with deletion, has been passed, clause 73 is therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 1, 3, 9, 11, 12, 17, 18, 24, 25, 37 and 40, subheading after clause 41, clauses 43, 44, 48, 49 to 52, 55, 58, 68, 70, 78, 81, 85 and 95 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 19.

MISS MARGARET NG: Madam Chairman, on behalf of the Bills Committee on Trade Marks Bill, I move that clause 19 be amended as set out in the paper circularized to Members.

Clause 19 of the Trade Marks Bill concerns parallel importation of trade mark articles. Parallel-imported trade mark articles are products that are legitimately produced and marketed abroad with the consent of the trade mark owner, but they are then imported into a country or territory without the agreement of the owner or the exclusive licensee in the place of importation. Clause 19 provides for the adoption of international exhaustion of rights, which means that once the trade mark owner has consented to the selling of goods bearing his trade mark anywhere in the world, he could not take infringement actions against parallel importers.

As I have mentioned in my speech during the resumption of the Second Reading debate on the Bill, the issue of parallel importation of trade mark articles has attracted extensive media reports throughout the scrutiny process. This is so not only because of the controversial nature of the proposal in the Bill, but also because of its impact on the daily life of the general members of the public. The fact that there is no international consensus on this subject, and that the World Trade Organization leaves it open for each member to decide for itself testifies that there is no self-evident correct solution.

The Bills Committee has devoted two rounds of consultation on this issue and has received deeply divided views. These views and the arguments for and against them are set out in the Report of the Bills Committee tabled today. As announced well in advance, the Bills Committee took a vote on clause 19 on 17 April 2000. All members supported the liberalization of parallel import. However, a majority of those present supported clause 19 on the basis that a "labelling" system will be introduced, whereby the identity of the importer of the goods will be made known to the consumer at the time of the purchase. We had hoped that the Administration would accept our view and move the appropriate amendment accordingly. However, as the Administration has declined to do so, the Bills Committee will move an amendment through me, as we are constitutionally entitled to do.

Let me state from the outset what this amendment is not about. It is not based on any misunderstanding that parallel import goods are pirated goods. It is not about product safety which is the business of other legislation. It does not impose criminal liability. It does not aim at stifling or stigmatizing parallel import goods. It is simply that as we welcome the opening up of the market for consumers, we also see the advantage in providing the consumers with the information which will facilitate informed choice and any follow-up action to prosecute the rights. Information alone does not give them new rights, but it is a prerequisite if rights are to be meaningful. The approach of the Bills Committee is simple. The first question that we asked was whether clause 19 changes the existing law. The Administration says that clause 19 merely clarifies existing ambiguity in the law. We do not share this understanding. It is clear that under the present Trade Marks Ordinance, whether parallel import amounts to an infringement depends on whether express or implied consent to such use of the trade mark has been given. It is, therefore, a matter of fact and evidence. Clause 19, however, makes it a matter of law that once the goods have been put on the market anywhere in the world, the rights are exhausted and parallel import is not an infringement, because there is no more rights left to infringe. In our view, this is a clear change in the law.

It is in this context that the Bills Committee took the view that, at the same time as liberalizing parallel importation, we would put in a mechanism to provide for consumers' interests. We believe that this is a positive move.

Providing the name and address of the importer is by no means a novelty in our law. It already exists for toys and children's products. Nor is making liberalization of parallel importation conditional alien to clause 19 itself. Clause 19(2) is such a condition. The purpose is to encourage those intending to parallel import to take responsibility for their importation. In this respect, I am gratified to hear that some authorized distributors organizations have pledged to do the same, thereby making this a more level playing field. The consumer will be able to judge for himself or herself from whom he or she is getting the better deal.

The Bills Committee do realize that a system of identification may well mean an increase in cost. Consumer protection almost invariably incurs some costs. But we do not accept that the cost will be anything like inhibitive as the Administration suggests, especially when the Administration has not come up with any cost analysis to substantiate its point, in spite of repeated invitation to

do so. Our assessment is that our proposal will not increase the cost of goods to any significant extent.

Madam Chairman, the legal effect of the present amendment to clause 19 is that parallel importation of trade mark goods does not infringe the registered trade mark, provided that the person who imports the goods into Hong Kong for sale is identified when the goods are put on the retail market. The amendment allows different ways to identify the importer of goods. The name and address of the importer of goods could be marked on the goods, the package of the goods, or a label affixed to the package. Such information could also be shown on a document enclosed in the package of goods, or a document which is exhibited in a conspicuous place where the goods are displayed for sale. Any other ways to identify the importer as provided in the Trade Marks Rules would meet the proposed requirement. We believe that the Bills Committee's proposal is reasonable, flexible, in the public interest and in no way incompatible with the spirit of liberalization which informs clause 19 and the Bill as a whole.

I urge Members of this Council to support this amendment. I do so submit, Madam Chairman.

Proposed amendment

Clause 19 (see Annex V)

MR HUI CHEUNG-CHING (in Cantonese): Madam Chairman, the Hong Kong Progressive Alliance (HKPA) is absolutely clear in its position regarding legitimizing parallel importation. In principle, we support parallel importation to enlarge the range of choices for consumers. But we are also concerned about the fact that unconditional parallel importation may not necessarily benefit consumers and is unfair to traditional agents.

Parallel importation is carried out by some business people who see a chance to make a profit out of the activity. So, they import once and for all a batch of goods of certain brands from other places, when the brands are already well-served by some licensed agents. But because parallel importers do not regularly deal with the line of goods they import, they will not be able to operate as well as the agents who have had a tradition in dealing with them in terms of quality requirement, suitability for Hong Kong, and after-sale service. So, if parallel importation is not properly regulated, consumers will be victimized.

On the other hand, traditional agents need to invest in promotion, supporting service and all kinds of after-sale services before they can establish a brand. Therefore, if we now haphazardly and indiscriminately allow parallel importation without identification, this will certainly indirectly or even directly be unfair to traditional agents. This may even be tantamount to a blow dealt to them so that they treat this as a disincentive to continue their service. Although the range of choices has been enlarged, there may be confusion in the absence of clear labelling for identification purposes. Consequently, the interests of the consumers may be compromised.

Although the Government has stressed repeatedly that labelling increases costs, which will ultimately be transferred to the consumers and will diminish the variety of goods to be imported, we do not think this argument is tenable. A global trend now is for the protection of consumers. Labelling should not be turned down for reasons of costs alone. Furthermore, labelling for retail to show the name of the importer is only a very inexpensive process. For goods in general, the cost of labelling per piece is minimal.

Hence the HKPA agrees with the suggestions of the Bills Committee, that is, there should be labelling on the goods so that goods imported by licensed importers and parallel imported goods can be distinguished. Thus parallel importers will then have some minimal sense of responsibility and goods of traditional agents will not be confused with parallel imported goods. In this way, traditional agents can continue to serve their customers in their own ways and at the same time consumers are given more information and choices in making prudent and informed decisions on whether to buy goods imported by licensed importers or parallel imported goods.

Thank you, Madam Chairman.

MR MA FUNG-KWOK (in Cantonese): Madam Chairman, the Government proposed using the Trade Marks Bill to replace the Trade Marks Ordinance, which has been in force for 40 years. That is a good move as it can improve the business environment of Hong Kong. But in formulating the Bill, the Government added the provision about parallel importation (legitimizing parallel importation) with a rationale biased towards the price advantage and choice. Undoubtedly, parallel imported goods may benefit consumers to a certain extent. But we also have a responsibility to protect other interests of the consumer.

Indeed, the price factor should not be the only component of consumer interests. The right to be informed, to choose and to be assured of good product quality should also be included. In addition, legitimizing parallel importation should be implemented according to the characteristics of an industry to avoid victimizing certain industries, in particular, certain copyright-related industries. In considering the Bill, the industry and colleagues of the Bills Committee put forward friendly suggestions. They hoped, under the premise that they would not oppose to legitimizing parallel importation, the Government would consider adding a labelling system into the Trade Marks Bill to help consumers distinguish between parallel imported goods and goods imported by licensed importers. But government officials responded in a very stubborn and unfriendly way. Secretary CHAU even cited the collapse of the KPS Video Express chain stores and ubiquitous pirated audio-visual products on the market as examples. He blamed all these on the concessions which had been made by the Government in dealing with the Copyright Bill, which partially criminalized parallel importation of audio-visual products. Today, I need to point out the fallacy in the ideas of the Secretary, which are irresponsible. The Secretary even said he wanted to reverse the position in which parallel imported film products were criminalized under the law.

I must point out here that the KPS Video Express chain stores collapsed for a number of reasons, including over-expansion, transformation in the industry, and operating problems. But a very important reason is that the Government failed to effectively stem out rampant pirate activities at an early stage. Before the KPS Video Express chain stores closed down, there were already over a thousand small-scale video shops which had been closed down. The market of lawful versions of the films in the Hong Kong film industry plummeted due to pirate activities. There was heavy unprecedented blow to the rental and retail business in the audio and visual products. In fact, after the closure of the KPS Video Express chain stores, against all odds many shops selling mainly parallel imported audio and visual products thrived. Some expanded from one shop to six or seven shops. As head of his Bureau, Secretary CHAU must find out the facts about the issue. He should not confuse the issue of labelling with the closure of the KPS Video Express chain stores, hoping the chaos will pave the way for legitimizing parallel importation for audio and visual products.

Legitimizing parallel importation has a far-reaching effect. Retailers, wholesalers and even manufacturers are all affected. The sundry goods

industry and the retail industry are affected, as are the creative industries of audio and visual products. Take the film industry as an example. Legitimizing parallel importation has destroyed the running of an established film distribution system. Parallel importers have taken the opportunity to jump the gun in film distribution and carry out infringement activities. More serious, is profiteering by rascals who engage themselves in such illegal activities. They confuse the public with pirated goods under the pretext of parallel importation. Ultimately, consumers, the creative industry and the image of the community as a whole are inevitably victimized.

In fact, requiring that labelling be done on parallel imported goods to identify the importer of goods is in line with the Government's initial idea of providing transparency. In addition, this can also enhance protection for the interests of the consumer and those of the manufacturer so that people know clearly whether they are buying parallel imported goods or goods imported by licensed importers. At present, parallel imported goods on the market often charge 20% to 30% lower than goods imported by licensed importers because they need no incur costs in advertising or after-sale service. I agree consumers have a right to choose between buying parallel imported goods or goods imported by licensed importers. They can always buy parallel imported goods if they do not care about after-sale service or if price is their only consideration. But if consumers want quality products and after-sale service, they may also choose goods imported by licensed importers. So, consumers may take their pick. What is most important is that consumers are given a real right to choose and to be informed. However, consumers at present cannot tell from the packaging whether goods they buy are parallel imported goods or goods imported by licensed importers. Lacking such basic information, how can the consumer make a choice? Therefore, we often hear news about people who took parallel imported goods to be goods imported by licensed importers. When they found out and wanted to return the goods, they could not do so. Some unscrupulous business people even tell consumers the goods they sell are goods imported by licensed importers but in fact they are not. To better protect the right of the consumers to be informed, I support setting up a labelling system for imported goods.

Moreover, labelling benefits not only licensed importers but also parallel importers. There are good parallel importers and bad ones. A labelling system will screen out irresponsible parallel importers.

The Government has been saying labelling may increase costs and there may be technical difficulties. All these have been discussed in the Bills Committee. These are basically not tenable reasons to oppose labelling. Some members even said that, as a compromise, for some goods with low unit price and high sales volume, only a label of the importer on the shelf would do. Labelling is a win-win measure for consumers, licensed importers as well as parallel importers. Why do we not support it? Thus, I support Miss Margaret NG's amendment.

I so submit.

MRS SELINA CHOW (in Cantonese): Madam Chairman, first of all, I would like to reiterate what I have said during the Second Reading debate. The Liberal Party would absolutely support the motion moved by Miss Margaret NG on behalf of the Bills Committee. But I would like to make a few points. Firstly, the Secretary has just mentioned that the Government's policy is to liberalize parallel importation unconditionally. But is it really unconditional? As Miss Margaret NG has just pointed it out, conditions are laid down in clause 19(2). We also support the laying down of conditions because this can protect the consumers' interests. The amendment we move now aims at the same objective and intends to do it even better. In other words, after the amendment is introduced, it will not only lay down conditions stipulating that the standard of goods cannot be lower than certain level, it will also make it clear who will be held responsible. I believe this will improve clause 19(2) rather than lead to a contradictory result.

It is a very strange thing for the Government to say that it is difficult to affix labels on the goods and it is also very difficult to identify the importers. Are these difficulties as serious as what the Government said? I recall that when we listened to the views of various bodies here, we had asked parallel importers a question. The question was raised by me and I believe colleagues would remember this. I asked them directly what difficulties they faced and urged them to tell us one by one so that we could assess the seriousness of their difficulties in an objective way and we could then strike a balance when we came to know their difficulties. They replied that they had only one difficulty which was concerned about costs as the proposed requirement would lead to an increase in cost. Apart from that, I had not heard any other difficulty. Nor did they mention any other difficulty in this Chamber. But as a matter of fact, I had

heard that outside the Bills Committee they queried the practicability of affixing labels on each tin of soft drink when they had imported a full container of canned soft drink. At the same time, I had also asked some retailers whether it was really so difficult to affix labels on a large volume of goods. They answered in the negative. In fact, a wide variety of goods have already been required to affix labels under the existing legislation. Will it really put such a great pressure on the costs if parallel imports are required to comply with the same requirements? It is not necessarily so. In fact, compared with the agents, parallel importers have been exempted from dealing with a lot of matters. For instance, the manufacturers or the factory owners may request the agents to sign contracts with them. But the parallel importers are not required to do so. So, they have basically saved a lot of costs. Now, for the protection of consumers' right to know, it is not unreasonable to impose additional requirements on them. However, as Miss Margaret NG has just said, even though they have told us their difficulty which is concerned about an increase in cost, the Government has even pointed out that parallel importers are unable to make any profit, or unable to go on with the operation and even have to wind up their business. In view of that, we have urged the Government to provide us with quantified data. But we have not received any evidence from the Government.

The point made by Mr CHAN Kam-lam just now is quite interesting. He said that our amendment has caused difficulties to the trade perhaps because it is introduced in such a hasty manner. I do not understand why Mr CHAN Kam-lam or his political party has not told us the difficulties through him. Why did they not reveal all the difficulties arising from the amendment in front of the Members during the scrutiny process of the Bills Committee? Are these difficulties actually not in existence? Time also does not seem to be so rush because we have given sufficient time for this. Moreover, no Members have complained against the Bills Committee's hastiness in dealing with the matter, making them fail to understand the requirements. In fact, the provisions of the amendment are very clear, having taken into account views which were not presented here. For instance, we have considered the situations which will really cause difficulty. If the goods are very small in size, will it be difficult to comply with the requirements? Will it be another problem when the volume of goods is too large? In view of these factors, we have provided different methods to identify the importers in our amendment. Our proposal has already taken into account various situations.

I would like to reiterate that the Liberal Party would certainly support the amendment as we consider that the amendment can fully protect the interests of

both the consumers and the retailers. It can also safeguard public interests in the process of market liberalization. I therefore hope that Members can support the amendment moved by the Bills Committee.

Thank you, Madam Chairman.

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

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, as regards the position of Democratic Alliance for the Betterment of Hong Kong (DAB) on the labelling requirements, I believe we have been expressing our views during the scrutiny process of the Bills Committee. With a liberal attitude, we support any suggestion that would enhance consumers' right to know or lead to the provision of more information about the goods or the importers so as to safeguard the consumers' interests. The most important point is Mrs Selina CHOW's comment that we have not expressed our views on the present amendment and any matters that may be involved. As a matter of fact, I have expressed my views on all possible scenarios after the introduction of this amendment and unfortunately Mrs Selina CHOW was absent at those meetings. Moreover, I can see that just a few comments have been expressed on problems which may arise from the amendment at those meetings. In the Chairman's Report, it has clearly set out my views on the amendment.

In any case, in my opinion, if the amendment is to be a binding legislation observed by both the parallel importers and licensed importers, the legislation must be a practical and effective one. At present, I can see that five labelling methods are made available for them to choose. However, they are not obliged to observe them, for instance, if method A is not applicable to certain commodities, then method B must be adopted. But now, the problem is that the importers can choose any one out of the five and loophole thus arises. As I have mentioned during the Second Reading debate, one of the big loopholes is that if the importers are requested or allowed to show their names on the shelves on which their goods are displayed, the consumers may have forgotten their names soon after buying the goods. If they want to claim from the importer concerned when defects are found in the products, they basically have no idea of how to get to know the importer's name because there is no label on the goods as required by legislation. But there is no fault on the part of the importer since its name has already been shown on the shelves of the retailer.

Besides, there will be a lot of problems in law enforcement. As regards the example I have just cited, even if the importers have repeatedly reminded the retailer to show his name on the shelves in both Chinese and English in order to comply with the legislative requirement, who will be held responsible if there is negligence on the part of the retailer due to abundance of goods? Eventually, it may turn out that the consumer sues the retailer for failing to display information about the importer as required by law. As things go on, it may turn out that the retailer sues the importer. Hence, unnecessary lawsuits and disputes will arise due to ambiguous legislation and requirements.

The DAB has decided not to support the amendment on the ground that it is unsatisfactory. Of course, we feel that time is on our side to work out a better way to provide information which is acceptable to the whole market. In other words, while achieving the necessary purpose, it will not lead to unnecessary regulation in the market, thus imposing restriction on parallel importation. I think we should continue to strive for such a plan so as to protect the consumers.

Besides, we know that there is no legislative requirement that trade mark or goodwill must be shown on commodities. At present, many firms deliberately display their trade marks in their advertisements in order to highlight their goodwill and status in the commercial circle or even their excellent after-sale service. This shows that goodwill is of commercial value. At present, there is no legislation prohibiting the display of trade marks on goods. However, in my opinion, as there is no legislative requirement, it is easier for those bright and clever businessmen to highlight their goodwill and their responsibility towards their goods so that the consumers can identify and differentiate their goods from the others. If labels are affixed on mainstream goods imported by licensed importers, it will be much easier to differentiate those without labels as parallel imports or parallel imports which are different from goods of their brands. So, I do not think it is necessary to regulate or differentiate mainstream products from parallel imports by means of a labelling system. I think we can go further into this controversial issue, as regulations or safety requirements concerning products such as food and medicines have been laid down in law. So, we are happy to work out some better ways to help consumers to differentiate goods on the market.

Thank you, Madam Chairman.

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

MR JAMES TO (in Cantonese): Madam Chairman, the Democratic Party opposes the amendment moved by Miss Margaret NG. Our arguments concerning the labelling requirements on parallel imports are as follows. Mrs Selina CHOW has in fact made a conclusion on the proposal of labelling system. She said that it was for the fairness of the consumers and the licensed importers. In other words, it is a matter of fairness. Let me explain my arguments one by one.

Firstly, the labelling system will provide more information to the consumers for differentiating the goods. But we do not think that this can provide any substantial protection mainly because it is the supplier who should be held responsible if there is any problem in the quality under the existing legislation. Since the trade mark of the goods is genuine, the commodity concerned is not a counterfeit. If it is a problem concerning the quality of the goods, it will be a matter concerning the contractual relationship between the purchaser and the retailer. So, even though the importer's name has been provided, it will not facilitate the claim.

Secondly, it is a concept concerning fairness to the licensed importers. The argument of the licensed importers is that they have spent a lot money in publicizing a brand name or in opening up the sale network of the brand name. However, once there is parallel importation, the fruit of their efforts can be taken away. I opine that their main point is concerned about how to differentiate mainstream imports from parallel imports. Hence, they suggested the introduction of a labelling system. Members may recall that the labelling system we are now discussing has been brewing for some time. During the early stage, I heard some licensed importers suggest that vendors who were not the sole agents of mainstream goods should have to affix labels on the commodities indicating that they were not mainstream goods or stating that they were parallel goods. Of course, they eventually have not put forward that suggestion. What is put in place is a lower level suggestion that all importers have to state the names of the companies. In other words, both the licensed importers and the parallel importers are required to state their company names. But even if this is implemented, I wonder whether the consumers or the licensed importers can differentiate the goods. We can imagine that this is not possible, especially for the general public, as the company names of most importers, no

matter they are of mainstream imports or parallel imports, will not enable the consumers to tell which company the goods are associated with by taking a glance at it. For instance, the name of the licensed importer is Tai Fat Company while the name of the parallel importer is Super Tai Fat Company. In fact, these are merely the names of two companies, which cannot tell which one is parallel importer and which one is licensed importer. If it is hoped that the consumers can differentiate them by looking at the company name, the licensed importer has to publicize widely that Tai Fat Company is the licensed importer of goods of certain brands. But we have to note that Tai Fat Company, the licensed importer of certain mainstream goods, may also be the parallel importer of some other goods. So the consumers may not associate the name of Tai Fat Company with mainstream imports because the company may also be the parallel importer of some other commodities. One cannot tell whether it is a mainstream import or a parallel import by looking at the company name. If they really want the consumers to differentiate them, both the licensed importer and the parallel importer have to make a lot of efforts in publicity. Of course, if the parallel importers feel that their goods are even better than mainstream imports, they should make much more effort to publicize that they are Super Tai Fat Company. Finally, I consider that publicity is still needed even after the introduction of a labelling system.

Although the labelling system has yet been introduced, there are already some existing differentiation mechanisms. For instance, the licensed importer can publicize the trade mark of his goods and urge the consumers to recognize it. Or he may highlight that the soft drink he sells is made in Holland and those which are not made in Holland must be parallel imports. When a consumer knows that the differentiation mechanism is "made in Holland", he will apparently know that he has to check the trade mark of the goods according to the distributors' publicity when he wants to buy either mainstream or parallel imports. If it is said that the mainstream imports and parallel imports of certain brands are exactly the same, in terms of quality and all characteristics, and non-differentiable, what can a consumer do? In that case, I cannot but ask a question: what is the purpose of telling the consumers that the licensed importer and the parallel importer are Tai Fat Company and Super Tai Fat Company respectively? If there is some difference in the appearance of the tin or the package, the distributor may publicize the difference. With such a difference, differentiation will become important. Under such circumstances, the question is simple. It is merely a question of who should be responsible for publicity. I believe if the licensed importer thinks that the parallel importer will not publicize

his goods, he can, as Mr CHAN Kam-lam has suggested, publicize the trade mark of the mainstream imports or the provision of any after-sale services. This will be the most effective means for the consumers to differentiate the mainstream imports from the parallel imports and it will offer the greatest protection to the consumers.

Lastly, the Democratic Party has not stated that the introduction of a labelling system will render the parallel imports totally non-competitive. The Democratic Party does not oppose the amendment on this ground. We certainly consider that some parallel importers may be adversely affected, especially for those who are selling low-priced products. But this is not our main justification. Our main justification is that the labelling requirement does not have any merit at all. On the contrary, the introduction of labelling system will add cost to both the mainstream goods and parallel goods, even though it is not a great margin. But if I am asked to assess the merits, I cannot but ask: what is the purpose of the labelling requirement? It will lead to increase in cost which will ultimately be borne by the consumers. Most importantly, as mainstream goods are also required to affix labels, the cost of mainstream goods will be increased as well. As a result, the consumers have to pay more money because of increase in cost. So what is the purpose of such requirement? So I consider that the total solution for this problem is to improve the differentiation mechanism. I urge the licensed importers or the parallel importers to widely publicize the difference of their goods in terms of quality and package if they think these characteristics enable the consumers to differentiate them. In doing so, the consumers will not make mistake in identifying the goods. Secondly, they will not claim the wrong person without justification. I think this is the most important point.

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

MRS SELINA CHOW (in Cantonese): Madam Chairman, I would like to respond to what the two Honourable Members have just said. I believe Mr James TO has made some mistakes. He has mistaken the actual purpose and the objective to be achieved by the amendment moved by Miss Margaret NG on behalf of the Bills Committee. As a matter of fact, the most important part of the amendment is not concerned about how to differentiate parallel imports from mainstream imports. This is not the crucial part. The most important point is to state who should be responsible and who is the importer. I believe Mr James

TO has never imported parallel goods, not even mainstream products. *(Laughters)* In fact, parallel goods and mainstream products we are now talking about bear the same trade marks which are exactly the same. As they bear the same trade mark, it does not matter where they are made or produced as this is not the core of the problem. The core of problem is that the importer of the goods should be held responsible.

We have held a lot of discussion on this aspect. But unfortunately Mr James TO has not attended all the meetings. The licensed importers have repeatedly expressed that such a liberal market would cause a lot of unfairness to them because they would become the scapegoat. For instance, some parallel importers have imported some goods the quality of which may not be the same as that of the mainstream products because the former is manufactured for another market. The ingredients of the parallel imports are not the same as those for Hong Kong market although they bear the same trade mark. Hong Kong consumers are totally unaware of this and, as a result, have bought goods bearing the same trade mark but of different quality. However, this is not the worst scenario. What is the worst scenario? It is that some parallel importers — let me stress that not all of them — in particular, those who are reluctant to pay more money for their goods as described by Mr HUI Cheung-ching, have imported the cheapest goods. These cheapest goods may be those which are soon to be "expired" or those which are inferior in terms of quality or standards, but bear the same trade mark. These goods cannot be said to be unsafe when they are imported. Nor is their quality so poor that they fall within the standards stipulated in clause 19(2) of the Bill. In that case, it will become a responsibility imposed on the importer.

Madam Chairman, I would like to take this opportunity to tell Mr James TO a story. In fact, he has already heard about it. In this reported case, a parallel importer sold a watch, which was parallel imported, to a consumer. Later, the watch became out of order. As the watch did not bear any label, the consumer did not realize that the importer was in fact the retailer. When he took the watch to the retailer for repair, he was told that the agent was so-and-so. He then took the watch to that agent who refused to repair the watch on the ground that it was parallel imported. Without any alternative, the consumer took the watch back to the retailer. The retailer initially denied that it was imported by him and refused to handle the case until the consumer sued him in the Small Claims Tribunal. From this, we can see that such an incident would bring a lot of inconvenience to the consumers. Besides, it is also an unexpected

bad turn to the agent. Undoubtedly, the agent has not suffered any loss under such circumstances. But I know that in many cases, the agents would accept or take back the parallel-imported product which is sub-standard as they do not want to make any delay to the problem. Why do the agents do so? It is because they want to protect the value of the brand.

I have some queries on what Mr CHAN Kam-lam has said. It is true that he has insisted that it is not feasible from the first meeting of the Bills Committee. It is not surprising to hear him maintain that it is impracticable today. But I query, as I have just said, why he has never told us how impracticable the amendment is. Nor have we heard from the trade that it is not feasible. Just now he has made an interesting point that the label must be in both Chinese and English. But the amendment does not make such a provision. The amendment provides that the label can be in Chinese "or" English. In other words, either one of the two languages can do. It is not so complicated as he said. I really wonder whether he has envisaged the matter in a more complicated way than it should be in reality. I hope he can seriously examine our amendment before we vote. If he thinks that he can support the amendment after examining it, I hope he can give us support.

MR JAMES TO (in Cantonese): Madam Chairman, I will not repeat the points I have made but I would only respond to the new point made by Mrs Selina CHOW.

Mrs Selina CHOW has mainly said that she supports the aim of the amendment and she thinks that the aim of the amendment is not to distinguish between "parallel imports" and "mainstream goods" but to define responsibilities. Different Members will certainly support the amendment on different bases and I have actually heard many Members say that identification is very important, thus, I would only respond to the "identification argument".

As regards the "responsibility argument" and "scapegoat argument", Mrs Selina CHOW has just said that some parallel importers mislead consumers and tell them that they should hold the licensed importers responsible which is actually unreasonable. I agree that this is unfair.

Yet, at present, some problems emerge. If a licensed importer deeply believes that the parallel imports and mainstream goods of certain commodities

are different, he should step up publicity to let the consumers understand their differences. Take a can of soft drink as an example, the place of production adequately indicates who is the licensed importer but difficulties are involved. The soft drinks imported by the so-called "licensed importer" may be mass-produced in place of production A on one occasion, and the trader importing soft drinks from the place can be called the "licensed importer" — in fact, some soft drinks are directly manufactured in Hong Kong. However, as far as I know, even if some licensed importers import the same brand of goods, some goods will be produced in place of production A while some other goods are produced in place of production B, thus, licensed importers can also import goods from several places of production. It is too bad that when the parallel importers sell goods from place of production A, as different international trade situation will affect the state of the goods just produced, goods imported from country B will become parallel imports. What may happen is that: when a person sells goods from place of production A while another person sells goods from place of production B, when the former sells goods from place of production B, the latter may have switched to sell goods from place of production C. Therefore, consumers can only identify the places of production from the different packaging shown in the publicity of the goods. In extremity, when parallel imports are no different from mainstream goods in terms of quality and every aspect, I really do not know why the "scapegoat argument" will come into being. In that case, even the global owner of the trade mark will ultimately have to trace the origin and responsibility through the licensed importers or parallel importers. If there is only one type of goods, the goods sold all over the world should have the same quality.

Let me turn to the "expiry argument". Some have said that the quality of the goods will change when they expire. As mainstream goods may also expire, the "expiry argument" is only applicable to goods such as food, and consumers must note the expiry dates marked on food. Whether expiry dates are marked on mainstream goods will certainly depend on the consumer legislation of different places. For instance, some say that expiry dates must be marked on food but if we consider this from the point of view of safety, it is not necessary to mark expiry dates on food. If the goods are articles for use which will not cause harm regardless of when they are used, the "expiry argument" will be untenable.

The cases of some so-called "parallel importers" will sometimes be different. After the implementation of the labelling system, when licensed

importers are held responsible, they will certainly point out the goods that they have not imported, and cite the labels on the shelves of supermarkets as proof. I think they will more or less respond this way. Yet, why do licensed importers have to entertain misled customers who want to affix responsibility? Only for the sake of goodwill. Even if this system has been established, licensed importers will not like to offend customers for the sake of goodwill, and they will still give them compensation or accept exchanges, and they may even not point out the labels on the shelves of supermarkets.

Why? As Members may imagine, when a purchaser is not satisfied with the parallel imports he bought and is misled by the parallel importer to hold the licensed importer responsible, he needs not tell the licensed importer where he bought the goods and he can say that he has just bought the goods on the street without specifying the seller. Then, the licensed importer can only point out that the can of soft drink or the goods are not imported by him. If the licensed importer, for any reason, does not want to offend the customer or produce counter-publicity results, he may even give the customer compensation. Therefore, even if a labelling system is established, the consideration of the licensed importers will not be different.

Based on the above, I do not have any special arguments so far to support doing something that is not quite effective, that is why I always find that it is hard to support the amendment.

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I did not intend to speak too much during the Committee stage because we have already stated our stance very clearly. However, Mrs Selina CHOW may misunderstand us if we do not express our views on this amendment more thoroughly.

Let us consider the timetable of our discussions on the amendment. Actually, we only saw the five proposals at the last meeting. Mrs CHOW had not attended the meeting and it seemed that she was out of town. I stated clearly our stance at the meeting and expressed my views on the amendment. After Mrs CHOW has expressed her views on the quality of parallel imports and the problems that might arise, although Mrs CHOW has said that she supports parallel importation, she still has doubts about parallel imports. Thus, if we continue with our discussions, it may only give people an impression that although Members say that they support parallel imports, that is actually untrue.

Therefore, we need to explore ways to help consumers identify mainstream goods and parallel imports on their own when they buy goods. Yet, we may not necessarily be able to do so now because there are thousands, even tens of thousands of goods in the market. When consumers buy goods, do they rely on the trade marks for identification or on the attractiveness of the goods to them and whether they are pleased with the goods? Identification in this nature is actually fairly difficult. If we further ask consumers to distinguish between goods that look almost the same and tell mainstream goods from parallel imports, I believe it will even be harder for consumers.

Mrs CHOW has just cited the example of a watch. As Mrs CHOW is the representative of the wholesale and retail sector, she should understand the day-to-day operation of the sector. If she cited this example to illustrate the difference between parallel imports and mainstream goods, I think it is indeed a very wrong example. After the consumer had bought the watch, he was later instructed to hold the agent responsible. The retailer was wrong and his operating practice was improper. If we want to identify the responsibility for the sales of a brand or goods, apart from looking for a shop with proper operating practice, we also have to consider the after-sale results. We can see from the example of the watch that the licensed importer has not suffered any loss as a result of the unlawful practice of the retailer, and the consumer has also not suffered any loss as a result of the unlawful practice of the retailer. When legal action was finally taken, the court decided that the retailer who sold the parallel imports should give the consumer compensation. Therefore, in a free market, besides requiring the relevant parties to have proper operating practices, we should further educate consumers on how they can identify importers and retailers with proper operating practices when they consume. The most important point is that the problem cannot be solved by the labelling system deemed as the only feasible solution.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Honourable Members, some other Members have also asked to speak. In accordance with the Rules of Procedure, a Member may speak more than once at the Committee stage but I would like to remind Members that the Bills Committee has already spent plenty of time scrutinizing this Bill, and the matters discussed today may have already been discussed by the Bills Committee. Although Members have already discussed certain matters, they can discuss these matters again for they absolutely have freedom of speech.

I would also like to tell Members that the Clerk has already invited Members to note on 29 May that if I am of the opinion that it is unlikely that the business on the Agenda of the meeting can be finished by about midnight on the day of the meeting, I will order that it resumes the following day for the continuation of business.

MRS SELINA CHOW (in Cantonese): Madam Chairman, thank you for being so tolerant. As there is a new point and my name has been mentioned, I have to respond any way. I agree with Mr CHAN Kam-lam that consumers are wise but they need sufficient information to make wise choices. If they are kept in the dark, they cannot act wisely. Education is not needed for consumers know how to identify when they are given information. Although Mr CHAN Kam-lam thinks that the suggestion of the amendment may not be feasible, I hope he will accept that the spirit of the amendment is to provide consumers with information to facilitate identification. Whether he finds this feasible is another matter.

Mr CHAN has just made one point which is extremely wrong. The story I have just told is not about the problem of the retailer. There is a problem just because the retailer is concurrently the importer. If the retailer is purely a retailer, regardless of whether the goods is supplied by the parallel importer or the licensed importer, so long as all the goods are affixed with labels or identification marks that we have discussed, there will not be any problem. The importer in the story is a parallel importer and concurrently a retailer, in other words, he is selling the parallel imports he has imported. However, he is unwilling to let the consumer know that he is the parallel importer. Thus, the story can prove that it is necessary to establish a labelling system for identification because consumers will then know who will be held responsible for the goods bought. I can put it more clearly that the consumer need not know whether the goods are parallel imports or mainstream goods for the problem does not lie there. He needs only know who will be responsible for the quality of the goods and when there are problems with the goods. In other words, this is an issue of responsibility.

I would also like to respond to the remarks made by Mr James TO. In fact, it is after all an issue of responsibility. He has just said that there should be labels indicating the date. Well, some goods have labels while some others do not. For example, do cosmetics have labels indicating the date? No. Do

beers have labels indicating the date? No. Food is regulated by other legislation but we are now discussing the problems that have actually arisen as many goods do not have labels and a lot of parallel imports are found in the market. For example, some cosmetics (Madam Chairman, we ladies may be more familiar with this) have peculiar smell, and we discover there are problems as soon as we open the boxes. Yet, it has not been stipulated that dates should be indicated. Mr James TO has just said that publicity can be made on mainstream goods to publicize their features or merits. In any case, such publicity will not involve things that parallel imports lack. The focus of our discussion is why we should state clearly who should be responsible for the quality of the goods. Publicity can be made on the merits of mainstream goods but it cannot point out things that parallel imports lack. Even licensed importers may not know what are included or missing in the quality of parallel imports. It is not perfectly right to do so and we do not encourage doing so. We only hope that each business operator will act in his own way. He may import goods from different origins and publicize their merits.

I really do not understand something. I have pointed out during the Second Reading of the Bill that as parallel imports are so remarkable, why do the importers have to hold back their identity? If the imported goods are cheap and good, why do importers have to hold back their identity? I really do not understand this. This is my immediate response to the doubts expressed by the two Members just now.

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

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I would be very brief because I do not want the meeting to resume tomorrow for the continuation of business as a result of my remarks. *(Laughter)*

Mrs Selina CHOW has just said that we should support the spirit of the amendment because consumer interests will be better protected and consumers will have more right to knowledge after labels have been affixed on goods. However, whether this is feasible is another matter. This is precisely the topic we are going to debate over today. We are here to examine whether the Bill is feasible, what will be the result if it is not feasible and we still reluctantly support it? Actually, I know parallel importers, importers and retailers very well, and I

have held several meetings with them and listened to their views in the course of scrutiny of the Bill. I have explained to them that if we enact a law that we know will not be feasible, once the law is enacted, it may lead to many problems in the sector. Thus, is this attitude responsible? It will be useless even if I give the proposal moral support because we are enacting a law and we cannot just say we support it. I am a friend of theirs and I will not casually offend my friends, therefore, I have explained to them clearly that I really hope that there will be a chance for us to continue to explore other methods to let importers — parallel importers and licensed importers alike — give consumers more information so that consumers can distinguish between goods that are good and goods that are not good.

Mrs Selina CHOW has repeatedly said that parallel imports will have problems and she has also given the example of cosmetics having peculiar smell. However, we know that this Bill has clearly stated that if consumers find that there are problems with the quality of some parallel imports or goods, they can regard this as an act of infringement upon the trade mark of the goods and take legal proceedings in accordance with this law. Thus, we need not worry that someone will intentionally introduce to Hong Kong inferior goods sold in foreign countries by means of parallel import. I fully understand the worries of the sector but I do not understand why Mrs Selina CHOW has taken this as the basis of refutation. Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I am very pleased to have heard this educational and heated debate. The earlier debate once again proved that Legislative Council Members are far superior to bureaucrats. They can rise to speak at great length without a script, Madam Chairman, while I am as good as dumb without one. *(Laughter)*

I am also pleased to have heard the criticisms levelled at me by many Members. As our emperors used to say, "if there are mistakes everywhere, the fault is all mine". Although I am not an emperor, I may be blamed for all the mistakes.

Madam Chairman, the Government's stand on parallel importation is consistent throughout. Among the reforms proposed by the Law Reform Commission in 1995, decriminalization of parallel import was recommended in its report on Hong Kong's copyright laws. The Government followed these recommendations in the Copyright Bill. The provisions on parallel import in the existing Copyright Ordinance were passed by the then Legislative Council after several heated debates.

In terms of protection of intellectual property, the Government has enhanced the law and the Customs and Excise Department has strictly enforced the law to combat counterfeit and piracy activities over the past year or so. As a result, such criminal activities have been greatly dampened. We will continue to combat with all force counterfeit and piracy activities, as well as enhance the law when necessary, in order to ensure that the Hong Kong Special Administrative Region can provide the best protection for intellectual property owners.

Clause 19 of the Trade Marks Bill stipulates that a trade mark owner has no right to forbid others from importing goods bearing his trade mark. The object is to give consumers more choice by opening the market and benefit consumers by enabling them to buy basically the same products at lower prices. However, in order to protect the interests of the trade mark owner, clause 19 also provides that it does not apply if it is proved that the condition of the goods has been impaired, such as they have gone bad with the passage of time, and the use of the trade mark is detrimental to the repute of the trade mark. In our view, clause 19 has achieved a balance between benefitting consumers and protecting the interests of trade mark owners. We disagree with the technical amendments proposed by Miss Margaret NG to clause 19 for the following four reasons:

First, in our view, the proposed amendment discriminates against parallel importers. The amendment will in effect affect only parallel importers, since even if the authorized dealer or exclusive licensee does not comply with the relevant stipulation, he will not be sued by the trade mark owner.

Second, when consumers discover that the goods they bought are problem goods or substandard goods, they will usually complain to or seek compensation from the retailer, rather than the importer. From the point of view of contractual law, there is no contract between consumers and importers. Therefore, there are no grounds for claiming compensation from importers.

There are great technical difficulties if consumers wish to sue the importer in accordance with the negligence law. Therefore, the proposed amendment will not give consumers any real protection.

Third, stipulating the identification of the parallel importer on the goods will increase the cost of parallel importers, which will ultimately be transferred to consumers. For low-priced products marketed in bulk, the additional cost is by no means negligible. On the whole, the stipulation may lead to a reduction of certain parallel import goods and higher prices, as well as reduce consumers' choice and harm their interests.

Fourth, to provide for labelling of parallel import goods to allow consumers to identify the goods of dealers is not a sound method, since it will increase the cost of doing business and cause price increase. If a dealer specially introduces goods for the local market or provides good after-sale service to consumers, he should label the goods voluntarily to emphasize his selling points.

Notwithstanding this, the Government does not deny the effect of labelling or marking. However, I wish to point out that the relevant provisions involving pharmaceutical products, food as well as toys and children's products are made due to specific safety or hygiene reasons and included in the relevant laws. The Trade Marks Ordinance is not the proper law to deal with such issues.

Madam Chairman, the statutory labelling of consumer goods is an important issue that must be carefully studied. The Government has a responsibility to ensure that the stipulations on labelling are appropriate and in keeping with the times. I wish to stress that there must be adequate grounds to make additional requirements on top of the existing stipulations, especially those applied to all consumer goods. Mr CHAN Kam-lam convened a special meeting of the Panel on Trade and Industry of the Legislative Council in mid-May to discuss how to improve the existing regulations on labelling and step up law enforcement to protect the rightful interests of consumers. The Government is willing to continue to discuss and follow up this question with Members.

As for the right of consumers to claim compensation, as Mr James TO of the Democratic Party pointed out earlier, enacting a civil liability for unsafe products ordinance is the most appropriate way to protect consumers. In

December last year, we consulted the Panel on Trade and Industry of the Legislative Council on the Bill. Unfortunately, some Members had reservations regarding this Bill. After the discussions sparked off by parallel importation over the last few months, I believe Members now better understand the need for enacting that law. We are willing to expedite the enactment of legislation to provide a clear legal basis for consumers to claim compensation from retailers, importers, suppliers and manufacturers for losses or injury caused by the use of unsafe products.

While officially opening up the market to parallel imports, we will ask the Consumer Council to step up consumer education to alert consumers to the quality of goods and after-sale service and encourage them to buy goods in shops with a good reputation, in order to enhance their ability of self-protection. The Consumer Council will also co-operate with the business sector to encourage retailers to improve their method of operation to provide better service to consumers. We will also gladly follow the suggestion of the Democratic Alliance for the Betterment of Hong Kong to listen to the view of dealers and discuss with the industry how to further protect consumer interests, so that consumers and the business sector will be well-prepared before the Trade Marks Ordinance comes into operation in 2001.

Based on the above reasons, I urge Members to oppose the relevant amendment. Thank you, Madam Chairman.

MISS MARGARET NG: Madam Chairman, on behalf of the Bills Committee, I wish to thank Members who have spoken. I hope that if I deal with their points briefly, it will not be taken as a sign of disrespect. For convenience, I will go through Members' views in the order of their speeches.

The Honourable CHAN Kam-lam, on behalf of the Democratic Alliance for the Betterment of Hong Kong, opposes the amendment as proposed. His first point is that the amendment aims at distinguishing between licensed importers and parallel importers. This may not actually be bad for parallel importers. Mr CHAN seems to think that labelling is prejudicial to parallel importers, but this goes against the basic premise that parallel imported goods are every bit as good as the goods imported by licensed importers. If that is the case, why should labelling be prejudicial? In fact, would it not rather help the consumers to see that for the same quality, they do not have to pay so much?

Thus, the Bills Committee is not favouring one party rather than another. For this suggestion of labelling, it is only supposed to help those who are prepared to take responsibility.

Mr CHAN Kam-lam also says that he cannot support the amendment because it does not achieve the aim. It is not very clear why he thinks that it will not achieve the aim, seeing that the aim is a very simple one, that of identifying the importer, so that consumers would be placed in a position to make a more informed choice. He also says that because of the nature of the amendment, not everybody will be compelled to label. Some will label and some others will not, and uniformity will not be achieved.

However, Madam Chairman, we do not aim at achieving uniformity. We aim at starting the process. If this proves to be useful to the consumers, the demand will broaden and the practice would take hold. In fact, the same criticism can be launched against clause 19(2), because there is also a condition which itself is not coercive. It may also be a source of litigation. It is also a matter of civil liability rather than criminal liability. It is not coercive and yet, it is put there because it is considered to be fair. I do not think that this is a good reason for opposing the amendment to clause 19.

The Honourable Mrs Selina CHOW spoke in favour, several times in very strong terms, of the amendment which has been given the discussion, in the Bills Committee and it, therefore, does not surprise me. She points out that clause 19 does take away some existing rights from the trade mark owner and the licensed importer, with which I respectfully agree. I would further add that maintaining the existing rights does not mean that the trade mark owner and the licensed importer are entitled to special protection indefinitely. When we have any policy change affecting the existing rights, those existing rights should be taken into consideration and the reasonable views of those affected ought to be listened to. And this is exactly what the Bills Committee has done.

The Honourable Kenneth TING spoke in favour of the amendment. He has mentioned that consumer protection starts with having the right information and he takes the view that there are certain advantages about licensed importers, for example, after-sale service and so on. And this, of course, is very real. Consumers are entitled to choose whether they want good after-sale service but pay a higher price, or get the goods at a cheaper price but without after-sale service. And information, again, would be of assistance to them and that is exactly what this amendment tries to achieve.

The Honourable NG Leung-sing also supports the amendment and he points out that the Government's opposition is difficult to understand, given the Government's proposed consumer protection legislation to be brought on later, because the present amendment will actually assist that legislation once it is introduced.

The Honourable HUI Cheung-ching, speaking for the Hong Kong Progressive Alliance, also supports the amendment, and he mentions the point of being fair to licensed importers. Madam Chairman, I would like to make a remark here. In our system, there is no iniquity in defending one's interests. One may disagree with the position of licensed importers, but they are entitled to defend their own interests subject to balancing their interests against legitimate interests of other people. It is unfair to attack them for the mere fact that they defend their own interests.

The Honourable MA Fung-kwok, supporting the amendment, mentions that consumers' interest is not only a matter of getting lower prices, but also higher quality. Again, whether price is more important or quality is more important is a matter of choice. The identification and the additional information put a consumer in a better position of making a choice. He also points out that the proposed amendment aims at increasing transparency which is consistent with the Government's position all along. And further, he says, with which I respectfully agree, that a labelling system will not only benefit the consumer, but will also benefit the parallel importer because among parallel importers, there are more responsible people as well as less responsible people. If one could follow their identification, one may end up favour supporting certain parallel importers while keeping away from others. With respect, that is a valid point.

Madam Chairman, I do not intend to comment in detail on the very lively debate. I would come at once to the Honourable James TO's speaking on behalf of the Democratic Party. I must say that I have some difficulties in understanding his position. The first point that Mr James TO made is that the extra information does not give the consumers more protection, because rights is a matter of contract. However, information has always been considered to be consistent with consumer protection. I have already dealt with this point. His right is worth nothing to him if he is unable to prosecute that right, and identification is the beginning point of his ability to prosecute that right.

Secondly, we are not trying to say that by labelling, an additional right would be given to him, because the emphasis of this proposed amendment is on choice, not on legal action. But even so, in the projected consumer protection legislation, clearly, if legal action is contemplated, it does exist for you to know who is the importer in case you want to take action against him.

Mr James TO says that the main reason why the Democratic Party is against the amendment is that there does not seem to be any advantage to the requirement of labelling, although there is a small increase in cost. He does not think that the cost is going to be tremendous, but balance against no advantage, that forms a main reason for objection. This is a very strange position, because although he may not agree that the knowledge is a very important advantage, it is nevertheless a recognized advantage. On the other hand, to oppose the proposed amendment because it might cause a small increase in cost price which a trader may easily recover seems to me to be a rather strange reason for opposing a measure.

Finally, Madam Chairman, Mr CHAN Kam-lam raised a point which I am very anxious to answer, and that is, his view that the amendment was put together in a hurry and, therefore, perhaps not well thought through. May I just, for the sake of Members who are not of the Bills Committee, provide this information. The Bills Committee actually has proceeded with very great caution. First, deputations were listened to. Then, as I said earlier, on 17 April, a decision was made on the policy stand of the Bills Committee. After that, there were three further meetings.

In the first meeting, the Administration was invited to agree with us. When the Administration indicated that it would not support us, we went into a discussion of what kind of amendment the Bills Committee would like to put forward. After that, there is a second meeting discussing the working draft provided by the legal adviser of the Bills Committee. Upon discussion, further refinements were suggested. Then, at the third meeting, and it was only at the third meeting then the final drafting was accepted. Madam Chairman, I do not wish Members to think that on such a matter, we have proceeded with haste or thoughtlessness.

Finally, the Secretary for Trade and Industry told us four reasons why he opposed the amendment. The first reason is that it discriminates against parallel importers. I have answered very fully before. If by merely giving people

your name amounts to discrimination, you must have a very peculiar view of what you are doing. If it is identification of something good that you are doing, this cannot be discrimination.

Secondly, he says that as far as problem goods are concerned, there is no right against the importer as such because there is no contract. I have also answered this point before because here, the emphasis is on choice, not on legal action.

Thirdly again, it is a matter of increase of cost price. I note that to this very last moment, the Administration or the Secretary has not given us any cost analysis.

Finally, the Secretary says that it is not right to force people to label. It is better to ask the licensed importers to do more advertising. He also says that the Government is not against labelling as such. There are all sorts of labelling already going on. However, it seems to me that the Government is opposing this amendment for the sake of opposing it, and I must say that I do not agree with this position.

May I end up by just saying this: In conclusion, the one reason why I am inviting Members to support this amendment is quite simple. There is no downside to this amendment but a quite significant benefit at a moderate cost. I submit the amendment which merits support.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for three minutes.

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

CHAIRMAN (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, Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Mr Michael HO, Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong voted against the motion.

Geographical Constituencies and Election Committee:

Mr NG Leung-sing, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss Christine LOH, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, 18 were in favour of the motion and eight against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, four were in favour of the motion and 21 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the amendment moved by Miss Margaret NG to section 19 has been negatived, I now put the question to you and that is: That section 19 be made part of the Bill.

Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TIEN rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TIEN has claimed a division. The division bell will ring for three minutes.

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

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

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Miss Christine LOH, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung , Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Timothy FOK, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

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

THE CHAIRMAN announced that there were 48 Members present, 36 were in favour of the motion and 11 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

DR LEONG CHE-HUNG (in Cantonese): Madam Chairman, in accordance with Rule 49(4) of the Rules of Procedure, I move that if a Member claims a division in respect of other motions concerning the Trade Marks Bill at this meeting, the Committee of the whole Council shall proceed to the relevant division immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: If a Member claims a division in respect of other motions concerning the Trade Marks Bill at this meeting, the Committee of the whole Council shall proceed to the relevant division immediately after the division bell has been rung for one minute. Does any Member wish to speak?

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed. I order that if a Member claims a division in respect of other motions concerning the Trade Marks Bill at this meeting, the Committee of the whole Council shall proceed to the relevant division immediately after the division bell has been rung for one minute.

SECRETARY FOR INDUSTRY AND TRADE (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any schedule shall be considered after the clauses and any proposed new clauses of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that this Committee may consider Schedules 1 to 4 and new Schedules 1 and 2, ahead of other clauses and new clauses of the Bill.

CHAIRMAN (in Cantonese): Secretary for Trade and Industry, as only the President may give consent, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Trade and Industry, you have my consent.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 to 4 and new Schedules 1 and 2, ahead of other clauses and new clauses of the Bill.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 to 4 and new Schedules 1 and 2, ahead of other clauses and new clauses of the Bill.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): Schedules 1 to 4.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 to 4, as set out in the paper circularized to Members.

The purpose of the relevant amendments is to renumber the Schedules after the addition of new Schedules 1 and 2. In addition, I propose technical amendments consequent to changes in the text and drafting of other clauses of the Bill. The Bills Committee has pointed out that the amendments to the Trade Descriptions Ordinance and the Crimes Ordinance should not be regarded as consequential amendments in the Trade Marks Bill. Therefore, we propose to delete clauses 7, 8 and 11 in Schedule 4. All these amendments have been endorsed by the Bills Committee.

Proposed amendments

Schedule 1 (see Annex V)

Schedule 2 (see Annex V)

Schedule 3 (see Annex V)

Schedule 4 (see Annex V)

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 Trade and Industry 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): Schedules 1 to 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New Schedule 1 PARIS CONVENTION COUNTRIES AND WTO MEMBERS

New Schedule 2 DETERMINATION OF WELL-KNOWN TRADE MARKS.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that new Schedules 1 and 2, as set out in the paper circularized to Members, be read the Second time.

New Schedule 1 is proposed in the light of the amendments to clause 91. Clause 91 provided that the Chief Executive in Council has the power to amend the lists of Paris Convention Countries and World Trade Organization Members which will be set out in new Schedule 1. New Schedule 2 provides guidelines for the court and the Registrar of Trade Marks, specifying certain criteria for determining a trade mark as a well-known trade mark. These criteria were

made with reference to section 2 of a joint resolution concerning provision on the protection of well-known trade marks as promulgated by the World Intellectual Property Organization in September 1999. These amendments have been endorsed by the Bills Committee.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedules 1 and 2 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New Schedules 1 and 2.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that new Schedules 1 and 2 be added to the Bill.

Proposed additions

New Schedule 1 (see Annex V)

New Schedule 2 (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedules 1 and 2 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 59, 60, 91, 96 and 97.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 4, 59, 60, 91, 96 and 97, as set out in the paper circularized to Members.

These amendments have been made in light of new Schedules 1 and 2. The Chief Executive in Council will provide for by way of regulation under section 91 a list of Paris Convention countries as specified in Schedule 1 and a membership list of the World Trade Organization. Other amendments are related to the criteria for judging well-known trade marks as set out in Schedule 2. These proposed amendments have been endorsed by the Bills Committee.

Proposed amendments

Clause 2 (see Annex V)

Clause 4 (see Annex V)

Clause 59 (see Annex V)

Clause 60 (see Annex V)

Clause 91 (see Annex V)

Clause 96 (see Annex V)

Clause 97 (see Annex V)

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 Trade and Industry 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 2, 4, 59, 60, 91, 96 and 97 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any proposed new clause shall be considered after the clauses of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clauses 8A and 19A, ahead of clause 13 of the Bill.

CHAIRMAN (in Cantonese): As only the President may approve of the request made by the Secretary for Trade and Industry, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Trade and industry, you have my consent.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider my proposed new clauses 8A and 19A, ahead of clause 13 of the Bill.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of procedure be suspended to enable the Committee of the whole Council to consider new clauses 8A and 19A, ahead of clause 13 of the Bill.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 8A Ordinance binds Government

New clause 19A Use in advertising, etc.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that new clauses 8A and 19A, as set out in the paper circularized to Members, be read the Second time.

Under the provisions of new clause 8A, this Bill shall apply to the Government of the Hong Kong Special Administrative Region (SAR). However, our policy intent has always been that the Trade Marks Bill shall apply to all persons and organizations, including the SAR Government and offices of the Central People's Government in Hong Kong. We agree with the Bills Committee that the expression of clause 9(3) of the Bill could be further improved to reflect the above policy intent. We shall draft a proper text to suit the purpose and submit the text to this Council for Members' scrutiny as soon as possible. New clause 19A is introduced at the Bills Committee's request to make an express reference to advertising in the provision and to improve the expression of clause17(7). Comparative advertising is legitimized under the provisions of the new clause. Traders who use comparative advertising may make use of a competitor's trade mark to identify his product for comparison purpose. Both amendments were endorsed by the Bills Committee.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 8A and 19A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 8A and 19A.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that new clauses 8A and 19A be added to the Bill.

Proposed additions

New clause 8A (see Annex V)

New clause 19A (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 8A and 19A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 13.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendment to clause 13, as set out in the paper circularized to Members.

The proposed technical amendment is a consequential amendment subsequent to the addition of the provision related to the use of trade mark in advertising to new clause 19A. This amendment has been endorsed by the Bills Committee.

Proposed amendment

Clause 13 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 13 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendment to the long title, as set out in the paper circularized to Members.

The proposed amendment seeks to specify clearly that the Trade Marks Bill is completely different from the existing Trade Marks Ordinance. Under the new legislation, legal assumptions related to the existing trade marks system will not apply. This amendment has been endorsed by the Bills Committee.

Proposed amendment

Long title (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Trade and Industry be passed.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

TRADE MARKS BILL

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the

Trade Marks Bill

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

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Trade Marks Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Road Traffic (Amendment) Bill 2000.

ROAD TRAFFIC (AMENDMENT) BILL 2000

Resumption of debate on Second Reading which was moved on 16 February 2000

PRESIDENT (in Cantonese): Mrs Miriam LAU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MRS MIRIAM LAU (in Cantonese): Madam President, as Chairman of the Bills Committee on the Road Traffic (Amendment) Bill 2000, I wish to report on the main deliberations of the Bills Committee.

The Bill seeks to improve the existing legislation in dealing with reckless and careless driving by amending the Road Traffic Ordinance so as to:

(a) instil more objectively by replacing "reckless driving" with "dangerous driving";

(b) introduce alternative offences in addition to "careless driving" to allow the court to have the discretion in handing down convictions; and

(c) increase the penalty level to strengthen the deterrent effect.

Some members of the Bills Committee question the need to replace "reckless driving" by "dangerous driving" as they consider that the definitions of "reckless driving", dangerous driving" and "careless driving" refer to different driving behaviours.

The Administration has pointed out that the occurrence of serious traffic accidents involving fatalities had brought to light perceived inadequacies in the Road Traffic Ordinance. The Administration had explained that in many of these cases, the difficulty in proving *mens rea* (that is, a driver's mental state) has resulted in the defendants being found guilty of the lesser offence of "careless driving" with much lower penalties, rather than the more serious offences of "reckless driving" or "reckless driving causing death".

To address the problem, the Administration has proposed to replace "reckless driving" by "dangerous driving" to instil more objectivity in establishing dangerous driving behaviour by requiring the courts to have regard to all relevant circumstances involved to determine what would constitute the standards expected of a competent and careful driver. In the Administration's view, the proposed definition of "dangerous driving" will overcome the difficulty in proving *mens rea* for recklessness by shifting the emphasis from the mental state of the driver to the actual driving behaviour.

The Administration has advised that in drawing up the proposal to replace "reckless driving" by "dangerous driving", the Administration has made reference to the practice adopted in the United Kingdom where the determination of what amounts to driving dangerously is by means of a test which concentrates upon the nature of the driving rather than the defendant's state of mind. The definition of dangerous driving in the United Kingdom has two main ingredients:

(a) a standard of driving which fell far below that expected of a competent and careful driver; and

(b) it would be obvious that the driving behaviour would carry a potential or actual danger of physical injury or serious damage to property.

Members have inquired whether driving under certain conditions would be regarded as an offence under the new definition of "dangerous driving", such as:

(a) driving after taking drugs;

(b) driving under poor health condition, for example, suffering from heart disease or diabetes; and

(c) driving after working long hours overnight without rest or sleep.

The Administration has explained that the simple fact that a person who has taken panadol, or is tried or suffers from a disease and drives would not in itself constitute dangerous driving. There would have to be two tests. First, the actual driving behaviour is dangerous, for instances, he drives in excessive speed, or he drives on the wrong side of the road. Second, the court shall have regard to the circumstances of the case including the nature, condition and use of the road, the traffic condition and the state of the vehicle. The court shall also have regard to all relevant circumstances shown to have been within the knowledge of the defendant that it is obvious to a competent and careful driver that driving in such a state is dangerous.

Members have expressed concern that the physical condition of the driver is not clearly specified as one of the circumstances to be taken into account by the court or magistrate in determining what would be regarded as a dangerous driving behaviour. The Administration has agreed to propose amendments to the Bill to address Members' concern.

Members are also concerned that with the replacement of "reckless driving" by "dangerous driving", some offences which should have been charged with careless driving might eventually fall within the scope of dangerous driving.

The Administration had advised that there are strict internal guidelines on laying charges for serious driving offences for front-line police officers to follow. The Administration has provided some examples of possible dangerous driving behaviours. In response to members' request, the Administration has

undertaken to publish a pamphlet after the enactment of the Bill to enable the public to have a better understanding of what kinds of driving behaviour may be regarded as dangerous driving. The Government has also promised to consult the Panel on Transport in respect of the contents of the pamphlet.

Another important proposal of the Bill is to introduce alternative offences in addition to "careless driving" to allow the court to have the discretion in handing down convictions. The Administration has also made reference to the practice adopted in the United Kingdom. However, the alternative offences adopted in the United Kingdom are only restricted to "careless driving" and "drunken driving". The original proposal of the Government includes six minor offences that drivers may often commit, for example, driving in excessive speed, crossing a double white line or disobeying the traffic light. Members do not agree that the Government should include these minor offences within the scope of alternative offences because a driver who commits such a minor offence will first be levied a charge against "dangerous driving", and he will only be convicted of a more minor offence after he has not been convicted of "dangerous driving".

Members are of the view that a law enforcing officer should have decided upon the offence against which a charge will be levied when he levies the charge, and the proposal of the Government will easily cause the law enforcing officer to abuse power.

Lastly, the Government agrees to delete the six minor offences from the alternative offences, and the Government will later propose an amendment during the Committee stage.

Madam President, the Bills Committee, with the exception of a member who has reservations, supports the proposal in the Bill. Thank you.

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, the information of the Government shows that there are 20 000 traffic accidents every year resulting in casualties on average, and we doubt if road safety is adequately safeguarded.

To increase the objectivity of the law and allow the Government to prosecute drivers who endangered public safety more effectively, the Government has made amendments to the Road Traffic (Amendment) Ordinance 2000 and replaced "reckless driving" by "dangerous driving". The Hong Kong Federation of Trade Unions (FTU) approves of this principle because the relevant amendments will better safeguard the safety of road users.

However, we are still concerned about some parts of the Bill. Firstly, the definition of "dangerous" can be very broad. For example, when we first examined the Bill, according to the Government's proposal, driving by ill drivers such as those suffering from diabetes and heart disease will also be regarded as "dangerous driving". However, the illness of some people may not be serious and they can perform routine duties including driving. Besides, if it is not suitable for a patient to drive, the doctor will advise him against driving. Thus, the Government's proposal will give people an impression that it has been a bit overcorrect.

Yet, having discussed this with the representatives of the industry, the Government has narrowed down the definition of "dangerous driving" and after the amendment, the above example is no longer regarded as "dangerous driving". The Government has also promised to publish pamphlets on cases related to the definition of "dangerous driving", to enhance the understanding and knowledge of drivers and law enforcing officers of "dangerous driving". This will undoubtedly help law enforcement but the FTU still urges the Government to keep in contact and communication with the industry in respect of the definition and details of "dangerous driving".

As regards alternative offences, the original intention of the Government is that if the court rules that a suspect is not convicted of "dangerous driving", in accordance with the original amendment, the Government can charge the litigant against other more minor offences such as "crossing a double white line" or "failure to give precedence to pedestrians on zebra crossing". The FTU has reservations about this because the police should decide upon the offence against which a suspect will be charged on the basis of the facts of the case, and the police should not charge the suspect against the most serious offence first and then charge him against a more minor offence after the first charge has been unsuccessful in a multi-layer, crisscross manner. This is not only time-consuming and ineffective but also extremely unfair to the litigant. As a result of the alternative offences charged by the Government against the litigant, he has

to appear in court for several times and put up with unnecessary psychological pressure and financial burden. Furthermore, the Government will waste public money unnecessarily.

Yet, I have to stress that we definitely understand that the purpose of the addition of the alternative offences is to increase the deterrent effect of the Bill so that reckless drivers will restrain themselves to safeguard the safety of road users. Therefore, we do not oppose the Government's amendment concerning alternative offences pinpointing at serious offences such as drunken driving.

Therefore, together with the Motor Transport Workers General Union, we have expressed our views to the Government time and again and the Government has finally accepted the relevant proposal to make amendments. The existing provisions have only retained three alternative offences, namely, "careless driving", "driving under the influence of drugs" and "drunken driving". The FTU welcomes this and supports the Government. After the passage of the Road Traffic (Amendment) Bill 2000, the safety of the public will be better safeguarded.

Madam President, I so submit.

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

(No Member responded)

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I do not need to speak.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Traffic (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): Road Traffic (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

ROAD TRAFFIC (AMENDMENT) BILL 2000

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

CLERK (in Cantonese): Clauses 1 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2.

SECRETARY FOR TRANSPORT (in Cantonese): Madam Chairman, I move the amendments to clause 2, as set out in the paper circularized to Members.

The objective of the proposed amendments is to delete certain offences from the alternative offences to "dangerous driving" and "dangerous driving causing death", and to further specify the circumstances to be taken into account when considering what would be regarded as dangerous driving. In addition, I also propose to delete the reference to "the court or magistrate" in the clause to render the relevant provisions more concise. These amendments have all been endorsed and approved by the Bills Committee after discussion. I hereby urge Honourable Members to lend their support to these amendments proposed by the Administration. Thank you, Madam Chairman.

Proposed amendment

Clause 2 (see Annex VI)

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 Transport be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 4 Section added

New clause 5 Consequential amendments.

SECRETARY FOR TRANSPORT (in Cantonese): Madam Chairman, I move that new clauses 4 and 5, as set out in the paper circularized to Members, be read the Second time.

New clause 4 is a transitional provision which seeks to remove any possible risk of challenge that any offence of causing death by reckless driving or reckless driving committed before the commencement of the Bill, or any criminal proceedings for such offences instituted before the commencement of the Bill, shall not continue to be charged, punished or instituted after 1 July 2000. This is a technical amendment.

New clause 5 is a consequential amendment. Its purpose is to replace "reckless" with "dangerous" in other ordinances and subsidiary legislation which have made reference to reckless driving. This is also a technical amendment. These amendments have been agreed and approved by the Bills Committee. I urge Members to support the Government's amendments. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 4 and 5 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 4 and 5.

SECRETARY FOR TRANSPORT (in Cantonese): Madam Chairman, I move that new clauses 4 and 5 be added to the Bill.

Proposed additions

New clause 4 (see Annex VI)

New clause 5 (see Annex VI)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 4 and 5 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ROAD TRAFFIC (AMENDMENT) BILL 2000

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, the

Road Traffic (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 Road Traffic (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): Road Traffic (Amendment) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (No. 8) Bill 1999.

ADAPTATION OF LAWS (NO. 8) BILL 1999

Resumption of debate on Second Reading which was moved on 31 March 1999

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws (No. 8) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Adaptation of Laws (No. 8) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 8) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws (No. 8) Bill 1999.

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 10.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ADAPTATION OF LAWS (NO. 8) BILL 1999

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

Adaptation of Laws (No. 8) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (No. 8) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please 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): Adaptation of Laws (No. 8) Bill 1999.

MOTIONS

PRESIDENT (in Cantonese): Motions. Two resolutions proposed under the Interpretation and General Clauses Ordinance.

The first motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I move the motion as printed on the Agenda. The purpose of the motion is to propose some technical amendments to some of the provisions in the Financial Resources Rules (FRR).

The main objective of the FRR is to improve the existing financial rules to bring them in line with the changes in market practice and strategies and to cope with the diversified developments in investment products, such as some new derivatives. The amendments also seek to improve the incompatibilities and inadequacies discovered when the existing FRR are put in force. In addition, the FRR also extend relevant financial rules to cover the new class of registrants known as securities margin financiers.

When we were formulating the FRR, we had made public consultation and thoroughly considered the submissions made in the consultation exercise. Such views are incorporated into the relevant rules. The Administration has submitted the draft to the Bills Committee on Securities (Margin Financing) (Amendment) Bill 1999 for members' perusal to help them in their deliberations on the proposed regulatory framework on securities margin financing. The

relevant Subcommittee of this Council held two meetings in May to deliberate and give advice on the FRR. I would like to extend my gratitude to Honourable Members who have taken part in the formulation of the FRR, and in particular, Mr Ronald ARCULLI, Chairman of the Subcommittee.

The amendments found in the motion are of a technical nature with the objective of giving greater clarity to the relevant provisions.

I so submit and urge Honourable Members to support the motion. Thank you.

The Secretary for Financial Services moved the following motion:

"That the Financial Resources Rules, published as Legal Notice No. 103 of 2000 and laid on the table of the Legislative Council on 3 May 2000, be amended -

(a) in section 2, in the definition of "introducing broker" -

(i) in paragraph (a)(i) by repealing everything after "in the name of such person to exchange participants" and substituting ", or members of a stock market specified in Schedule 5 or a futures or options market specified in Schedule 6; or";

(ii) in paragraph (a)(ii) by repealing "introducing another person to exchange participants of the Unified Exchange, or members or exchange participants of" and substituting "introducing another person to exchange participants, or members of";

(b) in section 7(b) by repealing "during any 5 business days" and substituting "on more than a total of 4 business days";

(c) in Part I of Schedule 2, by repealing Table 2 and substituting -

"TABLE 2 - "Maturity"

Remaining term to maturity		(I) Fixed coupon bonds/normal floating rate bonds Haircut %	(II) Any bonds other than those set out in (I) Haircut %
(a)	less than 6 months	1	1
(b)	6 months to less than 3 years	3	3
(c)	3 years to less than 5 years	4	5
(d)	5 years to less than 10 years	7	10
(e)	10 years or more	10	22"."

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

MR RONALD ARCULLI: Madam President, the FRR laid on the table of this Council aims at updating the current FRR which have been in operation since 1993. In view of the importance of the FRR in providing standards on the financial resources of intermediaries in the securities and futures markets, the House Committee formed a subcommittee to study the new FRR together with other related subsidiary legislation. As Chairman of the Subcommittee, I wish to take this opportunity to highlight some of the important points that we have considered.

We are in support of the revision of the current FRR to keep up with changes in market practices and strategies, in particular, following the enactment

of the Securities (Margin Financing) (Amendment) Ordinance 2000, under which a new class of registrant called "securities margin financiers" has been created. One of the key objectives of the new FRR is to extend appropriate financial regulations to the securities margin financiers.

The Subcommittee is, however, concerned about the readiness of market participants in producing the notifications and monthly returns on their assets and liabilities as required under the new FRR for submission to the Securities and Futures Commission. The industry might have difficulties in understanding the complex calculation and computation involved. In this respect, the Subcommittee is reassured by the Administration that it will monitor closely the development of software in assisting the industry to complete the prescribed forms for monthly returns, and will consider the Subcommittee's suggestion of developing its own electronic reporting device for use by the industry.

As regards the calculation of liquid assets, the Subcommittee has noted that there is a disparity in treatment between a dealing company or securities margin financier registered in Hong Kong operating an overseas branch and an overseas company operating a Hong Kong branch. Such disparity in treatment is not only unfair to companies registered in Hong Kong, but may also encourage local companies to relocate overseas and to operate through a branch in Hong Kong. The Subcommittee considers that a branch of an overseas company in Hong Kong should be regarded as a separate entity having adequate assets to comply with the same liquid capital requirement applicable to a Hong Kong company. We understand that the Administration would separately conduct a review to examine this disparity in treatment.

On capital requirements under the FRR, some members are concerned about the possible difficulties encountered by individual sole proprietors in complying with the new requirements of maintaining a liquid capital of $3 million and a minimum capital of $5 million. The Subcommittee has considered whether a six-month grace period should be given to sole proprietors. As the objective of revising the FRR is to ensure that licensed entities engaged in securities businesses are financially sound to stand the risks undertaken, the Subcommittee agrees that the FRR will commence as scheduled, but the Securities and Futures Commission should continue to approach individual sole proprietors and offer assistance as necessary on a case by case basis.

Madam President, the amendments proposed by the Secretary for Financial Services today are made to improve the drafting of the FRR after discussion with the Subcommittee. The Subcommittee supports these amendments.

Thank you, Madam President.

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

(No Member responded)

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

(The Secretary for Financial Services indicated that she did not wish to reply)

PRESIENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial 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.

PRESIDENT (in Cantonese): The second proposed resolution under the Interpretation and General Clauses Ordinance. As the Secretary for Education and Manpower is not in the Chamber now, I shall suspend the meeting. I hope the meeting will be able to continue after a few minutes.

7.42 pm

Meeting suspended.

7.50 pm

Council then resumed.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, first of all, I would like to apologize to the President and Members for I was late because of some misunderstanding about time.

I move the second motion under the Interpretation and General Clauses Ordinance on the Agenda to pass the resolution to increase the fines under the Education Ordinance (the Ordinance) and the Education Regulations (the Regulations).

The resolution before Members seeks to:

(1) increase the level of fine in section 84(3) of the Ordinance from $5,000 to $250,000;

(2) increase the levels of fines in various other sections of the Ordinance on the basis of inflation; and

(3) amend regulation 102 of the Regulations to provide a maximum fine of $250,000 for over-enrollment in contravention of regulation 87, and a maximum fine of $50,000 for contravening other regulations.

The fines provisions in the Ordinance and the Regulations have not been revised for a long time. The recent spate of incidents of kindergartens and tutorial schools over-enrolling, over-charging and operating without registration has given rise to public concern about the adequacy of the existing fines as a deterrent under the Ordinance and the Regulations. There have been repeated

calls for the Government to step up enforcement action and to impose heavier penalties on offenders. Generally speaking, there is a growing expectation in the community for the Government to deal stringently with any schools which act against the law. Furthermore, in two recent investigation reports relating to the operation of kindergartens and tutorial schools, the Ombudsman has recommended, *inter alia*, that the fines in the Ordinance and the Regulations be increased.

In view of these developments, we have conducted a review of the fines provisions in the Ordinance and its subsidiary legislation. The opportunity is also taken to convert the fines, where appropriate, to the appropriate levels according to the standard scale of fines under the Criminal Procedure Ordinance.

We have consulted the Legislative Council Panel on Education on this exercise. We propose that the fines in sections 18A(2), 63(3), 63(5), 76(4), 76(5), 78, 86A(3), 86B(2), 87(1), 87(2), 87(3), 87(3A) and 89(6) of the Ordinance be revised on the basis of inflation. The offences covered in these sections include, for example, operating a school without the requisite registration or permit, obstructing the operation of the Appeals Board, failing to comply with an attendance order and so on.

Section 84 provides that the Chief Executive in Council may make regulations on various aspects of school standards, operations, management, fees and so on and that such regulations may provide that contravention of these regulations shall be punishable by a fine of $5,000 and an imprisonment term not exceeding two years. Regulation 102 provides that a person found guilty of an offence under any provisions in the Regulations, including over-enrollment, shall be liable to a fine of $5,000 and to imprisonment for one year. We consider over-enrollment to be a much more serious offence when compared to other breaches of regulatory requirements stipulated in the Regulations because of the safety implications. With the support of the Legislative Council Panel on Education, we propose that over-enrollment should attract a maximum fine of $250,000 upon conviction. This 50 times increase should send a clear signal to kindergarten operators that the Government attaches great importance to the well-being and safety of children in kindergartens, and that over-enrollment will not be tolerated. As for all other offences under the Regulations, we propose that the fine be increased to $50,000 on the basis of inflation.

I should add that fees levied by kindergartens in respect of the education of a pupil is subject to approval by the Director of Education. If a kindergarten charges more than the approved amount, the supervisor and principal will each be liable to a fine of $50,000, under the present amendment proposal. If kindergartens wish to sell school items or provide other paid services to pupils, they should make it clear to parents that acquisition of such items or services is entirely on a voluntary basis. The Education Department has as recently as in April this year issued two Administration Circulars reminding all kindergarten supervisors to observe the rules. When kindergarten profiles for the 2000-01 school year are compiled later this year, information on school fees and miscellaneous charges made by kindergartens will be included.

We have also reviewed the imprisonment terms specified in various provisions of the Ordinance and the Regulations. We consider the existing provisions appropriate and do not propose any change.

Madam President, I beg to move.

The Secretary for Education and Manpower moved the following motion:

"That –

(1) the Education Ordinance (Cap. 279) be amended –

(a) in section 18A(2), by repealing "of $5,000" and substituting "at level 3";

(b) in section 63(3) and (5), by repealing "of $5,000" and substituting "at level 3";

(c) in section 76(4) and (5), by repealing "of $5,000" and substituting "at level 3";

(d) in section 78, by repealing "of $5,000" and substituting "at level 3";

(e) in section 84(3), by repealing "5,000" and substituting "250,000";

(f) in section 86A(3), by repealing "of $10,000" and substituting "at level 4";

(g) in section 86B(2), by repealing "of $10,000" and substituting "at level 4";

(h) in section 87 –

(i) in subsection (1), by repealing "25,000" and substituting "250,000";

(ii) in subsection (2), by repealing "of $10,000" and substituting "at level 6";

(iii) in subsection (3), by repealing "of $5,000" and substituting "at level 5";

(iv) in subsection (3A), by repealing "of $5,000" and substituting "at level 3";

(i) in section 89(6), by repealing "of $5,000" and substituting "at level 5";

(2) the Education Regulations (Cap. 279 sub. leg.) be amended –

(a) by repealing regulation 102 and substituting –

"**102. Penalties**

(1) Subject to paragraph (2), any person who is guilty of an offence under these regulations shall be liable on conviction to a fine at level 5 and to imprisonment for one year.

(2) The supervisor or principal of a school who is guilty of an offence under regulation 101(6) by virtue of a contravention of regulation 87 shall be liable on conviction to a fine of $250,000 and to imprisonment for one year.";

(b) in the Third Schedule -

(i) in Form 1, under the part headed "WARNING", in paragraph 1(b), by repealing "25,000" and substituting "250,000";

(ii) in each of Forms 6, 8, 10 and 11, under the part headed "WARNING", in paragraph (b), by repealing "25,000" and substituting "250,000"."

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

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

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, the motion today proposes to raise the maximum fine for over-enrollment to $250,000 and that for other offences to $50,000. The Democratic Party and I will support the motion.

Several cases of over-enrollment in kindergartens and tutorial schools have occurred recently, and today I wish to focus on the situation in kindergartens. I have discussed the matter with a number of kindergarten principals and teachers, and they all agree that operating without a licence, over-enrollment, over-charging school fees and miscellaneous fees have impaired the reputation of the kindergarten sector. They all feel aggrieved as a result. They all feel this way because although there is only a handful of such unscrupulous kindergartens, they have nonetheless impaired the reputation of the entire kindergarten sector and brought shame to it. That is why they want to make a clean break with these kindergartens, so as to show the education ideals and scruples of the sector. Therefore, they all support the legislative proposal of drastically increasing the fines.

The increased penalties contained in the legislative amendments today can achieve a deterrent effect, and the majority of the kindergartens in Hong Kong,

which are all law- and regulation-abiding, will support or even welcome these increases. Having said that, I must point out that these amendments will only be able to achieve the purpose of punishing law-breakers. If the Government does not step up its inspections and enforcement actions after enacting these amendments, it will in effect be continuing to allow the law- and regulation-breaking kindergartens to continue to harm the interests of pupils, parents and the education system. Therefore, I must urge the Government to take effective steps to monitor kindergartens. Regular inspections on a district basis must be conducted, and when kindergartens with delinquent records apply for the opening of branch schools, the Government must pay special attention before issuing a licence, and regular inspections must be conducted afterward.

Besides, I hope that while the Government seeks to enact amendments on increasing the penalties, it will also provide adequate assistance and funding to law-abiding kindergartens with proper education objectives. I also hope that the Government can formulate a long-term policy on providing fully subsidized kindergarten education.

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

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, the Democratic Alliance for the Betterment of Hong Kong (DAB) supports the move of the Government to drastically increase the fines under the Education Ordinance and the Education Regulations. The issue was actually discussed in the Education Panel of the Legislative Council before. At that time, Members expressed the dissatisfaction that the Government tried only to adjust the levels of penalties on the basis of inflation, saying that this would not help improve the situation. They hoped that the Government would impose heavier penalties to achieve a deterrent effect.

In the past two years, cases of violation, such as operating without a licence, over-enrollment and over-charging, occurred repeatedly in tutorial schools and kindergartens, and this has aroused the concern of the community. In some cases which involved over-enrollment and operating without a licence, for example, the breaches were of a very serious nature. Such attempts to pursue profits in total disregard for student safety are really highly irresponsible.

Besides the fact that the existing penalties are too lenient, a more significant cause of all the problems is the inadequate inspection and monitoring of kindergartens on the part of the Education Department. For this reason, even if the penalties are raised today, it does not necessarily mean that all the problems can be solved in the future. The DAB hopes that the Education Department can take effective measures to step up monitoring and clamp down on irresponsible operators, so that students can be able to learn in a safe environment.

Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I am very grateful to Honourable Members who have spoken in support of this motion. I would like to make a pledge here that if the motion is to be passed, our colleagues in the Education Department will certainly step up their monitoring and enforcement efforts. From our perspective, we attach great importance to kindergarten education and we would like to exchange views with Honourable Members on the reform proposals later and on the devising of measures to enhance the quality of kindergarten education. Thank you, Madam President.

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

PRESIDENT (in Cantonese): Proposed resolution under the Fixed Penalty (Criminal Proceedings) Ordinance.

PROPOSED RESOLUTION UNDER THE FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. This motion is to amend the amount of fixed penalty for excessive emission of smoke from a motor vehicle, as set out in item 29 of the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance, from $450 to $1,000.

First of all, I would like to explain the reasons and justifications for the proposed increase in fixed penalty for smoky vehicle to $1,000.

Tackling the air pollution problem is our prime target for early action. It is also a common objective shared by the Government, the Council and the different sectors of the community. Air pollution problem in Hong Kong is mainly caused by vehicle emissions. In particular, diesel vehicles account for 98% of the suspended particulates and around 80% of the nitrogen oxides emitted by vehicles. Therefore, the reduction of emissions from diesel vehicle is our top priority.

Standards of vehicle maintenance are a key factor in the emission performance of vehicles. A poorly maintained vehicle can emit up to 10 times the pollutants emitted by a properly maintained one. For diesel vehicles, an obvious sign of poor maintenance is the emission of black smoke. One of our initiatives to improve air quality is therefore focused on taking effective measures against smoky vehicles.

Numerous representations have been made by members of the public over the past year, expressing their concerns over health threats from air pollution and calling for reduction in vehicle emissions to protect public health. Many of them have urged the Administration to step up enforcement action against smoky vehicles and increase the penalties for such offences.

The current fixed penalty fine of $450 for smoky vehicle owners was set in 1994. At the existing level, a smoky vehicle offence carries the same penalty to that for relatively minor traffic offences, for example, loading/uploading goods or picking up/setting down passengers in a restricted zone, vehicles with excess passengers. Having regard to medical evidence on the health impacts of air pollution and the extent to which harmful air pollutants are associated with vehicle emissions, we believe that a fixed penalty at the existing level cannot adequately reflect the health effects of emissions from smoky vehicles. For the above reason and for the purpose of enhancing the deterrent effect, we consider that the fixed penalty for smoky vehicles should be increased. It will also convey a clear message to all vehicle owners of their responsibility to ensure proper maintenance of their vehicles to reduce the effect vehicle emissions have on others.

At which level should we set for the increase in the fixed penalty for smoky vehicles? Many different views expressed on this point. We consider that the penalty for smoky vehicle offences should be increased to a level similar to that for other traffic offences which threaten other people's safety. Currently, an overloading offence carries a fixed penalty of $1,000 and this is the only penalty under the Fixed Penalty (Criminal Proceedings) Ordinance which has been set at the level of $1,000. It is also the heaviest penalty under the Ordinance. We therefore propose to increase the fixed penalty for smoky vehicle offences to the same level.

Apart from raising the level of penalty, we are also implementing a package of effective control measures to achieve a greater deterrent effect. Under the Smoky Vehicle Control Programme, smoky vehicles spotted by trained spotters must pass a smoke test administered by the Environmental Protection Department (EPD) within a specified period. Failure to do so will result in cancellation of the vehicle licences concerned. The EPD issued about 26 700, 31 800 and 37 800 emission testing notices in 1997, 1998 and 1999 respectively. To enhance the effectiveness of the programme, the EPD introduced chassis dynamometer smoke tests for light-duty vehicles in September

last year. The more revealing test has been effective in deterring improperly maintained vehicles. The EPD plans to extend the use of chassis dynamometer to medium and heavy-duty vehicles undergoing the smoke test later this year.

Since April last year, the police have been provided with 12 portable smokemeters to help step up their enforcement work. In 1997 and 1998, the police issued about 1 100 and 1 600 fixed penalty tickets against smoky vehicles. In 1999, about 5 100 fixed penalty tickets were issued. In the first four months of this year alone, around 2 000 fixed penalty tickets had been issued. Smoky vehicles caught by the police will be issued with a fixed penalty ticket and referred to the EPD for a follow-up smoke test within a specified period. Vehicles failing the smoke test will also have their licences cancelled. The police have also been carrying out joint roadside operations with the EPD against smoky vehicles. The two departments are now looking into ways which could strengthen the effectiveness of joint roadside operations against smoky vehicles.

During our earlier consultation with the transport trades on the proposed increase in the fixed penalty for smoky vehicles, some members of the trades expressed the view that we should place more emphasis on raising the standards of vehicle maintenance, especially those related to the maintenance of the vehicle emission systems.

Taking into consideration comments of the trades, we are working closely together with the vehicle maintenance trade in raising vehicle maintenance services. In January this year, we already set up a Working Group on Vehicle Maintenance Services with representatives from the trade, government departments and professional bodies to study ways to improve vehicle maintenance. In addition, we have organized a number of vehicle maintenance seminars and are providing numerous training courses for the trade. On the issue of vehicle maintenance data, we have been discussion with the relevant trade associations on our request to release technical data required for vehicle maintenance. The Services Manager Association has recently undertook that majority of its members would release maintenance data on emissions from pre-Euro diesel vehicles. We will continue to study both long and short-term measures to improve vehicle maintenance standards through the Working Group on Vehicle Maintenance Services.

We are aware that the overall standards of vehicle maintenance services cannot be said to be prefect. But we will continue to press on with our efforts to

raise the standards of the vehicle maintenance trade on the maintenance of vehicle emissions. To provide a reasonable time for the trades to improve the maintenance arrangement for their vehicles, we propose to bring the new level into effect on 1 December 2000.

On the issue of repeated offenders, I have advised the relevant Legislative Council Panels that the inter-departmental Task Force on improving air quality will review the existing legislation with a view of working out the most effective means to impose heavier penalty against repeated offenders of smoky vehicle offences. We will consider various options including the one with an incremental increase in fixed penalty level proposed by the All Party Clean Air Alliance of the Legislative Council. We will put our proposal to Members at the next legislative session.

I urge Members to support my motion of raising the fixed penalty for smoky vehicles to the level of $1,000. Thank you, Madam President.

The Secretary for the Environment and Food moved the following motion:

"That —

(a) that the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended in item 29 by repealing "$450" and substituting "$1,000"; and

(b) that this Resolution shall come into operation on a day to be appointed by the Secretary for the Environment and Food by notice in the Gazette."

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

PRESIDENT (in Cantonese): Miss Christine LOH and Mr James TIEN will move amendments to this motion. Their amendments have been printed on the Agenda. Council will now debate the motion and the two amendments together in a joint debate.

I will call upon Miss Christine LOH to speak first, to be followed by Mr James TIEN; but no amendments are to be moved at this stage.

MISS CHRISTINE LOH: Madam President, last year, I tried unsuccessfully to raise the smoky vehicle fine to $5,000 when we debated the Revenue Bill. Since then, Hong Kong recorded its worst Air Pollution Index. The Administration has also confirmed the annual cost in medical expenses and loss of productivity resulting from air pollution is $3.8 billion a year. And that excludes the unquantifiable cost of some 2 000 people dying prematurely annually as a result of Hong Kong's bad air.

Let us look at some facts. Hong Kong has some 500 000 vehicles, of which 150 000 are powered by diesel. Almost all of the diesels are commercial vehicles. That means the vehicle is an essential tool of the transport trade. Of the 150 000 diesel vehicles, the majority of them are old, with pre-Euro engines. These, in particular, need to be well maintained. However, their owners often do not bother to spend money to maintain the vehicles, thereby compounding the amount of poisonous emissions. 70% of all diesel goods vehicles and 41% of buses are pre-Euro. In addition, there are 18 000 taxis, 4 000-plus public light buses and 2 000 passenger vans to make up the total diesel fleet.

The point I want to take is that the pre-Euro vehicles, diesel taxis and vans have very simple engines. The reason why I want to highlight this point is to emphasize that these engines are not hard to fix. They cannot be compared to Euro II vehicles or newer petrol powered private cars, which have complicated electronic devises. I want to highlight this because from my private conversations with Members, I realized that some of them are labouring under a serious misunderstanding. They think that my proposal is too stiff because they believe that Hong Kong mechanics cannot adequately fix these vehicles today.

That is completely wrong. Let me repeat. These engines are simple ones. As one mechanic said to me: "Miss LOH, Hong Kong's mechanics are competent to fix them." He has also told me that the problem is that the transport trade does not regularly maintain its fleet according to manufacturers' instructions. The main reason why commercial vehicle owners do not regularly maintain their vehicles is because they wish to save money. Worse, to save more money, irresponsible owners and drivers use illegal, high sulphur, heavily polluting fuels. That is a deadly mix. The result is that your health and my

health have to suffer. I do not see why the public or I should tolerate such selfishness.

Some Members may think that mechanics cannot fix pre-Euro diesel vehicles, taxis and vans because the manufacturers have not released the full maintenance manuals. While I think that there is no excuse for withholding the information, I will not allow that to be used as an excuse. Members should remember that the Vocational Training Council (VTC) has most of the full maintenance manuals, which they use to train mechanics. If someone really wants to take a look at them, they are accessible today. The Secretary has also reminded this Council that manufacturers are now being forced to release the manuals. If the transport trade continues to pull wool over our eyes, I challenge them to take a smoky vehicle to the VTC and have their mechanics show them how to fix it.

The reason why an offending vehicle is offending is that it is poorly maintained and it is using illegal fuels. If caught, why should we be lenient on such irresponsibility? We have already been too tolerant to put up with the current ridiculously low fine at $450. Do you really think that $1,000 is enough? I do not think so, Madam President. And that is why I want the fine to be set at $5,000.

I hear repeatedly from the transport trade how much they support the environment, and how hard they are trying to become more environmentally conscious. That is all very much appreciated. One thing that I have not heard from the various transport associations is that they will not use illegal fuels. I am sure that the associations can muster the influence if they really want to, to dissuade commercial owners and drivers from buying the illegal fuels. Until and unless I see them commit to doing that, I do not believe that they are wholehearted in their efforts. That is another reason why I think we need the big stick now. That is why a fine of $5,000 is the only thing that will really make the trade pull its socks up.

Of course, we need the Customs and Excise Department and other bodies to do their jobs properly to stop the illegal sale and use of improper fuels. But that does not mean that we cannot penalize those who buy the fuel for profit, and at the cost of public health.

I would also like to see the Honourable Mrs Miriam LAU, who works so tirelessly for her transport constituency, to call upon them to stop using illegal fuels. She could be a brave champion in this cause. Indeed, I would like to see all the political parties do the same.

There are two reasons put forward by the Administration privately and publicly to Members not to support my amendment. Officials apparently say that the transport trade has already done a lot to improve matters. Yes, I do agree with that. That is why many of the light vehicles are passing the dynamometer test recently. The pass rate for these vehicles has gone up from 76% last October to more than 90% since March this year. Those who are still failing are the ones who are the true offenders. Why should we not punish them with a harsh fine?

As I said, surely, the improved rate of passing means that it is the right time to impose a heavier fine now. And in any case, it will not take effect till the end of the year. Those who are still not maintaining their vehicles, and those who still choose to buy illegal fuels, should be heavily penalized and not excused.

So, let me repeat myself once more. A taxi owner, a bus operator or a goods vehicle owner who regularly maintains his vehicle, and who does not use illegal fuels is unlikely to offend.

The second reason put forward by the Administration in private and in public is that the $1,000 fine is commensurate with other fines, such as overloading, and therefore deemed appropriate. The Administration also says that $5,000 is too high and this is a higher fine than an overloading offence. However, I am sure that the Administration is not serious about this argument. By its own calculation, the cost to society is already at $3.8 billion a year, how can $1,000 be enough? Let us not forget that an offending vehicle travels all over Hong Kong emitting poison, which messes up our collective health.

During the many discussions in this Chamber, Members asked the Administration to provide incentives for the trade to switch taxis to using liquefied petroleum gas (LPG). This has nothing to do with the level of the fine that we are talking about today. LPG is a cleaner fuel. But we are not arguing that all taxis should be converted before we increase the fine, so Members should not link up these two issues.

The Administration's proposed subsidy of $1.4 billion will help taxi owners to purchase LPG taxis as well as help owners to buy particulate traps and catalytic converters. This means that very soon, all diesel vehicles will enjoy public subsidy to buy products that can cut emissions. Hong Kong will now import ultra-low sulphur diesel, which is another cleaner fuel. There will be an appropriate tax preference for it. There are now many training courses for mechanics to upgrade their skills, and even for drivers to improve driving techniques. A dynamometer for heavy vehicles will be introduced this September. The level of public support given to this one sector of business to address pollution is unprecedented, and flies in the face of the "polluter pays" principle. Is that still not enough?

Lastly, I want to re-emphasize why $5,000 is the right fine today. The All Party Clean Air Alliance wanted a progressive penalty with repeated offenders paying $5,000, so actually, there is no resistance to the principle of $5,000 by the majority of Members. I would have supported a progressive approach as a compromise today, but that cannot be raised unfortunately for various technical reasons. The Secretary just said that she will consider a progressive penalty and will put proposals to Members at the next legislative term. That is simply not good enough. Why is there such hesitation? Perhaps the reason is that various departments just could not agree on what to do. Is that not just pathetic?

I am going ahead with my amendment because it is the public choice. Last year, Member should try to remember that this Council received hundreds of messages from the public to support a $5,000 fine.

An owner or driver who uses illegal fuels can save several thousand dollars a month. At the various Committees in this Council, we have been through some of the numbers. That is why a top fine of $1,000 is grossly insufficient, and that is why $5,000 is the only level that will really bite.

From talking to the Democratic Party, I understand that what is holding them back from supporting my amendment is a feeling that $5,000 would be too high a burden on the trade. Again, I ask them: Are they being serious? Should public health be put in second place? What the Democratic Party is asking the public to do is to be willing to compromise its health, because the transport trade should not be heavily penalized for poor maintenance and for use of illegal fuels. But remember, the pass rate is now 90%. Madam President, I urge them to think again.

I am not sure how the Democratic Alliance for the Betterment of Hong Kong is going to vote and I urge them, too, to support the public choice of $5,000.

MR JAMES TIEN (in Cantonese): Madam President, even if we exclude foreign investors from our discussion, many of our local investors consider Hong Kong possessing a lot of attributes contributing to its success to be an international cosmopolitan and a financial centre: we have a good foundation in the rule of law and a number of well-tested government measures. Nevertheless, if Hong Kong is to become a real cosmopolitan, comparable to London and New York as cited by the Chief Executive — of course, some people might say the air quality of London and New York is not so satisfactory but it is generally still better than that of Hong Kong — the overall standard and quality of living in Hong Kong will occupy a very important position too.

I asked many of my friends this question before: "Given the fact that you have made great success in business and have no interest in politics, where will you choose to live?". Many of them said they would choose Hong Kong and then cited many reasons to me. For instance, they have a lot of friends in Hong Kong, the standards of restaurants in Hong Kong are good, Hong Kong is a liberal place and so on. I would then ask them another question: "What reason will you give if you must cite one for leaving Hong Kong?". They would then tell me the only reason was that they had to consult the doctor frequently. In spite of this, however, they would never emigrate. They would rather choose to stay in different places all over the world for three months each. They would only leave Hong Kong temporarily when Hong Kong was suffering the most serious air pollution. If my friends really do that, their investments in Hong Kong will definitely shrink; the duration of their stay and the size of their business in Hong Kong will definitely diminish too. Our overall economic development and job opportunities will subsequently be affected.

What is being affected most badly by air quality? I have a lot of friends from the industrial sector. When they operated industries two decades or so ago, chimneys must be built as fuels at that time had an extremely high sulphur content. At present, most of them have moved their business to other places or closed them down altogether. Therefore, the air pollution problem induced by industries *per se* no longer exists in Hong Kong. Although we can still say that an electricity company remains a source of air pollution, air pollution in Hong Kong is actually caused entirely by vehicles.

Of the 500 000 vehicles in Hong Kong, 300 000 are private vehicles driven by unleaded petrol. These vehicles will basically not produce a great impact on air pollution. The remaining ones are diesel vehicles. At present, there are 100 000 vehicles powered by low sulphur diesel in Hong Kong. A great number of Members insisted that many vehicles were still using illegal diesel. In this respect, the Honourable Miss Christine LOH stated that the transport trade had failed to address this problem by preferring the use of illegal marked oil. I am afraid I cannot share her view completely. This is because we have been told that members of the trade will give us their full support in opposing the use of illegal marked oil as it is illegal. I am sure Mrs Miriam LAU will make it clear that the trade strongly objects to the use of illegal marked oil when she speaks later.

For those vehicles that still run on diesel at the moment, how can they ameliorate air pollution? We often talk about maintenance. Insofar as this point is concerned, I have listened to the views put forward by the trade. Miss Christine LOH has also expressed her view on this issue earlier. Let me look at what happened to my own fleet of lorries. My company has four to five lorries. I did ask my colleagues in the company whether the lorries had been reported to have emitted black smoke in the past several years. The answer was negative. I asked this question not because I was particularly concerned about environmental protection lately or because of the increase in the penalty. I also asked my colleagues whether they had deliberately spent a lot of money on maintenance and repairs for the lorries over the past few years. They said they had not done so and they even showed me the bills. On average, it took about $3,000 a year for the repairs of innards and engines as well as fuel consumption. It is of course another matter if there is a need to replace other spare parts such as tyres, shock absorbers and so on. Actually, the lorries were taken to roadside garages instead of authorized dealers for repairs. Could these garages fix the lorries? The reply given by my colleague coincided with what Miss Christine LOH said earlier. Actually, the standard of maintenance services provided by roadside garages in Hong Kong is not too bad. Moreover, not every vehicle, like the sportscar I have, needs to be fixed by computer technology. Ordinary maintenance workshops are already capable of fixing a great number of lorries. If this is really the case, we will need to discuss whether the penalty of $450 is a reasonable amount.

Madam President, I have acquired some information from the Environmental Protection Department (EPD). The Secretary said earlier that,

in the first four months of this year, 2 000 vehicles had been fined $450. However, we find some very strange breakdown figures. In February and March, 685 and 688 vehicles were fined respectively. However, the number dropped to 377 in April. I wonder if the immediate improvement in the situation was caused by the fact that many people talked about increasing the penalty in April. In April, 291 lorries were fined though only 68 taxis were punished. At present, there are 18 000 taxis in Hong Kong. The fact that only 68 taxis were fined $450 gave me the impression that most taxis had been fixed properly. Of course, I need to make the relevant figures a bit more specific. In April, a total of 1 363 taxis were reported but only 68 of them were fined. Was it because the taxis were requested by the EPD for inspection again after repairs? This might be one of the reasons. If we were to raise the penalty, say increasing the penalty to $5,000 as suggested by Miss Christine LOH, only 68 taxis would have been fined judging from the figure cited for the month of April. Will it really produce a devastating impact on the trade? Based on the abovementioned figures, I am quite doubtful. Perhaps it is only because they find the $5,000 penalty apparently scary, therefore, they will not give their support by all possible means. Under the existing legislation, smoking in cinemas is also liable to a fine of $5,000. However, we can only find a few cases where the penalty is actually imposed. This is because members of the public will naturally restrain themselves as it has been provided for in legislation.

As for lorries, why were 291 lorries fined? Is it because lorries cannot be fixed properly? According to the Government, there are 80 000 lorries in Hong Kong. This figure, representing the combined total of light goods vehicles and heavy goods vehicles, far exceeds the number of taxis. If 291 lorries have really been fined $450, even if the penalty is to be raised to $5,000 as suggested by Miss Christine LOH, only 200-odd lorries would have been fined. Although I am still unable to calculate the result of multiplying $5,000 by 290-odd (lorries), I am sure the figure is by no means comparable to the $3 billion medical expenses mentioned by us earlier.

Madam President, should the $450 fine be raised to $1,000, $1,500 or $5,000 in order to be reasonable? Madam President, if you still remember, a motion moved in the Council meeting last week was about environmental protection and tourism. Members supported the motion moved by Mr HO Sai-chu. When I rose to claim a division, many of my colleagues asked why it was necessary for us to spend three minutes on that. Let me explain here. There were 45 Members who supported the motion. Item 4 of the motion reads:

"strengthening and effectively enforcing punitive measures to control excessive vehicle emission and to crack down on the trading of illicit diesel……". I would like to remind those 45 Members that they supported the motion (Mrs Miriam LAU did not support it). Of course, Members could argue with me that it had not been stated clearly whether punitive measures should mean a penalty of $1,500 or $5,000. In that case, I would like to urge Members to make up their minds. Which one of the following should be considered punitive: $450, $1,000, $1,500 or $5,000? Anyhow, it was unanimously agreed that punitive measures should be enforced to crack down on excessive vehicle emission.

The Liberal Party seldom conducted surveys in relation to a reasonable fine. On the contrary, the Democratic Party and the Democratic Alliance for the Betterment of Hong Kong (DAB) used to do that frequently. We decided to learn from them this time and commissioned the University of Hong Kong to conduct a survey from last Wednesday to this Wednesday. A total of 900-odd members of the public were interviewed and asked to what extent the fine should be raised in order to be reasonable. There were 831 members of the public who were willing to be interviewed and the result was as follows: 11 respondents suggested that the fine be set at $0; 34 respondents suggested $0 to $450; 300 respondents suggested $450 to $1,000; 300 respondents suggested $1,000 to $2,000; 80 respondents suggested $2,000 to $3,000; 100 respondents suggested $3,000 to $10,000 (same as the ceiling set by us); whereas 53 respondents suggested $5,000. We also asked them how they would choose if they were given the options of raising the fine from $450 to $1,000, $1,500 or $5,000. The eventual result was that, most people, accounting for 57%, opted for $1,000. Only 28% opted for $1,500, and 12% for $5,000. If the penalty amounts opted for by the 831 respondents are added up and divided by 831, the average figure will be $1,530. I am not sure to what extent these views will be acceptable to Members.

Madam President, the last point I want to make concerns why I moved an amendment to the part related to repeated offenders last Wednesday. This is because I attended a meeting held by the Legislative Council Panel on Environmental Affairs, chaired by Miss Christine LOH, before last Wednesday. The Secretary was also present at the meeting. However, what she said on that day was different from what she said in her speech earlier. On that day, she said: "As I mentioned in the relevant Legislative Council Panels, the interdepartmental task force on improving air quality set up by the Government will review the existing legislation and formulate the most effective means to

impose heavier penalty against repeated offenders of smoky vehicle offences". During the meeting, the Secretary stated repeatedly that she would consider the implementation of the measures. I did raise the point to her that to consider the implementation of the measures was greatly different from putting the measures into implementation after consideration. It appeared that Miss Christine LOH did not agree to it too. It is really hard to figure out what the Chinese text really means. I think it would be better for me to read out paragraph 13 of the English paper laid by the Secretary on our table earlier: "that the interdepartmental task force on improving air quality will review the existing legislation with a view to working out the most effective means to impose heavier penalty against repeated offenders of smoky vehicle offences". For me, the meaning of the phrase "will review the existing legislation with a view to working out" is crystal clear. This means that the Government will review existing Ordinances with a view to formulating a set of effective measures to impose heavier penalty on repeated offenders of smoky vehicle offences. Madam President, I think if the Government agrees to put this into implementation, it will be able to achieve what a number of political parties have asked for in their proposals, that is, a fine of $1,000 for first offenders, $2,000 for second offenders within a year, and $5,000 for third offenders within a year. The amendment of $1,500 as proposed by me is actually arrived from adding the penalty amounts imposed on first offenders and second offenders and then dividing the total by two, for the median of $1,500. Based on the reasons cited by me earlier and the commitments made by the Secretary that the Administration would review and definitely implement the measures in relation to repeated offenders, the Secretary would already be able to achieve what many political parties have asked for so long as there is progressive penalty, that is to say, heavier penalty for repeated offenders, no matter whether she accepts the figures put forward by us.

Based on the reasons cited above, Madam President, I will not move my amendment again.

MR EDWARD HO (in Cantonese): Madam President, today I very much support the rise in the smoky vehicle fine from $450 to $1,000. In recent years, air pollution in Hong Kong has reached an unacceptable level and become one of the most serious concerns to Hong Kong residents. Not only does it affect the health of Hong Kong residents, the tourist industry of Hong Kong, inward investment intention and the economy of Hong Kong, but it also affects the image of Hong Kong as an international metropolis.

On that matter, I am very glad to have formed an All Party Clean Air Alliance with Honourable colleagues of this Council. We have put aside the divergent views between parties as well as between individuals and made concerted efforts to put forward 16 proposals. These proposals have also been submitted to the Chief Executive, Mr TUNG Chee-hwa, in a bid to co-operate with the Government in improving the air quality of Hong Kong and creating a better living environment for Hong Kong residents. One of the 16 proposals made by the All Party Alliance is to raise the smoky vehicle fine to $1,000, which will be increased to $2,000 in the case of repeated offenders within 12 months and $5,000 in the case of third-time offenders.

The motion moved by the Government this time around happens to tally with the fine of $1,000 proposed by the Alliance, so it merits our support. As for the fine imposed on repeated offenders, the Government on this occasion has proposed nothing while Honourable Members in this Council cannot propose any amendments for technical reasons. However, the Secretary for the Environment and Food has just undertaken to put proposals to Members of the next term in regard to the imposition of heavier penalties on repeated offenders.

Here, I would like to respond to Miss Christine LOH's remarks just now. She said that since the Government could not raise the fine for repeated offenders' to $5,000, it would be just as well to adjust the fine for first offenders' to $5,000. I wonder what is the logic behind this. Does it mean that if the penalty for theft should be imprisonment for three months while a murderer should be sentenced to life imprisonment, then given that this debate on the bill only relates to theft, the Government will propose that it had better change the penalty for theft to life imprisonment? Miss LOH's logic seems to run that way, but I do not quite understand it.

Madam President, I would like to make a solemn statement. The attention that I myself and my functional constituency pay to the Hong Kong environment will surely be no less than Miss LOH, but while we endeavour to improve the environment, I extremely disapprove of the mere adoption of punitive measures instead of considering the actual difficulties facing the offenders. Hence, I cannot support the amendment moved by Miss Christine LOH today to raise the fine to $5,000.

In the 16 proposals of the All Party Alliance, we have demanded that the Government should take measures to assist the transport industry in adapting smoothly to the latest environmental standard. As far as the taxi industry is concerned, the LPG taxi scheme is implemented so as to seek a permanent solution to the pollution problem that diesel taxis may create. However, the burning issue now is to resolve the problem of inadequate LPG filling stations. The shortage of LPG filling stations is a big problem. It hinders the implementation of the LPG taxi scheme at full speed. Here, I hope the Administration and LPG companies can expeditiously reach a fair and reasonable agreement between them and overcome the shortage of LPG filling stations.

Yesterday the All Party Alliance met representatives of the transport industry. It was a pity that Miss Christine LOH did not attend the meeting. Representatives of the transport industry told Members that they cared about and supported environmental protection very much. People engaging in the industry are front-line workers and they bear the brunt of air pollution that poses a threat to their health. However, they have also listed many problems that they are facing at the moment. I am not prepared to spend time on these problems here. I will sort out the relevant problems for reference by Honourable colleagues and the Government.

I only wish to point out that the problems facing the transport industry currently, especially medium and heavy goods vehicles, such as maintenance and repairs, should not be ignored indeed. Hence, if an even heavier penalty is to be imposed, I think the Government must face up to the situation and assist the industry in resolving various incidental problems.

Madam President, I am glad that the Administration has responded to various proposals put forward by the All Party Alliance and made good progress. For example, the installation of particulate traps in diesel vehicles is expected to begin in September this year and it is anticipated that ultra low sulphur diesel will be imported into Hong Kong by the end of this year. We expect that the Chief Executive will fully respond to the proposal of the All Party Alliance in the near future.

Madam President, when I moved a motion relating to air pollution in 1998, I did say that the environmental issue was not exclusive to anybody. Of course, neither is it exclusive to Miss Christine LOH. Improvement in environmental protection relies very much on the co-operation of Members of this Council, the

Administration, the industry and the general public. I therefore urge Members to support the motion today and vote against Miss Christine LOH's amendment, which has only focused on severe punishment.

MR CHAN WING-CHAN (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) greatly welcomes the Government's decision to formulate measures to improve air quality. Nevertheless, we are also concerned about whether the measures can really improve the air pollution problem effectively and whether they are fair to those being affected.

The Government has proposed in the resolution to raise the fixed penalty for smoky vehicles drastically from $450 to $1,000. The aim of the Government in raising the penalty is to produce a deterrent effect to compel vehicle owners to carry out maintenance regularly so as to improve the performance of their vehicles, thus reducing exhaust gas emission and preventing them from being punished.

The Government's thinking seems to be ideal. Since the introduction of this resolution by the Government, Members from the FTU have made a number of attempts to contact motor vehicle unions in order to understand the impact of the penalty increase on professional drivers. We note that although vehicle owners are required by law to pay the penalty, it is actually paid by rentee-drivers. In issuing summons with respect to smoky vehicles, policemen will invariably record the driving licence's number, name and address of the relevant drivers on the summons. In doing so, the drivers will be obliged to appear in court to give evidence should the vehicle owners refuse to admit having committed the offence of excessive emissions.

Rentee-drivers, such as taxi and public light bus rentee-drivers, should actually hand the summons to rentor-owners for payment of the penalty. However, owing to keen competition for car rentals, rentee-drivers are often required to pay the penalty for there is a great demand for car rentals. For those "kind-hearted" rentor-owners, they will only ask rentee-drivers to shoulder half of the penalty. However, most rentor-owners will ask rentee-drivers to pay the penalty in full. Actually, this is what really happens usually.

Perhaps some people will say rentee-drivers can choose not to pay the penalty. However, the crux of the problem lies in the fact that information

related to the drivers will be recorded on the summons. In cases of failure to pay the penalty, the drivers will be required not only to pay a double penalty on behalf of the vehicle owners when the drivers renew their driving licences, but also to pay a cost of $440. Although officials from the Environmental and Food Bureau have stated that, under the existing legislation, drivers can appeal to the Central Traffic Prosecutions Bureau by explaining that the penalty should be paid by vehicle owners, what really happens is, despite what has been laid down in the law, the drivers are forced to pay the penalty for if they fail to do so, they will be unable to renew their driving licences. According to the current practice, rentee-drivers will be required to shoulder at least $500 of the penalty if it is to be raised to $1,000. This is really a heavy burden for professional drivers and what they gain from toiling all day long will come to naught.

Madam President, professional drivers are still disputing as to "who" should be responsible for paying the penalty imposed on smoky vehicles. As the issue remains unresolved and given the fact that we are not given any choices, the three Members from the FTU, who are all surnamed CHAN, can only abstain from voting with much reluctance.

I so submit. Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, today we are debating on the resolution on raising the penalty for smoky vehicles. I think this is an appropriate occasion to sum up what the Government has done over the past five years on the question of reducing the emissions of diesel vehicles and the efforts made by the transport trade. Let us face with a calmness of mind the question of whether the transport trade should be singled out to bear the responsibility of air pollution alone. Let us consider the question of whether it is fair to pinpoint at the transport sector with the Government's proposal to increase the fines for smoky vehicles today.

The year 1995 can be said to be a threshold for diesel vehicles. Before 1995, the Government did not have any stringent requirements on the emissions of imported vehicles. The result of this is that the vehicle owners paid hard cash for diesel vehicles with quite a substantial amount of exhaust emission. So at present there are still as many as more than 80 000 taxis, minibuses and light goods vehicles imported before the Euro standards are adopted running on our roads. In 1996, I went to Japan to study the LPG taxis and I asked the car

manufacturers there why they did not export vehicles with a lower exhaust emission to Hong Kong. The answer I got was, "Your government does not have more stringent emission requirements." We know that as early as in 1992, the Euro I standard was already in existence, but that was adopted in Hong Kong only in 1995. The emission requirements for vehicles imported from Japan were made stricter only after 1996. Had the Government introduced the Euro standards a few years earlier, and if the emission requirements for vehicles imported from Japan were made stricter at an earlier time, our transport sector would not have to bear the blame and suffer in silence, trying their best to reduce the amount of exhaust emission to meet the increasingly stringent requirements of environmental protection despite the inherent inadequacies and the lack of matching facilities.

In 1995, the Government launched the LPG conversion scheme and the Environmental Protection Department (EPD) said that over the past few years it had been trying hard to find some fuels to replace diesel. However, the EPD only managed to find gasoline which is not much more environmentally friendly as compared to diesel. Gasoline will give out carbon dioxide which is conducive to the greenhouse effect. It also produces toxic ozone hydrocarbons and benzene which is carcinogenic. As we all know, many foreign countries started using LPG which is environmentally friendly many years ago. The diesel to gasoline conversion scheme launched by the EPD has met strong opposition and the scheme has proved to be futile. Had the EPD put its efforts in LPG and in the LPG taxis scheme which was considered to be of great significance in environmental protection, these could have been started at least one or two years earlier.

The task of finding environmentally friendly fuels should be the responsibility of the Government, but now the transport trade with such insufficient resources is to take it. In 1996, the transport sector made a self-financed tour to Japan to study the LPG taxis there which have been in operation for more than 30 years. When the members of the tour came back, they approached the Government and proposed the conversion of taxis into LPG taxis. Facts have shown that the sector and the public respond more enthusiastically to the conversion of taxis into LPG instead of to gasoline. The reason is that LPG is more environmentally friendly than gasoline.

Though the transport trade has found a way out for taxis, it knows that the question remains unresolved. It is because there are still many types of diesel

vehicles imported before 1995 and that the implementation of the LPG taxis scheme will take a lot of time. Therefore, in addition to organizing a study tour to Japan, the transport trade also commissioned the Hong Kong Polytechnic University to undertake a study on the particulate filters in a bid to reduce pollution.

With the money and efforts put in by the transport sector, the LPG taxis pilot scheme was completed at the end of 1998. It has proved that the scheme is practicable. The sector voiced many concerns during the pilot scheme, such as the number of LPG filling stations and maintenance depots. The adequacy of matching facilities or otherwise will affect the success of the scheme. The Government said at the end of last year that there would be 26 LPG filling stations by the end of this year, but after a few months later, it said that there would only be 12 such stations.

Up to this very second, the transport trade has done the best it can. The fact that some diesel vehicles emit too much smoke is really a very complicated problem. The problem cannot be expected to be resolved if we rely on the efforts of the transport trade alone. A year ago the transport trade therefore organized a Preparatory Committee of the Transport Trades on Environmental Protection for the New Millennium composed of 66 groups in the sector. It proposed a 21-point package to the Planning, Environment and Lands Bureau in the hope that a partnership relationship could be forged with the Government and that the problem of excessive emission of smoke from diesel vehicles could be resolved. One of the major proposals raised by the sector is to raise the inspection and maintenance levels.

The Government has always stressed that repairs and maintenance are the responsibilities of the owners of vehicles. If the owners shirk their responsibility and allow their vehicles to emit smoke, then they should be penalized. But if owners pay for the maintenance and their diesel vehicles still emit smoke, then they will have to bear the consequences of poor maintenance, that is, to pay the fines. Is this fair to vehicle owners?

In the middle of 1999, the diversities in standards of car mechanics were exposed when all smoky vehicles with a loading capacity of less than 5.5 tonnes were required to take a chassis dynamometer smoke test. At the initial stages of the test, only a very low percentage of vehicles passed the test. That shows the diversities of the abilities of the car mechanics. There are many of them who

do not know the skills of tuning vehicles properly. I think at the initial stages of using the chassis dynamometer smoke test, the EPD has to hold many meetings with the vehicle maintenance trade and the transport sector so that they can be aware of the operations of the equipment and how to tune the vehicles and so on. I think it is a fact and no one can hope to pass off as knowledgeable in this without actually knowing it. Not every one knows how to maintain diesel vehicles, the question we have now is that we do not know who can do so and who cannot. Miss Christine LOH said that those in the sector had told her that they knew how to maintain all kinds of diesel vehicles. I have no idea who said that to Miss LOH. I cannot say that all the car mechanics in Hong Kong do not know about maintaining diesel vehicles. But the transport sector does not know who can and who cannot fix diesel vehicles. That shows exactly the kind of standard of competency in the vehicle maintenance trade and the fact that it is not yet common to find a high standard of competency. The Government is beginning to be aware of the problems and difficulties faced by the vehicle maintenance trade. Since March this year, the Vocational Training Council began to offer a course on the inspection and maintenance of diesel vehicles with an excessive emission of black smoke. Those who attend the course may choose from a one-day course or a three-evening course. It is expected that the course would upgrade the skills of 3 000 mechanics each year. But what can a voluntary one-day or three-evening course with a total of about eight or nine hours at most do to upgrade the skills of the vehicle maintenance trade in dealing with the problem of the emission of black smoke? Furthermore, since the course was launched only in March this year, its effect will only be seen in the beginning of next year.

As early as in 1991, there were some scholars who pointed out that the root of the air pollution problem in Hong Kong lies in the inability to ensure that the innards of the diesel vehicles could be tuned properly. The transport trade proposed a maintenance plan for vehicle emission systems in 1995. The objectives of the plan are to raise the maintenance standards and to prevent vehicles from being tuned improperly. It is unfortunate that the Government did not bother to consider the plan. Just now Miss LOH said that it is very easy to maintain diesel vehicles. Mr James TIEN also said that the few diesel vehicles that he has do not encounter any problems in maintenance. The annual costs of maintaining each vehicle are $3,000. There are no problems with his cars and ever since he owns these cars, he has never been fined for black smoke. But we may not know that the cars that Mr TIEN has are only four or five years old. What I am talking about are those pre-Euro vehicles that were already

defective when they were manufactured. What should we do about them? It is likely that Miss LOH and Mr TIEN know nothing about the grievances of the common people and the fact that there are more than 80 000 of these inherently defective vehicles running on our roads. The question before us is how to deal with these vehicles.

No one knows the vehicle maintenance trade more than the trade itself. The people in the trade know it very well that problems do exist and so some of these organizations urged the Government to face the question of the diversity of maintenance standards in the trade. They would not have done so if the trade is free from problems. They hope that the Government would help to upgrade the level of skills in the trade . They would not have done so if they thought that their level of competency was adequate. Various government departments all shirked their responsibilities and passed the buck onto each other. They all claimed that they did not know which department should handle the demands of the vehicle maintenance trade and which department should oversee it. After a lot of efforts made by the transport sector, the Working Group on Vehicle Maintenance Services was set up in January this year. That is the working group which the Secretary has just referred to. Members of the group include representatives from the vehicle maintenance trade, government departments and professional bodies. The group is charged with the task of seeking ways to improve the standards of vehicle maintenance and to explore the possibility of devising a licensing system for car mechanics. But sad to say, the Working Group has been making progress only at a snail's pace and no specific proposals have been made to date.

In order to maintain a diesel vehicle properly, the skills of the maintenance personnel are important, and likewise is the technical information. If not, the maintenance personnel will need to work on a trial-and-error basis. Will they be right every time? If not, the vehicles still give out a lot of black smoke and who will suffer in the end? The vehicle owners will have to bear the blame alone, pay the fine or take their vehicles for inspection, or to maintain their vehicles again. The upgrading of the skills of the maintenance personnel cannot be expected to be done overnight. However, the technical information is already there and it should be disseminated. It is unfortunate that after repeated demands from the vehicle maintenance and transport trades, the car dealers have only agreed to release some technical information in this aspect. But we do not know at this stage what information will be made available. It remains another problem if the information is adequate or not. Miss Christine LOH said that

this kind of information was not that important. If it is found to be necessary, she would help the sector to obtain it. It is not for Miss LOH, for me or for the transport trade to say that it is necessary or not, the question should be left to the vehicle maintenance trade. They have made it clear to the Government in the Working Group that the information is vital to their work.

One year after the transport trade has proposed a package of suggestions, the Government launched a series of measures to improve air quality, many of which were precisely those proposed by the transport trade a year ago. These include the introduction of diesel with an ultra low sulphur content and the crack down on the use of marked diesel. Madam President, if Miss LOH has not listened to what I have said in the past, I would like to say it again. I have said on countless occasions that the transport sector does not support the use of marked diesel and that it supports the idea that heavy penalties should be imposed on those who use marked diesel. So I hope that Miss LOH will stop from distorting the truth of the matter again. The proposals made by the transport trade also include the speedy phasing out of old vehicles and so on. The fact that the Government has put forward a package of proposals now indicates that the Government is determined to improve air quality, but it also shows that what it has done in the past is far from being enough.

Madam President, I am making this quite a lengthy account is because I would like each one of us know that over the past five years, the transport trade has been taking concrete steps to support environmental protection and not just supporting the cause in principle. The trade is not just paying lip service and not taking any action. I would like each one of us to know that it is easier said than done to reduce black smoke from diesel vehicles. There are practical difficulties and also historical causes. This cannot be done by the efforts of the transport trade alone. Matching actions should be made by the vehicle maintenance trade, the fuel suppliers and the vehicle manufacturers.

The Government has let so much time slip through its hands and it has not tried to tackle the problem at its roots. It was not until the air pollution index reached 172 that the Government proposed a series of mitigation measures. When the public and Honourable Members urged the Government to speed up its efforts, the Government said that there were difficulties in that and that the matter had to be coped with gradually. Admittedly, the transport sector has encountered difficulties in its attempt to reduce black smoke in diesel vehicles, but the matter has not received due attention. The grievances of the sector are

never heard and it has been suggested that heavier penalties should be imposed. The Government has said repeatedly that the penalties would not come into force until December this year. But can we ever hope to regain the precious time lost over the past few years simply in a matter of months? Moreover, can the problem be resolved if the owners of vehicles are heavily penalized?

When vehicle maintenance standards are not upgraded, when mechanics do not get enough training, when detailed technical information is not available, when diesel with ultra low sulphur content is not yet in use, filters for particulates are not yet installed, catalysts for diesel engines is still in an experimental stage, when all these matching facilities are not yet in place, would it be fair to penalize vehicle owners heavily?

Many people are aware of the complexity of the problem of black smoke and I believe Miss LOH would also know that it is difficult to solve the problem because it involves so many issues. Many people support the cause of environmental protection, but they are doing this with their emotions and they have ignored the facts. Many things have actually happened. Other people have talked about them and many people have heard about them and they are found in the papers. Still many people choose not to read or listen. They are still biased. The imposition of heavier fines has become an attractive slogan to shout and a sign to show that they champion for the cause of environmental protection.

I have said many times that environmental protection is much more than a slogan. Over the past five years, I have been representing the transport trades and I have encouraged it and helped it in protecting the environment. The trade has taken concrete actions to improve the environment. As a consensus has been reached among the transport trade, the public, Honourable Members and the Government on this issue of environmental protection and that something ought to be done, it is high time that we took a pragmatic and rational approach and solve this problem which has plagued our society for so many years.

Madam President, owing to practical difficulties, historical reasons and before matching facilities are in place to help the transport sector to solve the problem of black smoke, I am firmly against the increase of fines on excessive emission of smoke from vehicles.

Thank you, Madam President.

MR LAW CHI-KWONG (in Cantonese): Madam President, last year, the Democratic Party agreed to raise the penalty for smoky vehicles and made an attempt to raise the penalty to $1,000 through the moving of an amendment by Mr Albert HO. However, owing to the views collected after the Government's consultation with the industry and the discussion held with respect to making improvement to matching measures, the Democratic Party decided then to withdraw the relevant amendment.

The Democratic Party also supported raising penalties against repeated offenders to the effect that the penalty be raised to $2,000 for second offenders within a year and to $5,000 for offenders committing the offence for three times or more within a year. Insofar as this resolution is concerned, the Democratic Party has originally drafted an amendment. However, according to the legal advice given to us, the amendment has exceeded the scope of this resolution. And taking into account the fact that we had discussed this issue with a cross-party coalition and that the Government had undertaken earlier that it would consider introducing relevant amendments in the coming legislative year, the Democratic Party finally decided to withhold the amendment instead of proposing it to the President.

I would like to respond to the allegation made by Miss Christine LOH that the Democratic Party has put public health in the second place. Let us think from a logical point of view. If some people object to the proposal of raising the penalty to $50,000 or even $500,000, can we accuse them of ignoring public health? I believe the answer should be negative. It is therefore obvious that the crux of the problem really lies in at what level the penalty should be set for it to be considered reasonable. Miss LOH should also be aware that the Democratic Party has previously advocated the increase of penalties against second offenders and repeated offenders to $2,000 or $5,000. Why did the Democratic Party not support Miss LOH's proposal for a one-off increase to $5,000? There are four reasons for this.

First, we have all along proposed to set the penalty at $1,000 in our concultation with the trade for the Democratic Party has all along expressed support for setting the penalty at $1,000. Generally speaking, unless there are significant changes in practical circumstances, the Democratic Party would not wish to "keep on changing its mind" for other people will find it hard to have a definite plan to follow and even accuse us of "making a volte face".

Second, the Democratic Party has all along had reservations about the imposition of stringent penalties on whatever issues we encounter. Nevertheless, the Democratic Party agrees that heavier penalty should be imposed against repeated offenders.

Third, occasional offenders. Occasional offenders should not be held fully responsible for the offences they have committed. I would like to share my personal experience with Members. Twenty years ago, a second-hand car owned by me was found to have emitted black smoke. I tried to repair the car but I was told by a friend of mine that the car continued to emit black smoke. I inspected the car immediately and found out that it was not the first day my car was having the problem. I immediately took the car to a depot for a major overhaul. I cited this experience of mine because I wanted to point out that it would be really out of luck if a car was unfortunately prosecuted the first time it was caught emitting black smoke.

Fourth, regarding the issue of smoky vehicles, the Government should be held partly responsible instead of shirking all responsibilities onto owners of the vehicles. Just now, Mrs Miriam LAU also mentioned the point that Euro I vehicles were not introduced by the Government until lately. Moreover, the Government has been turning a blind eye to the quality and training of the whole maintenance industry. Therefore, after taking a balanced view on the consideration given to various aspects, the Democratic Party thinks that we had better stop before going too far by supporting the increase of the penalty imposed against first offenders to $1,000. However, a different consideration should be given to repeated offenders.

Quoting a survey conducted by the Liberal Party, Mr James TIEN stated that the public supported that the penalty being set at $1,500 on average. It was fortunate that Mr TIEN decided to withdraw his amendment just now. But still I want to raise a statistical phenomenon with Mr TIEN. I believe he will find out what I am going to say though he is not in this Chamber at the moment. If the Liberal Party conducts a survey in which 10-odd respondents demand that the penalty be raised to $20,000 or even $100,000, the average figure will be higher than $1,500. For this reason, we should not take the average figure as the standard in determining the fixed penalty. In my opinion, the fact that more than half of the respondents supported raising the penalty to $1,000 should be taken as an important reference point.

If this resolution, aimed at increasing the penalty, is passed today, every Member of this Council (I mean those who support raising the penalty since some Members might raise objection) shall be obliged to urge the Government to improve supporting measures and, in particular, put them into implementation in the coming six months, to enable responsible vehicle owners to take effective measures to prevent their vehicles from emitting black smoke.

Thank you, Madam President.

MISS EMILY LAU (in Cantonese): Madam President, in mid-April this year, some Members of the Legislative Council gathered together to discuss the air pollution problem, and shortly after that the All Party Alliance just referred to by several Members and the Secretary was formed. Why is it possible that people with different political beliefs can group together within such a short period of time? This is the second time that this has happened in the Legislative Council. Madam President, perhaps you may still remember that when the first Legislative Council was formed in 1998, the economy of Hong Kong was very poor. At that time, six parties and many groups and "lines" got together to discuss the situation with the Government, and requested the Government to adopt a series of measures to "save the market and people of Hong Kong". At that time, the Government swiftly responded to our request. This time around, an All Party Alliance was formed, and as Mr Edward HO said, we came up with more than 10 proposals and respectively held meetings with the Chief Executive and the Secretary for the Environment and Food.

Madam President, in fact, I believe that the Legislative Council and our whole community should be held responsible for air pollution, because we have been "too slow" in recognizing the adverse effects of environmental pollution, and have done things which have caused pollution. However, in order to clean up our acts, we would have to make a lot of efforts and it will also be a long time before this could be done. The air pollution problem is now so bad and there are so much outcries in the community that Members of this Council are forced to face the problem. Many people walk on the streets every day, and those who work on the streets are the first ones to bear the brunt; the business sector is also gravely concerned about this matter. I believe that the Chief Executive would listen to views of the business community, especially those of the overseas business community.

I believe that the establishment of the All Party Alliance has achieved a very important purpose, and that is, an alarm has been sounded in the community. We have told members of the public that we are very concerned about this matter, and that the Legislative Council will do everything possible to urge the executive authorities to do something about this situation. I hope that the All Party Alliance can continue to fulfil its functions.

Madam President, there is one thing which I wish could be done. Before the All Party Alliance was formed, the Government had passed on a proposal to the District Councils, saying that traffic congestions and poor air quality were caused by too many vehicles, but this proposal was voted down by two District Councils. Since members of the public are of the view that they should get to their workplaces direct from their homes, it is only natural that District Councillors have voted down the proposal for they have to reflect the opinions of the public. One of the 16 proposals made by the All Party Alliance is on the reorganization of bus routes, and this will mean a reduction in the number of bus routes. This represented the consensus of most parties concerned. I have also told the Secretary and officers of the Transport Department many times that they have to go back to the District Councils with this proposal, because this idea is now supported by all parties, and we hope that our air quality could be improved by adopting this measure.

Today, we fully support the Secretary's proposal on increasing the level of the penalty, and in the past, I was also in favour of the idea that a higher penalty level should be set. We hope that members of the All Party Alliance could continue to join efforts together today to get this done. Why is it that we still support the Secretary when the proposed level of increase is so low? Some colleagues have just mentioned that our first reaction was to move an amendment to the Secretary's proposal, but after consulting the Legal Adviser, we found that this could not be done. We hope that the level of increase can be higher and that a progressive approach can be adopted. The Secretary has made a clear undertaking that she will consider this point, and will put forward some proposals to the Legislative Council later this year. I hope that many of our colleagues, including the President, will return to the new term of the Legislative Council in October.

As matching facilities are still inadequate, we are unable to address the concerns of public about this serious matter. The Secretary may be of the opinion that the existing matching facilities are still not yet 100% perfect, and I

hope that her goal can be achieved when the time comes. We are not trying to make life difficult for the transport trade, but members of the trade are the first to bear the brunt and suffer from the adverse effects of air pollution. I hope that when the time comes the Secretary can be here to tell us that the matching facilities are all in place, and the level of penalty can be further increased. If we still have an All Party Alliance by then, I believe that we will continue to support the Secretary's proposal. I hope that the Secretary can listen to what Members have to say. It is only natural that we may have arguments because of our divergent views, but nevertheless, we have already sent out a very clear message and that is, the Legislative Council can no longer allow our air to be so polluted. We hope that the Government can deal with this issue as soon as possible.

Madam President, the Government submitted a paper to the Establishment Subcommittee under the Finance Committee of the Legislative Council this morning for the creation of a three-year D3 post, because the Secretary needs a special assistant to assist her in solving the air pollution problem. In the paper, the Secretary has also explained the reasons for creating this three-year post, and this is because she thinks that the measures for solving the air problem can be consolidated within three years.

Madam President, you may recall that a few weeks ago, I asked the Secretary an oral question as to when we could see the azure sky and breathe in fresh air again, but the Secretary could not answer my question at that time. I understand that the Chief Executive has recently said that he hopes that the quality of our air will be at the same level as London and New York by the year 2005. However, the Secretary has mentioned in her paper today that it will take us three years to achieve this target. But, can all the work be really completed in three years' time? The Secretary said that the roadside suspended particulate level will be reduced by 70%, but this does not mean that she has undertaken that the air would become as fresh as what we would have desired.

Madam President, I believe that though the problem is very complicated, our objective is very clear, and that is, we want to have fresh air, and this is the basic right of Hong Kong residents. However, the whole community, including the Legislative Council, members of the transport trade and the Government have neglected this problem for many years. Therefore, I do not think that we should shirk our responsibilities; this is not the time to look for scapegoats, and there is a lot of work to be done and this requires our concerted efforts.

Madam President, when we met with the Chief Executive, we mentioned that though the working party headed by the Secretary is comprised of representatives from different departments, we hope that the Secretary can "call the shots". Madam President, you may also be aware that other Bureau Secretaries are of the same rank as the Secretary and they hold a lot of powers, but since the air pollution problem covers many spheres, Mrs Lily YAM will have our full support in this matter. However, I am both worried and disillusioned because I understand that the whole government bureaucracy is not a simple structure. Madam President, this is a battle we cannot afford to lose.

Some colleagues have referred to the figures given by the Government. It was said that medical expenses and loss of productivity resulting from air pollution has amounted to $3.8 billion in total. As a matter of fact, Mr SALKELD told us this morning that the cost should be more than $3.8 billion because this amount only covered acute hospitalization cases. Medical expenses on out-patient clinic visits have not yet been included, and the total amount may be more than $5 billion. This is a very exorbitant sum. I asked the Secretary whether we can cut back on the $3.8 billion in three years' time? But she found it difficult to give me an answer. Perhaps it is also unfair to ask her to give us a concrete answer at this stage.

I believe that Members have reflected the wishes of all Hong Kong residents, including that of the business sector and the transport trade in their speeches today: We want fresh air. Hong Kong should have the ability, environment and necessary resources to achieve this target and we will all have to make some efforts. I hope that the Secretary, the incumbent of the new post and all her colleagues will strive to submit new proposals to the Legislative Council in October. I also hope that they will not fail those Members who have supported them today.

With these remarks, I support the resolution.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, soon after my son was born, it was discovered that he has asthma. Very often, his condition was so acute that we had to take him to the accident and emergency department for treatment. I asked the doctor what should be done about my son's ailment and was told that his attacks would become less frequent when he grows up and becomes stronger. However, the doctor advised that the best option would be to emigrate because the air pollution problem of Hong Kong will aggravate the condition of asthma patients.

Madam President, the air pollution problem of Hong Kong is indeed very serious. In the last one or two years, I have driven along Tuen Mun Highway and found that the emission of black smoke by heavy vehicles along the Highway was very serious. I found this very annoying. I think that the Government should really do something about it. However, the air pollution problem of Hong Kong is not something which only happens today. I recalled that in the mid-eighties, we frequently accused the industries of polluting the environment of Hong Kong. Afterwards, thanks to the concerted efforts of the public and various parties, the Government was finally forced to address the issue. Legislation was then enacted to lower the sulphur content in the fuel from 0.5% to 0.25% and subsequently the condition of our environment was much improved; and our air quality was even more acceptable when the industries gradually moved to the north.

I have brought up this issue again mainly because I want to point out that, at that time, though the Government was already aware that the sulphur content in fuel was the main cause of air pollution, it had only "treated the symptoms instead of the ailment". The Government only addressed the problems of the industrial sector when problems were discovered in this area, while neglecting the fact that the same fuel is used in vehicles and it will also cause pollution. The Government has neither taken this problem seriously nor has it done anything about it.

In fact, we were told by members of the trade, and Mrs Miriam LAU has also mentioned that, that the Government should be held responsible for the substandard vehicles, because so far, it has not laid down any restrictions in this respect. It has allowed these substandard vehicles to be imported into Hong Kong, and buyers have bought such vehicles without any knowledge of their problems. So, what has actually gone wrong? Who should be held responsible?

Today we have to introduce a piece of legislation to increase the level of penalty and members of the trade will suffer. Madam President, I have consulted those in the trade and asked them whether they think that there should be a fine. They indicated that they supported the fine and would not raise any objections. They felt that if they were responsible for the pollution, then they should be punished. Madam President, but the question is, even if they are responsible for the pollution, should they shoulder all the responsibilities? This is a question which I would like to ask.

Mrs Miriam LAU has just done a very good job in giving us a detailed account of the history. In fact, there are a lot of amenable members in the trade, and they are willing to co-operate with the Government in improving our environment. However, what has the Government done to co-operate with these people? It is a pity that the Government has not tried to work with them. Instead of helping them to solve the problem, the Government has only tried to hit and hurt them with hammer and axe. The resolution of today is a good example to show that the Government has tried to shirk its responsibilities onto vehicle owners in enacting legislation to punish vehicle owners because their vehicles have emitted black smoke.

Madam President, many vehicle owners, especially those of light goods vehicles, told me that they would like to have some assistance from the Government in switching over from diesel to LPG since LPG is now commonly known as the most environmentally friendly fuel. However the Government told us that it is impossible and they can only use petrol. Mrs Miriam LAU has clearly pointed out that petrol is only a kind of disguise for deceiving the public. As petrol will not produce suspended particulates and black smoke, everyone will think that it is environmentally clean; but in fact, that is not true, and from an environmental point of view, petrol is even more harmful for it will produce carcinogenic substances.

The Government has neither explained nor told the public anything about this. It has only told us time and again that diesel is a poor fuel, while petrol, on the contrary, is much better. The Government told us the same story in 1995 at a motion debate. So far, the public has never been told the truth and what they have been told are all lies. I think that the Government has deceived the public. As a matter of fact, even up to today, while we are looking at the ways to solve the environmental pollution problem, the Government has, in an inconspicuous document, recommended that the 70 000-odd light goods vehicles should switch to petrol. Is this really an environmentally friendly policy? Can the problem really be resolved? Madam President, at a time when members of the public would really like to work with the Government to improve the environment, it has trampled on their goodwill instead of offering them any assistance.

Miss Christine LOH has just stressed on the importance of maintenance. Madam President, I have already quoted the example of "LC3" — a vehicle of this Council, in the last motion debate. Yesterday, I noticed that the old "LC3"

has been replaced by a new vehicle. I do not know how long has the old "LC3" been in use, but I remembered that the driver of that vehicle had once told me that it started to emit black smoke less than a year after it was bought. Though the vehicle was checked and repaired many times, it still emitted black smoke. We should bear in mind that it was a new vehicle. I believe that colleagues of the Legislative Council would not try to save money and scrimp on maintenance. However, even the vehicle was repaired and maintained, it still gave out black smoke. Madam President, I mentioned in the last motion debate that I once trailed the vehicle and found that it did emit a lot of black smoke. Why? Whose responsibility is it? Whose fault is it? I think that this got to do with maintenance and the condition of the vehicle itself, and the blame should not be placed on the driver or owner.

Of course, I am not saying that all the vehicle owners and drivers are responsible persons, or that they always maintain their vehicles properly. However, I believe that the legislation should be targeted at those who broke the law and not those who are law-abiding. I would like to ask the Government what else can the law-abiding people do? What else could I have done if the condition of my vehicle has not improved after repairs were carried out? Even if we want to buy better vehicles and use better fuels, will the Government be able to make them available? Mrs Miriam LAU has pointed out that it will be pointless even if fuel of a lower sulphur content is available. Will it be available on the market of Hong Kong? Since this kind of fuel is not yet available, Madam President, what can drivers do now?

I think that we will be taking a mean advantage if we are to legislate against black smoke emittors, because even if they want to resolve the problem, they will have no means to do so. I would like to tell Members that I am a keen supporter of environmental protection. Why should I be otherwise when my son is also a victim of air pollution? However, I think that the most important point is how we should go about it, for we cannot disregard the livelihood of the grassroots.

Madam President, perhaps I am challenging Members of this Council by making this comment. Last week, Mrs Miriam LAU and Mr LAU Chin-shek organized a "vehicle-free week campaign" in the hope that Honourable colleagues would take part in it. Later, I read a press report on an interview with Mr James TIEN. He was asked whether he would join the campaign. Mr James TIEN said he lived at the Mid-Levels and asked what could he do

instead of driving? Are we saying that he has to slide down from the peak? Madam President, as regards the issue of environmental protection, I think that we should do more than paying lip service. We should also practise what we preach. I also want to point out that environmental protection is not the privilege of the rich.

In fact, I think everyone would like to protect the environment. Some colleagues have asked who spend the longest time on the streets? The answer is professional drivers. I do not know whether the Secretary has done any medical check-ups on professional drivers to find out about the condition of their health. Aren't they human beings? Don't they care for their own health? Don't they enjoy looking at black smoke? Don't they like azure skies? The problem is, even if they would like to improve the environment, what can they do about it? The Government has not provided them with any assistance. Those in the trade are facing a lot of difficulties. They have come up with 21 recommendations, but what has the Government done?

I think that we will be taking an easy way out if we vote for a heavier penalty today. It is very easy to impose a penalty and perhaps in the end, nobody will drive again. In fact, there is a more simple solution and Mr LAW Chi-kwong has just given us an example, and that is, to raise the level of penalty to $500,000. I propose that we might as well introduce a piece of legislation to ban driving, and this measure will be even more environmentally friendly. However, the Government will not do so because this is too drastic and cannot really solve the problem. Therefore, I think while we are debating on the environmental problem today, we cannot turn a blind eye to the reality. We should also take a look at those who really want to change for the better but fail to receive any assistance from the Government.

Madam President, there is an even more serious problem, and that is, I think the Government should be held largely responsible for the environmental pollution problem. What has the Government really done about the whole environmental policy? As regards the air pollution problem, the Government said that vehicles are the main cause of pollution. However, many green groups have pointed out that vehicles are not the only source for air pollution, because incinerators are also one of the sources. Though the use of incinerators is not at all environmentally friendly, the Government has not only encouraged but also spent several billions of dollars on its construction. The green groups have also pointed out that poor ventilation caused by high-rise buildings is also a

cause for air pollution. Has the Government ever considered these issues? The answer is no. In fact, there are a lot of environmental protection measures which the Government should have implemented. There are also a lot of problems which the Government should have addressed. I think that we should not adopt a "piecemeal approach" to tackle this problem. A comprehensive environmental protection policy should be introduced. As I have said, the Government should not only "treat the symptoms instead of the ailment", and it should do more than finding solutions only when there is a problem. For example, when a lot of people talk about air pollution, then the Government would focus all its attention on this problem.

Though today is a hot and stuffy day, we are still under the impression that the air is very fresh because of the wind, and we will think that the air condition is not so bad after all. So, very often, the question is not that we do not try to solve the problem, but rather how we should solve it. I believe that polluted air can be more easily dispersed if we have more open space.

Please forgive me for being so straightforward, but I really think that Members are short-sighted in supporting the resolution today and it also gives me an impression that they are doing it to help the Government. I think that the Government's environmental protection policy is a total failure. What has the Government really done over all these years? In the mid-eighties, when air pollution was caused by the industries, the Government only focussed its attention on the industries to the neglect of other areas. Now, when everyone is saying that the problem of smoky vehicles is very serious, the Government focusses its attention on smoky vehicles and introduces a heavy penalty. Since we have now got an air pollution index, everyone is now talking about this matter, but nothing has been done about reviewing the overall environmental protection policy.

Madam President, since I do not think that this is a comprehensive approach, and in a way, I also think that the Government is shirking its responsibilities, I cannot support the resolution. Furthermore, since this will only make the grassroots suffer and does not offer them any help, I will not support the resolution.

Madam President, I so submit.

MR LAU KONG-WAH (in Cantonese): Madam President, the serious air pollution in Hong Kong has become a social problem. Both local residents and overseas investors have a very poor opinion of the air quality in Hong Kong. According to a recent survey conducted by the Democratic Alliance for the Betterment of Hong Kong (DAB), over 80% of interviewees consider the air pollution problem in Hong Kong to be very serious. A survey done by an international business consultancy also found that Hong Kong ranked third last among 12 regions in terms of "air quality", only before China and India. As the organization responsible for the survey pointed out, this ranking shows that Hong Kong's competitiveness is now very much in question.

Thus, for the sake of people's health and Hong Kong's development opportunities, the DAB actively persuades the Government to improve the quality of Hong Kong's environment through various means. One of the means is appropriately increasing the fine for smoky vehicles to enhance the deterrent effect. That is why the DAB supports the Government's amendment. However, the DAB has reservations about increasing the fine to $1,500 or $5,000 or a progressive increase of the fine from $1,000, to $2,000, then to $5,000, as proposed by other colleagues of this Council. Even if a penalty must be imposed, it must be reasonable and realistic.

In the DAB's view, increasing the penalty to $1,000 already has a very great deterrent effect. In order to effectively reduce air pollution caused by vehicles, other approaches must be adopted.

Increasing the penalty for smoky vehicles from $450 to $1,000 already represents a 100% increase. If we receive a parking ticket today, we would feel unhappy even if the penalty is only $320. Therefore, those who say that a $1,000 fine does not have sufficient deterrent effect are a bit divorced from reality.

What is significant is that the amendment to the law we are going to pass does not only affect big companies or big groups, but many people who drive for a living and support their family by driving. If these people who drive for a living miss a half day's work, they will lose a half day's income. When the car owners receive a notice for vehicle examination, they have to sacrifice their working time and take their cars to a vehicle examination centre. What they are paying is more than $1,000.

To alleviate the problem of smoke emission of vehicles, apart from appropriately increasing the penalty, other measures should also be taken forward. A hefty increase of the penalty would only be tyranny.

A fundamental solution would be to enable all kinds of vehicles in Hong Kong to use fuels that are more effective in reducing air pollution. Unfortunately, the Government has not yet reached an agreement with some oil companies on the question of compensation. At present, even the plan to switch to LPG taxis implemented by the Government has experienced a great delay. This also affects the switch to LPG public light buses and light goods vehicles. No one can make an optimistic estimation about when it would take place.

Besides, the Government must understand how important it is for the improvement of the air quality to raise the standards of the automobile maintenance industry. It should work on this expeditiously and ensure that mechanics are better equipped with professional skills through professional training and an examination system. Another important factor is automobile maintenance manuals. Earlier, an automobile dealer was finally willing to release the manuals for some older automobile. Some progress has finally been made. However, they represent only a small fraction. The rest will depend on the negotiations between the Government and the dealers.

The above measures are important matching measures that should go hand in hand with the increase of penalty. When the Government has not yet succeeded in introducing LPG, when better-quality diesel and automobile maintenance manuals are not available, is it fair and just simply to ask for a higher and more severe penalty?

Madam President, just now, Miss Christine LOH reminded the DAB to respect the public choice. We certainly respect it. According to the findings of an opinion poll provided by Mr James TIEN just now (a rare opinion poll), 57% of the people support the $1,000 penalty. As far as Mr James TIEN's opinion poll is concerned, which we respect, we have followed the public choice. We have chosen correctly. The DAB has long grasped the public choice and sentiments. Therefore, at this stage, we are against a hefty increase of the penalty. We believe that it is very proper to increase the penalty to $1,000 for now.

We did not have such a hard time as Mr LAW Chi-kwong. At first, he wanted to propose an amendment. Then, he withdrew his amendment. Just now, Mr LAW said they were against draconian laws. I also agree. However, he proposed at the same time that repeated offenders must be heavily punished. According to this logic, all Hong Kong laws should have progressive penalties in order to deter repeated offenders. However, he failed to see this point.

Madam President, it seems to me that anything which becomes fashionable in Hong Kong will invariably turn into a trend. Everyone seems to express concern about certain matters at the same time. It was originally a good thing. But how should we handle it? Whenever one talks about improvement now, one tends to take hasty and drastic steps. Reforms are hasty and punishment is severe. In comparison, it seems that the "moderate" and "step-by-step" approach in Hong Kong over the past few decades was more successful. Thus, we should beware of "drastic" reforms and "severe" punishments.

Thank you, Madam President.

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

MRS SOPHIE LEUNG (in Cantonese): Madam President, I seem to be the third Member of the Liberal Party to speak on this motion tonight. It is now after nine. We will probably not be able to finish all the items on the Agenda. Still, I wish to take this opportunity to speak. Today, we have heard the speeches of a number of colleagues. We have quite similar views on this matter. It may be because we have set up an All Party Alliance, which is working quite well. I also have great faith in the capability of this Alliance.

Today, I wish to say to our colleagues that we should not lose heart, since it is "better late than never". A while ago, we talked about the serious pollution of Hong Kong's sea water, as a result of which many types of fish cannot survive in Hong Kong waters. However, recently, a few types of fish have returned, among them the yellow-finned seabream. The yellow-finned seabream is a very "picky" fish, which lives only in water whose quality is up to a certain standard. Now, we can find these yellow-finned seabreams in waters in Hong Kong and neighbouring Chinese waters, although they are only small ones. Of course, I believe it also has something to do with our fishing off season. Some time ago,

we did a lot of work in Hong Kong's waters, such as reclamation, which scared off many fishes. However, recently, we have done much to clean up the act and succeeded in luring many fishes back. Similarly, if we are determined to improve the air quality, I am sure we will see the effects in a few years.

Colleagues have expressed different views on the "punitive" aspect. I am very glad that they do not approve of it. Our party leader Mr TIEN mentioned that he had wanted to move an amendment to revise the penalty to $1,500. I believe we all know that Mr TIEN has frequent contact with foreigners, especially foreigners wishing to invest in Hong Kong. They have heard many rumours about Hong Kong's air quality and it has become a big issue among them, even though it might not be so big to start with. The problem has been blown out of all proportion and they have reacted strongly to this matter. After listening to the views of these well-wishers of Hong Kong, Mr TIEN has considered this matter carefully. Of course, we in the Liberal Party also very much appreciate the work of one of our members, Mrs Miriam LAU. She has been a pioneer in environmental protection since the early days and has done a lot of work. Today, I hope that all Members in this Chamber — including new and old colleagues — will admit that Mrs LAU has done a lot, even at the cost of going against the whole society. Pioneering work is very difficult. Mrs LAU mentioned today that she went to Japan in 1996 to do some very practical work. Even if the past work was not enough, it does not matter, since "yesterday's me needs not be today's me". As long as we work together today, it is not too late.

Another point I wish to talk about is that we have a new Secretary. Knowing that we are all concerned about this matter, she places great emphasis on this matter. People who know her well will have noticed that she has lost a lot of weight and cannot lose much weight any longer. We hope that she can work with some of our very active Members to do a good job. Of course, we have also set up an All Party Alliance, with Mr Edward HO as its elected chairman. I hope Mr HO will live up to our expectations and do more work.

Some Members mentioned that we must explain to the public, especially our voters, telling them that we can no longer expect "door-to-door transport without need for transfer". We have to take "Bus Route No. 11", that is, use our legs, which is in fact good for our health. Just now, I heard Mr LEUNG Yiu-chung talk about asthma. There are many causes for asthma and they do not necessarily have to do with air quality. I suggest that Mr LEUNG use a non-cotton mattress or even put a polyester mattress underneath the sheets,

which can get rid of a lot of "mites", which are the main cause of asthma in children.

Madam President, on the whole, I think we should not lose heart today. But neither should we contradict ourselves from one moment to the next or adopt a "bad loser" attitude. If the voters want "door-to-door transport" with no need for transfer and do not like to use their legs, we have to come out and say no. At the same time, everyone in society must be united to make this work.

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

(No Member responded)

PRESIDENT (in Cantonese): Mr James TIEN has indicated that he will not move his amendment. Secretary for the Environment and Food, you may now speak on Miss Christine LOH's amendment.

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I would like to stress that in order to adequately reflect the health hazards of emissions from smoky vehicles and enhance the deterrent effect of fixed penalty, we feel that there is a need to raise the level of penalty for smoky vehicles. Some Honourable Members have queried the existence of technology to maintain vehicles which emit smoke. It is a matter of fact that when diesel vehicles are properly maintained, they will not emit smoke excessively. It does not matter how old these vehicles are, whether they are using diesel with a low sulphur content, or whether they are installed with particulate filters or catalysts. More than 90% of the vehicles involved in smoky vehicles offences passed the smoke test administered by the Environmental Protection Department after undergoing repair and maintenance services. This shows that the vehicle maintenance trade has an adequate grasp of the skills related to the fixing of emissions from diesel vehicles. We will, however, press on with our efforts to raise the standards of the vehicle maintenance trade.

I would like to respond to Miss Christine LOH's amendment to increase the fixed penalty for smoky vehicles to $5,000. We are not proposing to raise the level of penalty to $1,000 arbitrarily. The proposed level of penalty for smoky vehicles has been determined after considering the fixed penalty for other traffic offences which threaten safety. The fixed penalty of $1,000 is currently the heaviest penalty under the Fixed Penalty (Criminal Proceedings) Ordinance. Therefore, we are of the view that there are no grounds justifying an increase of the fixed penalty for smoky vehicles to $5,000. The imposition of heavier penalty on smoky vehicles is only one of the measures adopted by the Government to tackle the problem of air pollution. I therefore implore Honourable Members to support the original motion moved by me. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Miss Christine LOH to move her amendment to the motion.

MISS CHRISTINE LOH: Madam President, I move that the Secretary for the Environment and Food's motion be amended, as set out on the Agenda.

Miss Christine LOH moved the following amendment:

> "That the motion to be moved by the Secretary for the Environment and Food under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) at the Legislative Council Meeting on 31 May 2000 be amended in paragraph (a) by deleting "$1,000" and substituting "$5,000"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss Christine LOH to the Secretary for the Environment and Food's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Christine LOH rose to claim a division.

PRESIDENT (in Cantonese): Miss Christine LOH 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 if they have pressed the "Present" button.

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

Functional Constituencies:

Dr David LI, Mr Bernard CHAN and Dr LEONG Che-hung voted for the amendment.

Mr Edward HO, Mr Michael HO, Dr Raymond HO, Mr LEE Kai-ming, Dr LUI Ming-wah, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr LAW Chi-kwong, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Christine LOH voted for the amendment.

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 Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, one was in favour of the amendment and 22 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Secretary for the Environment and Food, do you wish to reply?

(The Secretary for the Environment and Food indicated that she did not wish to reply)

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

Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Miriam LAU rose to claim a division.

PRESIDENT (in Cantonese): Mrs Miriam LAU 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.

Miss Cyd HO, Mr Edward HO, Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Dr David LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr MA Fung-kwok, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Miss Christine LOH, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Mr LEUNG Yiu-chung and Mrs Miriam LAU voted against the motion.

Mr LEE Kai-ming, Mr CHAN Kwok-keung, Miss CHAN Yuen-han and Mr CHAN Wing-chan abstained.

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

THE PRESIDENT announced that there were 45 Members present, 38 were in favour of the motion, two against it and four abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Members, although there are still two Members' motions on the Agenda, it is now five minutes to 10 pm. Under normal circumstances, the debate of each Members' motion will take two hours. Therefore, I will now suspend the meeting until 9.30 am tomorrow.

Suspended accordingly at five minutes to Ten o'clock.

Annex I

WRITTEN ANSWER

Translation of written answer by the Secretary for Housing to Mr LEUNG Yiu-chung's supplementary question to Question 1

Attached are the information on the median rent-to-income ratio of households throughout the Territory for Members' reference.

Household median rent-to-income ratio (%)

	Public rental housing under the Housing Authority	*Private Housing*	*Housing throughout the Territory*
1995			
First quarter	8.4	25.0	10.1
Second quarter	8.5	25.5	10.3
Third quarter	8.4	25.9	10.3
Fourth quarter	8.7	26.1	10.6
1996			
First quarter	8.6	25.0	10.6
Second quarter	8.6	25.2	10.5
Third quarter	8.7	25.8	10.6
Fourth quarter	8.9	26.0	10.8
1997			
First quarter	9.0	26.0	11.3
Second quarter	9.1	25.0	11.3
Third quarter	9.1	25.9	11.3
Fourth quarter	8.9	26.7	11.3
1998			
First quarter	8.8	25.8	11.0
Second quarter	8.9	26.6	11.7
Third quarter	9.3	26.8	11.9
Fourth quarter	8.6	26.7	11.2
1999			
First quarter	9.4	27.6	12.0
Second quarter	9.8	28.0	12.5
Third quarter	9.6	27.4	12.2
Fourth quarter	10.0	28.7	12.7

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Education and Manpower to Mr SZETO Wah's supplementary question to Question 3

In regard to the question whether Mr Nicholas NG, the Secretary for Transport, was one of the managers of the La Salle Primary School, the Education Department has checked and confirmed that Mr NG is not a manager of the school concerned.

Annex III

WRITTEN ANSWER

Translation of written answer by the Secretary for Trade and Industry to Miss CHOY So-yuk's supplementary question to Question 5

In relation to a question raised by Dr the Honourable LUI Ming-wah on the Hong Kong Convention and Exhibition Centre (HKCEC), Miss CHOY pointed out that the floor area at the HKCEC available for holding exhibition should be 60 000-odd sq m. I now confirm that the figure is totally correct. When I replied Miss CHOY's supplementary question at the meeting, I had doubts on the information concerned, thereby causing her embarrassment. Thus, I am now writing to express my deep apology.

Moreover, Miss CHOY also asked at the meeting as to why the total gross area rented for holding individual exhibitions as contained in the Annex to the main reply would exceed the rentable area of the HKCEC (that is, 63 500 sq m). I now clarify as follows: the information contained in the Annex refers to the gross area rented throughout the period for holding each exhibition. In other words, the figures are arrived at by multiplying the area rented per day for each exhibition by the total number of days rented. This explains why in some cases, the gross area rented by some large-scale exhibitions exceeded the said 63 500 sq m.

Annex IV

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

Clause	Amendment Proposed
4	In the proposed section 6A(2)(c), by deleting everything after "training centre" and substituting - " - (i) the recall order shall lapse; or (ii) his detention in such a training centre shall take effect on the expiration of the recall order, as may be decided by the Commissioner.".
5	In the proposed section 5A(3) - (a) in paragraph (a)(ii), by deleting "Board of Review established under regulation 6 of the Drug Addiction Treatment Centres Regulations (Cap. 244 sub. leg.)" and substituting "Commissioner"; (b) in paragraph (c), by deleting "board established for each training centre under regulation 7 of the Training Centres Regulations (Cap. 280 sub. leg.)" and substituting "Commissioner".
7	In the proposed section 12A - (a) in the heading, by deleting "**on sales or exchanges**";

Clause | Amendment Proposed

(b) by deleting subsections (1) and (2) and substituting -

"(1) Where land is subject to any encumbrance, whether immediately realizable or payable or not, and the encumbrancer is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who the encumbrancer is, the court may, if it thinks fit, on the application of the party for the time being entitled to redeem the encumbrance, direct or allow payment into court of a sum of money sufficient to redeem the encumbrance and any interest thereon.

(2) Upon payment into court of the sum referred to in subsection (1), the court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the court thinks fit, declare the land to be free from the encumbrance, and make any order for conveyance or vesting order as appropriate, and give directions for the retention and investment of the sum of money paid into court and for the payment or application of the income thereof, and for the payment of an amount certified by the court to be the reasonable costs of the applicant in making the application, such amount to be deducted from the sum of money paid into court.";

(c) in subsection (3), by deleting "法庭" and substituting "法院";

(d) by adding -

"(4) In this section, "court" (法院) means the Court of First Instance unless the

Clause	Amendment Proposed
	party to the application submits to the jurisdiction of the District Court.".
Part VI	In the heading, by deleting "AND CONSPIRACY COMMITTED BEFORE COMMENCEMENT OF CRIMES (AMENDMENT) ORDINANCE 1996".
14	By deleting the clause.
Schedule 2, item 44	In column 3 -
	(a) in paragraph (a), by deleting everything after "廢除" and substituting ""City and New Territories Administration" 而代以 "Home Affairs Department";";
	(b) in paragraph (b), by deleting everything after "廢除" and substituting ""*City and New Territories Administration*" 而代以 "*Home Affairs Department*"。".
Schedule 2, new	By adding -
	"91. Mutual Legal Assistance in Criminal Matters (Italy) Order (L.N. 21 of 2000) — In Schedule 2, in paragraph 1, repeal "構成該罪行的同一作為或不作為所構成的罪行或" and substitute "該外地罪行或由構成該外地罪行的同一作為或不作為所構成的".
	92. Mutual Legal Assistance in — In Schedule 2, in paragraph 1, repeal "構成該罪行的同

Clause	Amendment Proposed	
	Criminal Matters (South Korea) Order (L.N. 23 of 2000)	一作為或不作為所構成的罪行或" and substitute "該外地罪行或由構成該外地罪行的同一作為或不作為所構成的".".
Schedule 3, New	By adding -	
	"5A. Smuggling into China (Control) Specification (Cap. 242 sub. leg.).".	

Annex V

TRADE MARKS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

Clause	Amendment Proposed
Long title	By deleting "Amend and consolidate the law relating to" and substituting "Make new provision in respect of".
1(2)	By deleting "Trade" and substituting "Commerce".
2(1)	(a) By deleting the definition of "Paris Convention country" and substituting - ""Paris Convention country" (巴黎公約國) means - (a) any country for the time being specified in Schedule 1 as being a country which has acceded to the Paris Convention; (b) any territory or area subject to the authority or under the suzerainty of any country referred to in paragraph (a), or any territory or area administered by any such country, on behalf of which such country has acceded to the Paris Convention;". (b) In the definition of "WTO member", by deleting "designated by regulation made under section 91 (regulations) as" and substituting "for the time being specified in Schedule 1 as being".

Clause	Amendment Proposed
	(c) By adding -
	""certified" (核證), in relation to a copy or extract, means certified by the Registrar and sealed with the seal of the Registrar;".
3(2)	By deleting "numerals, figurative elements, the shape of goods or their packaging, a combination of colours" and substituting "characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging".
4	(a) In subclause (1), by deleting "well-known in Hong Kong" and substituting "well known in Hong Kong".
	(b) By adding -
	"(1A)In determining for the purposes of subsection (1) whether a trade mark is well known in Hong Kong, the Registrar or the court shall have regard to Schedule 2.".
New	By adding before Part II -
	"**8A. Ordinance binds Government**
	This Ordinance binds the Government.".
9	By deleting subclause (3).
11	(a) In subclause (4), by deleting "has a reputation in Hong Kong" and substituting "is entitled to protection under the Paris Convention as a well-known trade mark".

Clause	Amendment Proposed
	(b) In subclause (8), by deleting "unless the Registrar is satisfied that the use of the trade mark, in relation to the goods or services in respect of which it is proposed to be registered, is likely to cause confusion on the part of the public".
12(1)(b)	By adding "special" before "circumstances".
13(2)	By deleting "and section 19 (exhaustion of rights conferred by registered trade mark)" and substituting ", section 19 (exhaustion of rights conferred by registered trade mark) and section 19A (use in advertising, etc.)".
17	(a) In subclause (4)(b), by deleting "has a reputation in Hong Kong" and substituting "is entitled to protection under the Paris Convention as a well-known trade mark". (b) By deleting subclause (7).
18	By deleting subclause (3) and substituting - "(3) A registered trade mark is not infringed by - (a) the use by a person of his own name or address or the name of his place of business; (b) the use by a person of the name of his predecessor in business or the name of his predecessor's place of business;

Clause Amendment Proposed

(c) the use of signs which serve to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services; or

(d) the use of the trade mark where it is necessary to indicate the intended purpose of goods or services (for example, as accessories or spare parts),

provided the use is in accordance with honest practices in industrial or commercial matters.".

New By adding before the subheading "**Infringement proceedings**" -

"**19A. Use in advertising, etc.**

(1) Nothing in section 17 (infringement of registered trade mark) shall be construed as preventing the use by any person of a registered trade mark for the purpose of identifying goods or services as those of the owner of the registered trade mark or a licensee, but any such use which is otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trade mark.

(2) In determining for the purposes of subsection (1) whether the use is in accordance with honest practices in industrial or commercial matters, the court may consider such factors as it considers relevant including, in particular, whether -

(a) the use takes unfair advantage of the trade mark;

Clause	Amendment Proposed

(b) the use is detrimental to the distinctive character or repute of the trade mark; or

(c) the use is such as to deceive the public.

(3) For the avoidance of doubt, nothing in this section shall be construed as applying to the interpretation of section 19 (exhaustion of rights conferred by registered trade mark).".

24 By adding -

"(7) Nothing in this section makes a barrister or solicitor liable to proceedings under this section for any act done by him in a professional capacity on behalf of a client.".

25(5) By adding "that an assignment or assent be signed" after "subsection (4)".

37 By deleting subclause (1) and substituting -

"(1) The filing date of an application for registration of a trade mark is the date on which documents containing everything required by section 36(2)(a) to (d) (application for registration) are filed with the Registrar.

(1A) If the documents are filed on different dates, the filing date is the last of those dates.".

Clause	Amendment Proposed
40	By deleting subclauses (3) and (4) and substituting - "(3) If it appears to the Registrar that the requirements for registration are not met, the Registrar shall, by notice in writing - (a) inform the applicant of the Registrar's opinion; (b) inform him that he may make representations to the Registrar to establish that the requirements for registration are met or that he may amend the application so as to meet those requirements, but that he must do so within the prescribed period; and (c) inform him of the provisions of subsection (4). (4) The Registrar shall refuse to accept the application if the applicant - (a) fails to respond to the notice before the end of the period prescribed for the purposes of subsection (3)(b); or (b) fails, before the end of that period, to satisfy the Registrar that the requirements for registration are met or to amend the application so as to meet those requirements.".
Subheading	In the subheading after clause 41, by deleting ", **restriction**".

Clause	Amendment Proposed
43	(a) In the heading, by deleting "**or restriction**".
	(b) In subclause (1), by deleting "or restrict the goods or services covered by the application".
	(c) In subclause (2), by deleting "or restriction".
44	By adding -
	"(2A) An application for registration of a trade mark may be amended -
	(a) for the purpose of restricting the goods or services covered by the application; or
	(b) for such other purposes as may be prescribed.".
48(7)	By deleting "愎" and substituting "復".
49(2)(b)	By deleting "as to".
50	(a) In subclause (2), by deleting paragraphs (a) to (c) and substituting -
	"(a) that the trade mark has not been genuinely used in Hong Kong by the owner or with his consent, in relation to the goods or services for which it is registered, for a continuous period of at least 3 years, and there are no valid reasons for non-use (such as import restrictions on, or other governmental

Clause | Amendment Proposed

requirements for, goods or services protected by the trade mark);

(b) that the trade mark consists of a sign that, in consequence of the acts or the inactivity of the owner -

(i) has become the common name in the trade for goods or services for which the trade mark is registered; or

(ii) has become generally accepted within the trade as the sign that describes goods or services for which the trade mark is registered;".

(b) In subclause (3) -

(i) in paragraph (a), by deleting "and";

(ii) in paragraph (b), by deleting the full stop and substituting "; and";

(iii) by adding -

"(c) use of a trade mark in Hong Kong includes, where the trade mark is registered in respect of services, use in relation to services provided or to be provided outside Hong Kong.".

(c) In subclauses (4) and (5), by deleting "or (b)".

Clause	Amendment Proposed
	(d) By deleting subclause (8) and substituting -
	"(8) For the purposes of subsection (2)(a), the 3-year period may begin at any time on or after the actual date on which particulars of the trade mark were entered in the register under section 45(1) (registration).".
51	(a) In subclause (3), by deleting "已" and substituting "以".
	(b) In subclause (5), by adding "also" after "may".
	(c) By deleting subclause (6) and substituting -
	"(6) The registration of a trade mark may not be declared invalid under subsection (5) if the owner of the earlier trade mark or other earlier right has consented to the registration.".
52(2)	By adding "only" after "varied".
55	By deleting subclauses (5) and (6) and substituting -
	"(5) The Registrar may, on request made by the owner of a registered trade mark or a licensee, or by any person having an interest in or charge on a registered trade mark the particulars of which have been entered in the register under section 27 (registration of transactions affecting registered trade mark), enter any change in his name or address, or in any other particulars identifying such person, as recorded in the register.

Clause	Amendment Proposed
	(6) Where the Registrar is satisfied that an error or omission in the register is attributable to an error or omission on his part or on the part of the staff of the Registry, he may on his own initiative correct the error or omission in the register, but before doing so he shall give notice of the proposed correction to any person who appears to him to be concerned.".
58	(a) In subclause (1), by deleting "well-known" and substituting "exceptionally well known in Hong Kong".
	(b) In subclause (7), by deleting "50(2)(a), (b), (c) and (d)" and substituting "50(2)(a), (b) and (c)".
59(2)	By deleting "Schedule 1" and substituting "Schedule 3".
60(2)	By deleting "Schedule 2" and substituting "Schedule 4".
68	By deleting the clause and substituting -

"**68. Decisions of Registrar to be taken after hearing**

(1) Without prejudice to any rule of law or to any provision of this Ordinance requiring the Registrar to hear any party to proceedings before him, or to give any such party an opportunity to be heard, the Registrar shall, before taking any decision on any matter under this Ordinance or the rules which is or may be adverse to any party to any proceedings before him, give that party an opportunity to be heard.

Clause	Amendment Proposed
	(2) The Registrar shall give a party to proceedings before him at least 14 days' notice of the time when he may be heard unless that party consents to shorter notice.".
70(3)	By deleting "or restriction".
73	By deleting the clause.
78	By deleting subclause (5).
81	By deleting the clause and substituting -

"**81. Burden in civil proceedings of proving use of trade mark**

(1) If, in any civil proceedings under this Ordinance in which the owner of a registered trade mark is a party, a question arises as to the use to which the trade mark has been put, the burden of proving that use shall lie with the owner.

(2) If, in any civil proceedings under this Ordinance in which a licensee of a registered trade mark is a party, a question arises as to the use to which the trade mark has been put, the burden of proving that use shall lie with -

(a) the owner of the trade mark, where he is a party to the proceedings; or

Clause	Amendment Proposed
	(b) the licensee, where the owner is not a party to the proceedings.".
85	(a) In subclause (1), by deleting "and the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties".
	(b) By deleting subclause (3).
91	By deleting the clause and substituting -

"**91. Regulations**

The Chief Executive in Council may by regulation -

(a) add to Schedule 1 (Paris Convention countries and WTO members) the name of -

(i) any country which has acceded to the Paris Convention;

(ii) any country, territory or area which has acceded to the World Trade Organization Agreement;

(b) delete from Schedule 1 the name of -

(i) any country which has denounced the Paris Convention;

Clause	Amendment Proposed
	(ii) any country, territory or area which has denounced the World Trade Organization Agreement;
	(c) otherwise amend Schedule 1;
	(d) amend Schedule 2 (determination of well-known trade marks);
	(e) amend Schedule 3 (collective marks); and
	(f) amend Schedule 4 (certification marks).".
95	By deleting subclause (4) and substituting -
	"(4) A person shall not be treated as a director of a corporation by reason only that the directors of the corporation act on advice given by him in a professional capacity.".
96(1),(4) and (6)	By deleting "Schedule 3" and substituting "Schedule 5".
97	By deleting "Schedule 4" and substituting "Schedule 6".

Clause	Amendment Proposed
New	By adding -

"SCHEDULE 1 [ss. 2 & 91]

PARIS CONVENTION COUNTRIES AND WTO MEMBERS

Countries which have acceded to the Paris Convention

Countries, territories and areas which have acceded to the World Trade Organization Agreement (not including countries which have acceded to the Paris Convention)

".

New By adding -

"SCHEDULE 2 [ss. 4 & 91]

DETERMINATION OF WELL-KNOWN TRADE MARKS

1. **Factors for consideration**

(1) In determining for the purposes of section 4 (meaning of "well-known trade mark") whether a trade mark is well known in Hong Kong, the Registrar or the court shall take into account any factors from which it may be inferred that the trade mark is well known in Hong Kong.

(2) In particular, the Registrar or the court shall consider any information submitted to the Registrar or the court from which it may be inferred that the trade mark is,

Clause | Amendment Proposed

or is not, well known in Hong Kong, including, but not limited to, information concerning the following -

(a) the degree of knowledge or recognition of the trade mark in the relevant sectors of the public;

(b) the duration, extent and geographical area of any use of the trade mark;

(c) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods or services to which the trade mark applies;

(d) the duration and geographical area of any registrations, or any applications for registration, of the trade mark, to the extent that they reflect use or recognition of the trade mark;

(e) the record of successful enforcement of rights in the trade mark, in particular, the extent to which the trade mark has been recognized as a well-known trade mark by competent authorities in foreign jurisdictions; and

(f) the value associated with the trade mark.

(3) The factors mentioned in subsection (2) are intended to serve as guidelines to assist the Registrar and the court to determine whether the trade mark is well known in Hong Kong. It is not a pre-condition for reaching that determination that information be submitted

Clause Amendment Proposed

with respect to any of those factors or that equal weight be given to each of them. Rather, the determination in each case will depend upon the particular circumstances of that case. In some cases all of the factors may be relevant. In other cases some of the factors may be relevant. In still other cases none of the factors may be relevant, and the decision may be based on additional factors that are not mentioned in subsection (2). Such additional factors may be relevant alone, or in combination with one or more of the factors mentioned in subsection (2).

(4) For the purpose of subsection (2)(a), "relevant sectors of the public" (有關的公眾界別) includes, but is not limited to -

(a) actual or potential consumers of the type of goods or services to which the trade mark applies;

(b) persons involved in channels of distribution of the type of goods or services to which the trade mark applies; and

(c) business circles dealing with the type of goods or services to which the trade mark applies.

(5) Where a trade mark is determined to be well known in at least one relevant sector of the public in Hong Kong, it shall be considered to be well known in Hong Kong.

(6) For the purpose of subsection (2)(e), "competent authorities in foreign jurisdictions" (外地主管當局) means administrative, judicial or quasi-judicial authorities in jurisdictions other than Hong Kong that are

Clause | Amendment Proposed

competent to determine whether a trade mark is a well-known trade mark, or in enforcing the protection of well-known trade marks, in their respective jurisdictions.

2. **Factors not required to be established**

For the purpose of determining whether a trade mark is well known in Hong Kong, it is not necessary to establish -

(a) that the trade mark has been used, or has been registered, in Hong Kong;

(b) that an application for registration of the trade mark has been filed in Hong Kong;

(c) that the trade mark is well known, or has been registered, in a jurisdiction other than Hong Kong;

(d) that an application for registration of the trade mark has been filed in a jurisdiction other than Hong Kong; or

(e) that the trade mark is well known by the public at large in Hong Kong.".

Schedule 1 (a) By deleting "SCHEDULE 1" and substituting "SCHEDULE 3".

(b) In section 4(3), by deleting "section 43 (withdrawal or restriction of application) and section 44 (amendment of application) of this Ordinance" and substituting "section 44 of this Ordinance (amendment of application)".

Clause	Amendment Proposed
Schedule 2	(a) By deleting "SCHEDULE 2" and substituting "SCHEDULE 4".
	(b) Within the square brackets, by adding "& Sch. 5" after "91".
	(c) In section 5(3), by deleting "section 43 (withdrawal or restriction of application) and section 44 (amendment of application) of this Ordinance" and substituting "section 44 of this Ordinance (amendment of application)".
Schedule 3	(a) By deleting "SCHEDULE 3" and substituting "SCHEDULE 5".
	(b) In section 6(2), by deleting "Schedule 2" and substituting "Schedule 4".
	(c) In section 8(6), by deleting "after that date" and substituting "made on or after that date".
	(d) In section 10 -
	(i) by deleting subsection (2) and substituting -
	"(2) Section 15 of the repealed Ordinance (opposition to registration) and any other provisions of the old law relating to oppositions to registration continue to apply in relation to an application mentioned in subsection (1).";"
	(ii) in subsection (3), by deleting "a notice of opposition" and substituting "an opposition to registration".

Clause	Amendment Proposed
	(e) In section 11(3), by deleting "immediately after" and substituting "on".
	(f) In section 16(2), by deleting "grounds mentioned in section 50(2)(a) or (b)" and substituting "ground mentioned in section 50(2)(a)".
	(g) In section 18(1), by deleting "Schedule 2" and substituting "Schedule 4".
	(h) In the Annex -
	(i) within the square brackets, by deleting "Sch. 3" and substituting "Sch. 5";
	(ii) in the heading, by deleting "SCHEDULE 3" and substituting "SCHEDULE 5";
	(iii) in section 37(2A)(a) and (b), by deleting "country or territory" and substituting "country, territory or place".
Schedule 4	(a) By deleting "SCHEDULE 4" and substituting "SCHEDULE 6".
	(b) By deleting section 7.
	(c) By deleting section 8 and substituting -
	"8. **Offences in respect of trade marks**
	Section 9 is amended -
	(a) by repealing subsection (3) and substituting -

Clause | Amendment Proposed

"(3) For the purposes of this section but subject to subsection (3A), a person shall be deemed -

(a) to forge a trade mark who either -

(i) without the consent of the owner of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(ii) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

(b) falsely to apply to goods a trade mark who without the consent of the owner of that trade mark applies that trade mark to goods,

Clause | Amendment Proposed

and "forged trade mark" (偽造商標) shall be construed accordingly.

(3A) A person shall not be deemed under subsection (3) to forge a trade mark, or falsely to apply to goods a trade mark, if the person proves -

(a) that he acted without infringing any right of the owner of the trade mark conferred by the Trade Marks Ordinance (of 2000);

(b) that the trade mark or mark was not used by him in the course of any trade or business as a trade mark in relation to goods;

(c) that the use made by him of the trade mark or mark is not a use in relation to goods for which the trade mark is registered and is not a use in relation to goods similar to those for which it is registered; or

Clause | Amendment Proposed

(d) that the use made by him of the trade mark or mark is a use to which the rights of the owner of the trade mark do not extend by reason of a disclaimer, limitation or condition to which the trade mark is subject.";

(b) in subsection (4), by repealing "assent of the proprietor" and substituting "consent of the owner".".

(d) By deleting section 11.

TRADE MARKS BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Margaret NG

Clause	Amendment Proposed
19	(a) By deleting subclause (2) and substituting -

"(2) Subsection (1) does not apply under one or both of the following -

(a) where the condition of the goods has been changed or impaired after they have been put on the market, and the use of the registered trade mark in relation to those goods is detrimental to the distinctive character or repute of the trade mark;

(b) in the case of goods imported into Hong Kong in the course of trade or business and subsequently put on the retail market, where the person who imported the goods is not identified.".

(b) By adding -

"(3) The person mentioned in subsection (2)(b) shall be treated to have been identified if the name and address of that person in either the Chinese or English language, or in both languages are -

(a) in accordance with the rules, marked on -

Clause | Amendment Proposed

(i) the goods;

(ii) any package containing the goods;

(iii) a label securely affixed to the goods or any package containing the goods;

(iv) a document enclosed with any package containing the goods;

(v) a document which relates to the goods and is exhibited in a conspicuous place where the goods are displayed for retail purchase; or

(b) marked as provided by the rules.

(4) Subsection (2)(b) does not apply to any goods in transit or goods in the course of transhipment.".

Annex VI

ROAD TRAFFIC (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

Clause	Amendment Proposed
2	(a) In the proposed section 36 -
	(i) in subsection (7) -
	(A) by deleting "the court or magistrate shall have regard" and substituting "regard shall be had";
	(B) in paragraph (c), by adding "(including the physical condition of the accused)" after "circumstances" where it twice appears;
	(ii) in subsection (8), by deleting "the court or magistrate may have regard" and substituting "regard may be had";
	(iii) in subsection (10), by deleting everything after "39" and substituting "or 39A.".
	(b) In the proposed section 37 -
	(i) in subsection (7) -
	(A) by deleting "the court or magistrate shall have regard" and substituting "regard shall be had";

Clause | Amendment Proposed

(B) in paragraph (c), by adding "(including the physical condition of the accused)" after "circumstances" where it twice appears;

(ii) in subsection (8), by deleting "the court or magistrate may have regard" and substituting "regard may be had";

(iii) in subsection (9), by deleting everything after "39" and substituting "or 39A.".".

New — By adding -

"**4. Section added**

The following is added -

"**113B. Transitional provisions regarding reckless driving causing death and reckless driving**

(1) The repeal of sections 36 and 37 by section 2 of the Road Traffic (Amendment) Ordinance 2000 (of 2000) ("the amending Ordinance") does not -

(a) affect any liability incurred under the repealed section 36 or 37; or

(b) affect -

Clause | Amendment Proposed

(i) any penalty or disqualification imposed; or

(ii) any investigation or criminal proceedings instituted,

in respect of any offence committed before the commencement of the amending Ordinance against the repealed section 36 or 37; and any such penalty or disqualification may be imposed, and any investigation or criminal proceedings may be instituted or carried on in respect of such offence, as if the amending Ordinance had not been passed.

(2) A person may be convicted of an offence under the repealed section 36 notwithstanding that the death of another person as referred to in the repealed section 36(1) occurs on or after the commencement of the amending Ordinance.

(3) Subsections (1) and (2) shall be in addition to and shall not derogate from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).".".

Clause Amendment Proposed

New By adding -

"**5. Consequential amendments**

The enactments specified in column 2 of the Schedule are amended to the extent and in the manner specified in column 3 of that Schedule in relation to each enactment.

SCHEDULE [s. 5]

Item	Enactment	Amendment
1.	Road Traffic Ordinance (Cap. 374)	In section 68(1), repeal "reckless" where it twice appears and substitute "dangerous".
2.	Road Traffic (Driving-offence Points) Ordinance (Cap. 375)	In the Schedule - (a) in item 1, repeal "reckless" and substitute "dangerous"; (b) in item 2, repeal "Reckless" and substitute "Dangerous".
3.	Airport Authority Bylaw (Cap. 483 sub. leg.)	(a) In section 48(3) and (4), repeal "recklessly" and substitute "dangerously".

Clause		Amendment Proposed
		(b) In Schedule 4, in column 2 -
		(i) repeal "reckless" where it appears opposite "48(3)" in column 1 and substitute "dangerous";
		(ii) repeal "Reckless" where it appears opposite "48(4)" in column 1 and substitute "Dangerous".
4.	Coroners Ordinance (Cap. 504)	In sections 33(2), 35(1)(b) and (7)(b) and 36(1), repeal "reckless" and substitute "dangerous".
5.	Coroners Rules (Cap. 504 sub. leg.)	In rule 12, repeal "reckless" and substitute "dangerous".
6.	Coroners (Forms) Rules (Cap. 504 sub. leg.)	In the Schedule, in Form 12, in Note 4(b) and (c), repeal "reckless" and substitute "dangerous".".