

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 7 June 2000

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

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

THE HONOURABLE DAVID CHU YU-LIN

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

THE HONOURABLE CYD HO SAU-LAN

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

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE MICHAEL HO MUN-KA

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

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

THE HONOURABLE 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.

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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

MISS YVONNE CHOI YING-PIK, J.P.
SECRETARY FOR TRADE AND INDUSTRY

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Securities and Futures Commission (Levy) (Securities) (Amendment) (No. 2) Order 2000	200/2000
Immigration (Vietnamese Refugee Centres) (Designation) Order 2000.....	201/2000
Immigration (Vietnamese Refugee Centres) (Open Centre) (Amendment) Rules 2000	202/2000
Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2000.....	203/2000

Other Papers

No. 103 — Report of changes to the approved Estimates of Expenditure approved during the final quarter of 1999-2000 (Public Finance Ordinance : Section 8)

No. 104 — Securities and Futures Commission
Annual Report 1999-2000

Report of the Finance Committee on the examination of the Draft Estimates of Expenditure 2000-2001 (June 2000)

Report of the Bills Committee on Telecommunication (Amendment)
Bill 1999

ADDRESS

PRESIDENT (in Cantonese): Address. Mr Ronald ARCULLI will address the Council on the Report of the Finance Committee on the examination of the Draft Estimates of Expenditure 2000-2001 (June 2000).

Report of the Finance Committee on the examination of the Draft Estimates of Expenditure 2000-2001 (June 2000)

MR RONALD ARCULLI: Madam President, on behalf of the Finance Committee, I would like to present the Committee's Report on its examination of the Draft Estimates of Expenditure for 2000-01, which were referred to the Committee by you, Madam President, in accordance with Rule 71(11) of the Rules of Procedure.

The Finance Committee held a total of six special meetings consisting of 18 open sessions from 21 to 24 March 2000 to examine the Draft Estimates of Expenditure. The purpose of the examination is to ensure that the Administration is seeking provision no more than is necessary for the execution of its policies in 2000-01.

Prior to the special meetings, written questions were invited from Members on the Draft Estimates. This year, a total of 1 348 written questions from Members were forwarded to the Administration for its reply. This Report gives an account of how the examination was conducted and contains a full record of the proceedings of the 18 sessions in Chapters II to XIX. At each of the sessions, Members put questions to the Policy Secretary concerned after his/her brief presentation focusing on the spending priorities and provisions sought under various programmes areas. Supplementary questions and requests for additional information were dealt with by the Administration after the meeting in writing. Broad policy issues raised during the meetings were referred to the relevant Panels for follow-up, where necessary.

Madam President, I would like to express my appreciation to Members for their enthusiasm in forwarding their written questions and in participating in the special meetings. I am also grateful to representatives of the Administration

who took part in very fruitful discussions with Members at these special meetings. Last but not least, I wish to thank the staff of the Finance Bureau and the Legislative Council Secretariat for supporting the work of the Committee.

Thank you, Madam President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Public Confidence in Government's Work

1. **MR LEE WING-TAT** (in Cantonese): *Madam President, the Hong Kong Transition Project randomly selected 704 persons for interview in mid-April, and 54% of the respondents were dissatisfied with the performance of the incumbent Chief Executive. In this connection, will the Government inform this Council whether it will review its policy objectives, and of the measures it will take to salvage the prestige of its governance?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the Hong Kong Government attaches great importance to the opinions of the community in formulating its policies. We monitor opinion polls and surveys regularly to gauge the views of the public on issues of concern. We have taken note of the survey referred to in the question raised by Mr LEE Wing-tat, which is one of the many opinion polls conducted in Hong Kong. We will make reference to these opinion polls.

Indeed, the Government also conducts opinion polls regularly. The Home Affairs Bureau has been conducting bi-monthly telephone opinion surveys since 1983, in which an average of 1 500 of eligible respondents are successfully interviewed in each survey. In the past five years, the percentage of respondents who considered that the Government was concerned about public opinions and had taken them into account when deciding on policy and actions was consistently around 60%. The percentage remains stable before and after the reunification.

Regardless of the results of opinion polls, the Chief Executive and the Government are fully committed to Hong Kong's well-being and have the short and long term interests of the people of Hong Kong at heart.

Our directions are clear. We will on the one hand maintain economic development to provide business opportunities and gainful employment for Hong Kong people. On the other, we will keep rolling forward our social policies to upgrade the quality of life in Hong Kong.

The Administration will take into account public opinions when deciding its policies and actions, and will regularly review and fine-tune existing policy objectives to ensure that they are geared towards the overall and long-term interests of Hong Kong. This process is subsumed in the Chief Executive's annual policy address and the Policy Objectives of individual Policy Bureaux.

MR LEE WING-TAT (in Cantonese): *Madam President, the survey mentioned shows that people do not only find the performance of the Chief Executive unsatisfactory by impression, one of the results gathered in the survey also shows that people think that the Chief Executive is too much influenced by commercial leaders and Beijing officials. How would the Chief Executive make improvements in response to the dissatisfaction of the people in this aspect?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I have said in my main reply that we will make reference to the opinion surveys in formulating policies. Mr LEE has just mentioned one of the many opinion surveys. The results of all opinion surveys will be used systematically as reference by Policy Bureaux and policy divisions but we will not make an immediate response to a certain point on the basis of the result of individual opinion surveys.

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

MR LEE WING-TAT (in Cantonese): *Madam President, perhaps I have not made my point clear enough. I do not want to discuss the results of that*

particular opinion survey but one of the results gathered in that opinion survey reveals that the respondents think that Mr TUNG is too much influenced by businessmen and Beijing in respect of administration. In this connection, does the Government have any specific responses? I do not intend to compare different surveys.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, in Hong Kong, in general, people will express their views or do so when interviewed and this often happens. But as I have said, we will not particularly make an immediate response to a certain point of a survey. However, we will synthesize all information for reference through different channels. I would also like to point out that the information collected by other surveys show that people often have different views on different matters. The Government conducts bi-monthly surveys and as we are highly concerned about the views of local and overseas people on us, the Government of the Special Administrative Region (SAR) often pays attention to public opinions when formulating its policy objectives.

MR FRED LI (in Cantonese): *Madam President, when that particular opinion survey was released, Mr Stephen LAM, Information Co-ordinator in the Chief Executive's Office, responded that the extent of support given by people to the Government would not affect the governing authority of the SAR Government. If his remarks represent the position of the Government, does it mean that the Government does not attach importance to public support?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as far as I recall and in my capacity as a member of the SAR Government, regardless of the extent of support reflected in the opinion surveys, the SAR Government will continue to act in the light of the greatest interests of Hong Kong and try its best to implement its policy objectives. This can be seen from many examples and is precisely my understanding.

MR FRED LI (in Cantonese): *Madam President, the Secretary has not answered my supplementary question at all. I have asked the supplementary question on the basis of an actual example, that is, the remarks made by Mr Stephen LAM, but the Secretary has not responded to this.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, what Mr LI just said differs from what I understood. As far as I know, the Information Co-ordinator has said that regardless of the extent of support reflected in the opinion surveys, the SAR Government will continue to act in the light of the greatest interests of Hong Kong and have the long-term interests of Hong Kong at heart. This is different from what Mr LI has just said, and it seems that our understanding may be somewhat different. If my understanding is wrong, Mr LI may tell me the actual situation after this meeting and I will gladly take follow-up actions.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary has said that the Government will act in the light of the interests of the majority public regardless of the results of the opinion surveys. Does it mean that the Government will strongly hold on to its own views and continue to do something wrong even if it is wrong, taking no notice of the aspiration of the majority public? The Secretary has stressed in his main reply that the Chief Executive and the SAR Government are fully committed to Hong Kong's well-being and have the long and short term interests of the people of Hong Kong at heart. If the Government can really do so, why are public opinions exactly contrary to the Government's views?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I wonder why it is considered something wrong if a government acts in the light of the long-term interests of the place and the well-being of the majority public. If someone thinks that it is wrong to act in the light of the interests of the majority public, I would like to listen to his reasons. I can cite many examples to illustrate how the Government acts in the light of the long-term interests of the majority of Hong Kong people.

The Government's intervention in the financial market to resist the financial turmoil in 1998 was a bold move. At that time, the Government had listened carefully to people's views and met their requests. Certainly, there were loud voices opposing the move then. But I believe many people in Hong Kong and abroad are making good responses now and they think that we did something right.

Secondly, in 1999, we executed an agreement with the Disney Company to make arrangements for organizing a theme park in Hong Kong to attract tourists and create job opportunities. This also tallied with the policy of acting in the light of the long-term interests of people. Many people also have different views on the proposed bid for the 2006 Asian Games. This has created quite a lot of controversy lately. Although some people have negative views, we still respect their views. Yet, all decisions of the SAR Government are made in the light of the interests of Hong Kong people at large and the long-term interests of Hong Kong. I cannot see there is anything wrong.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, I have asked the Secretary in my supplementary question why public opinions differ from the present views of the Government. It has nothing to do with whether the Government has acted in the light of the interests of the majority public. What are the views of the Government on the difference between public opinions and its policy objectives?*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, perhaps I would elaborate on this. I have said in my main reply that we attach great importance to the opinions of the community but I do not understand why the Honourable Member said that what we did is contrary to public opinions. In all the examples I just gave, during a certain period of time, especially when we have proposed to bid for the Asian Games recently — I have better understanding about this because I am involved — the public indeed have different views or even opposing views since they fail to fully understand the relevant information and all aspects of the matter. However, this does not matter as Hong Kong is an extremely free place and people are free to express their views. People are allowed to speak up and express their views and it is right for them to do so. But I believe the examples I just gave — the Government's intervention during the financial turmoil, Disney theme park and Asian Games — show that the policy objectives of the Government have the long-term interests of Hong Kong people at heart, so these decisions are supported by the people. Therefore, our policies are not contrary to public opinions.

DR YEUNG SUM (in Cantonese): *Madam President, the Secretary has said that the Government respects public opinions and takes them into account. Can the Government and the Chief Executive consider increasing the number of times that the Chief Executive attends Legislative Council meetings to answer questions in the coming term (the present term will come to an end soon), and come to the Legislative Council in person to brief Members and answer questions when there are major issues? Can they consider doing so?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I am pleased to pass on the supplementary question asked by Dr YEUNG Sum to the Chief Executive. Although his question is a bit outside the scope of the main question, I am very willing to pass on this message to the Chief Executive. I would also like to restate that the SAR Government attaches great importance to public opinions but this does not mean that whenever the views of the community on a certain matter are different at a certain period, we must act accordingly. Members should understand that the views of the community on certain matters may sometimes change along with time but we cannot make frequent changes to our policies.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary has pointed out in the second paragraph of his main reply that the Government has been conducting opinion surveys since 1983 and in the past five years, the percentage of respondents who considered that the Government was concerned about public opinions was consistently around 60%. Is the Secretary satisfied with this percentage? There are many government officials like the Secretary who know a trick or two, do they have any good tricks to increase the percentage of people's support for the Government?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, 60% is a fairly good percentage but as I have said in my main reply, this percentage remains stable before and after the reunification. In the light of our position, we certainly hope that people will think that the Government will consider public opinions to a further extent when considering and formulating policies. I can also say that the Government has all along found public opinions one of the many very important factors for consideration. As regards whether I can think of other methods to improve the present situation, in fact, my colleagues and I and even the whole SAR Government hope that we can make improvements while we work. Therefore, we share the same view in this matter.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. Although several Members are waiting to ask questions, I can only allow one Member to ask the last supplementary question.

DR LUI MING-WAH (in Cantonese): *Madam President, the main question stated that the Hong Kong Transition Project randomly selected 704 persons for interview in mid-April, and 54% of the respondents were dissatisfied with the performance of the incumbent Chief Executive. Can the Secretary comment on the result of the survey?*

PRESIDENT (in Cantonese): Dr LUI, your question is only the premise of the main question but not on the main question. Please revise the wordings of your supplementary question to link it up with the main question.

DR LUI MING-WAH (in Cantonese): *Madam President, is there an integral relationship between the two, that is, the performance of the Chief Executive and the performance of the Government?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the examples I have just given such as making preparations for the Disney theme park, the Government's intervention in the market during the financial turmoil and the bid for the Asian Games are government actions recognized and supported by Hong Kong people. Having discussed the situation in Hong Kong, let me turn to the situation of other countries. The European Union has recently submitted a report to the Council and European Parliament in May 2000 which stated that, after the implementation of "one country, two systems" in Hong Kong, no harm has been done to the community and the system has been well-implemented on the whole. Besides, Hong Kong can be described as the freest society in Asia and it has revived rapidly after the financial turmoil. It is really good to see that the Hong Kong Government led by the Chief Executive is well received by other countries in respect of such major issues. Similarly, the State Department of the United States published a report on Hong Kong in April this year and positively appraised Hong Kong. Let us also consider that the United States Heritage Foundation has commented for six consecutive years that Hong Kong is an excellent example of a free economy in the world. I am not saying

that we must fully believe the praises that other countries heaped on us or just choose to believe the good comments. I have just given some examples to show that other countries, for instance, the Fraser Institute of Canada and the World Economic Forum, have made positive comments on Hong Kong. Now that the SAR Government led by the Chief Executive is highly appraised in Hong Kong and abroad, I believe their comments are worth consideration by Members.

Vacant Departmental Quarters of Housing Department

2. **MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, it is learnt that the Housing Department (HD) has ceased to allocate vacant departmental quarters to eligible staff since 1997, and about two thirds of such quarters are left vacant at present. On the other hand, some HD staff have pointed out that the HD has been using public funds to carry out refurbishment works for vacated departmental quarters over the past several years. In this connection, will the Government inform this Council:*

- (a) *how the HD plans to dispose of the vacant departmental quarters;*
- (b) *whether the Audit Commission has studied if the HD has squandered public funds by carrying out refurbishment works for vacated quarters; if it has, of the result of the study; if not, the reasons for that; and*
- (c) *given that departmental quarters are one type of housing benefits granted to civil servants, of the justifications for its view that, in ceasing to allocate departmental quarters to its staff, the HD is not in breach of Article 100 of the Basic Law, which stipulates that all public servants may retain their benefits and conditions of service no less favourable than before?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the HD has decided to pool existing occupants of departmental quarters together to those quarters in Kwun Tong, Lok Fu and Tin Wan, and is examining ways to dispose of the remaining quarters, including letting them out privately on a temporary basis or using the released sites for future housing development. In the meantime, no refurbishment works will be undertaken for the vacated quarters.

The Audit Commission has not conducted a study on this subject owing to staff constraint, but has indicated that it will monitor how the HD deals with the vacant quarters.

The decision of the HD to cease allocating departmental quarters to staff is not in breach of Article 100 of the Basic Law. As the provision of departmental quarters to HD staff is intended to meet operational needs, it is not a condition of service. Indeed, the Civil Service Regulations stipulate that no officer is entitled as of right to reside in quarters. These regulations have been in place well before 1997.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, vacant departmental quarters have appeared since 1997 and there are quite a number of such quarters, amounting to two thirds of the total. Would the Government regard the policy of not allocating quarters to staff despite their request for them as waste of government resources? No matter whether the answer is in the affirmative or negative, I would like an explanation from the Secretary, and I would like him to state whether he would conduct an in-depth review into the matter.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the HD found that quarters are vacant because there are no longer operational needs. Thus the HD ceased allocating departmental quarters to staff. This is in fact a proper way to deal with resources. If on the contrary the HD allocated quarters to staff in the absence of any ground to do so, more criticisms would arise and the HD would in future be reprimanded by the Audit Commission. So, the HD cannot do so.

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

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, although the Secretary said it would be a waste if allocation of quarters to staff continues in the absence of any needs, not allocating them is also a waste because I think leaving the quarters vacant is a waste of public funds. What is the Secretary's view on this matter, and what action will he take to review the situation?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in view of the situation the HD completed a review last September in order to solve the problem as soon as possible. However, there are a lot of oppositions from staff and pressures (including pressures from outside). Moreover, staff have been holding meetings with Members of the Legislative Council about the matter, and Members wanted to allow staff to stay in the quarters, so the HD maintains the status quo for the time being. As I said in the first paragraph of the main reply, the HD has come up with a set of solutions after review. As regards the vacant quarters, the HD will decide what to do about them in the next few months.

MR CHAN KAM-LAM (in Cantonese): *Madam President, in the main reply, the Secretary did not mention the number of vacant quarters. Will the Secretary inform this Council whether in finding a solution to the problem there is a relationship between the solution and the number of vacant quarters?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, there are at present 213 vacant quarters among a total of 305 in the HD. In other words, 92 quarters are being occupied by HD staff. The best solution, as mentioned in the first paragraph of the main reply, is to pool existing occupants living in 11 different areas together to three areas, and then use the remaining quarters in eight areas for other uses such as letting them out privately on a temporary basis or using the released sites for future housing or other developments.

Problem of Traffic Noises

3. **MR FRED LI** (in Cantonese): *Madam President, regarding the problem of traffic noises, will the Government inform this Council:*

- (a) *of the roads and road sections which have a noise level exceeding 70 dB in the daytime and at night respectively;*
- (b) *whether it has plans to construct noise barriers for the aforesaid roads and road sections; if it has, of the details and the estimated costs of each works project; and*

- (c) *in respect of those roads and road sections not suitable for constructing noise barriers, of other specific measures that it has to reduce the traffic noises caused to nearby residents?*

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

- (a) Under our existing policy, the relevant departments or developers must minimize noise impact when planning new roads or major alteration to existing roads. If it is envisaged that the traffic noises generated will exceed 70 dB to residential premises in the vicinity, the relevant departments or developers must adopt all practicable direct measures, such as alignment adjustment, constructing earth berm, erecting noise barrier or enclosure to reduce the noise impact on nearby residents.

According to an assessment made by the Environmental Protection Department (EPD), there are about 600 road sections where traffic noises exceeded the relevant standard during peak traffic flow. The majority of these road sections were planned and constructed before the existing policy took effect.

- (b) and (c)

According to the EPD's assessment, out of all road sections where traffic noises exceed the standard, retrofitting noise barriers or enclosures is suitable in respect of only a few road sections. Low noise materials are used for resurfacing works on all suitable road sections. Moreover, regulations have been made to require vehicles to comply with stringent standards on first registration in Hong Kong. We are now considering other practicable measures to reduce traffic noise such as restricting heavy vehicles from using the road sections during certain hours. We will also take into account the views of the parties affected, and we will consult Honourable Members on the entire programme in the next legislative session.

MR FRED LI (in Cantonese): *Madam President, I hope you would allow me to raise two supplementary questions because firstly, the Secretary did not answer part (b) of my main question in respect of the details of the estimated costs of those projects; and secondly, I would like to follow up the Secretary's main reply. Just now the Secretary said that there were about 600 road sections affected by traffic noises. Will the Government inform this Council of the number of residents affected by traffic noises along these 600 road sections?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, as I explained just now, according to the EPD's assessment, of those 600 road sections where traffic noises exceed the relevant standard, only very few are suitable for retrofitting noise barriers or noise enclosures; and to be more specific, only about 20 road sections and six flyovers are suitable for these facilities. As I explained earlier on, the reason is that these road sections were mostly planned and constructed before the new policy took effect. Given that so few of these 600 road sections are suitable for such facilities, we hold that erecting noise barriers or enclosures can only solve the problem to a little extent. Therefore, it is necessary for us to make an assessment of the overall mitigation measures. As to the number of affected residents along those 600 road sections with a noise level exceeding 70 dB, I do not have the information at the moment but I will give Members a reply in writing later. (Annex I)

MR FRED LI (in Cantonese): *Madam President, the Secretary still did not answer the part on the estimated costs.*

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

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): At a rough estimate, Madam President, it requires over \$2 billion to erect noise barriers or enclosures at these 20 road sections and six flyovers.

MR LAW CHI-KWONG (in Cantonese): *Madam President, in part (b) and (c) of the main reply, the Secretary said that many of these roads are not suitable for retrofitting noise barriers and noise enclosures. But has the Government looked into another practicable measure of engaging the EPD and the Transport Department to discuss the feasibility of widening those roads such that noise barriers can be erected there?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): *Madam President, in concluding that only very few of the road sections are suitable for retrofitting noise barriers and enclosures, we have considered the possibility of retrofitting these facilities by widening the roads concerned. However, this is not a feasible option in most cases, unless massive engineering works are carried out. Furthermore, large scale road widening works will create environmental problems in many areas. As I mentioned just now, it already requires over \$2 billion simply for acoustic insulation facilities at 20 road sections and six flyovers. Additional widening works will entail even higher costs, so we need to take this into careful consideration.*

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary kept on mentioning \$2 billion, which is, of course, a huge amount of money. May I ask the Secretary whether the Government has made any cost assessment in respect of the health hazards posed by noise pollution on citizens who thus have to seek medical treatment at clinics or hospitals, similar to the way it deals with air pollution; and whether it has assessed the economic loss due to lower productivity on the part of citizens as a result of noise pollution, similar to those made in respect of air pollution? Madam President, I remember that \$3.8 billion was involved in respect of air pollution last year. I think the Government has not carried out similar assessments of the noise impacts because the officials replied that they did not make such assessments during discussions on noise pollution at the meeting of the Panel on Environmental Affairs last Friday. I would like to ask the Secretary if she considers the problem of noise pollution equally serious. Will the Government also assess how many millions of dollars in total our society has lost in this connection?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I did try to find out why the standard is set at 70 dB and the impact on health posed by a noise level exceeding this standard of 70 dB for we are indeed very concerned about the possible impact of noise pollution on public health. As far as I understand it, a noise level of 70 dB will create some nuisances. Generally speaking, people who are more sensitive to noises will consider it a nuisance to them. From our experiences in Hong Kong, about half of the affected people will complain about the noise nuisances caused to them when noises have reached a level of 70 dB. In mapping out a comprehensive programme, we must ascertain how many of those 600 road sections have a noise level significantly exceeding the standard of 70 dB and also by how much they exceed this standard, as well as the impact on public health or hearing of nearby residents under this circumstance, and so on. We need to assess all these details more thoroughly.

DR RAYMOND HO (in Cantonese): *Madam President, it seems that the Government knows only one way to deal with the problem of traffic noises, that is, by retrofitting enclosed or semi-enclosed noise barriers or enclosures. At the meeting of the Panel last week, I mentioned that among the \$1.1 billion for the construction of Route 5, \$110 million was used for noise barriers; and over \$400 million was spent on noise barriers among the \$2 billion for the project of Trunk Road T7 in Ma On Shan. My view is that these barriers are unattractive to look at; the air inside is stagnant and their results in abating noises are not too conspicuous. I wonder if the Government has considered other alternatives, such as planting more trees, considering quality asphalt instead of using cement for all road surfacing works, or prohibiting vehicle owners from converting their vehicles, private cars or motorcycles to avoid excessive noises being generated when the vehicles are accelerated?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I understand that during discussions on this problem at the last meeting of the Panel on Environmental Affairs, Members provided lots of useful suggestions which are well worth our reference. The Government also takes the view that we need to contemplate other practicable measures apart from retrofitting noise barriers and noise enclosures. We will consider the views expressed by Dr HO just now, and we certainly have to take account of the effectiveness of the various measures as well. As these 600 road sections were

mostly constructed some years ago, we cannot simply rely on noise barriers and noise enclosures in dealing with the problem. In fact, I have also received views from some members of the public who said that while these noise barriers can abate some of the noises, they nevertheless block the scenery along the way. In this connection, we will further conduct a more comprehensive assessment, and we will not rule out any option and measure that can effectively reduce noises.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I would also like to ask a question about noises at those 600 road sections. The threshold of noise on roads is now pitched at 70 dB. In fact, at other meetings we have queried the Government this: Since 70 dB is such a high noise level, will the Government accord top priority to environmental protection or consider the problem more from this perspective, or will it be that the Government, based on financial considerations, is not going to give priority to this problem?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, the standard of 70 dB is actually applicable to residential dwellings. The standard for roads in the vicinity of schools is even higher at 65 dB. The threshold of 70 dB is set having regard to situations in other Asian countries and in Hong Kong, so it is a rather objective standard that befits Hong Kong. My objective is to identify those roads with noise problem based on this standard and then explore the ways to redress traffic noises. We should not seek to further raise the relevant standard before we have resolved the problems that we encountered as we based on the current threshold as the yardstick.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, which part of your supplementary question has not been answered?

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, the Secretary did not answer my supplementary question. My question is this: Will the Government refrain from revising the noise standard applicable to residential dwellings from 70 dB to 65 dB based on financial considerations? The Secretary did not answer my supplementary question.*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I believe that this does not only involve financial considerations. In fact, it is also necessary for us to consider the feasibility of this proposal. It is meaningless if we only keep on raising our standards or levels without earnestly implementing measures to reduce noises.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary said that some road sections were constructed before the existing policy took effect. Examples are the section of Tseung Kwan O Road fronting Tsui Ping Estate, and the MTR road section at Kwun Tong Road. Indeed, many residents started to complain about the traffic noises a long time ago. For how long does the Government need to come up with specific measures to address the problem?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, even though we could come up with practicable measures, it would not be easy to implement them given that these road sections were constructed many years ago. Just now Members asked whether retrofitting noise barriers or enclosures is the best, the most effective and the most cost-effective measure. These are questions that we need to further explore. As I said just now, we aim to consult the Legislative Council on the entire programme in the next legislative session.

PRESIDENT (in Cantonese): We have spent over 15 minutes on this question. Last supplementary question.

DR LUI MING-WAH (in Cantonese): *Madam President, retrofitting noise barriers is not the best option. In fact, the Government can consider the simplest measure, that is, changing the road surfacing materials. Skid resistant materials are used at the Princess Margaret Road or near the Mongkok Worker's Children School where the level of traffic noises is at least 85% lower than that at ordinary cement roads. I hope the Government will consider this simplest measure.*

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

DR LUI MING-WAH (in Cantonese): *Madam President, can the Government use skid resistant materials for surfacing those hundreds of road sections?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, low noise materials were already used for surfacing all new roads. For roads constructed in the past, resurfacing works had already been carried out wherever it was technically feasible. We will continuously follow up the experiences of other countries to find out what new materials they used are suitable for use in Hong Kong.

Separate Collection and Recycling of Household Waste

4. **MISS EMILY LAU** (in Cantonese): *Madam President, regarding the separate collection and recycling of household waste, will the executive authorities inform this Council:*

- (a) *of the quantity of each type of household waste separately collected in each of the past two years, and how the statistics of these figures are compiled;*
- (b) *of the additional separate collection facilities provided by the authorities to tie in with the publicity given in the electronic media in recent months to urge the public to segregate their household waste before disposal; and*
- (c) *whether the authorities have found segregated household waste being dumped at landfills; and of the measures in place to ensure the recycling of segregated household waste?*

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

- (a) We do not have statistics covering all household waste that is collected separately for recycling. In the case of public housing estates, data began to be collected for the purpose of the Waste Recycling Campaign launched by the Environmental Protection

Department (EPD), the Housing Department (HD) and the Environmental Campaign Committee. The first competition ran from March 1998 to May 1998. This covered only 41 public housing estates and two categories of material, namely, paper and aluminium cans. 1 761 tonnes of paper and 14 tonnes of aluminium cans were collected in this period. The second competition was held from October 1998 to March 1999 and covered 132 estates. 9 365 tonnes of paper and 231 tonnes of aluminium cans were collected during this period. In July 1999, the programme was extended to all public housing estates, and plastic bottles were added to the materials collected separately. Between July 1999 and March 2000, 47 229 tonnes of paper, 685 tonnes of aluminium cans and 230 tonnes of plastic bottles were collected.

To provide regular statistics, and to provide verification that the separated materials are properly handled, the HD introduced a log book and receipt system for all cleansing contractors in January this year.

- (b) The publicity programme on waste separation is a continuing public education effort. Additional facilities have not been provided specifically to tie in with television or radio APIs. However, there is an ongoing programme to increase the number of bins for separate waste collection. So far, we have provided over 4 200 bins to public housing estates and over 4 500 to private housing developments. A number of separation bins are also provided in public areas.

In order to help increase the amount of domestic waste that is separated, thereby to make collection for recycling or reuse more economical and to reduce the volume of waste sent for disposal at landfills, we are reviewing the effectiveness of our measures and publicity arrangements, and examining measures that may increase support for the recovery and reuse of materials.

- (c) There is no evidence that segregated household waste is dumped at landfills, despite occasional reports to the contrary. The HD has included provisions in its contracts with cleansing contractors to

require the proper management of separated wastes, and inspect transaction documents between cleansing contractors and waste collectors/recyclers regularly. There are similar arrangements in the Food and Environmental Hygiene Department (FEHD) and the Agriculture, Fisheries and Conservation Department (AFCD).

MISS EMILY LAU (in Cantonese): *Madam President, I raised the main question mainly because I wanted the Secretary to tell us that waste segregated by the public could eventually be recycled. However, it was pointed out in the main reply that it was only until January this year that the HD started to ask cleansing contractors to make proper arrangements. According to the statistics provided by the Secretary with respect to relevant competitions held over recent years, a total of 58 000 tonnes of paper, 900 tonnes of aluminium cans and 230 tonnes of plastic bottles were collected. Will the Secretary inform this Council whether there is concrete evidence showing that these wastes were all recycled or they were not recycled until better arrangements were made by the HD in January this year?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): *Madam President, all these competitions were launched by the Environmental Campaign Committee. As far as I understand it, these figures were not provided by the relevant housing estates. The statistics were compiled after the receipts issued by waste collectors had been returned.*

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My question is: Is there any evidence showing that household waste segregated by the public upon the Government's request was being properly dealt with for further recycling rather than being dumped at landfills after collection? Given the fact that better arrangements were not made until January this year, will the Secretary inform this Council whether she was aware that segregated household waste had all along been dealt with properly, or she had actually no knowledge of it and there is no evidence which can put the public's minds at ease for we have been worried that household waste segregated by the public will end up being dumped at landfills?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, the statistics on the three competitions I mentioned earlier are all supported by the receipts issued by waste collectors to relevant housing estates. After collecting segregated waste from housing estates, waste collectors will issue receipts to certify the amount of waste collected. The housing estates will then hand the receipts to the Environmental Campaign Committee. The Committee is a non-governmental body. It is made up entirely of unofficial members. I think it is quite reliable for us to ask waste collectors to provide receipts instead of asking housing estates to declare their figures in these waste segregation and recycling competitions.

As I mentioned earlier, the HD, the FEHD and the AFCD tried to institutionalize the current practice by specifying in the contracts with cleansing contractors to require the proper management of separated wastes. The cleansing contracts categorically state that cleansing contractors must, after collecting separated waste, hand it to waste collectors instead of sending it to landfills. In addition, log books must be kept for recording all waste collected each time and waste collectors must sign the log books to certify that they have collected the waste. I agree that this is an effective solution. Why have these government departments adopted such practices? This is because we have received some comments considering that we should prevent the situation as described by Miss LAU as far as possible. As members of the public have made so much effort in segregating waste, we must ensure that the segregated waste will be recovered and recycled.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, when I went visiting new housing estates or development sites, I always found people dumping new doors, toilets, kitchen utensils and so on in order to carry out fitting-out works. Will the Government follow the practice of foreign countries by allocating certain places for the residents to dispose of things they do not want so that people who need these things can go there and get them? Will the Government consider doing so?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, after buying a house, a lot of people will actually choose to replace the interior decorations they do not like. As far as I understand it, in carrying out refurnishing works, fitting-out workers will usually smash the

things to be replaced for convenience sake. In addition, I believe every one of us should have our own preference. I wonder how effective it will be for the Government to specially allocate some places for people to dispose of the decorations they tear down so that other people who need them can buy them or get them for free.

Over the past many years, we have made constant efforts to explore more effective ways to deal with construction waste. We think the most effective means is to levy charges on the disposal of construction waste. We have actually, on different occasions, raised the proposal of levying landfill charges with Members. We plan to table our study and proposal to Members for consideration in the next legislative year in the hope that problems arisen as a result of construction waste and trade waste can be solved through the levying of landfill charges.

MR HUI CHEUNG-CHING (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary stated that the result achieved by the EPD, the HD and the Environmental Campaign Committee in launching the Waste Recycling Campaign was getting better and better each time. Will the Secretary inform this Council whether the Government has taken the lead in promoting separate waste collection within government departments?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, we have one green manager in each government department at the moment. The green manager is not a full-time post. It is taken up by a member of the department staff, who shall be responsible for promoting environmental protection. Individual government departments have attached great importance to waste recycling. However, the need for separate waste collection in offices is not great. This is because waste produced by civil servants in their offices is mainly paper. There will not be too many aluminium cans or other types of waste. At present, government departments have been trying their best to reduce the use of paper such as by using both sides of a paper. In addition, waste paper generated by government departments will also be handed to waste collectors.

MR CHAN WING-CHAN (in Cantonese): *Madam President, will the Government conduct a study on the relationship between the development of recovery and recycling industries and the local manpower market shortly for the purpose of formulating government policies?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, a Member also pointed out that, just as I indicated in the main reply, insofar as waste recycling is concerned, in particular household waste, the result achieved by the Government's publicity programme has been getting better and better each time. This proves that there is a growing public awareness in this area. In spite of this, I greatly share with Mr CHAN that we should not only confine ourselves to publicity education and encouraging the public to separate waste. We should also consider and examine whether existing supporting facilities for recovery and recycling are adequate to enable members of the public to separate waste. I have explained earlier that the relevant study will cover the whole process, not only ways to segregate household waste. We will look at how the existing refuse collection service provided by the FEHD can tie in with waste separation in private buildings and whether the existing facilities provided by collectors/recyclers are adequate and so on. We need to make a comprehensive assessment for our work to be operated more effectively.

MISS CHOY SO-YUK (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary listed the total number of bins for separate waste collection provided in private housing developments and public housing estates. Will the Secretary inform this Council of the approximate percentage of these figures out of the total requirement of the whole territory, and of the number of years needed before the whole scheme can be extended to all public places as well as private and public housing developments in Hong Kong?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, first of all, I want to emphasize that the figures I provided just now are only part of segregated waste we are collecting at the moment. They can only reflect the figures of waste collected over the months when the Waste Recycling Campaign was launched. It was only until lately that all public housing estates took part in the Campaign. Therefore, there are also other channels through which waste can be separated. It is only that the relevant

figures have not been included in the statistics. I would like to provide Members with some figures for reference. In 1998, a total of 2.49 million tonnes of household waste were disposed of at landfills. The figure rose to 2.71 million tonnes last year. Therefore, the figures recorded in the Campaign as I mentioned earlier represent only a small part of the overall figures.

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

MISS CHOY SO-YUK (in Cantonese): *Madam President, will the Government tell us how many years it will take for this scheme to be extended to all private housing developments in Hong Kong?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I am sorry that I have forgotten to answer this part of the question.

We have not specially set a target with respect to segregated household waste collection. However, the Waste Reduction Committee has set an overall objective. It is targetted at not only household waste, but also trade and construction wastes. During the review, we will see if there is a need to set a more specific target for segregated household waste collection.

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

Indulgence of Adolescents in On-line Chatting

5. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, it is reported that an increasing number of adolescents are engaging in on-line chatting on the Internet, some have become indulgent and some even become acquainted with undesirable elements and become crime victims. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of crime cases related to on-line chatting reported and cracked down in the past year, broken down by the type of cases;*
- (b) *whether it has studied how adolescents are affected in respect of their mental and intellectual developments, communication skills and interpersonal relationship by their indulgence in such on-line chatting; if it has, of the results; if it has not, whether it will do so; and*
- (c) *of the measures taken to assist parents and adolescents in adopting a correct attitude towards participating in such activities, and to assist schools and parents in dealing with problems related to adolescents indulged in on-line chatting?*

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

- (a) At present, the Hong Kong Police Force does not maintain separate figures on crime reports related to on-line chatting. Thus, there is no statistical data on the number of such cases including its breakdown. But anecdotal experience is that there have been few cases of crimes arising from on-line chatting.
- (b) Since on-line chatting on the Internet has only become widespread among local young people recently, the Administration has not carried out any study on the effect of such activity on our youth before. However, the Commission on Youth is planning to conduct a study on the influence of information technology (IT) on youth later this year. The study, among other topics, will cover the influence of Internet usage (including on-line chatting) on the behaviour of our youth, as well as the relationship between the value standards of youth, their behaviour in daily life and their Internet usage pattern.
- (c) At present, the Education Department has implemented the following measures to assist students in developing a correct attitude towards computer applications, including on-line activities:

(i) Curriculum Support

The Education Department revised the syllabuses of computer subjects in secondary schools in 1999. The revised syllabuses cover the correct attitude towards applications of computer and the Internet.

The Education Department recently developed a set of Information Technology Learning Targets for primary and secondary school students. Apart from the knowledge and skills to be acquired by students at different learning stages, the learning targets also set out the correct attitude towards applications of IT, for example the social and ethical responsibilities of using IT (including the Internet) and the awareness of indecent elements or activities on the Internet. The Information Technology Learning Targets will be implemented at schools starting from September this year.

(ii) Provision of Training

The Education Department will include next year a new topic "Guidance Programme to Develop Correct Attitude Towards IT Application" in the pre-service and in-service training for student guidance teachers to assist them to acquire skills on student counselling.

(iii) Support to Parents

The Education Department has set up a homepage to provide parents with information on the healthy development of children. The homepage includes reports and article extracts on the attitude of adolescents towards using IT and the Internet as well as how parents educate their children about using IT and the Internet. Information uploaded recently include reports on adolescents engaging in on-line chatting and how parents could deal with problems related to children indulged in on-line chatting.

If students are found to be indulged in on-line chatting, schools may refer them to the Psychological Services Section of the Education Department. The officers will provide counselling services to the parents and students concerned.

The Information Technology and Broadcasting Bureau also emphasizes the correct attitude of young people and children on using the Internet. For example, the Information Technology Services Department has produced a VCD entitled "Explore IT with our Children". The main focus of the VCD is on how parents could guide their children on the proper use of the Internet. The VCD has been distributed to all secondary schools for discussion at their parent-teacher associations. The Television and Entertainment Licensing Authority has also launched various publicity and public education programmes, such as distribution of publicity materials to and talks for parents, broadcast of Announcements of Public Interest in television and radio to encourage parents to provide guidance to their children on how to prevent them from exposure to indecent or obscene materials on the Internet.

In making available computers for use by our youngsters in children and youth centres, it is also common that non-governmental organizations organize sessions for parents and youngsters to, apart from teaching them to use the Internet, alert them to possible hazards to which young people are exposed and provide guidance on the correct attitude when using the Internet. Those with personal or familial problems arising from youngsters indulging in using the Internet may seek assistance from school social workers or family caseworkers.

MISS CHOY SO-YUK (in Cantonese): *Madam President, does the Government know of the methods normally employed by the bad elements in leading adolescents astray through on-line chatting? Will government officials be sent to schools to explain such methods so as to make the students aware?*

PRESIDENT (in Cantonese): Which Secretary will reply to this supplementary question? Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the police is already aware of the problems in this respect, and the Commercial Crime Bureau and the Crime Prevention Bureau have included criminal activities

related to on-line chatting into items of discussion for their talks to be held at schools. In fact, the police has noted developments in this respect and hopes that adolescents and students can watch out for such activities as a result of these talks.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Secretary has not replied on the part regarding whether school visits will be made to explain such methods.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, just now, I have said that they will hold talks in schools to convey the relevant messages.

MR HOWARD YOUNG: *Madam President, part of the problem with this is that quite often, children are much more knowledgeable in information technology (IT) and in using Internet than parents, and I speak from personal experience, too. As regards the support to parents, the Secretary said that a homepage has been set up to provide parents with information. However, since a lot of parents do not even know how to get to the homepage, they will not see the information. Thus, can the Government tell us whether there are any other, shall I say, more primary plans to help parents learn how to get to a homepage, for example, by providing courses in community centres and so on?*

PRESIDENT (in Cantonese): Which Secretary will reply to this supplementary question? Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS: Madam President, we are fully aware that in tackling this problem, it is not only the young people that we need to target at, but also their parents. And of course, we do attach importance in this aspect in our approach. When dealing with this problem, we think that the family, particularly parents, will be able to be involved in the process. That is why we do have programmes which can help parents to familiarize themselves with the use of new technology like IT. This is part of the things that we are, and will be, doing.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, apart from what Miss CHOY said just now that on-line chatting can lure adolescents into committing crimes, has the Government conducted any studies as to on-line chatting can also have an impact on the views of adolescents on certain issues? Will the Government encourage developments in this respect?*

PRESIDENT (in Cantonese): Which Secretary will reply to this supplementary question? Secretary for Information Technology and Broadcasting.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, on-line chatting in fact is also a kind of communication, just like using the facsimile machine or telephone, and the most important thing is the proper use of this technology. Thus, one of our main focuses in launching our promotion and education programmes is that parents and their children should not only use this technology together but also enjoy it together. Therefore, we attach great importance to the correct attitude on using this technology.

MR HOWARD YOUNG (in Cantonese): *Madam President, originally, I intended to say that the Secretary has not replied my supplementary question but since I have queued up again, I will take it as another question. When mentioning the part on "Support to Parents" in paragraph (iii) to part (c) of his main reply, the Secretary said that the Education Department has set up a homepage. What I want to say is if parents do not know how to get to the homepage, how can they get support in this respect? Does the Government have any more primary plans to help parents learn how to get to the homepage for these information?*

PRESIDENT (in Cantonese): Which Secretary will reply to this supplementary question? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I want to supplement the point that the homepage for parents provided by the Education Department in fact contains a lot of information. Mr

YOUNG said just now that a lot of parents do not know how to get to the homepage but I believe that at present, many families in Hong Kong have computers and know how to get on the Internet. Besides, I also believe that the use of the Internet is getting more and more popular. We are willing to find out again if the Education Department could step up promotion on its education homepage. Basically, the impression I gather is that getting on the Internet is quite easy but I will still discuss with my colleagues to see if there is a way to make it easier for parents to go to the Education Department's homepage.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Government said in its main reply that the Hong Kong Police Force has not maintained the figures concerned. I would like to ask if the school social workers have maintained such figures which will indicate the number of complaints or cases they have received concerning students' indulgence in on-line chatting thereby affecting their studies and emotions?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): *Madam President, I will take down the Honourable Member's question and see if we have information on this; if so, I will give the Honourable Member a written reply. (Annex II)*

Development of Industrial Estates

6. **MR KENNETH TING** (in Cantonese): *Madam President, regarding the facilitation of the development of industrial estates and the Hong Kong Industrial Estates Corporation (HKIEC), will the Government inform this Council:*

- (a) *whether it has plans to improve the roads in various industrial estates and build such additional facilities as hotels, conference centres, leisure centres and research centres within these estates, in order to attract more manufacturers to move in; and*
- (b) *of the current progress of the plan announced in last September to merge the HKIEC, the Hong Kong Industrial Technology Centre Corporation and the Hong Kong Science Park?*

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

- (a) The HKIEC is committed to providing good environment and facilities for its grantees. The roads in various industrial estates are wide and the traffic is smooth. There is no congestion problem and the HKIEC has received no complaint from grantees. Besides, the Government has been working actively to improve the outward traffic of the industrial estates. For example, the congestion problem of the route linking the Tseung Kwan O industrial estate has been lessened after the implementation of a series of road improvement works programmes. It is expected that the situation will be further improved when a road-widening project completes in October this year. The outward traffic of the Tai Po industrial estate would also be improved after the Tolo Highway and the Fanling Highway have been broadened to dual four-lanes carriageway.

The current land use zoning does not permit the establishment of hotels inside industrial estates. There is also no such demand for the time being. However, the HKIEC will continue to improve other facilities of the industrial estates. For example, in the Estate Centre building of the Tai Po industrial estate, there is a multi-function room where grantees can hold seminars or conferences. The land of the Tai Po industrial estate has been granted in full and that of the Yuen Long industrial estate is almost fully committed as well. Hence, there is limitation to setting up new facilities inside these two industrial estates. The HKIEC is now considering the re-development of the area surrounding the Estate Centre building of the Tai Po industrial estate, including the feasibility of setting up other new facilities.

Moreover, the Science Park will provide a comprehensive set of supporting facilities, such as conference rooms, exhibition halls, shopping malls and restaurants. After the merger of the Science Park, industrial estates and the Technology Centre, grantees of the industrial estates can make use of these facilities.

- (b) The merger of the HKIEC, Hong Kong Industrial Technology Centre Corporation and the Provisional Hong Kong Science Park Company Limited (PHKSPC) will be effected by enactment of new legislation. We plan to submit the relevant bill to the Legislative Council in end 2000. Besides, the Government is actively formulating various arrangements for the merger exercise. We have set up a high-level steering committee comprising the chairmen of the three organizations concerned and the Director-General of Industry, giving policy steer on the merger exercise. The boards of directors of the three organizations have also agreed to appoint the Chief Executive of the HKIEC, with effect from 1 June, concurrently as the acting Chief Executive Officer of the other two organizations to carry out the planning and implementation work of the merger exercise. We have also commissioned a management consultancy study on the organizational framework and the pay structure and conditions of the merged body. The consultants have recently submitted their report. We will quickly consider the recommendations set out in the report and consult the steering committee accordingly.

MR KENNETH TING (in Cantonese): *Madam President, prior to the merger of these three organizations, may I ask how many of the prospective tenants of the Science Park have requested the establishment of a temporary base in Hong Kong before the Science Park is commissioned? How many floor areas are involved, and how will the Science Park handle such requests?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, as indicated by the information at hand, the Science Park has been attracting a good tenancy rate ever since its official debut last November. At the end of May this year, the PHKSPC received 22 tenancy applications and 44 detailed inquiries. As regards surface areas needed, it will exceed 1.9 times of the 46 000 sq m gross floor area of the three blocks of buildings in phase one. This reflects the support of the industry to the Science Park. In order to satisfy the demands, the PHKSPC has commenced the preliminary study in the development of phase two and phase three of the Science Park.

MR JAMES TO (in Cantonese): *Madam President, in part (a) of Mr TING's main question, he has asked whether the Government has plans to build additional facilities such as hotels, conference centres, leisure centres and research centres, in order to attract more manufacturers to move in. May I ask the Secretary that to the best of her knowledge, have such requests been received; or have similar requests been reflected in questionnaires or opinion polls?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, to the best of my knowledge, the HKIEC has never received requests in this aspect. However, I will follow up this with the HKIEC and see whether it has received requests of this nature.

I have mentioned in my main reply that after the implementation of a series of road improvement works programmes, outward traffic of the industrial estates has been improved. Nevertheless, due to the limitations in land use zoning, and as the land of the Tai Po industrial estate has been granted in full and that of the Yuen Long industrial estate is almost fully committed as well, there is limitation to setting up new facilities inside these industrial estates. However, we are going to provide these facilities in the new Science Park, which will be open to grantees of the two industrial estates.

MR HO SAI-CHU (in Cantonese): *Madam President, the Secretary has mentioned in part (a) of her main reply that the Science Park would provide a comprehensive set of supporting facilities. Of course we welcome the arrangement. However, it cannot be denied that the three places are some distance away from each other. Therefore, even though there are such facilities in the Science Park, it is not so convenient for grantees of the two industrial estates. In this connection, will the Secretary consider incorporating these facilities, such as hotels, into future industrial estate project just as the Science Park? We can see similar facilities in many overseas industrial estates, and that will attract more tenants. Will the Secretary consider the suggestion?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, of course we will take Mr HO Sai-chu's suggestions into consideration, because Mr HO knows that we are considering the development of the fourth industrial estate. Although we have not arrived at the final decision, we will take the suggestion of setting up these facilities into consideration when we decide to develop the fourth industrial estate.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, my supplementary question is similar to Mr HO Sai-chu's question. As the development of the Science Park and industrial estate is of grave significance to the restructuring of the Hong Kong economy, the overall facilities are therefore very important. I think the Secretary's answer to the main question of Mr TING a moment ago shows that the Government does not have a thorough understanding of the existing situation. As there is a relatively long distance among the locations of the three organizations, it is impossible for them to share the facilities. Should the Government conduct a detailed study on the overall planning? Will the Secretary submit the merger plan of the three organizations to the Legislative Council for discussion in the coming term? In this term, some Members of this Council have visited the industrial estates and have much concern over the development in this aspect. Therefore, I hope the Government will discuss with this Council before the relevant bill is drawn up. As to whether I may be elected as a Legislative Council Member in the coming term, it is totally irrelevant to the matter. May I ask the Secretary if my suggestion is feasible?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): *Madam President, I have mentioned earlier that we intend to submit the relevant bill on the merging of the three organizations to the Legislative Council for consideration at the end of this year. Of course, before the bill is introduced to this Council, we can attend meetings of the relevant panel to provide explanation to Members who are interested in the issue.*

DR RAYMOND HO (in Cantonese): *Madam President, now that the Government has decided to merge the Science Park, the HKIEC and the Hong Kong Industrial Technology Centre Corporation. However, the three organizations are actually responsible to different scopes of duties and functions. For example, the scope of duties of the HKIEC and the Hong Kong Industrial Technology Centre Corporation is different in terms of orientation. After the merger exercise, will the Government strengthen the manpower of the department, in particular by recruiting staff who have concrete working experience, with a view to formulate a long-awaited industrial policy as soon as possible?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the major objective of the merger exercise is to provide the Hong Kong industry with the best supporting facilities through the pooling of resources. In this connection, we have commissioned a management consultancy study, which will offer proposals on the roles, distribution of resources and functions of each organization in the future. We will thoroughly consider these recommendations.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary has not answered my question of whether the Government will consider the formulation of an industrial policy.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I think our industrial policy is crystal clear all along, that is, the Government will provide the best possible supporting facilities to facilitate the development of our industry. I have also mentioned earlier that the major objective of the merging of the three organizations is to streamline the structure and to fully complement each other. We will consider the overall merger exercise from this perspective.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, my supplementary question is similar to the one raised by Dr Raymond HO. The three organizations have their own positions. For example, the HKIEC mainly lets out industrial premises for the manufacturers; the Science Park lets out premises to high technology companies for research purposes; while the Hong Kong Industrial Technology Centre Corporation is responsible for the cultivation of new companies. After the merger exercise, will these three organizations maintain their own positions? In fact, these three organizations also need different technology personnel. For example, the HKIEC needs management staff, the Science Park needs staff who have knowledge of high technology, while the Hong Kong Industrial Technology Centre Corporation needs staff who are specialized in opening up new businesses. What will the future staffing structure be? Do we need more staff with technology background? Does the Government intend to recruit people with stronger technology background via the new body?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the issues in the supplementary questions raised by several Honourable Members are exactly the topics our consultants are working on, as well as issues the Government should take into consideration. In respect of the functions and operation mode of the three organizations, we certainly would look into ways to bring their individual function into full play while achieving the objective of streamlining the structure after the merger exercise. Therefore, we will surely take everything into consideration, including whether there is a need to recruit more professional talents.

PRESIDENT (in Cantonese): The last supplementary question.

DR RAYMOND HO (in Cantonese): *Madam President, by the time the merger exercise is completed, we will also have the Cyber Port scheme in place, which is a joint venture between the Government and the private sector. Will the Government face any problems on co-ordination when foreign enterprises are coming to invest in Hong Kong?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I think there should not be many co-ordination problems because the Cyber Port scheme is mainly information-based, whilst the scope of work of the Science Park and the other two organizations is broader, which is mainly related to the promotion of innovative technologies. Of course, the Trade and Industry Bureau and the Information Technology and Broadcasting Bureau will always maintain close contact with each other.

WRITTEN ANSWERS TO QUESTIONS

Schooling for Mainland Children Allowed to Stay in Hong Kong Temporarily

7. **MR GARY CHENG** (in Chinese): *Madam President, regarding schooling for the mainland children and young persons who are allowed to stay in Hong Kong temporarily, will the Government inform this Council:*

- (a) *of the government policy and the government department(s) responsible for implementing the policy;*
- (b) *whether primary and secondary schools are required to obtain prior permission from the Education Department (ED) before they admit these persons; if so, of the number of such applications received by the ED and the number of persons concerned each year since the reunification of Hong Kong with China;*
- (c) *of the number of cases received by the ED from the parents concerned requesting assistance in each of the past two years; and*
- (d) *whether any measures are in place to assist these persons in their schooling in Hong Kong; if so, of the details; if not, the reasons for that?*

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

(a) and (b)

Under current policy, if mainland children and young people who are allowed to temporarily stay in Hong Kong for various reasons wish to receive schooling in Hong Kong, prior approval must first be sought from the Immigration Department. According to the existing requirements of the ED, if these children and young people apply to schools direct for admission, the schools concerned have to forward the applications first to the ED which will check with the Immigration Department to confirm whether the applicants have been approved to receive schooling in Hong Kong. Only when such approval has been given could schools admit these applicants. If these children and young people apply to the ED for receiving schooling, the ED will also first check with the Immigration Department. After the Immigration Department confirms that they have been approved to receive schooling in Hong Kong, the ED will offer relevant assistance to them.

The ED does not keep records of the number of applications for receiving schooling made to the Department and schools from mainland children and young people who are allowed to temporarily stay in Hong Kong.

(c) and (d)

If mainland children and young people who have obtained approval from the Immigration Department to temporarily stay in Hong Kong and receive schooling request placement assistance from the ED, the Department will arrange for them to have interviews with schools. The schools concerned will then decide whether to admit the applicants having regard to their levels of academic attainment and vacancies available.

In the past two years, the number of mainland children and young people, approved by the Immigration Department to temporarily stay in Hong Kong and receive schooling, receiving assistance from the ED is as follows:

<i>School year</i>	<i>Number of people</i>
1997-98	487
1998-99	284

All the individuals who sought placement assistance from the ED were placed.

Noise Nuisances Caused by Renovation Works in Domestic Premises

8. **MR LAU WONG-FAT** (in Chinese): *Madam President, with regard to the noise nuisances caused by renovation works undertaken in domestic premises, will the Government inform this Council:*

- (a) *of the number of complaints about such noise received by the relevant authorities, and the number of persons prosecuted for causing nuisances to other persons by undertaking renovation works in domestic premises outside the permissible hours specified under the Noise Control Ordinance (Cap. 400) in the past three years;*

- (b) *whether it will consider organizing publicity activities jointly with the renovation industry to make newcomers to the industry aware of the noise control requirements; and*
- (c) *whether it will, through the mass media before each long holiday, remind the public and renovation workers to comply with the noise control requirements?*

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

- (a) Construction works, including domestic renovation works, during the restricted hours from 7 pm to 7 am on weekdays or at any time during general holidays are controlled by means of a Construction Noise Permit system under the Noise Control Ordinance. Permits will only be issued if the construction noise can be kept within the limits laid down in the Ordinance. In the past three years, there were 195 complaints on noise from domestic renovation works conducted during the restricted hours. Four complaints led to prosecutions and convictions.

(b) and (c)

In the past three years, the Environmental Protection Department has conducted over 30 seminars for various parties including contractors and trade associations to promote awareness of the provisions of the Noise Control Ordinance as well as good construction practices in the industry. The Department will continue to organize similar functions for the trade. Publicity programmes to remind contractors of their responsibilities and the public of their rights and the complaint procedures are regularly reviewed and changes made as necessary.

Computer System Failures at Border Control Points

9. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, regarding the computer system failures at various land crossings in Shenzhen and Hong Kong, will the Government inform this Council of:*

- (a) *the number of computer system failures at each control point in Shenzhen and each border control point in Hong Kong over the past three years, resulting in traffic congestion at the border, and the causes of such failures; and*
- (b) *the measures in place to prevent the occurrence of computer system failures at various border control points in Hong Kong?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) Based on available records, the number of computer system failures at each land boundary crossing in Shenzhen over the past three years, resulting in traffic congestion at the border are as follows:

<i>Year</i>	<i>Huanggang</i>	<i>Wenjindu</i>	<i>Shataujiao</i>
1997	6	0	0
1998	12	3	4
1999	28	7	18
2000	6	3	0

(up to May 2000)

We were given to understand that these computer failures were usually caused by power failure, technical problems in software, hardware and network and the over-burdened old computer systems which have since been replaced.

There was no record of computer breakdown at the border control points on the Hong Kong side which had resulted in traffic congestion in the same period.

- (b) Both the Customs and Excise Department and the Immigration Department conduct regular checks and maintenance on our computer systems at the border control points to ensure effective and reliable operation. In the event of mainframe computer system breakdown, a backup system will come into operation. There is also emergency power supply to ensure provision of stable and continuous power supply to the computers during power failure. Frontline staff are issued with guidelines to deal with computer breakdown contingency. Both departments also maintain close liaison with their counterparts at the border control points on the mainland side.

Demand and Supply of Medical, Nursing and Allied Health Professionals

10. **MR MICHAEL HO** (in Chinese): *Madam President, regarding the demand and supply of medical, nursing and allied health professionals, will the Government inform this Council whether it knows:*

- (a) *in respect of the graduates of each medical and health care profession, of the number and percentage of those who obtained employment within six months upon graduation, and among them, the percentage of those who are employed in areas related to their studies and their average starting salaries, in each of the past five years;*
- (b) *of the annual changes in the number of tertiary places for various medical and health care professions in the past five years and the reasons for such changes;*
- (c) *of the anticipated employment situation of graduates in various medical and health care professions this year; and*
- (d) *of the progress made by the University Grants Committee (UGC) in planning tertiary places for various medical and health care professions for the 2001-02 to 2003-04, the professions which require adjustments in the number of tertiary places, and whether, in making such adjustments, it has considered the needs of primary health care service development; if it has, of the details; if not, the reasons for that?*

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

- (a) According to the information provided by the UGC-funded institutions based on their annual graduate employment surveys, the employment situation of full-time graduates of medical and allied health first degree programmes as at the end of the graduation year in the past five years is as follows:

(1) Medicine⁽¹⁾

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	258	256	291	285	313
No. of responded graduates	104 (40%)	98 (32%)	119 (41%)	198 (69%)	234 (75%)
No. of responded graduates in full-time employment	104 (100%)	97 (99%)	119 (100%)	196 (99%)	229 (98%)
No. of responded graduates employed in areas related to their own discipline ⁽²⁾	104 (100%)	97 (100%)	119 (100%)	196 (100%)	229 (100%)
Average annual starting salary ⁽³⁾	\$533,000	\$578,000	\$601,000	\$628,000	\$600,000

⁽¹⁾ The results of graduate employment surveys on medical graduates refer to the employment situation after the 1-year internship. The number of full-time medical graduates refers to the graduates a year ago, that is, before the internship. The Chinese University of Hong Kong started to conduct graduate employment survey on medical graduates in 1998. Figures before 1998 referred to the number of graduates of the University of Hong Kong only.

⁽²⁾ The percentage in bracket shows the ratio of responded graduates in full-time employment who are engaged in jobs related to their own disciplines.

⁽³⁾ Average annual starting salary includes commission and other cash allowance.

(2) Nursing

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	82	87	82	83	156
No. of responded graduates	72 (88%)	75 (86%)	60 (73%)	62 (75%)	135 (87%)
No. of responded graduates in full-time employment	67 (93%)	69 (92%)	58 (97%)	60 (97%)	130 (96%)
No. of responded graduates employed in areas related to their own discipline	65 (97%)	67 (97%)	56 (97%)	59 (98%)	125 (96%)
Average annual starting salary	\$269,000	\$289,000	\$301,000	\$295,000	\$266,000

(3) Dental Surgery

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	37	38	36	42	50
No. of responded graduates	34 (92%)	36 (95%)	32 (89%)	40 (95%)	29 (58%)
No. of responded graduates in full-time employment	34 (100%)	31 (86%)	30 (94%)	40 (100%)	29 (100%)
No. of responded graduates employed in areas related to their own discipline	34 (100%)	31 (100%)	30 (100%)	40 (100%)	29 (100%)
Average annual starting salary	\$313,000	\$323,000	\$325,000	\$304,000	\$264,000

(4) Optometry

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	33	18	25	26	33
No. of responded graduates	28 (85%)	13 (72%)	20 (80%)	22 (85%)	32 (97%)
No. of responded graduates in full-time employment	26 (93%)	12 (92%)	20 (100%)	19 (86%)	28 (88%)
No. of responded graduates employed in areas related to their own discipline	23 (88%)	12 (100%)	20 (100%)	18 (95%)	26 (93%)
Average annual starting salary	\$196,000	\$230,000	\$276,000	\$199,000	\$189,000

(5) Occupational Therapy

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	39	48	49	43	49
No. of responded graduates	34 (87%)	40 (83%)	49 (100%)	41 (95%)	49 (100%)
No. of responded graduates in full-time employment	34 (100%)	40 (100%)	46 (94%)	39 (95%)	46 (94%)
No. of responded graduates employed in areas related to their own discipline	34 (100%)	40 (100%)	46 (100%)	35 (90%)	42 (91%)
Average annual starting salary	\$219,000	\$235,000	\$240,000	\$248,000	\$236,000

(6) Pharmacy

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	31	30	33	31	29
No. of responded graduates	30	30	23	26	27
	(97%)	(100%)	(70%)	(84%)	(93%)
No. of responded graduates in full-time employment	29	30	22	26	27
	(97%)	(100%)	(96%)	(100%)	(100%)
No. of responded graduates employed in areas related to their own discipline	29	30	22	26	26
	(100%)	(100%)	(100%)	(100%)	(96%)
Average annual starting salary	\$150,000	\$162,000	\$167,000	\$181,000	\$181,000

(7) Physiotherapy

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	74	71	64	81	99
No. of responded graduates	59	58	63	70	97
	(80%)	(82%)	(98%)	(86%)	(98%)
No. of responded graduates in full-time employment	59	58	63	65	63
	(100%)	100%	(100%)	(93%)	(65%)
No. of responded graduates employed in areas related to their own discipline	58	58	62	65	45
	(98%)	(100%)	(98%)	(100%)	(71%)
Average annual starting salary	\$219,000	\$234,000	\$236,000	\$241,000	\$230,000

(8) Prosthetics and Orthotics

<i>Year of graduation⁽⁴⁾</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	-	-	-	18	26
No. of responded graduates	-	-	-	15 (83%)	25 (96%)
No. of responded graduates in full-time employment	-	-	-	15 (100%)	18 (72%)
No. of responded graduates employed in areas related to their own discipline	-	-	-	12 (80%)	12 (67%)
Average annual starting salary	-	-	-	\$221,000	\$157,000

(9) Radiography

<i>Year of graduation</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No. of full-time graduates	58	68	65	69	70
No. of responded graduates	50 (86%)	57 (83%)	54 (83%)	61 (88%)	66 (94%)
No. of responded graduates in full-time employment	50 (100%)	56 (98%)	50 (93%)	46 (75%)	51 (77%)
No. of responded graduates employed in areas related to their own discipline	48 (96%)	56 (100%)	48 (96%)	33 (72%)	35 (69%)
Average annual starting salary	\$219,000	\$236,000	\$243,000	\$217,000	\$145,000

⁽⁴⁾ As the programme was launched in the 1995-96 academic year, the first batch of intakes graduated in 1998.

(10) Speech and Hearing Sciences

<i>Year of graduation</i>	1995	1996	1997	1998	1999
No. of full-time graduates	19	14	19	18	29
No. of responded graduates	16 (84%)	12 (86%)	18 (94%)	18 (100%)	28 (97%)
No. of responded graduates in full-time employment	16 (100%)	11 (92%)	18 (100%)	17 (94%)	27 (96%)
No. of responded graduates employed in areas related to their own discipline	15 (94%)	8 (73%)	17 (94%)	17 (100%)	25 (93%)
Average annual starting salary	\$238,000	\$242,000	\$271,000	\$284,000	\$275,000

(b) Annual changes in undergraduate intakes of medical and allied health disciplines in the past five years are as follows:

<i>Disciplines</i>	1996-97	1997-98	1998-99	1999-2000
(1) Medical	+12 (+3.7%)	-4 (-1.2%)	-3 (-0.9%)	-19 (-5.7%)
(2) Nursing	+21 (+10.9%)	-1 (-0.5%)	-14 (-6.6%)	-7 (-3.5%)
(3) Dental Surgery	-4 (-7.1%)	+2 (+3.8%)	-9 (-16.7%)	+5 (+11.1%)
(4) Optometry	+1 (+3.4%)	0	-4 (-13.3%)	0
(5) Occupational Therapy	+12 (+27.3%)	-2 (-3.6%)	+36 (+66.7%)	-2 (-2.2%)
(6) Pharmacy	-1 (-3.4%)	-1 (-3.6%)	+5 (+18.5%)	-2 (-6.3%)
(7) Physiotherapy	+24 (+30.0%)	-5 (-4.8%)	+50 (+50.5%)	-4 (-2.7%)
(8) Prosthetics and Orthotics	+2 (+8.3%)	-1 (-3.8%)	-1 (-4.0%)	0
(9) Radiography	0	0	-6 (-8.7%)	0
(10) Speech and Hearing Sciences	-6 (-16.7%)	+14 (+46.7%)	-5 (-11.4%)	0

The Government regularly reviews the demand of public and private medical and health care institutions for medical and allied health professionals as well as the employment situation of fresh graduates of the relevant programmes. Based on these reviews, the Government discusses with the UGC on whether it is necessary to adjust the student numbers of these programmes in the context of the triennial planning for the institutions. Within each triennium, the institutions also have considerable freedom to adjust the planned student numbers in different disciplines to meet changes in society's manpower needs, provided that no additional resources are involved, that there is no deviation from their agreed roles and missions, and that the adjustment is in line with the student number targets set by the Government for specific professions.

- (c) We have reviewed the projected demand in the public sector for medical and allied health professionals in 2000-01, and estimated that the overall vacancies this year opened to the fresh graduates of these programmes should be more or less the same as those of last year.
- (d) The planning of the UGC-funded institutions for the 2001-02 to 2003-04 triennium is still being finalized. In adjusting the student numbers of medical doctors, nurses and other allied health professionals, we will consider the supply and demand of these professionals over the medium to long term. We will ensure that any adjustment is consistent with the need arising from the longer term development of the health care system, which calls for regular review of not only the numbers of student intake but also the curriculum of the training programmes. The future health care system will have more emphasis on primary health care, ambulatory care and community care programmes. This will result in greater demand for a multi-skilled health care workforce. We will encourage the tertiary institutions to review and re-organize their training programmes to meet this challenge.

Insurance Coverage for Government Vehicles

11. **MR BERNARD CHAN:** *Madam President, it has been reported that traffic accidents involving government vehicles are on the rise. Regarding insurance coverage for government vehicles, will the Government inform this Council:*

- (a) of the number of traffic accidents involving government vehicles over the past three years, with a breakdown by departments and by whether casualties were involved;*
- (b) of the total amount of compensation paid in the last three years to victims of traffic accidents or their family members; and*
- (c) whether it will consider taking out third-party insurance cover for government vehicles; if not, of the reasons for that?*

SECRETARY FOR THE TREASURY: Madam President, with regard to part (a) of the question, there were 1 454 traffic accidents involving government vehicles in 1997, 1 520 in 1998, and 1 511 in 1999. A breakdown of these accidents by departments and by whether casualties were involved is at the Annex.

With regard to part (b) of the question, the total amount of compensation paid in the last three years to victims injured in traffic accidents or their family members is \$1.15 million in 1997, \$9.99 million in 1998 and \$18.64 million in 1999. Naturally, other than the number of accidents involving casualties, the amount of compensation payable in a year is determined by the severity of injuries sustained by the victims.

With regard to part (c) of the question, according to section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), the Government is not required to insure its vehicles against third-party risks. At the moment, we have no plans to take out third-party risk insurance cover for government vehicles. The present arrangement whereby the Government underwrites the financial liability arising from traffic accidents involving its vehicles is considered more cost effective than paying insurance premium for such third-party liability.

Number of Traffic Accidents
Involving Government Vehicles in 1997 to 1999

<i>Year</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Department</i>	<i>Injury cases</i>			<i>Other cases</i>			<i>Total</i>		
Agriculture, Fisheries and Conservation Department	3	5	7	33	36	42	36	41	49
Auxiliary Medical Service	1	2		5	6	9	6	8	9
Architectural Services Department				4	3	3	4	3	3
Buildings Department			1	5	3	7	5	3	8
Civil Aviation Department			1	14	7		14	7	1
Civil Aid Service		4	3	12	7	9	12	11	12
Civil Engineering Department				14	13	6	14	13	6
Chief Executive's Office				1	1	2	1	1	2
Correctional Services Department	1	6	3	28	18	13	29	24	16
Customs and Excise Department	1	3	1	47	63	52	48	66	53
Drainage Services Department	1	1	1	13	16	18	14	17	19
Education Department					2	1		2	1
Electrical and Mechanical Services Department	3	4	1	34	31	27	37	35	28
Environmental Protection Department	1	1	2	10	21	18	11	22	20
Food and Environmental Hygiene Department						42			42
Fire Services Department	7	15	8	148	134	121	155	149	129
Government Land Transport Agency	2			37	23	21	39	23	21
Government Property Agency					1			1	
GS:Constitutional Affairs Bureau					1			1	
GS:Civil Service Bureau				2		1	2		1
Government Supplies Department				5	4	8	5	4	8
GS:Education and Manpower Bureau				2			2		
GS:Home Affairs Bureau				1		2	1		2
GS:Health and Welfare Bureau					1			1	
GS: Information Technology and Broadcasting Bureau					1			1	
GS:Office of CS and FS				3	8	7	3	8	7
GS:Security Bureau						1			1

<i>Year</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Department</i>	<i>Injury cases</i>			<i>Other cases</i>			<i>Total</i>		
GS:Works Bureau					1			1	
Home Affairs Department				5	10	9	5	10	9
Housing Department		1		37	29	26	37	30	26
Department of Health		1	1	7	12	17	7	13	18
Hong Kong Monetary Authority					1	2		1	2
Hong Kong Observatory				4			4		
Hong Kong Police Force	62	144	154	405	348	413	467	492	567
Highways Department				5	10	7	5	10	7
Independent Commission Against Corruption		1		11	14	14	11	15	14
Immigration Department	1	2		12	14	18	13	16	18
Industry Department				1		1	1		1
Inland Revenue Department				1	1	3	1	1	3
Information Services Department					2	2		2	2
Information Technology Services Department					1	1		1	1
Judiciary					2	1		2	1
Department of Justice		1		2	1	3	2	2	3
Labour Department				4	4	4	4	4	4
Leisure and Cultural Services Department						5			5
Lands Department			2	13	24	12	13	24	14
Marine Department		1		1	1	2	1	2	2
Management Services Agency				1		1	1		1
Office of the Telecommunications Authority					1	2		1	2
Official Languages Agency					1			1	
Official Receiver's Office				1			1		
Planning Department				3	1	3	3	1	3
Post Office	6	10	3	87	103	88	93	113	91
Printing Department				1	1		1	1	
Public Service Commission					1			1	
Regional Services Department	11	8	6	61	82	49	72	90	55
Radio Television Hong Kong			1	6	3	6	6	3	7
Rating and Valuation Department				6		1	6		1
Social Welfare Department				7	6	2	7	6	2

Year	1997	1998	1999	1997	1998	1999	1997	1998	1999
Department	Injury cases			Other cases			Total		
Transport Department				10	7		10	7	
Territory Development Department				1	3	3	1	3	3
Television and Entertainment Licensing Authority				1		2	1		2
Trade Department					1			1	
Treasury				1			1		
Urban Services Department	11	19	11	155	154	112	166	173	123
Water Supplies Department	3	5	7	73	47	79	76	52	86
Total	114	234	213	1 340	1 286	1 298	1 454	1 520	1 511

Fees Charged by Private Homes for the Elderly under Bought Place Schemes

12. **MR LAW CHI-KWONG** (in Chinese): *Madam President, regarding fees charged by the private homes for the elderly which participate in the Bought Place Scheme (BPS) and the Enhanced Bought Place Scheme (EBPS), will the Government inform this Council of:*

- (a) *the respective services and daily necessities which should be provided to the elderly residents concerned by the private homes according to the stipulations of the Schemes; the channels through which the elderly residents and their families are informed of the services and daily necessities which are paid for under these Schemes and those which are to be paid for by themselves; and*
- (b) *the measures in place to govern the collection of fees not covered by the Schemes from the elderly residents concerned and their families by the private homes for the elderly concerned?*

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

- (a) In accordance with the agreement signed between the Government and the operators of private residential care homes for the elderly participating in the BPS and the EBPs, the private care homes are to

provide board and lodging, and personal and nursing care including all related goods and services to the elderly residents under the schemes. The agreement also stipulates the maximum total amount inclusive of all charges and expenses which the operators may charge the elderly residents per month. On exceptional circumstances, the Social Welfare Department may allow a private care home, after obtaining the agreement of the family concerned, to charge extra for specified items if the elder has a serious medical problem certified by a doctor.

The social workers who refer the elderly residents for placement would brief their clients and their families of the services and charges of the private care homes under the schemes. The private care homes would also provide information on these areas to the elderly residents on admission. Should the elderly residents and their families have any query about services and charges, they can contact the Licensing Office of Residential Care Homes for the Elderly of the Social Welfare Department using a direct number (2961 7211) provided to them.

- (b) The Licensing Office conducts regular inspections on the private residential care homes under the BPS and EBPS and collects feedback from the elderly residents during these visits. Any comments from the elderly residents on irregularities in fee charging would be dealt with promptly. The elderly residents and their families can also raise any concern or complaint to the responsible social workers or the Licensing Office.

Improvement to Design of Refuse Collection Vehicles

13. **DR RAYMOND HO** (in Chinese): *Madam President, will the Government inform this Council whether it will improve the design of refuse collection vehicles (RCVs) and draw on the practices of the advanced American and European countries in transporting refuse, so as to avoid refuse on transit from exuding foul smell and spreading bacteria; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Chinese): Madam President, at present, refuse is mainly collected by RCVs at refuse collection points (RCPs) and then transported directly to landfills, or to refuse transfer stations before being taken to landfills by barges. The compaction plates at the end of the RCVs currently used by the Food and Environmental Hygiene Department (FEHD) or its contractors will unfold after collecting refuse to cover the refuse loading compartments in order to prevent overspill of refuse or emission of odour during transportation. This design is also widely used in European and American countries. We understand that some European RCV manufacturers have begun to install a tail-hood in a small number of RCV models to further prevent emission of odour. However, the tail-hoods of these RCVs will have to be raised to at least one m above the vehicle roofs during the collection of refuse. Due to the height constraint of the present RCPs in Hong Kong, the design is not suitable for local use.

Through its cleansing contractors, the FEHD also uses mobile compactors to collect refuse in some of the larger RCPs and markets. Cleansing staff will first load the refuse into the compactor; a hook-lift truck will then transport the whole compactor, which is sealed, to a refuse transfer station or landfill. Because of the sealed design of these compactors, the emission of refuse odour can be minimized to a great extent during transportation.

Several housing estates under the Housing Authority have followed the practice of some countries in using an Automatic Refuse Collection System (ARCS). Such a system provides for the transport of refuse from each floor through specially designed chutes to underground compactors. The refuse will then be compressed and deposited into sealed refuse collection containers. Hook-lift trucks will then transport the containers to refuse transfer stations or landfills. As such containers are sealed, they effectively prevent the emission of odour during transportation of the refuse. The Housing Authority has also decided that all large-scale public housing developments completed after 1 January 2001 will be equipped with ARCS as far as practicable. As regards new private housing developments, the government departments concerned are now studying ways to encourage more private developers to install ARCS, such as exempting the space occupied by such a system from the calculation of gross floor area stipulated for a building development.

To reduce the emission of odour and the spread of bacteria during transportation of refuse effectively, we have also taken the following measures:

- (i) The FEHD has issued to its staff clear guidelines on transportation of refuse and cleansing of RCVs in order to prevent overspill of foul water and to minimize possible emission of odour;
- (ii) worn-out leakproof rubber seals of the hoppers will be replaced during regular repair and maintenance of RCVs in order to ensure that the RCVs are fully sealed; and
- (iii) in inviting tenders for new RCVs, we will request manufacturers to provide other equipments that can further prevent the emission of odour for our consideration.

Rezoning of Industrial Land for Residential and Commercial Developments

14. **MISS CHRISTINE LOH:** *Madam President, since 1997, the rezoning of 92 hectares of industrial land for residential and commercial developments has been approved on the recommendation of the Town Planning Board. In this connection, will the Government inform this Council:*

- (a) *of the total floor area of the rezoned areas, and provide a breakdown by the type of uses;*
- (b) *of a projection of the percentage of rezoned areas which will have been redeveloped by the end of next year;*
- (c) *among the leases governing the land concerned, of the number of those which permit a change of land use without payment of a lease modification premium; and*
- (d) *whether, in order to speed up redevelopment, it will consider removing from the relevant leases those terms restricting redevelopment, and instead levying an annual tax based on the value of the land concerned, calculated in accordance with the optimum and best use that can be made of it?*

SECRETARY FOR PLANNING AND LANDS: Madam President,

- (a) Since 1997, a total of 95 hectares of industrial land has been rezoned for residential or commercial developments. The total gross floor area of the rezoned land is about 2 million sq m, of which 1 635 000 sq m were used for manufacturing activities, 237 000 sq m for warehouse and storage and the remaining 159 000 sq m for non-industrial purposes.
- (b) There is no time limit on the redevelopment of rezoned industrial land. The pace of redevelopment is primarily a function of the market and initiatives of the private sector. The Government does not make any projection of the time by which such land would be fully redeveloped.
- (c) Most of the leases within the 95 hectares of rezoned land contain restrictions on the uses of the site. All changes of use from "industrial" to "non-industrial" of a higher market value require the payment of a lease modification premium.
- (d) The proposal to remove restrictive development covenants in the affected lease terms and collect a land use value tax based on improvement in land use value represents a major departure from the existing land administration policy. In order to facilitate redevelopment of obsolete industrial land, the Government is currently exploring various possible forms of incentives. However, the Government would not make any such major decision without a detailed assessment of its implications and full consultation with parties concerned.

Management of TPS Estates

15. **MR LAU KONG-WAH** (in Chinese): *Madam President, will the Government inform this Council whether:*

- (a) *the Owners' Corporations (OCs) of the public housing estates sold under the Tenants Purchase Scheme (TPS estates) are required to engage private property management companies one year after they have formed their respective OCs; and*

- (b) *the Housing Department will provide management services for those TPS estates which have formed their OCs for one year or more but have not been able to engage their management companies?*

SECRETARY FOR HOUSING (in Chinese): Madam President, according to the Deed of Mutual Covenant for TPS estates, the Housing Authority (HA) will manage these estates for the first two years or until OCs are formed, whichever is the earlier. Upon their formation, the OCs or the HA may, by giving not less than three months' notice, terminate the HA's management services. The OCs may then employ private property companies to manage the estates.

The HA may consider providing management services to the OCs which have encountered difficulty in engaging management companies.

Greater Private Sector Involvement in Estate Management and Maintenance Services Plan

16. **MR LEE WING-TAT** (in Chinese): *Madam President, in January this year, the Hong Kong Housing Authority endorsed the plan for greater private sector involvement in estate management and maintenance services with a view to enhancing cost-effectiveness and improving the quality of service. Affected Housing Department (HD) staff may choose to voluntarily leave or stay in the Civil Service. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of HD staff of various grades who have opted for the voluntary release package as at the end of April this year; and*
- (b) *whether such figures tally with official estimation; if not, of the details and reasons for that?*

SECRETARY FOR HOUSING (in Chinese): Madam President, the numbers of HD staff in various grades having opted for the Voluntary Departure Scheme as at 30 April 2000 are shown at the Annex.

The HD has not made any official estimation of the number of staff who will opt for the Voluntary Departure Scheme as the Scheme is entirely voluntary and the option period is long (lasting until February 2003).

Annex

Voluntary Departure Scheme:
Breakdown by grade
(Position as at 30 April 2000)

<i>Grade</i>	<i>Staff having opted for the Scheme</i>
Workman	327
Estate Assistant	313
Housing Manager (including Housing Officer)	240
Artisan	192
Clerk of Works	48
Works Supervisor	25
Building Services Inspector	24
Technical Officer	24
Foreman	21
Structural Engineer, Maintenance Surveyor, Building Services Engineer and Quantity Surveyor	11
Survey Officer (Quantity)	7
Welfare Worker	7
Photoprinter	1
Total	1 240

Provision of Recreation Open Space

17. **MISS EMILY LAU:** *Madam President, regarding the provision of recreation open space, which includes parks, gardens, sitting-out areas, as set out in the Hong Kong Planning Standards and Guidelines (HKPSG), will the executive authorities inform this Council:*

- (a) when the relevant standards for recreation open space were first adopted and of the basis for adopting such standards; and*
- (b) of the area of recreation open space now established in each of the 18 districts, a comparison of these figures with those calculated in accordance with the relevant standards set out in the HKPSG, as well as the plans to meet the shortfall?*

SECRETARY FOR PLANNING AND LANDS: Madam President,

- (a) The provisions for open space set out in the HKPSG were first adopted by the Government in 1981. Taking into account the changing demographic structure and socio-economic characteristics of our population, the Planning Department commissioned a study in 1995 to examine the leisure habits and recreational preferences of the people of Hong Kong and on the basis of which comprehensively reviewed and updated such provisions in March 1998.

The current standard of provision of open space (including those developed by the public and the private sectors) is 2 sq m per person. In formulating the planning standards and guidelines, we have taken into account factors such as the aspiration of the community, existing and planned provisions, availability of land resources as well as standards adopted in other major Asian cities (for example, Singapore, Shanghai, Tokyo and so on).

- (b) The provision of open space and the requirement under the HKPSG for each of the 18 districts are set out below:

<i>District</i>	<i>Requirements upon full development (in hectares)</i>	<i>Provision (Existing and Planned) (in hectares)</i>
Central and Western	55	53.19
Wan Chai	34.88	36.62
Eastern	127.54	130.51
Southern	67	98.53
Yau Tsim Mong	68.6	76.2
Kowloon City	156.59	204.8
Wong Tai Sin	97.2	104.01
Kwun Tong	176.08	159.27
Sham Shui Po	103.73	105.06
Tsuen Wan	68.48	82.23
Kwai Tsing	105.06	128.09
Tuen Mun	135.32	180.19
Yuen Long	213.52	232.59
North	97.8	152.29
Tai Po	72.56	152.71
Sha Tin	149.86	170.09
Sai Kung	113	131.55
Islands	89.32	230.6

With the exception of the Central and Western and Kwun Tong Districts, there would be sufficient provision (including planned provision) of open space in most parts of the territory. The HKPSG does not, however, prohibit the Government from providing open space over and above the prescribed standards should suitable opportunities arise. As for the two districts with shortfalls, both are built up with most areas fully developed. Our main strategy to make up for the shortfalls is to take advantage of each new development, redevelopment as well as urban renewal projects to encourage the provision of open space, if necessary, through the offering of some incentives such as bonus plot ratio.

Change of Charging Method for EPS Service

18. **MR LAU KONG-WAH** (in Chinese): *Madam President, it was reported that, since April this year, the firm providing the electronic payment system Easy Payment System (EPS) has changed the charging method for its service for some business sectors from a flat rate of \$2 per transaction to levying a service charge equivalent to 0.75% of the transaction amount (amount-based charging method). Given that the system is now widely used by members of the public and there is an overall need to protect the consumers' interests, will the Government inform this Council whether it knows if the Consumer Council has information on the following:*

- (a) *the number and total amount of transactions made through the EPS, as well as the income that the firm derived from service charges in the past three years;*
- (b) *the additional monthly income of the firm after it has adopted the amount-based charging method;*
- (c) *the justifications for the firm adopting the amount-based charging method;*
- (d) *if the firm has any plan to implement the amount-based charging method on a full scale, and whether it will consider exceptionally allowing certain trades (such as bookshops and computer retailers and so on) to continue to pay service charges at a flat rate; if it will consider, of the trades involved; if not, the reasons for that; and*
- (e) *the impact of adopting the amount-based charging method by the firm on business operators, the business sectors and consumers?*

SECRETARY FOR TRADE AND INDUSTRY (in Chinese): *Madam President, the Administration understands from the Consumer Council that:*

- (a) *it does not know the number and total amount of transactions made through the EPS or the income that the Electronic Payment Services Company (HK) Limited (EPSCO) derived from EPS services in the past three years;*

- (b) it is not aware of the additional monthly income of the EPSCO after it adopted the percentage-based payment method. The EPSCO has declined to provide information on parts (a) and (b) of this question on grounds of commercial confidentiality;
- (c) the EPSCO informed the Consumer Council that it had adopted the new charging method because it believed charging a flat fee for all transactions was unfair to merchants, particularly those who have smaller transaction values;
- (d) the EPSCO informed the Consumer Council that its intention was to charge all merchants a percentage-based fee, but the percentage level could be negotiated between the EPSCO and individual merchants; and
- (e) the Consumer Council is conducting a study on the EPSCO's market position and its implications for consumers and businesses. The findings shall be made public when available.

Interruptions of Radio Broadcast Inside Vehicle Tunnels

19. **DR DAVID LI:** *Madam President, operators of vehicle tunnels often interrupt the radio broadcast inside the tunnels in order to make announcements. In this connection, will the Government inform this Council whether it will request tunnel operators to avoid such interruptions during the news broadcast time; if not, of the reason for that?*

SECRETARY FOR TRANSPORT: Madam President, in general, radio break-in messages broadcast by tunnel operators can be classified into two types, one being situation-specific announcements and the other general reminders on road safety. Situation-specific announcements mainly relate to traffic incidents in the tunnel area and its vicinity. They are necessary for keeping motorists abreast of road conditions so that they could decide on alternative routes in good time. As for general road safety reminders, they are recommended by the Road Safety Council for promoting safe driving behaviour and traffic lane discipline in tunnels. Both types of messages are essential for ensuring safety and smooth operation in a closed tunnel tube environment.

Efforts have been made to minimize interruptions. The broadcasting of general road safety reminders is normally restricted to the following situations:

- (i) during one-tube-two-way operation, usually in the night time, when one of the two tunnel tubes is closed for maintenance, inspection or cleansing. The broadcast is one of the measures to keep motorists vigilant and promote safe driving during such operation;
- (ii) on rainy days or when the road is wet and slippery; and
- (iii) before and during special festive occasions and major holidays when more weekend drivers are expected to travel through tunnels.

The existing broadcasting system in road tunnels cannot be operated automatically to stop break-in messages during news broadcast. The control will have to be done by officers in the control rooms manually. There are, however, more than 10 radio channels which are accessible in road tunnels and the exact timing and length of half-hourly news broadcasts vary from channel to channel. To deploy the control room staff to monitor news broadcasts of all of the radio channels manually will divert their attention from their main function of ensuring the safety and smooth operation of the tunnel. Continued efforts will be made to minimize the interruptions wherever possible.

Traffic Accidents Caused by Environmental Obstructions

20. **DR TANG SIU-TONG** (in Chinese): *Madam President, according to the information submitted to this Council by the Hong Kong Police Force, among the 13 991 traffic accident reports in 1998, 34 accidents had been identified as having been caused by environmental obstructions which could be improved upon by government departments, while among the 14 539 traffic accident reports in 1999, 120 accidents were of similar nature. In this connection, will the Government inform this Council:*

- (a) *of the places of occurrence and details of the aforesaid traffic accidents involving environmental obstructions; and*

- (b) *whether the police have relayed these environmental obstructions to relevant government departments for the carrying out of improvement works; if they have, of the improvement works that were completed in the past year or will commence shortly by the relevant departments, and the details of such works?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, among the traffic accidents which occurred in 1998 and 1999, the police identified that 34 and 120 accidents were caused by environmental obstructions, such as sightline obstructed by objects, defective traffic signals, damaged road surface and steep gradient of roads. A table showing the breakdown of these accidents by different environmental factors is as follows:

	<i>1998</i>	<i>1999</i>
Steep gradient of roads	5	20
Sightline obstructed	16	46
Defective traffic signals	2	21
Damaged road surface	11	33
Total	34	120

The places of occurrence of these accidents are listed at Annex A.

The police have an on-going dialogue with the Transport Department on ways to improve the road environment of accident spots to enhance road safety. We do not have specific statistics on the number of such suggestions. The Transport Department, upon receiving reports from the police, will liaise with the Highways Department or other departments to carry out remedial works, such as erection of additional traffic signs, repairing defective traffic signals, improving road surface, erection of railing, grass cutting and so on. In 1999, the Transport Department investigated 120 accident blackspots and improvement works have been carried out in 103 sites. Improvement works to the remaining 17 blackspots are being studied and will be implemented within this year.

Annex A

The Locations of Traffic Accidents in 1998

*Environmental
Obstructions**Location*

- | | |
|--------------------------------|---|
| 1. Steep gradient
of roads | I/S Ka Wah Quarry near Anderson Road
Tai O Mun Road I/S Country Club 6P Hill Side
Lo Wai Road near J/W Sam Tung Uk Road
Castle Peak Road J/W Wo Yi Hop Road
Service Road Leading to Sheung Kok Street near Block 21 Kwai
Chung Estate, KWC |
| 2. Sightline
obstructions | Pik Wan Road near Tak Shui House, Tak Tin Estate
Sheung Ning Road I/S On Ning Garden Carpark
Tsz Wan Shan Road O/S Tsz Man Estate
Tsak Yue Wu, Pak Tam Road near Lamp Post EB6532-0
Tung Choi St O/S House No. 101 near Argyle Street
Ho Pong Street O/S Block 3, San Fat Estate, Tuen Mun
Tolo Highway near Shui Wai, Tai Po
Texaco Road North J/W Tsuen Kam Interchange, Tsuen Wan
Castle Peak Road J/W Sai Lau Kok Road, Tsuen Wan
Tung Chau Street J/W Fat Tseung Street
An Unnamed Road of Chiu Keng Tsuen
An Unnamed Road near lamp Post 6271-9 near Ching Shan Tsuen
Po Lam Road N TKO Fire Stn near Lamp Post BEA 1083-9
Po Wan Road near Sheung Shui wai, Sheung Shui
Island Eastern Corridor
Yin Chong Street O/S House No. 12 |
| 3. Defective
traffic signal | Wai Yip Street J/W Cha Kwo Ling Road
Tai Po Road J/W Tai Wo Service Road West |

*Environmental
Obstructions*

Location

- | | |
|-------------------------|---|
| 4. Damaged road surface | Cheong Wan Road O/S Hong Kong Coliseum
Tai Po Road J/W Caldecott Road
Tai Kok Tsui Road near Foo Kwai Street
Gascoigne Road J/W Chatham Road S
Tai Po Tai Wo Road near Tolo Highway
Cycle Way of Ting Kok Road near Tai Po East Fire Station, Tai Po
Tsing Yi Road J/W Ching Hong Road, TY, Kwai Ching
Open Space inside Chek Lap Kok Airport
Cheung Tung Road near Tung Chung Refuse Collect Point
Route Twisk near look out O/S Lamp Post FA7949-5
Cycle Track of Choi Yuen Estate near Lamp Post N8019-5 |
|-------------------------|---|

Note:

I/S stands for "Inside"

O/S stands for "Outside"

J/O stands for "Junction of"

J/W stands for "Junction with"

E/B stands for "East bound"

S/B stands for "South bound"

W/B stands for "West bound"

N/B stands for "North bound"

The Locations of Traffic Accidents in 1999

*Environmental
Obstructions*

Location

- | | |
|----------------------------|--|
| 1. Steep gradient of roads | Wa Fu Road near Lamp Post 33045
W/B Island Eastern Corridor
Pokfulam Road Downhill/Hill Eoad
Gloucester Road W/B / Canal Road E
Pokfulam Road near Lamp Post No. 34163
Queen's Road Western Outside House No. 338-342 |
|----------------------------|--|

*Environmental
Obstructions*

Location

Caine Road W/B and Aberdeen Street
 Chi FU Road/Pok Fu Lam Road
 Outside the entrance of Peak Galleria, 118 Peak Road
 Island Eastern Corridor near Lamp Post No. 36608
 Hip Wo Lane/Lun Hing Street
 Pok Fu Lam Road J/O Second Street
 Wan Tsui Road
 Tin Hau Temple Road Opp. House No. 70 (Lamp Post 16178)
 Down hill Stanley Gap Road near Lamp Post S/N 35923
 Tsing Long Highway-Yuen Long near Sha Po (Tuen Mun Bound)
 Unnamed footpath of Chui Keng Tsuen near Fan Kam Road, Sheung Shui
 Access Road of Pak Sha Tau Chau near main Dam, Tai Mei Tuk
 Tuen Mun Road (NT Bound) near Siu Lam
 Cycle track of Ma On Shan Road O/S Hang Shan House

2. Sightline
 Obstructions

Opp. Hing Man Estate Bus-Stop
 Queensway outside United Center
 Johnston Road
 O/S Pamela Youde Nethersole Eastern Hospital Main Block
 Tin Wan Praya Road near Flyover
 Hennessy Road W/B O/S No. 338 Bus Stop
 Queen's Road C W/B O/S House No. 345
 Des Voeux Road W/Sutherland Street O/S House No. 51
 Sun Ha St near Lamp Post 24771
 O/S House No. 232, Wanchai Road E/B
 Comfort Garden
 Marble Road J/W Shu Kuk Street
 Sassoon Road I/S House No. 6
 Tai Tam Road near Tai Tam Reservoir
 Caine Road O/S No. 120
 Robinson Road W/B House No. 82
 Near Chi Fu Garden
 O/S No. 55 Island Road
 O/S Lamp Post 32316
 Apleichau Bridge Road S/B to Wong Chuk Hang Road E/B

*Environmental
Obstructions*

Location

- Stanley Gap Road way to Aberdeen at nearside
 Ma Tso Lung Road near Lui Pok Tsuen
 Service Road of Ho Pui Tsuen near Ho Pui Tsuen
 Outside House No. 18, Tai Tam Road W/B
 Lam Ha Road near Fei Ngo Shan Road
 Clear Water Bay Road Kowloon Bound near Cheng Lan Shu
 Connaught Road C Flyover W/B at J/O Flyover
 Tai Shu Ha Road East near Lamp Post FC2197-9
 Fan kam Road near Fire Services Department Training School
 To Fung Shan Road O/S Lamp Post EA 5456-8
 Westbound Nam Ning Street near Lamp Post No. 42510
 Hennessy Road O/S House 313
 O/S Chu Fung House Fung Tak Estate
 San Tam Road O/S Mo Fan Heung near Lamp Post: FA 9273, Yuen Long
 An unnamed road leading to Yau Shin Street near Shek Tong Tsuen
 Nim Wan Road near Ha Pak Nai Tsuen
 Kong Tai Road near Lamp Post H2744-8
 Unnamed Road Lamp Post FA 8024-9 (Near Pat Heung Road)(To Ma On Kong Tsuen)
 Nim Wan Road Lamp Post FA 0921-2(near Ha Pat Lai)
 Tat Wan Road near Wan Tau Tong Estate Lamp Post: FA 7633-9
 Access Road of Fan Leng Nam Wai O/S San Wan Road FL
 Access Road to Fa Sum Hang Village
 Wang Tat Road J/O Ma Miu Road
 Tai Yuen Street O/S House No. 7
 O/S House No. 3, Tai Yuen Street N/B
 San Tsuen Street near Wo Tik Street
3. Defective traffic Signal
- O/S No. 41, Fenwick Street/Hennessy Road
 Connaught Road W W/B near road junction
 O/S Sai Wan Ho MTR Station, Shau Kei Wan Road E/B
 Des Voeux Road C E/B near Rummsey Street
 Java Road/Shu Kuk Street
 King's Road W/B and Tin Chiu Street E
 The Aberdeen Praya Road to Aberdeen Main Road

*Environmental
Obstructions*

Location

- Chai Wan Road/Sheung On Street N/B
 King's Road J/O Healthy Street E
 Wan Po Road/Chiu Shun Road Roundabout
 Tsz Wan Shan Road O/S Chung Fai House of Tsz Chung Estate
 Tsui Ping Road J/W Private Road (near Community Centre)
 Wang Chiu Road J/O Sheung Yee Road
 J/O Po Kong Village Road and Choi Hung Road
 Ma Tau Chung Road J/W Sung Wong Toi Road
 Shanghai Street near Wing Sing Lane
 Nathan Road J/W Boundary Street
 Long Ping Road J/O Fung Chi Road, Lamp Post FA 1392-3
 Sha Tau Kok Road (STK bound) near Ma Mei Ha
 Route Twisk near Shek Kong Camp
 Yuen Wo Road J/W the slip road of Tai Po Road (near Shatin)
4. Damaged road surface
- Edinburgh Place towards south near junction
 Wong Chuk Hang Road
 I.E.C flyover towards to Kornhill Garden
 Pok Fu Lam Road E/B and Hill Road Flyover
 Deep Water Bay Road downslope near Shouson Hill Road
 Yue Kwong Road W/B near the Yue Hong Street
 Arsenal Street near Lockhart Road
 Clear Water Bay Road J/W Hiram's Highway
 O/S No. 22B Kwun Tong Road near Tung Yau Street
 Shatin Pass Road near Tsz Wan Shan Road
 Cheung Sha Wan Road N/B Hing Wah Street
 West Kowloon Highway near Lamp Post AAB0731-4
 Unnamed road open space of Green Land near Tin Wah Road, Tin Shui Wai
 Slip road of San Wan Road J/W So Kwun Po Road, Sheung Shui
 Lau Fau Shan Road near San Hing Tsuen, Yuen Long
 Service road of Ting Kok Road near Lo Che Tin Tsuen
 Castle Pear Road (Tuen Mun) Cycle Track, near Lamp Post FB 2252-8
 Route Twisk near Kap Lung Village
 Ma Wang Road near Ma Miu Road, Yuen Long

*Environmental**Obstructions**Location*

Cycleway of Ting Kok Road near Sheun Wan Chan Uk, Tai Po
So Kwun Wat Road near Lamp Post FA 3293
O/S Choi Fai Garden (to Yuen Long)
Hung Tin Road J/O Ping Ha Road
Tin Yiu Estate O/S Yiu Man House Playground
Hoi Wong Road near river side cycle track
Cycle way of Nam Wan Road near Kwong Fuk Estate, Tai Po
Cycle way of Ting Kok Road near Tsui Uk Tsuen, Tai Po
Cycle track of Tai Po Road near Man Wo House, Wo Che Estate
Kwai Fuk Road near Shing Fuk Street, Kwai Chung
Route Twisk near Chuen Lung Tsuen Wan bound
Gloucester Road near House No. 39
Connaught Road W W/B junction of Gilman Street
Cycle way of Ting Kok Road near Ting Kok Village, Tai Po

BILLS**First Reading of Bill**

PRESIDENT (in Cantonese): Bill: First Reading.

SUPPLEMENTARY APPROPRIATION (1999-2000) BILL 2000

CLERK (in Cantonese): Supplementary Appropriation (1999-2000) 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 Bill

PRESIDENT (in Cantonese): Bill: Second Reading.

SUPPLEMENTARY APPROPRIATION (1999-2000) BILL 2000

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move that the Supplementary Appropriation (1999-2000) Bill 2000 be read the Second time.

Section 9 of the Public Finance Ordinance states that "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates".

The expenditure accounts for the financial year 1999-2000 have been finalized by the Director of Accounting Services. The expenditure charged to 17 heads out of a total of 91 heads is in excess of the sum originally appropriated for those heads in the Appropriation Ordinance 1999. In each head, the excess expenditure reflects supplementary provision approved by the Finance Committee or under powers delegated by it. The Supplementary Appropriation (1999-2000) Bill 2000 seeks final legislative authority for the amount of supplementary provision approved during the year in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total supplementary appropriation required in respect of the 17 heads of expenditure is \$5,065 million. This excess is largely attributable to payments for which no provision was made in the original estimates. These were:

- (i) the expenses of the new Environment and Food Bureau and the two new departments for the delivery of municipal services for the period 1 January to 31 March 2000 amounting to \$2,153 million; and
- (ii) the payment of \$5 billion from the General Revenue Account to the Innovation and Technology Fund.

Despite these exceptional un-budgeted payments, total expenditure from the General Revenue Account was within the amount originally included in the Appropriation Ordinance 1999 as a result of savings in various heads of

expenditure and the provision made for additional commitments in the original estimates for the year.

Madam President, I hope Members will support the Supplementary Appropriation (1999-2000) Bill 2000. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (1999-2000) 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 Telecommunication (Amendment) Bill 1999.

TELECOMMUNICATION (AMENDMENT) BILL 1999

Resumption of debate on Second Reading which was moved on 12 May 1999

PRESIDENT (in Cantonese): The Chairman of the Bills Committee on the Telecommunication (Amendment) Bill 1999, Mr SIN Chung-Kai, will address the Council on the Committee's Report.

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Telecommunication (Amendment) Bill 1999, I now submit the report to this Council and will highlight a few important recommendations of this Bill.

The Bills Committee has held a total of 22 meetings. We have held in-depth discussions with the Administration and 21 deputations on the policy, technical and legal aspects of the Bill. Generally speaking, the Bills Committee and the deputations have no objection to the objective of the Bill, that is,

promoting fair competition, improving the regulatory framework and so on. As regards certain controversial provisions, after a series of discussions, an option generally acceptable to all was eventually worked out.

The Bill proposes that the powers of the Telecommunications Authority (TA) currently deriving from the licensing conditions should be codified into law and that certain checks and balances should be built in. For example, in regard to its decisions, written explanation should be given and consultation should be carried out and so on. Some deputations and Members reckon that the relevant checks and balances should be clearly laid out in the Bill in order to enhance the transparency of the decision-making process. To this effect, the Administration has decided to add sections 6C and 6D to the Bill, spelling out the circumstances under which the TA has to issue guidelines and to conduct consultations. Nevertheless, since the TA will invariably have to make timely decisions, the Administration thinks that it is not appropriate to impose a mandatory requirement on the TA that consultation should be conducted before making any decisions.

New sections 7K to 7N proposed under the Bill seek to strengthen safeguards on fair competition. In order to effectively curb anti-competitive practices, proposed section 36C empowers the TA to impose financial penalties which can be ten-fold of the present level. Where necessary, the TA may also apply to the Court of First Instance to impose heavier penalties on the licensee concerned. The industry and a majority of the fixed telecommunication network services (FTNS) operators have expressed support for these amendments. However, Members note the query of the Cable & Wireless HKT Limited (CWHKT) that sections 7K to 7N are discriminatory, since they target at the licensees and may not be in conformity with the relevant stipulations in the Hong Kong Bill of Rights Ordinance. Besides, in the CWHKT's view, section 36C is in effect a criminal process and thus licensees should be given the right to fair hearing and the right to appeal to the Court. However, the Administration and the legal adviser of the Bills Committee do not agree to the CWHKT's view. Nevertheless, the Administration has agreed to move a Committee stage amendment to the proposed section 36C to require the TA to give a reasonable opportunity to the affected parties to make representations before imposing a financial penalty or sanction and that the financial penalty or sanction must be proportionate and reasonable in relation to the concerned breach.

One of the important proposals of the Bill is that under section 14, the TA is empowered to authorize mobile network operators (MNOs) to gain access into shielded areas in order to install their facilities therein to provide services. However, the TA must be satisfied that it is in the public interest to do so, and that there are no alternative locations and no technical alternatives for installation, and on payment of a reasonable fee to the land/facility owner concerned by the MNO. Where both parties fail to reach a mutual agreement on access fee, the TA has the power to determine the fee according to certain principles. Six existing MNOs and the Consumer Council welcome the above amendment, believing that it can eliminate the difficulties currently faced by MNOs in negotiating the access fees with the land/facility owners concerned.

The Bills Committee has also listened to the opposing views of the two railway corporations, the Real Estate Developers' Association of Hong Kong (REDA) and the "Build, Operate and Transfer" (BOT) tunnel operators. Some members of the industry think that the provision concerned will upset the principle of commercial negotiation. They also query that since the TA is the regulator of the telecommunications industry and has an established position of himself, he may not be able to make decisions based on genuine public interest. The tunnel companies even strongly query whether the provision concerned is legal and constitutional. In their view, intervention by the TA will lead to a deprivation of personal property, that will in turn be contrary to the safeguard given by the related stipulations in the Basic Law. Some Members also consider that the proposed section 14 has given the TA excessive power to the extent that will seriously jeopardize the commercial interests of the tunnel companies. They have thus asked the Administration to reconsider that issue.

Members have also considered the views of the legal adviser of the Bills Committee on the question of whether the restrictions brought on by that provision will be reasonable and proportionate in relation to the policy objectives. The Administration has put forward a number of reasons, stating that the proposed section 14 will not amount to deprivation of property, and emphasizing that the provision concerned can help to ensure a ubiquitous mobile service coverage which will facilitate Hong Kong in developing into an telecommunications hub. The Administration has positively exchanged views with Members on whether or not the overall mechanism of the TA in determining the fees is appropriate.

In response to Members' concern and after balancing all sorts of consideration, the Administration will move a Committee stage amendment, stipulating that if the MNO fail to reach an agreement on access fee with the land/facility owner concerned, both parties can consider seeking independent arbitration in accordance with the Arbitration Ordinance. Pending the outcome of the arbitration, the MNO may gain early access upon payment of an interim access fee to the land/facility owner concerned. In regard to the formal arbitration decision of the arbitrator, it will have retrospective effect from the date on which the MNO gained access to the land/facility. The Administration agrees that the arbitrator, in determining the access fee, must give regard to the guidelines issued by the TA, and consider factors relating to costs, property value and the benefits to be derived from the authorization of access. After considering the concerns expressed by Members and the two railway corporations, the Administration will also move an amendment to stipulate that where there is inconsistency between the technical requirements on MNOs gaining access to the land/facility specified by the TA and any statutory provision relating to public safety, the latter shall prevail.

In regard to sections 36A and 36AA of the Bill relating to the arrangement of interconnection and facility sharing, the Bills Committee notes the CWHKT's view that the relevant provisions will constitute a deprivation of private property, thus contravening the related provisions in the Basic Law. Members have listened to the different views expressed by the Administration and the legal adviser of the Bills Committee. The Administration insists that the provisions concerned will not take away the title of the licensee to the facilities concerned. The Administration will also move a Committee stage amendment to clarify that the proposed section 36AA will apply to telecommunications licensees only.

The CWHKT, the Hong Kong Society of Accountants (HKSA) and some Members query whether the power of the TA is excessive in obtaining information. In view of this, the Bills Committee has sought clarification on the legal responsibilities of the licensees concerned in disclosing information to the TA as specified in the Bill, and on whether the proposed provisions are in line with the Personal Data (Privacy) Ordinance. The Administration has also agreed to move an amendment to spell out the kind of safeguards given to licensees.

Some Members share the concern of the HKSA that the proposed section 36D has given excessive power to the TA to the effect that he can make an *ex*

parte application to the Magistrate for an order to obtain information from non-licensees, which is unfair to a third party who is not subject to the supervision of the TA. Members understand that the TA, in investigating irregularities, will very often need to obtain information from a third party. After detail discussions, the Administration has agreed to incorporate more checks and balances into the proposed provision, such as restricting the application of the provision, and requiring that the TA should first serve on the non-licensee a written notice requesting the latter to produce the information/documents, and allow the third party to make representation in writing if he objects to the TA's request. If the TA still decides to apply to the Magistrate for an order, he must also submit the written representation of the third party for the Magistrate's consideration of whether an order should be issued.

It is the concern of the Bills Committee and a number of deputations that whilst the Bill has improved substantially the powers of the TA, it does not provide for an appeal mechanism. An aggrieved party can only seek judicial review according to the current practice. Members reckon that the existing arrangement is not an effective channel for appeal. The Administration, after considering Members' views from a policy perspective, finally agreed to add a provision to the Bill for the formation of a Telecommunications (Competition Provisions) Appeal Board comprising independent persons to hear appeals against the TA's opinions and decisions concerning safeguards of competition. The Bills Committee notes that the procedures of the Appeal Board will be codified in the form of subsidiary legislation after the Bill is passed into law. Generally speaking, Members accept the proposed appeal mechanism.

The content of the Telecommunication (Amendment) Bill 1999 is rather complicated. I would like to thank the Bills Committee members and a few Members who are not members of the Committee for their active participation, the Administration for its positive response to Members' views, as well as the staff of the Secretariat for their unfailing efforts. All these have contributed to the smooth scrutiny of the Bill. The Bills Committee also thank the various deputations for their concern for and invaluable opinions of the Bill.

With these remarks, Madam President, I support the Bill and the amendments to be moved by the Administration.

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

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, the liberalization of the market and the introduction of competition have been the main goals of Hong Kong's telecommunications industry in recent years. The main purpose of our amendment of the Telecommunication Ordinance is to provide an environment that best suits the development of telecommunications in the 21st century. If the Bill is passed, Hong Kong people will benefit from a better mobile network. It will also help Hong Kong become the telecommunications hub of the Asia-Pacific Region.

I believe many people have had the following experience when using their mobile phones: once they have entered certain shopping malls or buildings, the connection which had been fine would be broken off suddenly, or they cannot put through a call after entering these places. Actually, all this has to do with the coverage of the network. One of the purposes of the Bill is to improve such situation by granting telecommunications operators right of access to land to instal networks. If an agreement cannot be reached on access fees, application may be made to an independent arbitrator for arbitration. In the past, the main problem was that hostile groups tried to exclude one another or one party had a natural advantage in the negotiation. As a result, no agreement could be reached on the fees for the installation of facilities, so that people have to put up with interruptions in the connection.

In recent years, the mobile phone has achieved a penetration rate over that of traditional telephones and become a daily necessity. The third-generation mobile phone is now coming up. These 3G phones not only facilitate voice communication, but also have Internet functions. The transmission of text data and even images will be enhanced. They will also facilitate the development of electronic commerce. It is said that with a mobile phone, a Finlander can buy a soft drink from a machine with the shopping and accounting functions of the mobile phone. Such fantastic sounding modes of consumption may appear in Hong Kong very soon. Thus, it is of paramount importance for us to have ubiquitous network coverage.

In the course of deliberations on the Bill, we met with deputation after deputation of a number of telecommunications operators and tunnel companies. They also came to the Legislative Council several times to express their views. They gave a lot of views especially with regard to the right of access to land and the series of questions that arise from this, such as the spirit of contract, the credibility of arbitrators and the appeal channels. They even employed lawyers to submit their individual arguments.

With regard to the question of whether the TA should be given the power to intervene in agreements between telecommunications operators and commercial organizations, we once found ourselves in a dilemma. Finally, the Bills Committee accepted the Government's distinction between "regulation" and "deprivation" of property. The Government also accepted the suggestion of the Democratic Alliance for the Betterment of Hong Kong and other Members and agreed to provide for an independent arbitrator to take over the arbiter role of the TA, as well as setting up an appeal mechanism to make up for the inadequacy of judicial review.

The Bill also enhances the regulatory powers of the TA, especially in terms of competition safeguards. I believe that many people will recall that the TA used to play an "arbiter" role in matters concerning fair competition: receiving complaints, conducting investigations, arbitrating and making decisions. But since some telecommunications operators had challenged the TA's power of enforcement in court, the amendments in the Bill were thus proposed. The recent joint increase of fees by mobile phone operators has also reinforced the argument for enhancing the investigatory powers of the TA.

Due to the rapid development of technology and telecommunications, the regulation of the industry, especially in terms of competition safeguards, is so to speak avant-garde. We did not have too many precedents to draw on in our deliberations. Therefore, while enhancing the powers of the TA, we have also strengthened the protection of non-licensees and those who are subject to investigation.

I dare not say that the Telecommunications (Amendment) Bill is perfect. However, after 22 meetings and considerable lobbying in private, I believe we have tried our best to take into account the views of different sides and balance the concerns of different parties, in order to make the Bill clear and effective.

With these remarks, Madam President, I support the passage of the Bill.

MRS MIRIAM LAU (in Cantonese): Madam President, the Government proposed the Telecommunication (Amendment) Bill 1999 with a view to promoting competition in the telecommunications industry and strengthening the regulatory framework for the industry. While the Bill is well-meant, the means used by the Government has aroused a great controversy. For instance, there is

controversy over whether too much power will be conferred on the TA as proposed in the original Bill, which might easily lead to conflict of roles, whether the law will violate the principle of free market economy in Hong Kong and whether it will be inconsistent with the spirit of contract.

The Bill proposes that the TA may authorize network operators to gain access into shielded areas (including railways and tunnels) in order to install telecommunications facilities therein. The "Build, Operate and Transfer" (BOT) tunnel operators have signed franchise agreements with the Government and are regulated by the relevant tunnel legislation. The agreements and the provisions of the law clearly state that if any organization or company intends to install public facilities in the tunnels, it must negotiate with the relevant tunnel company and pay the relevant fees at market price.

Is it true that mobile network operators cannot gain access to the private tunnels and government intervention is thus required? As far as I know, the free negotiations between mobile network operators and private tunnel companies have always worked well. All mobile phone operators did gain access to the four private tunnels and have installed their networks. They even gained access to tunnels which the Government has not required them to.

However, the Government is now going to unilaterally alter the terms of the franchise agreements executed with the tunnel companies by "legitimately" amending the law, saying that it is in public interest and for the sake of providing mobile network operators with a favourable environment for development. This is unfair to the tunnel companies.

Apart from giving mobile network operators the statutory right to gain access to private tunnels, the Bill originally proposes that if an operator and a tunnel company fail to reach an agreement on the access fee, it will be determined by the TA. This literally takes away the tunnel companies' right to negotiate the fee freely with the network operators.

The Government has stressed repeatedly that the TA will be given power to intervene and determine the relevant fee only when both sides fail to reach an agreement. However, it is obvious that the original Bill contains a huge loophole, that is, it is most likely that the mobile network operators will use the TA as a bargaining chip in the commercial negotiations, thus placing the tunnel companies in a disadvantaged position. Besides, if the Government has the

power to intervene ultimately, it is doubtful whether the network operators will actively negotiate a fee with the tunnel companies.

The TA is the body responsible for promoting mobile telecommunications. However, according to the original Bill, the TA will be given the power to act as arbitrator between the telecommunications service providers and the tunnel operators. This will lead to conflict of roles on the part of the TA. As a government organization, the TA should avoid involvement in any commercial negotiations between private organizations, not to mention playing the role of arbitrator between them. In addition, since the TA lacks the expertise in tunnel operations, the private tunnel companies can hardly be convinced that the Government will be fair in the fee determination.

Fortunately, the Government has followed good advice in the end and agreed to propose a Committee stage amendment to provide for an independent arbitrator to determine the fee instead of the TA. In determining the fee, the arbitrator must also take into account the guidelines to be issued by the TA after consultation, as well as consider factors relating to cost, property value and the benefits to be derived from the authorization of access. Regarding the principles of fee determination, the Government submitted a paper to the Bills Committee outlining the fact that it would consult all relevant parties on certain charging principles, including the principle of cost and the valuation of property. I hope that in the Government's response today, it will state clearly whether these principles will still be used as the basis of consultation. I also hope that the Government will explain in detail what is covered by these principles.

Since the Government had made some slight concessions, the tunnel companies had no alternative but to reluctantly accept the restrictions placed by the Government unilaterally on their freedom to determine an appropriate fee. However, I am afraid that this has conveyed a negative message and that is, any agreement signed between any investor and the Government may later be unilaterally altered by the Government. This may affect investor confidence in participating in the infrastructural projects of Hong Kong.

Madam President, doubtless the Bill will be passed today, since the controversial provisions have eventually found a solution that can be reluctantly accepted. However, we are concerned that the Government's "deliberate" efforts to raise Hong Kong's status as a telecommunications hub may "imperceptibly" damage the free market economy in Hong Kong, upset free

negotiations under the free market economy and tarnish the reputation that Hong Kong has laboriously built up for itself as a free market.

I have to reiterate that the Government should not interfere with commercial negotiations. It should allow market forces to self-regulate in an economy of free competition. More importantly, the Government should take the lead in adhering to the spirit of contract in order to ensure that investors will continue to have confidence in investing in infrastructural projects.

Madam President, I so submit.

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

(No Member responded)

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I move the resumption of the Second Reading debate of the Telecommunication (Amendment) Bill 1999. The Bill had its First Reading in the Council on 12 May last year. The main purposes of the Bill are to strengthen competition safeguards in the telecommunications industry, to improve interconnection and access arrangements for telecommunications services, to streamline the licensing regime, and to confer suitable powers on the Telecommunications Authority (TA) in certain technical areas.

Under the leadership of Mr SIN Chung-kai, the Chairman of the Bills Committee, the Bills Committee held a total of 22 meetings and made in-depth deliberations on the Bill over the past 11 months. The Bills Committee has met with 21 deputations, including telecommunications service operators, tunnel operators and railway corporations, the Consumer Council and other stakeholders to receive their views on the Bill. I would like to thank the Chairman of the Bills Committee and members for the efforts they have made and the very useful advice they have given in the course of deliberating on the Bill.

The Bills Committee very much supports the policy objectives of the Bill, and expresses a major concern that the powers of the TA should be subject to

suitable checks and balances. In the Committee stage amendments which I will move later on, most of them are made in response to the concerns of the Bills Committee and the deputations, and to improve the Bill. The amendments have been given detailed discussions in the Bills Committee and endorsed by members. I hope Honourable Members will support the amendments later.

I wish to make use of this opportunity to expound several major amendments proposed by the Government. The Bills Committee has carefully examined and discussed clause 14 of the Bill. Clause 14 carfless on mobile network operators (MNOs) the right to gain access into land in order to install their facilities therein to provide services and expand their networks. Our policy objective is to ensure the ubiquitous coverage for mobile telecommunication services over the entire territory. Since the penetration rate for mobile telecommunication services is as high as 57%, which is higher than that for fixed telecommunication services, quality mobile telecommunication services with a ubiquitous coverage is hence essential to the consumers and our development into a telecommunications and information technology hub in the Asia-Pacific Region. So our policy objective is widely recognized. The point under contention is how the mechanism stipulated by law can be ensured to be fair, reasonable and effective and in public interest in the event that the MNOs and owners of shielded areas fail to enter into a commercial agreement.

After considering the views put forward by the Bills Committee and other interested parties, especially the suggestions made by Mrs Miriam LAU and other Honourable Members, we agree to move an amendment to the effect that an independent body or arbitrator will be responsible for the determination of the relevant fees. This arrangement can achieve our policy objective of a ubiquitous mobile service coverage and make the mechanism more impartial. We propose to make it clear in the amendment on independent arbitration that the fees payable by MNOs to owners of lawful interest on land should be fair and reasonable in all circumstances. Factors to be considered include cost, property value and the benefits to be derived from the authorization of access. As clause 14 is applicable to many kinds of shielded areas such as malls, tunnels and railways, the charging principle for access fees will not be similar. Therefore, we suggest that the TA should consult the owners of shielded areas and MNOs before issuing guidelines on charging principles to be considered by the independent arbitrator in determining fees. This will ensure the charging principle will reflect those affected by.....

PRESIDENT (in Cantonese): Secretary, I am sorry to ask you to stop your speech because I notice a burning smell in this Chamber. I announce that the meeting be suspended to enable the technicians to repair the machines concerned.

4.35 pm

Meeting suspended.

4.45 pm

Council then resumed.

PRESIDENT (in Cantonese): Honourable Members, we have had a problem with the uninterruptible power supply of the voting system and the relevant machines have been removed from the Chamber. The voting system has not been affected as a result of the problem.

Secretary for Information Technology and Broadcasting, please continue with your speech.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Since the proposed clause 14 applies to many kinds of shielded areas such as malls, tunnels and railways, the charging principle for access fees will not be the same. Therefore, we suggest that the TA should consult the owners of shielded areas and MNOs before issuing guidelines on charging principles to be considered by the independent arbitrator in determining fees. This will ensure the charging principle will reflect the view of all parties affected.

During the Bills Committee's deliberations on the Bill, we submitted a summary of the consultation paper on charging principles to the Bills Committee. We have listed in the consultation paper the three factors which would definitely be listed in the Bill. These are, first, the cost principle. This principle permits the land owner to recover all the expenses incurred by allowing the MNO to install, operate, manage and maintain mobile telecommunications services and facilities in the shielded area he owns. The costs involved may include direct,

indirect and intangible costs, covering capital costs, opportunity costs, expenses shared and even compensations. We will consult the stakeholders on the determination of reasonable financial returns for owners. Such returns will take into account the commercial risk factor involved. Second is the property value principle. This principle will take into consideration the property value of premises in similar locations where telecommunications facilities can be installed. Third is the principle on the benefits to be derived from the authorization of access. This takes into consideration the raising of service quality by the MNO by expanding the service network and coverage. On the other hand, the land owner may recover all the expenses he has paid and derive benefits as a result of the expansion of the service network to cover his property. As such, we will incorporate the charging principle for the sharing of profits into the scope of the consultation to be made.

After the Bill is passed into law, the TA will issue a consultation paper expeditiously to the stakeholders. I would like to stress that clause 14 seeks to put in place a reserve mechanism when the parties concerned fail to reach any commercial agreement, and I repeat, when the parties concerned fail to reach any commercial agreement, to ensure that the network can gain access to a shielded area for ubiquitous mobile service coverage. Clause 14 has never extinguished the rights of tunnel operators in authorizing access to tunnels or determining access fees. The authorized licensee and the tunnel operator concerned should try their best to ensure that a commercial agreement is reached on the payment of fees for the relevant installations. The independent arbitrator will determine the fees only when such agreements cannot be reached within a reasonable period of time. The fees so determined must be fair and reasonable in all circumstances. We believe that the public interest involved will be sufficient to support the establishment of such a mechanism and to ensure that the objective of "ubiquitous coverage" can be reached. After the amendment is passed, the determination of fees for access to install facilities will be the responsibility of the independent arbitrator subject to other balancing measures we have added. So in our opinion, the present arrangement is lawful, reasonable, proportionate and will not affect the interest of investors in infrastructure development.

Madam President, clauses 36A and 36AA cover the arrangements for interconnection and facilities sharing which are internationally recognized viable ways to enhance competition in the network markets. If a network cannot be connected to another network, then the subscribers to one network cannot communicate with those of another network. This is unacceptable in any city

with advanced telecommunications networks. Furthermore, there are many old buildings in Hong Kong which do not have sufficient space to install telecommunications facilities. If the TA has no power to order the sharing of facilities, then the options available to consumers will greatly diminish. Under 36A and 36AA, the powers of the TA will be subject to restrictions. The two provisions stipulate that the TA can intervene to make a ruling on interconnection or to direct the sharing of facilities only when he is acting in public interest. The amendments will also ensure that the operators can recover the costs.

Some groups have expressed concern that the TA may act by virtue of 36A and quash at his will the existing interconnection agreements executed among licensed institutions as a result of commercial negotiations and he may intervene to make a ruling on interconnection. Such worries are unfounded. Clause 36A provides unequivocally that the TA may intervene in interconnection matters only if he is acting in public interest. That is to say, the regulator may not intervene at his will into any commercial agreements already entered into in the free market and direct any interconnection arrangements. As a matter of fact, the TA in January this year made a decision on the interconnection arrangement between the Mass Transit Railway Corporation and a MNO and the case has affirmed the application of the above principle.

In addition, the Bills Committee has also made detailed deliberations on the powers vested in the TA under clauses 71, 35A and 36D to request for information and inspection, with a view to delineating clearly the powers exercisable by the TA and to provide adequate protection to licensees and non-licensees. After considering the views expressed by the Bills Committee and the depositions, we agree that the provisions may be further improved. For example, we can expressly state that the TA may only exercise the powers vested in him under clause 71 and 35A after ensuring that the licensee will comply with the legislation and the licensing terms and conditions and that the decision and directive he makes and issues will be by he himself. As to clause 36D, the TA shall only exercise the power vested in him under the provision if he is satisfied that the information and documents in the possession of the person concerned are related to the irregularities under investigation. Besides, we will clearly state in the provision concerned that the TA shall not compel the production of information which cannot have been compelled to be produced in civil proceedings before the Court of First Instance. We trust that the proposed amendments have addressed the concerns of the Bills Committee and the depositions concerned.

I would like to make it clear here again that when the TA wishes to obtain information from non-licensees such as accountants and auditors in his investigations into irregularities, he shall act in accordance with the stipulations in clause 36D and clause 35A will not be invoked. To further improve on clause 36D, our amendment will make it clear as a provision in law, the administrative measure of the TA serving a written notice on a non-licensee requesting him to produce information and to allow the person to make representation in writing if he objects to the TA's request. The order to obtain information from a non-licensee shall be issued by a Magistrate. If the non-licensee concerned has made a representation to the TA, the TA shall submit the representation together with the application to the Magistrate for consideration. We believe that clause 36D as improved by the amendment should be able to provide a safeguard for the non-licensee.

The Telecommunication (Amendment) Bill 1999 improves on the regulatory regime in the telecommunications industry so that operators can provide telecommunications services under fair and transparent circumstances. They can also make investments and put in efforts to ensure the provision of quality telecommunications services at reasonable prices. The proposals in the Bill are formulated as a result of many rounds of public consultation. The amendments meet the needs of the telecommunications market and will help consolidate our position as a world-class telecommunications hub.

Madam President, I commend this Bill to Honourable Members of this Council. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Telecommunication (Amendment) 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): Telecommunication (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

TELECOMMUNICATION (AMENDMENT) BILL 1999

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

CLERK (in Cantonese): Clauses 6, 9 to 12, 14, 15, 21, 24 and 27.

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 to 5, 7, 8, 13, 16 to 20, 22, 23, 25 and 26.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. I will explain the amendments briefly now.

We proposes that clause 1 be amended in respect of the commencement of the Ordinance to the effect that those clauses which do not require the support of subsidiary legislation for implementation can come into operation on the day on which the Ordinance is published in the Gazette, so as to give effect to the improved regulatory regime early to facilitate the development of the telecommunications industry.

Those clauses which require the support of subsidiary legislation for implementation, including the new licensing framework and provisions to abolish the previous licensing system, will take effect at a later date. We plan to table the relevant subsidiary legislation at the Legislative Council as early as possible in the next Legislative Session.

Having considered the concern expressed by the Bills Committee and various deputations over the checks and balances on the powers of the Telecommunications Authority (TA), amendments are proposed to clause 3 to incorporate in the Ordinance some of the existing administrative measures of the TA to further entrench the statutory checks and balances. The major amendments are: firstly, the TA has the duty to provide reasons in writing for the determination, direction or decision he made, and for the opinion he formed under the Ordinance; secondly, the TA is required to issue guidelines on the licensing criteria and on the charging principles for the consideration of the arbitrator under section 14; and thirdly, the TA is required to conduct consultation with the persons concerned before issuing guidelines on the test of market dominance, the charging principles for the consideration of the arbitrator under section 14, and the criteria for determining interconnection or sharing of facilities.

Amendments are proposed to clauses 4, 18 and 23 to further improve the provisions under which the TA can request for information from licensees and non-licensees and inspect such information. The proposed amendments include setting out more clearly the purposes of the TA in requesting for or inspecting information from licensees and non-licensees. Confidential information can be disclosed only if it is in public interest to do so and after considering the representations made by the persons supplying the information. This is to

exempt the person supplying the information from civil liability under a confidentiality agreement. This can also ensure that in providing information, the person concerned is not required to produce information that he will not be asked to produce in civil proceedings before the Court of First Instance.

The proposed amendments to clause 7 mainly serve to empower an independent arbitrator to determine a fair and reasonable fee payable by a network operator to gain access to a shielded area in the event that the network operator failed to reach a commercial agreement with the land owner. Apart from considering public interest and a range of factors, the TA must also take account of the representations made by the persons concerned in granting authorization of access. Moreover, the TA is required to specify the technical requirements arising from the authorization. Railway corporations are concerned that the safety and operation of railways will be jeopardized as a result of the authorization. In this connection, the TA will issue operational guidelines in consultation with the relevant parties, and an amendment is proposed to spell out explicitly that where there is inconsistency between the technical requirements arising from the authorization and any provision relating to public safety of any other ordinance, the latter shall prevail insofar as such inconsistency is concerned.

On the other hand, an interim fee is also proposed to allow early access by mobile network operators to install telecommunications facilities so as to provide services for the public. The payment of an interim fee will help protect the right and interest of the land owner. Under our proposal, the TA can specify an interim fee upon application made to him by the land owner or mobile network operator. The mobile network operator can proceed with the telecommunications installation after paying the interim fee.

The proposed amendments to clause 16 seek to establish a "Telecommunications (Competition Provisions) Appeal Board" to hear appeals against the TA's opinion, determination, direction, decision, sanction or remedy on competition issues.

A key policy objective of the Bill is to provide a pro-competition and pro-consumer regulatory framework. The competition safeguards underpinned by sections 7K to 7N as proposed in the Amendment Bill are introduced for the first time in Hong Kong in response to the needs and development of the industry. With the rapid liberalization of the telecommunications industry and the

increasingly fierce competition therein, anti-competitive practices and controversies may arise in the telecommunications market. The TA will also be presented with broader economic considerations in making decisions to safeguard competition. In view of these, we consider the setting up of the "Telecommunications (Competition Provisions) Appeal Board" a desirable policy initiative. The Appeal Board will comprise a Chairman and at least one Deputy Chairman who will be persons qualified for appointment as a High Court Judge, as well as a panel of members to be appointed by the Chief Executive. To avoid abuse of the appeal mechanism which would frustrate the decisions of the TA, all matters involved in the appeal will not be suspended, with the exception of the decision on penalties. The Board's decision will be final except on questions of law which the Appeal Board may refer to the Court of Appeal.

The proposed amendments to clause 17 mainly provide that the TA can revoke or suspend the licence of a licensee only if it is proportionate and reasonable to do so, and he is also required to provide reasons for it in writing. The licensee should be given an opportunity to make representations before a decision is taken.

We propose that clause 19 be amended to further improve the provisions on interconnection by, among other things, requiring the TA to provide an opportunity for the parties concerned to make representations, and stating explicitly that the interconnection charges must be fair and reasonable and must facilitate cost recovery by the network operator.

We also propose to amend clause 20 to further improve the provisions on directions to share facilities. It is clearly provided that the clause is applicable only to facilities owned and used by licensees, and that the fees of sharing facilities as specified by the TA must also be fair and reasonable, and must cover the requisite costs.

The proposed amendments to clause 22 mainly seek to provide that the TA can impose a financial penalty only if the financial penalty is proportionate and reasonable, and that the person concerned must be afforded a reasonable opportunity to make representations before a decision is taken.

Other amendments to the aforesaid clauses and the proposed amendments to clauses 2, 5, 8, 13, 25 and 26 are purely technical and textual amendments to add clarity to these clauses in order to achieve the desired results.

All the above amendments are introduced on the basis of the consensus reached between the Government and the Bills Committee after detailed discussions. I hope Members will support and pass these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex IV)

Clause 2 (see Annex IV)

Clause 3 (see Annex IV)

Clause 4 (see Annex IV)

Clause 5 (see Annex IV)

Clause 7 (see Annex IV)

Clause 8 (see Annex IV)

Clause 13 (see Annex IV)

Clause 16 (see Annex IV)

Clause 17 (see Annex IV)

Clause 18 (see Annex IV)

Clause 19 (see Annex IV)

Clause 20 (see Annex IV)

Clause 22 (see Annex IV)

Clause 23 (see Annex IV)

Clause 25 (see Annex IV)

Clause 26 (see Annex IV)

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

MR SIN CHUNG-KAI (in Cantonese): Madam Chairman, I just wish to speak on the Telecommunications (Competitive Provisions) Appeal Board.

First, I welcome the Government's proposal of this Appeal Board, thus changing the original appeal mechanism and providing a more flexible appeal mechanism. The Appeal Board is consistent with the Government's policy to introduce sector-specific competition provisions. Another motion on broadcasting may be submitted to the Legislative Council over the next two weeks. I wish to stress that they are but a small part of the larger trend of maintaining a level playing field. Although they are only a small part, I welcome them. However, I still hope that the Government will review it from time and time. Ultimately, a competition authority should be established to deal with competition between different sectors.

The telecommunications industry faces some unfair competition from other sectors, such as the anti-competitive practices of people in property management and sectors other than the telecommunications industry (although competition provisions have been made in this respect).

It is generally appropriate for the Telecommunications Authority to deal with anti-competitive acts within the industry. I believe he has adequate expertise and he is also assisted in this by an expert team. Let us consider the example of the United Kingdom. The Government says that our overall regulatory framework is based on the United Kingdom. However, the United Kingdom has a more powerful competition authority. Of course, it does not only deal with anti-competitive acts, but also with anti-trust matters in acquisition and merger (however, I believe we do not need to discuss that part). In terms of fair competition alone, although the present provisions are better than the old

ones, they are still far from being satisfactory. The reason is that our TA still has to deal with anti-competitive acts of other sectors against the telecommunications industry. That is why I am still worried about the effectiveness of the law.

The submission of this motion by the Information Technology and Broadcasting Bureau is a good start. Actually, we very much hope that the Government will set up expert teams in different sectors to monitor anti-competitive acts or ensure fair competition. After accumulating experience, a competition authority should be established. As I said, the Government's move is a good start, but it is certainly not the end. The telecommunications industry is rapidly developing in different countries. We all know that a highly effective regulatory framework must be established. This amendment exercise is necessary. However, it is not enough. I hope the Government will review from time to time the notion of a competition authority.

Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Information Technology and Broadcasting, do you wish to speak?

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): We have proposed the Telecommunications (Competition Provisions) Appeal Board on the basis of a sector-specific pro-competition policy. On the question of whether a cross-sector competition authority should be set up, we do not see this need under the existing policy for Hong Kong is already a very open market. Therefore, while we welcome Mr SIN Chung-kai's proposal, we maintain that a competition authority is not required under the existing policy.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Information Technology and Broadcasting 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 1 to 5, 7, 8, 13, 16 to 20, 22, 23, 25 and 26 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 5A Application of section 9 to air transit or air transhipment cargo.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move that new clause 5A, as set out in the paper circularized to Members, be read the Second time.

In the course of deliberations on this Bill, the Air Cargo Transshipment (Facilitation) Ordinance 2000 was enacted and came into effect. Under the Ordinance, a new section 9A is added to the Telecommunication Ordinance in respect of arrangements for the transit and transshipment of radiocommunication transmitting apparatus, and the word "radiocommunication" was used in the section so we need to amend the word as "radiocommunications". This is purely a textual amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 5A.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move that new clause 5A be added to the Bill.

Proposed addition

New clause 5A (see Annex IV)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2, as set out in the paper circularized to Members.

These Schedules include other legislation in which the words "telecommunication" and "radiocommunication" are proposed to be amended as "telecommunications" and "radiocommunications". Given that some of the legislation which contain the words "telecommunication" and "radiocommunication" were amended while the Bill was under scrutiny, we need to update these Schedules accordingly. The other amendments are also textual amendments. Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex IV)

Schedule 2 (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 Information Technology and Broadcasting 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 and 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

TELECOMMUNICATION (AMENDMENT) BILL 1999

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, the

Telecommunication (Amendment) 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 Telecommunication (Amendment) 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): Telecommunication (Amendment) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (No. 17) Bill 1999.

ADAPTATION OF LAWS (NO. 17) BILL 1999

Resumption of debate on Second Reading which was moved on 30 June 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. 17) 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. 17) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 17) 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. 17) Bill 1999.

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 HEALTH AND WELFARE (in Cantonese): Madam Chairman, 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 the Committee of the Council may consider clause 2 and Schedule 3 of the Bill together.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Health and Welfare, you have my consent.

SECRETARY FOR HEALTH AND WELFARE (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 clause 2 and Schedule 3 of the Bill together.

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 clause 2 and Schedule 3 of the Bill together.

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): Schedule 3.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move the amendments to clause 2 and Schedule 3, as set out in the paper circularized to Members.

Schedule 3 of the Bill seeks to adapt the Midwives Registration Ordinance and Midwives Registration (Amendment) Ordinance 1997. As the Amendment Ordinance has already come into effect, the relevant provisions have been integrated into the Midwives Registration Ordinance, too. Therefore, the original adaptations proposed in Schedule 3 should be changed correspondingly to amendments to provisions of the Midwives Registration Ordinance. With regard to the effective date of the adaptations, it should also be made consistent with the effective date of the Amendment Ordinance, that is, 30 September 1999. Therefore, we suggest amending together clause 2 which specifies the effective date of the Bill.

These are all technical amendments and shall not affect the Bill's original amendments to the relevant provisions. I hope Members will support the amendments.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex V)

Schedule 3 (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 Health and Welfare 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 and Schedule 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.

CLERK (in Cantonese): Schedules 1, 2 and 4 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. 17) BILL 1999

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

Adaptation of Laws (No. 17) 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 Adaptation of Laws (No. 17) 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. 17) Bill 1999.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. If a Member exceeds the time limit of his speech, I shall be obliged to stop him.

First motion: Investigatory body on medical incidents.

INVESTIGATORY BODY ON MEDICAL INCIDENTS

MR MICHAEL HO (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

With the public becoming increasingly aware of their rights, the number of complaints related to medical incidents each year has also increased over the past years. In addition, there has been a marked increase in the number of medical incidents reported in the newspapers. What does this show? In my view, this shows that people are more and more concerned about their rights. It may also indicate that some complaint systems have failed to handle their cases satisfactorily, or they have no confidence in the mechanisms dealing with complaints. As a result, they have turned to the press.

The motion proposed by me today precisely deals with this question. It urges the Government to establish an independent body with statutory powers, which I shall tentatively refer to as the Medical Complaints Commission. Members are no doubt familiar with the Ombudsman, who deals with complaints related to administrative matters, but not complaints about clinical services. Members must also be familiar with the Consumer Council, which receives complaints related to consumer matters. The Medical Complaints Commission that I propose can ensure that complaints are dealt with properly in a similar manner — it will receive complaints, conduct investigations, conciliate or even assist complainants in collecting or sorting out information.

At present, the mechanisms for receiving complaints related to medical incidents are extremely fragmented. Those who complain against the Hospital Authority (HA) are luckier, since the HA has set up a Public Complaint Committee with public participation — Madam President, I have to declare that I am a Board member of the HA. Those who complain against the Department of Health are also complaining to the right authority, since this government department obviously receives complaints from the public and deals with any medical complaints related to services provided by the department. But what about private hospitals? People may have to complain to the Medical Council about doctors, or to the Nursing Council about nurses, or to some committee about different specialists. Since the public may not be very familiar with those specialties, it would be even more complicated.

First, the public should know that professional bodies such as the Medical Council and the Nursing Council are not organizations for dealing with people's complaints. According to the law, they are responsible for the ethics of the relevant professionals. Their focus is on the professionals, and not on dealing with people's complaints. They look at ethical matters and whether there is negligence on the part of the relevant professionals, rather than matters related to remedy. If some incidents are mishaps, the professionals will not be blamed. The complaints made to the professional councils will also end at that, since mishaps are mishaps. Then what about remedy? There is a mechanism for remedy. One must institute civil proceedings through the Court to obtain compensation.

Second, the professional councils will not help complainants to collect or sort out information. The ordinary people may just obtain a pile of medical records. It is by no means easy to induce evidence from the paperwork. Without any help, does every person with a pile of medical records know how to follow up and where he can complain to? If we have a Medical Complaints Commission, it can help to deal with complaints like the Consumer Council or the Ombudsman. That is why I hope colleagues could support my motion.

Actually, a Medical Complaints Commission is nothing new. Various countries such as the United Kingdom, Ireland and Australia have clear legislation setting out different functions of such organizations to help deal with medical complaints through various means.

I wish to talk about the example of Northern Territory in Australia. In Australia, there is a Health Care Commission which helps complainants to collect information, request papers and conduct investigations. It can also invite complainants and the accused to meet for conciliation. Besides, the Commission can help to arrange for both parties to discuss compensation behind closed doors to save the trouble of obtaining compensation through the Court.

Today, we need not discuss the detailed structure and powers of the Medical Complaints Commission yet. We only need to discuss the principle of requesting the Government to establish an independent complaint mechanism. If the Government supports this principle, we can spend more time in future to study different overseas systems and experience before deciding on the details of the Medical Complaints Commission in Hong Kong.

I wish to remind the Government that the public is rather dissatisfied with the existing mechanism. Last week, the Democratic Party conducted a telephone survey and succeeded in interviewing 516 people. When asked if they supported the setting up of an independent medical complaint office by the Government, over 80% of the interviewees said yes. The survey also shows that the majority of people have no confidence in and are dissatisfied with the existing complaint mechanisms, including the Medical Council and the Public Complaint Committee of the HA.

I noticed that the Government had openly said recently that it did not support the establishment of a statutory Medical Complaints Commission. I very much hope that the Secretary can clearly explain the Government's stand in his reply later. We wish to know if the Government does not wish to establish an independent Commission, what measures it will take to address people's dissatisfaction with the complaint system and to help them lodge medical complaints more easily and effectively. I so submit.

Mr Michael HO moved the following motion: (Translation)

"That this Council urges the Government to establish an independent statutory body with adequate public participation to deal with medical incidents and related complaints; this body should be vested with investigatory powers to ensure that the cases concerned will be dealt with fairly."

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

PRESIDENT (in Cantonese): Dr LEONG Che-hung will move an amendment to this motion, as printed on the Agenda. In accordance with the Rules of Procedure, the motion and the amendment will now be debated together in a joint debate.

I now call upon Dr LEONG Che-hung to speak and move his amendment.

DR LEONG CHE-HUNG: Madam President, I move that the Honourable Michael HO's motion be amended, as set out on the Agenda.

Madam President, the health care professions, be they nurses, allied health professionals or doctors, like all professions and trades, are to serve society and to serve it well. This they do through the practice of their professions. Any malpractice or any misconduct in carrying out that practice is thus unbecoming to that profession, and for which, the individuals should be disciplined through the imposition of appropriate penalties.

Since each profession has its own intricacy, such disciplinary functions are usually delegated by law to self-disciplinary bodies. This is the case with architects, engineers, accountants, lawyers, barristers and, of course, the different health care professions. The same arrangement occurs in most democratic countries, and it is only in autocratic states where the government might take over the role.

In Hong Kong, in the health care sector, such disciplinary councils have been established for various health care professions. There are thus a Medical Council, a Dental Council, a Nursing Council and recently, a Chinese Medicine Council. Since health care deals with life of people, rightly so, these councils and boards must work with great care to protect the public. Also, in each of these councils and boards, there are lay members to prevent "self-protectionism".

In the Medical Council, in particular, most hearings are held in public. Let me stress, Madam President, that such openness does not occur with most other non-health care professional councils.

So much for the discipline of professional people themselves.

When it comes to the standards and functions of health care institutions, disciplinary bodies are already in place. For hospitals and clinics of the Hospital Authority (HA), there is the Public Complaint Committee which, though established under the HA, consists of members both from the HA Board and outside the body but includes no HA employee. For non-public institutions, the Department of Health, being the registrar of these organizations, is by law the vetting and disciplinary body.

In short, Madam President, proper disciplinary infrastructure is in existence to protect the public when a health care institution or a member of a health care profession is not doing the job properly.

Regrettably, medical mishaps still occur and when these happen, sometimes the actions taken by the relevant councils are not up to the expectation of the public. The aggrieved patients and their families, of course, "cry foul" and when these occur once too often, the public, as expected, cast doubt on these disciplinary bodies and demand a change. I presume that this must be the basis of Mr Michael HO's survey result.

Yet, the inability of these boards and committees to meet public demand could be due to many reasons: the structure of the councils themselves, the way they function, or even the attitude of the chairmen and members themselves.

Let us look at the Medical Council as an example. Whilst its disciplinary hearings are mostly opened to the public and at least one lay member must be present to protect public interest, it is not short of problems.

Experience indicated that it is often served by prosecutors from the Department of Justice lacking experience in medical litigation, often ill-prepared and crumbled when confronted by legal heavy-weights representing the accused.

The Medical Council has always lamented that it is pointless imposing heavy penalties onto doctors only to be squashed by the Court of Final Appeal. Yet, this is no excuse to be lenient, for the Medical Council, as entrusted by the law, must do its utmost to set its standard undeterred by what might be the decision of any subsequent high court.

More, many of the decisions on disciplinary activities have sometimes led the public to perceive that this professional body exist for the profession's interests. To wit, of the 230 cases that went to the Medical Council in 1999, only four persons were convicted on the proposed charges. And only one was given the heavier penalty of deregistration, but had the sentence suspended. In short, very few were actually asked to pack their bags irrespective of their "crime".

Surprisingly too, recent media reports show that the Medical Council keeps rather poor records. No one actually knows the basis giving rise to the convictions and the level of penalties, nor were these revealed to the accused and the complainants.

There is, of course, the never-ending complaint that there is not enough lay members' representation in the Medical Council. Finally, the user-friendliness of the body leaves much to be desired.

Regrettably, these are not the problems of the Medical Council itself, but they also occur in other health care councils. However, are all these not correctable? As a start, there is no reason why more public participation could not be introduced into these bodies. The Medical Council has, for example, on its own proposed that there should be an addition of two other lay members into the Council.

Madam President, there are those who would, at this stage, call for a revolutionary change in the system as proposed in the original motion — to create a new independent statutory body comprising independent members and with investigatory power. Once and for all, the perception of "professional self-protectionism" or perhaps "cronyism" could be wiped away. But let me submit to you the possible fallacies.

As a start, professional discipline is based on standards and conducts of practice for which it depends very much on peer assessment than the letters of the law. It is the professions themselves which could determine what is proper practice and what is not. This is the practice that every profession adheres to and is revered, be it the health care profession, the legal profession, the accounting profession and so on.

An independent body to vet, investigate and impose disciplinary measures on medical incidents will require a very sizable membership indeed, comprising not only of lay members, but also adequate number of members from all the different health care disciplines.

Any independent body of less cumbersome composition would at best be a post box, where a possible misconduct of a professional is referred back to its relevant council.

Madam President, in these days where public accountability is highest on society's agenda, and rightly so, there is always a tendency to set up independent bodies. But does it mean to say that we should have an independent body to vet the function of our legal profession, our accounting profession, our engineering profession and so on?

Madam President, let me submit to you and Members of this Council that the proper function of any professions and trades is very much based on trust and respect. Yes, scrutiny is a must. This is perhaps more so in the health care and medical professions. For whilst medicine itself is a science, the practice of medicine is an art, for which there is no absolute right or wrong and for which the time-honoured patient-doctor relationship is the pivot of an efficient practice. Needless to say, both the patients and the doctors must play their parts with clear conscience.

Any denigration of this relationship will result in the doctors practising "defensive medicine" to save their own skin — something that will not benefit the patients, the doctors and, therefore, the society at large.

Madam President, much work has to be done by the health care profession to strengthen, if not regain, our respect and trust from patients and the society at large. This can and should be done by improving our self disciplinary bodies through enhancing public participation, transparency, efficiency and user-friendliness.

These disciplinary bodies owe it to the public, to this society in defending public interest. They should not be seen as an agent to protect the profession's interests. They owe it to their own profession, too, to weed out the black sheep and the undesirable elements to maintain the profession's good name.

Let them be the ultimate role models for other professional bodies to follow! I do so move.

Dr LEONG Che-hung moved the following amendment: (Translation)

"To delete "establish an independent statutory body with adequate public participation to deal with medical incidents and related complaints; this body should be vested with investigatory powers to ensure that the cases concerned" and substitute with "ensure that the Hospital Authority and the

statutory disciplinary bodies of different health care professions act to enhance the public participation, transparency, efficiency and user-friendliness of their complaint-handling mechanisms; this Council also urges the Government to strengthen the role of the Department of Health in monitoring health care institutions outside the public sector, so as to ensure that medical incidents and related complaints".

PRESIDENT (in Cantonese): I now propose the question to you, and that is: That the amendment moved by Dr LEONG Che-hung to Mr Michael HO's motion, be passed.

MR LAW CHI-KWONG (in Cantonese): Mr Michael HO just now mentioned that the Democratic Party had conducted an opinion poll on 500 members of the public. One of the questions asked was whether the public was aware of the channels available for complaints against medical blunders; 78% of the respondents indicated that no proper channel was available at the moment for complaints against medical blunders, and some people said that members of the public do not have any channel to lodge complaints. However, there are "channels for complaints", and in fact, too many "channels", that members of the public are confused as to which channel to pursue, and thus find their way blocked.

Last year, the Harvard experts said that the existing medical system of Hong Kong is a highly "compartmentalized", and in fact, this also applies to the medical complaint system. At present, the responsibilities of dealing with complaints against medical blunders are vested with many different departments. If complaints are made against hospitals under the Hospital Authority (HA), then such cases will be followed up by Patient Relations Officers and the Public Complaint Committee; if complaints are made against professionals like doctors and nurses, then the cases will be followed up by the relevant disciplinary bodies; if complaints are lodged against private hospitals, then members of the public will have to approach the Department of Health. Sometimes, some of these cases are even handled by the Consumer Council. Eventually, even if a doctor is convicted of professional misconduct by the relevant disciplinary body, the complainant will still have to go through the tedious procedure of applying for legal aid before their complaint could be settled through legal proceedings. What makes the matter more complicated is that members of the public may not

even have the slightest idea about who they should complaint against. For example, if a private medical practitioner performs an operation in a private hospital and a medical blunder is committed, the patient will have to lodge his complaint with the Department of Health if the private hospital is at fault. However, if the doctor is at fault, then the patient will have to lodge his complaint with the Medical Council. But, the problem is, how can the patient tell whether the doctor or the hospital is at fault? So, the basic question is, the patient will not even know where to lodge their complaint. If doctors, nurses and the hospital are all involved in a medical blunder at the same time, then the patient will have to lodge their complaint with three different bodies. This situation is really too complicated for many a helpless member of the public.

Let me cite an actual case as an example. There was this person who suspected that the medical charges for his mother's stay in a private hospital were too high and would like to lodge a complaint. He then lodged his complaint with the Consumer Council, the Medical Council and the HA, but his case was not accepted by any one of those organizations. Finally, he was informed by a patients' rights group that the Department of Health made should be the appropriate body to deal with his case. So, he contacted the Department of Health, but was not explicitly told whether his case would be taken up by the Department, and he also did not know whether someone would follow up on his case. Finally, this person chose to disclose his case to the media — the media became a channel for lodging complaints — and it was until then that he was able to draw any attention to his case. Eventually, the Department of Health a clear response in relation to this case at a meeting of the Legislative Council Panel on Health Services on complaints against medical services, saying that this person could lodge a complaint with government officers who are in charge of the registration of private hospitals in the Department of Health. The mother of this person was discharged from the hospital in 1992, but it was until the morning of 13 December 1999, and that is, after seven years, that he learned from a meeting of the Panel on Health Services where to lodge his complaint.

All this goes to show that the existing medical complaint system is very difficult for the general public to comprehend. If we can establish an independent statutory body to deal with these medical blunders, then members of the public will know that they can approach this body for complaints. Of course, as we have just mentioned, the complaints may still involve doctors, other medical professionals or hospitals, but if an independent statutory body is established to deal with medical complaints, then patients will not have to acquire

knowledge on a medical complaints system which is too complicated for them. Therefore, I hope that Honourable colleagues will support the original motion. Thank you, Madam President.

MR ALBERT HO (in Cantonese): Madam President, the motion moved by Mr Michael HO today is actually not targeted at a particular group, and it is definitely not against the Medical Council. I think that Dr LEONG Che-hung made some very fair and reasonable comments when he talked about the existing operation of the Medical Council, and I believe Members will agree with me on this point. For example, first of all, outsiders are now under the impression that the chairman and vice-chairman of the preliminary inquiry group will do an initial screening before a case is established and passed to the preliminary inquiry group, which will then conduct a disciplinary hearing if it thinks that there is a case. During the period from 1995 to 1999, the percentage of complaints which were found to be justified ranged from 2.8% to 7.9%. Very often the complainants will only receive a letter saying that there is no case but no explanations will be given in the letter. Secondly, I will first like to talk about the Medical Council. As regards the procedures of the Council, there is no doubt that some improvements have been made. For example, disciplinary hearings are now opened to the public and the number of professional members in the Council has been increased — Dr LEONG has just rightly pointed out that the number of lay members should also be further increased. However, as Dr LEONG has also clearly pointed out, the greatest deficiency in the system lies in the Council's failure to explain its actions. For example, after a hearing is conducted, the Council will not explain whether it thinks that the complainant has a case? Whether it thinks that the accused has committed any act of misconduct? What has really gone wrong? Or, under what circumstances will the accused receive warning letters, and under what circumstances will their names be published in the Gazette or have their licences suspended? All these are usually left unexplained, and complainants are often left in the dark and they also do not know what further channels of redress there are. Though, we can say that the complainant may always follow up on the case through the Court, but is it an appropriate channel? Moreover, not every case can be taken to the Court.

Madam President, we have to reiterate that we are not targeting at any particular group or the Medical Council by sponsoring this motion, for we are of the opinion that many of the unfortunate medical blunders cannot simply be attributed to misconduct or negligence on the part of doctors. Sometimes, the

circumstances surrounding a case may be even more complex, but since there are limits on the powers of the Medical Council, it may not always be possible for it to conduct a more comprehensive inquiry or hearing. Take the example of a well-known incident which occurred in the past one or two years — the problematic renal dialysis machine of the Hong Kong Sanatorium and Hospital, and we can see that this is the result of problems in the system. How did this happen and why did so many patients die? There was also the example where wrong blood transfusion took place at the Queen Mary Hospital which led to the death of a critically injured young man. The problems involved in the case of wrong blood transfusion are rather complicated. These include the problems with the whole medical system, the training of health care personnel, or even whether resources are adequate. If resources are inadequate, then nurses who have to work long hours will have a very heavy workload and easily make mistakes. All these call for a thorough investigation. Under the existing system, if medical blunders do occur, there may be times when hospitals have to conduct internal investigations, for not all cases will be referred to the Medical Council. However, is it appropriate to ask the management of hospitals to look into its own system? Will there be cases where, in the opinion of the management, will adversely affect the image of the hospitals or institutions and thus prevent them from conducting full-scale investigations? It is only natural that outsiders will have doubts in this area.

As regards the most unfortunate cases, where patients have died, hearings will have to be conducted by the Coroner's Court and experts may have to be called in the course of the proceedings. But since court proceedings are very rigid, it may not be the best channel, for complainants are not given sufficient opportunities to ask questions. As such, I do not think that this is the best course of action for it will not do much to help the complainants get a full picture of the whole incident. As a result of the cases I have handled in the past, I have come to realize that in the absence of a Medical Complaints Commission, members of the public may have difficulty in understanding the more complicated cases. Let me cite a few examples.

The first example involved an injured young person who was given anesthesia and connected to an oxygen inhalator by a nurse in preparation for an operation. However, he suddenly came around during the interim before the operation; such things sometimes happen if the waiting period is too long. Since there was no nurses around, the young person disconnected the oxygen inhalator on his own and the machine failed to sound any alarm. As a result,

that young man is now lying in coma in the hospital due to the lack of oxygen. Whose fault was this? Did this happen because the machine had malfunctioned, or was it the fault of the health care personnel or the system? The second example involved a patient who suffered from blood tumor and need to undergo an operation. This patient was transferred from a hospital in the New Territories to a public hospital in Kowloon. He had to wait for 11 hours before the hospital took an X-ray of his brain and another 12 hours before the operation was performed. During the 20-odd hours in the interim, he screamed in agony and vomitted, and his wife who was at the end of her tether was forced to tie up his mouth with a piece of string. After the operation, it was written in the report that the operation was successful, but if that were the case, then why did the patient die? According to the findings of our subsequent investigation, it was found that the cause of his death might be due to the fact that his mouth was tied up, and his vomit has flowed into his bronchitis. Eventually, the cause of his death was adjudged to be pneumonia. Then who was actually at fault in this case? Have we not conducted a thorough investigation, then could we have easily found the answer? Though most victims of such cases are offered compensations, it did nothing to help to improve the entire system which is still deficient.

Furthermore, there is the problem of culture and whether certain treatments are appropriate? There is this case in which a gynaecologist applied air in clearing up a blocked fallopian tube of a woman who had been given a dilatation and curettage operation before that. The patient eventually died as a result of the air bubbles in her heart. All the doctors of Hong Kong found this gynecologist was in the right but all the overseas experts pointed out in their reports that the gynecologist was at fault and queried why air was applied instead of carbon dioxide? Air will dissolve in the blood under pressure but turn into bubbles once depressurized. If thorough investigations have not been conducted, then how can these incidents be rectified?

PRESIDENT (in Cantonese): Mr HO, your time is up.

MR ALBERT HO (in Cantonese): With these remarks, I support Mr Michael HO's motion.

MR NG LEUNG-SING (in Cantonese): Madam President, recently, there have been complaints against the quality of medical services and medical blunders, and this has aroused concern among members of the public. At least, on the surface, it seemed that these cases involved different degrees of professional misconduct. However, complainants and patients were unhappy about the level of penalties imposed on the health care professionals against whom complaints were made, and this has led to further complaints on the transparency and imparitability of the complaint mechanism. With the rapid development of society and increasing awareness of their rights, patients do have a higher expectation on the quality of medical services. Thus, if the handling of medical blunders and the complaints mechanism are really far from desirable, then the medical professional bodies should really work with the relevant government departments to introduce improvements.

It has always been an accepted principle in Hong Kong that professional bodies should exercise self-regulation. The rationale behind this principle is to try as far as possible to avoid the situation where professionals are overlooked by those outside the profession. With the existence of such a regulatory system, the various professions in Hong Kong such as lawyers, doctors, accountants, engineers, and so on have been able to maintain their independence and develop their professional standards through continuous self-regulation and improvement. And, they have won recognition and respect from members of the community. Under such a mechanism, it is of utmost importance to the development of the profession that disciplinary hearings and investigations can be conducted under the leadership of those in the profession for they are the only persons who can fully understand the professional aspects and intricacies of their own operations. One cannot help having reservations about the question of how a totally independent body can be able to monitor a profession that deals with matters of life and death? How can such an independent body be able to conduct thorough and proper investigations and pass fair verdicts in relation to this profession, so that such investigations and verdicts will have a positive and beneficial effect to the future development of that profession? I recalled that recently there were discussions in the community on the professional ethics and discipline of the media, and it was eventually agreed that self-regulation on the part of the media would be far more satisfactory than other forms of regulation. Since similar treatments should be accorded to all professions and trades, the same argument should apply to other professions as well, and this naturally includes the medical profession.

On the other hand, a self-regulatory system for professional bodies, especially one which regulates the professional performance and ethics of the practitioners, must also be basically in line with the aspirations of the community at large. Since a certain profession has been recognized by the community and accorded a respectable status, it should also have a self-regulatory system. Moreover, members of the public will also naturally expect that the professional services provided by this profession will be up to standard and can meet the demand of the public. In order to win the trust of the public, the self-regulatory system of this profession should also be fair and open. So, in order to enhance the creditability of the self-regulatory system, it is essential that its disciplinary procedures should be opened to the public so that the public can have a better understanding of the mechanism, and the transparency of the system should also be enhanced.

As regard the mechanism under the Medical Council for dealing with medical blunders and complaints, I think that the composition of the Council has already provided a channel for public participation. As to whether the percentage of lay members in the Council should be increased, I think it is worthwhile for us to pursue this issue in a rational matter; and further consideration can also be given to whether the transparency of disciplinary hearing procedures should be enhanced. Generally speaking, though members of the public may not be able to understand the professional aspects and intricacies of a disciplinary hearing, I think we cannot overlook the fact that, apart from being fair and impartial to members of the profession, a proper disciplinary body should also allow the public to see that impartiality is maintained in the whole process.

Madam President, on the whole, I am of the opinion that on the one hand, the mechanism for handling medical blunders and complaints should not allow for "cronyism" and on the other, it should also not allow "those in the profession to be regulated by outsiders". A more acceptable way would be for the profession to improve its own self-regulatory system and enhance their creditability. For these reasons, I support the amendment.

MR HOWARD YOUNG (in Cantonese): Madam President, medical service and people's livelihood are closely related (sorry, speaking and the microphone are also closely related sometimes). The Liberal Party maintains that the Government must ensure every sector of the local medical system caters to the

interests of the public. As the community develops, patients' interests are given significant attention. Therefore the authority concerned must make improvements and provide the people with series of medical services of a high standard because the series of medical incidents that happened some time ago have undermined the people's confidence in our medical services.

The Liberal Party does not agree with the suggestion of the original motion to set up another body in addition to the existing investigative body. This would mean duplication of efforts and a waste of resources. We hold the view that if we need to improve the complaint mechanism, we should start with the existing body. We should enhance its transparency and public participation and deal with all kinds of medical complaints in a practical manner.

At the moment, there are two bodies dealing with medical complaints. One of them is the Medical Council, which carries out investigations into all complaint cases received in respect of registered doctors in Hong Kong. At present, in deciding whether to proceed further with a complaint at the initial stage, the complaint is referred to the Chairman and Deputy Chairman of the Preliminary Investigation Committee, both of whom being doctors. To enhance accountability and public participation, the Liberal Party is of the view that at the initial stage when the Committee decides whether to accept the complaint, a lay member may be added to it and if only one of the Committee members thinks there is a need to investigate, the Committee may conduct an in-depth investigation. In this way, outside input can be facilitated in dealing with complaints and more justice can be maintained for the benefit of the complainant. In the investigation, foreign experts may be invited to sit in attendance during hearings. Then the impression of "cronyism" may be improved.

In fact, of the many cases referred to the Medical Council which were finally not established, there are many which involve issues other than professional misconduct. The Liberal Party welcomes the "Quality Assurance Committee" recently proposed to be established by the Medical Council. The proposed Committee specializes in dealing with cases where doctors perform unsatisfactorily. It can gather information relating to practice standards of doctors and help them to continually upgrade their professional standards. The Administration should consider conferring statutory power on the Quality Assurance Committee so that it can carry out its work more effectively.

Another body that handles complaints is the Public Complaint Committee of the Hospital Authority (HA). The Liberal Party welcomes the new measures proposed earlier by the Committee to expedite the handling of complaints and to enhance transparency. One of the proposals is to change the frequency of meetings from once to twice a month, and to make pledges to complete investigation in three months. The Liberal Party hopes the new improvement measures can be implemented and the relevant authorities can continue to monitor the progress of the matter so that there is further improvement in the complaints mechanism to boost the confidence of the people.

The Liberal Party agrees with the proposal in the amendment, that is, strengthening the role of the Department of Health in monitoring health care institutions outside the public sector. To ensure complaints of patients are dealt with fairly, the Department of Health can consider imposing a condition for the renewal of a licence whereby reference is made to the operation of the complaints mechanism and its effectiveness and the manner in which complaints are dealt with in a private hospital. This will make private hospitals give emphasis to and strengthen their complaints mechanisms. The Department of Health may also provide guidelines to private hospitals, ask them to make reference to existing complaints mechanisms in public hospitals and let people who are not doctors and patient representatives take part in the handling process, thereby increasing the transparency of the mechanisms.

Madam President, a good complaint mechanism can only serve as a remedy to a medical incident after it has happened. In the long run, we need to improve the quality of medical services to reduce the number of complaints. The HA should improve the understanding of the public to medical services through all possible channels. It should also make improvements to the present medical assessment and examination system and risk management. Indeed, a number of medical complaints arise from a lack of sufficient communication between medical personnel, patients and patients' families. The authority concerned should enhance its communication with patients and their families. Medical personnel should also take the initiative to contact patients and their families and explain to them patiently the details of their sicknesses in order to minimize confrontations arising from misunderstanding.

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

MR ANDREW CHENG (in Cantonese): Madam President, my speech is mainly about my views on the Public Complaints Committee (PCC) of the Hospital Authority (HA).

Very often, my Ward Office receives some medical complaints. Most of the complaints are lodged against hospitals under the HA. In the past year and a half, my office received 39 complaints, 37 of which involved public hospitals.

I found many of the complainants did not know the existence of the PCC, while some did not understand the work of the PCC. Although members of the PCC are independent individuals, staff of the secretariat who receive the complaints are staff of the HA. So, those people who lodged complaints thought it was the HA that was dealing with the complaints and they were worried that their complaints might not be treated fairly. Hence they would rather complain through other channels. One of the channels is the Members' Office from which they would seek assistance. If all Medical complaints were dealt with by an independent Medical Complaints Commission, people would be able to tell where to turn to for complaints and they would not query its impartiality.

When people turn to a Members' Office for help, all we, as Members, can do is refer the case to an appropriate body as a matter of course. Firstly we would write to the relevant hospital. If the complainant is not satisfied with the reply from the hospital, I would refer him or her to the PCC. In some overseas countries, such work is undertaken by offices of a Medical Complaints Commission. However, in Hong Kong in the absence of a unified complaint mechanism now, such work can only be done by other people, such as councillors at all levels like us. I trust Members in this Chamber must have done similar work through their Members' Offices. But this is an inefficient way of handling complaints and the service provided to the public is unstable in quality.

In my numerous contacts with the PCC, I found it to be rather open-minded compared to other complaints bodies. For example, it tries to mediate between parties to a complaint and lay down performance pledges. What should be applauded and should therefore be a model for other organizations is that the PCC interviews the complainant, so that it can understand the case more comprehensively and avails itself of the opportunity of listening to both sides of the story rather than relying on some information unilaterally provided by the

hospital before deciding whether the case is justified. A decision made this way is more credible in the eye of the public. Nevertheless, all these steps taken and measures adopted by the PCC to improve its operations still fail to remove what in my view is a stigma that the PCC is a "paper tiger" for it lacks the actual power. There are three reasons why I think the PCC is a "paper tiger".

Firstly, much of the work of handling complaints is done by the secretariat. For instance, the secretariat receives complaints and makes referrals. Some of the cases I have referred to the PCC were referred by the secretariat to the hospitals for investigation, but that was not made known to the complainants or my office.

In addition, assessing complaints, gathering information from hospitals, appointing experts and seeking legal opinions are all part of the work of the secretariat. In examining complaints, PCC members would rely on the information provided by the secretariat. The problem is that the secretariat does not just report to the PCC. Staff of the secretariat are also responsible for the administrative work in the HA. Thus there is a role conflict. Complainants and the public often suspect the information provided by the secretariat staff is incomplete and unfair. They would even suspect they are protecting HA medical staff. Moreover, complainants cannot attend meetings of the PCC. They do not know which experts have provided opinions and they know nothing about how hearings are conducted and hence cannot supply further information in the course of examination. All these factors will significantly compromise the ability of the PCC in dealing with complaints.

Secondly, when the PCC summons doctors to attend hearings, the hospitals concerned can refuse and hearings may proceed in the absence of doctors.

Thirdly, even if the PCC ultimately regards a complaint as established, what hospitals often do is no more than apologizing in writing or orally. I understand that some complaints against public hospitals were found to be justified by the PCC and the complainants later followed up by making claims through instituting legal actions. After the Legal Aid Department approved their applications for legal aid, the HA then proposed a settlement and compensations but stipulating in the relevant terms that the details not be released to the public.

Thus it can be seen that there are a number of institutional constraints on the PCC. If, as suggested by Dr LEONG Che-hung, the mechanism for dealing with complaints by the HA is to be improved, there should at least be an independent secretariat. The PCC should be supported by health care staff and administrative staff, including the appointment of expert witnesses. The PCC should also be empowered to solicit information, and to summon relevant persons for assistance. In addition to examining complaints, the PCC should also be empowered to make suggestions regarding penalties and improvements. Only in this way can we ensure complaints against medical incidents are fairly dealt with.

The framework mentioned by me just now is tantamount to a Medical Complaints Commission for public medical services in its terms of reference. Why do we not expand the institution's supervisory role to the private sector? This would be cost-effective, convenient and provide a unified system in dealing with medical complaints.

With these remarks, Madam President, I support Mr Michael HO's original motion and oppose Dr LEONG Che-hung's amendment.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I am speaking on behalf of the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment of Hong Kong. We are fully in support of Mr Michael HO's original motion on the mechanism for investigation into medical incidents. Dr LEONG Che-hung's amendment serves to remove the most important part of Mr HO's motion and makes minor changes to the existing mechanism. In view of that, we cannot support the amendment.

Why do we take this kind of stance? At present, there are three institutions through which medical incidents are dealt with. The Public Complaints Committee (PCC) deals with complaints against public hospitals; the Department of Health (DH), complaints against public out-patient clinics and those against private hospitals; and the Medical Council (MC) and some professional bodies, complaints against professional conduct of doctors in private practice. These complaint mechanisms are overlapping each other and there are many grey areas among them. More often than not, when patients want to lodge complaints, they do not know where to turn to and they are confused. As we can see, many people have become very sceptical about medical incidents that

took place in recent years. Their criticisms will have a direct impact on the prestige of the medical system and people working in the medical profession. So if we hold on to these institutions and make no adjustments to them, the image of the entire medical profession would be tarnished ultimately.

Madam President, regarding the PCC, Mr Andrew CHENG has said a lot about it just now and I do not intend to repeat his points. I think in the process of handling the complaints, people are invariably given the impression that the PCC and the medical staff are trying to protect each other. Although there are some non-medical members in the PCC, when the outcome of a case is at variance with the expectations of the public, people naturally tend not to trust the PCC because it is directly under the HA, no matter how reasonable the outcome is.

In addition, there is obviously a fundamental problem in the way complaints are handled by the DH regarding complaints against public outpatient clinics and those against private hospitals. For example, after the accident that happened at the Hong Kong Sanatorium and Hospital last year, it was found that there was obviously no mechanism for penalty. In appointing some people to deal with the accident, Dr LEONG Che-hung, who is someone related to the hospital, was also among those appointed. How can people have any trust in the system? We do trust Dr LEONG is impartial, but not everyone has worked with him and how can his appointment be convincing?

As regards letting the Medical Council handle complaints against the professional conduct of private doctors, one is often disappointed, frankly speaking. Some recent cases have proved to be disappointing too. We are disappointed not because the decision made by the Medical Council was right or wrong but because there may well be "cronyism", which is suspected to exist. As everyone knows, doctors in Hong Kong come mainly from two local universities, that is, the University of Hong Kong and the Chinese University of Hong Kong. People naturally suspect there is "cronyism" even though in reality there may not be any.

Madam President, in the three institutions mentioned by me just now, we have people from the same profession passing judgment onto their peers. Unless people are convinced of the decisions of the incestuous people appointed to deal with the complaints, the entire mechanism would fail. I must stress one point. Medical services, private or public, are services needed by every

household. What shall we do if the public have no faith in the relevant complaint mechanism?

Because there are three mechanisms for complaints, people do not know which one to turn to when they want to lodge complaints. They are confused. So, I think the Government should reorganize these mechanisms. This is very important. Last year, in the Consultancy Report on Hong Kong's Health Care Financing and Delivery System prepared by the Harvard team, it was suggested that all complaints against medical services be unified under an independent body, which is also consistent with the public demand. It will put an end to the present situation where the HA deals with complaints against public medical service; the DH, complaints against private doctors and the MC, complaints against professional conduct of private doctors.

Madam President, many people are criticizing the present system but I do not understand why whenever we discuss the issue in the Panel on Health Services, the Secretary would just say the problem could be solved if more outsiders are appointed to take part in dealing with complaints and if transparency is enhanced. I do not agree to that. At the moment, there is severe distrust among the public in our complaints mechanism. If the Government continues to be stubborn and act against people's wish, public faith in our medical system will be diminished. They will query the quality of our medical services. In view of this, we would like the Government to consider our suggestions and set up an independent statutory body with public participation to deal with medical incidents and related complaints. This can provide a convenient channel for the people to lodge complaints and do justice to workers in the medical profession (if they have not made any mistakes). I hope the Government can respond to the people's request for an independent complaints mechanism.

Moreover, I would mention that I am at a loss as to why the limited resources within the system with overlappings in its work have not been put to good use when the Government is talking about enhanced productivity, drastically reducing the number of front-line civil servants and contracting out its work.

Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, I think the most important point about the debate today is whether or not we should establish an independent monitoring mechanism for medical incidents. I support the motion of Mr Michael HO, because from the medical incidents in the past, we notice that the spirit behind such a proposal is not only supported by us, but also shared by complainants in general. I think there are several reasons for this.

First, I very much agree with Miss CHAN Yuen-han that our problem now is not so much about any lack of complaint mechanisms. Rather, and very regrettably, the problem is that the relevant mechanisms are not well known to the general public, with the result that people often do not know under what circumstances they should approach which committees. As people are completely ill-informed, they often feel that they have no channel to redress their grievances. If we can establish an independent mechanism similar to the Independent Commission Against Corruption (ICAC), people will have a clear idea of with whom they should lodge their complaints. This is the best solution, for it can enhance efficiency on the one hand, and make channels of complaints easily accessible to people on the other. Moreover, it can also facilitate the handling of complaints, thereby increasing the credibility of the complaint mechanism.

Madam President, I would say that credibility is very important. If complainants simply do not trust the complaint mechanism, what is the point of having such a mechanism? Although I have not handled too many medical incidents so far, my limited experience can still tell me that complainants simply do not have any confidence, any trust, in the existing complaint mechanism. Why? Madam President, I can give one example to illustrate this.

In 1996, I handled five cases of "vegetable babies". The community as a whole was very concerned about these incidents at that time. Despite my efforts to lodge complaints through various channels, I still failed to get any satisfactory answers. Eventually, in order to dissipate the concern of the community, the Government set up a three-member ad hoc group composing entirely of medical personnel and vested its three members with the sole responsibility of handling these medical incidents. This three-member group made many recommendations, but it failed to identify any causes of the medical incidents in the end. It simply concluded the whole matter by saying that some improvements in administrative procedures were required.

However, is it really true that all these incidents did not involve any blunders? Can all the problems be solved simply by making some improvements in administrative procedures? Madam President, the matter did not thus really come to an end. The mothers of the "vegetable babies" continued to pursue their complaints doggedly, because they were not satisfied, and they were convinced that the investigation of the three-member group was biased. Why did they think so? This was because, very strangely, the ad hoc group did not interview the parents of the babies even once throughout the entire investigation process. Given that the conclusion was reached without interviewing the parents concerned, can one possibly be convinced that it was impartial? Can one possibly accept the investigation as independent, complete and convincing? In the end, the mothers, all feeling dissatisfied, brought their cases before the Court. So far, four out of these five cases have been settled. How have they been settled? The Hospital Authority has been ordered to pay compensation to them.

Had the mothers not been so persistent in the pursuit of their complaints, the public might have thought that their cases were just very trivial, no big deal at all. Some might even think that these mothers were just creating troubles for themselves. However, these mothers all pursued their complaints doggedly, and as a result, they proved that the investigation finding of the three-member group was wrong, and that they should be entitled to compensation. Had there not been an "obvious" problem, why was the payment of compensation ordered? The reason involved is very easy to understand.

Therefore, it can be seen that the existing complaint mechanism is completely unable to help complainants, nor can it even command their confidence. Therefore, we must establish an independent mechanism before we can help build up the confidence of complainants.

The practice of "cronyism" in medical practice is even more alarming. Madam President, let me give one example to illustrate my point. One out of the five cases mentioned above is still unresolved. When the mother concerned approached the Legal Aid Department for assistance, a solicitor there asked a certain famous doctor in Hong Kong to go to the hospital to assess the conditions of the baby, because the baby had not yet died at that time. However, the doctor replied that he would not go to the hospital to observe the conditions of the baby, and that he was only prepared to make an assessment by reading the relevant papers. When the solicitor asked the doctor for a reason, he replied

that he could not possibly do something like this because he knew the medical personnel of the hospital personally. And, he further said that if he really did as requested, he would find it very difficult to continue to work as a doctor here. In the end, since an assessment could not be made, the case has so far remained unresolved.

This example is really very saddening. It is saddening that such a phenomenon should have occurred in the medical sector of Hong Kong — a doctor refusing to make an assessment in order to maintain his relationship with other medical personnel even when this means a possible sacrifice of justice in a medical incident. Is this not saddening?

I am sure that without an independent committee of inquiry, it will be very difficult to have any independent investigation at all. Actually, following the revelation of the five cases of "vegetable babies", some medical personnel immediately said to me, "LEUNG Yiu-chung, doctors will certainly keep cursing you for that, saying that you are up to nothing good. These incidents occur very often in the medical sector anyway. Why should you make such a big fuss?" This is precisely the view held by many other people — that is, this is simply how people think the medical sector gets things done. If we retain such a mechanism, how can the problem be solved?

The Harvard Team report contains several recommendations on this. It points out that our medical care system is characterized by a lack of checking and monitoring mechanism for the protection of patients' rights and interests. The existing system is indeed lacking in such a mechanism of checks and monitoring. For example, of the 28 members of the Medical Council of Hong Kong, only four are lay members chosen from the community. There are only four such members out of a total membership of 28. What is the implication of this? How strong are their voices and strength inside the Medical Council? The rest of the Council members are all doctors, professionals in the field. So, once these professional members have expressed their views, can these four lay members still say anything to the contrary? It can thus be seen that such an existing system is actually incapable of eliciting any genuinely impartial opinions, for the members of the Medical Council often do not dare to voice their real opinions due to pressure of one kind or another.

Madam President, I so submit.

MR GARY CHENG (in Cantonese): Madam President, there is not so much a lack of any complaint mechanism for medical incidents in Hong Kong. Quite the contrary, there are many such mechanisms, only that they have failed to function to the satisfaction of the community. Besides, members of the public also do not think that these mechanisms are at all conveniently accessible.

The existing complaint mechanisms can be broadly divided into several categories. The mechanisms belonging to the first category deal with administrative blunders occurring in medical institutions, and those belonging to another category deal with complaints about professional conduct. The existing mechanisms are in fact very complex, involving four institutions and three different sets of procedures. For example, complaints relating to administrative blunders in public hospitals are dealt with by the Public Complaints Committee under the Hospital Authority (HA); complaints relating to public out-patient services and private hospitals are dealt with by the Department of Health; and, complaints about the blunders of individual medical professionals such as doctors or nurses or about their professional conduct are dealt with by the relevant professional bodies themselves. In all cases, if a victim wishes to seek compensation, he or she must instigate civil proceedings.

I may have to say "touch wood", but I am sure that really no one would like to see the frequent occurrence of these incidents. It may well be too late for a person to find out what complaint channels there are after a medical incident has occurred, for by then, he may have already lost his gall bladder, or his intestines, or some other organs. In brief, he may have been victimized already. It is thus unreasonable for us to ask people to get to know the complaint mechanisms only after they have been victimized. There is not so much a lack of mechanism now; rather, the whole problem is just about the unsatisfactory operation such mechanisms. If we are to achieve efficiency, we must lay stress on the independence, openness and impartiality of the existing mechanisms. If not, and if we only introduce some improvised repairs, we cannot possibly redress people's grievances.

One example is the HA. It is both the provider of public hospital services and a part of the relevant complaint mechanism. This may give rise to role conflicts. Under the existing mechanism, there is not any independent review body, which is why even if the HA is really impartial, outsiders may still cast doubts on its impartiality. This is all a question of image. The Department of Health is responsible for issuing licences to private hospitals. It also handles

complaints about private hospitals, but it has no authority under the existing mechanism to penalize such hospitals for their errors or problems. It may well be argued that the performance of a private hospital will be taken into account before it is issued a licence, but I do not know how much weighting is actually given to this factor when a licence application is being considered. This leads people to doubt whether the Department of Health is really "a tiger with teeth". On the Medical Council of Hong Kong, which handles complaints about medical practitioners, some Members have already mentioned the problem of "cronyism". I do not intend to say whether such an allegation is true with the entire medical profession, but even if the allegation is not substantiated, efforts must still be made to convince the public that their complaints are always handled under impartial procedures.

There are already so many complaint mechanisms, so the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that even if we really adopt the proposal of Dr LEONG Che-hung to enhancement the degree of public participation in the internal complaint mechanisms of the HA and the relevant professional bodies, we can at best achieve very minimal enhancement in their credibility and efficiency only. These mechanisms will still remain highly complex and cumbersome, and we cannot possibly tackle the root of the problem. The proposal will only make the complaint procedures even more complex, creating more obstacles in the process and thus adding to people's confusion. Therefore, we will support the original motion of Mr Michael HO, which calls for a centralized complaint mechanism with increased transparency. We think this is the only way to achieve genuine public accountability.

Having said that, Madam President, I must still make clear one point. While we support the establishment of an independent complaint mechanism to handle complaints relating to medical incidents, we also think that the relevant professional bodies should still be allowed to play a major role in handling complaints relating to the professional conduct of medical professionals. We have no intention of interfering with how these professional bodies monitor the professional conduct of their members. We think that the Government must do something to address the aspirations of the public, and the things it does should not, however, supersede the internal complaint mechanisms of the relevant professional bodies. Besides, if the professional bodies really wish to command total public confidence, they should really follow the prevalent trend and abandon their "closed-door" and "opaque" approach. They should open themselves up where appropriate, so as to let people know how they are operating.

For the reasons mentioned above, we support the original motion moved by Mr Michael HO, which calls for the establishment of an independent statutory body to handle complaints relating to medical incidents.

Thank you, Madam President.

DR RAYMOND HO (in Cantonese): Madam President, in the past few years, quite a number of medical incidents occurred in Hong Kong, some which were even of a very serious nature, for they caused the death of the patients concerned. These medical incidents involved both public medical institutions and also private hospitals. Since incidents of this type involve the life of all those receiving medical treatment, we must address the relevant problems properly and carry out thorough investigation into their causes, so as to avoid the repetition of any similar unfortunate incidents. People who are affected should also lodge their complaints with the relevant authorities, so as to ensure the impartial handling of their cases. This can also help identify the causes of medical blunders and enable the authorities concerned to make prompt improvements.

In Hong Kong now, we already have quite a number of relevant complaint channels for medical incidents, such as the Public Complaints Committee under the HA, the Medical Council of Hong Kong and the Department of Health, but, still, many people may not know which of these should be the proper channels for their complaints. That is why many people simply choose to disclose their cases to the mass media. Admittedly, the existing channels for medical incidents are not operating very satisfactorily, but this does not mean that the authorities cannot improve them.

What is equally important is that we must try to build up the confidence of the public in the existing complaint channels, including the departments handling medical incidents and the statutory bodies on the regulation of professional conduct. Very often, these departments and bodies will handle complaint cases purely from the perspectives of medical professionals. When handling their cases, they often look at the whole thing from their professional perspectives. As a result, complainants may well question whether their cases have been dealt with impartially. In view of this, the authorities concerned should consider the possibility of enhancing public participation in these complaint bodies. Such an arrangement can enhance their transparency on the one hand, and foster public confidence in them on the other.

Although the existing complaint channels may not be so clear, I do not agree that an independent statutory body should be set up to handle medical incidents or related complaints. Quite the contrary, I think that we should focus on making the existing channels fulfil their designed functions. The relevant authorities should, after enhancing public participation in these complaint bodies, help them build up an image of increased openness, so as to foster public confidence in their handling of complaints.

Besides, the Government should also strengthen the role of the Department of Health in monitoring medical institutions outside the public sector. When people encounter problems in the course of receiving treatment in private medical institutions, there should also be appropriate channels for them to lodge complaints, and their cases should also be handled fairly.

With these remarks, Madam President, I support the amendment moved by Dr LEONG Che-hung. Thank you.

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

(No Member responded)

PRESIDENT (in Cantonese): Mr Michael HO, you may now speak on Dr LEONG Che-hung's amendment. You have up to five minutes.

MR MICHAEL HO (in Cantonese): Madam President, first of all, I wish to thank Dr LEONG Che-hung for moving his amendment, because with his amendment, our debate today can focus on whether or not an independent complaint channel for medical incidents should be established. As regards the other points contained in his amendment, such as increasing the transparency of the existing mechanism, I can support them.

Honourable colleagues, I think the amendment of Dr LEONG Che-hung has actually led us to discuss one very important point — the point on whether we should set up an independent complaint mechanism. His amendment proposes to strike off the proposal on establishing an independent complaint mechanism for medical incidents from my original motion. Is it really true, as claimed by

Dr LEONG, that only totalitarian countries will adopt such a mechanism which sees the government replacing the role of professional bodies? Madam President, I am not saying that the Government should replace the role of professional bodies; I am just asking for the establishment of an independent mechanism. Just look at some non-totalitarian countries like the United Kingdom, Australia and Ireland, and we will see that the procedures to be followed by their commissioners for complaints are clearly set out in the relevant laws. In brief, these commissioners for complaints are not supposed to replace the role of professional bodies; they are simply supposed to assist complainants in pursuing their cases.

The recent series of rulings reached by the Medical Council of Hong Kong has surprised many. It has recently disclosed some cases in which the doctors concerned were found to have performed some unnecessary and inappropriate surgeries, but the only penalty for these doctors is no more than a mere letter of condemnation. Members of the public are really baffled by such rulings.

Is it really true that under an independent complaint mechanism, complaint cases will never be referred to professional bodies for handling? The answer is definitely in the negative. Before every Member today, there is a letter which contains several tables listing out the relevant mechanisms in different countries. From these tables, we can see that the mechanisms in these countries do offer many kinds of assistance, but in the end, all complaint cases will be referred to the relevant professional bodies for professional rulings. Therefore, these mechanisms do not replace the role of professional bodies, and their role is just to provide assistance to complainants.

Dr LEONG says that the establishment of an independent mechanism may impair the relationship between doctors and patients. No one will want this to happen, but then again, may I ask who actually are the people who first impaired the mutual trust between doctors and patients? The truth is that the good relationship built up over the years between doctors and patients has now been impaired by some black sheep in the profession. When the reputation of the profession is damaged by its own black sheep, no one can possibly give it any help; more black sheep and more similar incidents will inevitably mean more damage. This is precisely what we want to deal with. If more and more people fail to see why such lenient penalties are imposed, and if we find that the findings of more and more investigations into cases are unreasonable, then the damage to the relationship of mutual trust is bound to increase.

If Members wish to see an independent committee which can help people pursue their complaints relating to medical incidents, they will have to oppose the amendment of Dr LEONG Che-hung; if they see no need for an independent committee — if they think that simply by making improvised repairs to increase the transparency of the existing mechanisms, they can already achieve their desired results, or the desired results of the Hong Kong people, then they may consider supporting Dr LEONG Che-hung's amendment.

I so submit.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I should like to express my gratitude to Mr Michael HO for moving this motion today. I am also grateful to Honourable Members for the views they raised just now. We will definitely take their views into consideration when investigating how the existing mechanism for handling medical incidents and related complaints could be improved.

Just now Members have referred to the existing complaint mechanism in their speeches. Here, I should like to clarify some points first. With regard to medical incidents, the Hospital Authority (HA) will certainly take detailed follow-up actions to investigate into the causes of the incidents to find out whether there is any blunders on the part of health care professionals or problems of the system or procedures concerned. Whether or not an independent mechanism will be established in this respect in the future, the HA still has to take follow-up actions and to discharge the duties in this connection. If the incidents concerned should be found to be caused by problems of the system or the procedures concerned, the HA would look into measures to improve on the existing system. Over the past few years, the HA has put in a great deal of efforts in this respect to promote clinical supervision and risk management in hospitals, with a view to minimizing the risk of medical incidents being caused by problems of the system or procedures.

In respect of medical incidents that take place in private hospitals, as the licensing authority for hospitals in the private sector, the Department of Health (DH) will require the hospitals concerned to submit reports on the relevant incidents. In addition to joining hands with the hospitals to look into any possible improvement measures, the DH will also require the hospitals to implement the necessary improvement measures.

As regards the professional conduct and practice of individual health care professionals, they are currently governed by the statutory registration system and disciplinary system implemented by the respective regulatory bodies of the various health care professions. For example, the Medical Council of Hong Kong is the regulatory body responsible for medical practitioners practising in Hong Kong while registered nurses are the responsibility of the Nursing Council. In addition to their respective codes of practice and guidelines on professional ethics, the various regulatory bodies have also set up their own disciplinary mechanism to deal with and investigate into complaints lodged by members of the public. In the event of the professional malpractice on the part of a health care professional being considered to be in breach of the code of conduct, punishments may be imposed by the relevant regulatory body as deemed appropriate. If the professional malpractice in question should be of a serious nature, the relevant regulatory body may even revoke the professional registration of the person concerned. At present, the complaint mechanism is operating in accordance with the principle of self-regulation of the health care professions.

At the same time, as employers of health care professionals, both the DH and the HA have also set up mechanisms whereby complaints lodged by the public against their staff will be handled. Likewise, irrespective of whether an independent mechanism will be established in this respect in the future, the DH and the HA as employers will have a responsibility to investigate into the work of their staff members to see if there is any need for disciplinary actions. Under the existing arrangements, the DH will conduct investigations in accordance with the Civil Service Regulations and take appropriate disciplinary actions. As regards the HA, it has a two-tier complaints handling system. If patients or members of the public should have any grievances, they could lodge their complaints directly at the hospitals concerned or the HA Head Office. If they should be dissatisfied with the investigation results concerned, they could further complain to the Public Complaints Committee (PCC) under the HA. The PCC is chaired by a HA member who is not among the management staff of the Authority and composed of social figures as well as some other members of the HA. In dealing with public complaints, the PCC will conduct independent investigations into each of the complaints received and will, depending on the cases concerned, mediate between the complainants and the staff members being complained of through meetings with both parties. Where necessary, the PCC will also commission experts to conduct investigations into the relevant complaints. The decision of the PCC will be final and cannot be overturned by the HA.

Since the consultancy report on the review of Hong Kong's health care services was published by the Harvard consultants in April last year, many organizations and individuals have expressed their views on the existing complaint mechanism in the light of the Harvard Report. They hold that improvements should be made to the existing complaint mechanism to rectify the following three problems:

- (1) under the existing system, the aggrieved patients and their families often do not have enough information as to the complaint channels available; besides, there are not any specific organizations providing them with any assistance in lodging complaints;
- (2) the existing complaint handling mechanism and procedures are not transparent enough, and if the complainant should lose the case, he or she will not be given any detailed explanations on why the relevant complaint could not be established; and
- (3) the regulatory bodies responsible for the discipline of the health care professionals may be suspected of playing conflicting roles, given that a complaint case will be investigated, prosecuted, heard, and determined by the same regulatory body.

In view of these opinions from the public, the Medical Council has in fact made active response by putting forward a number of proposals to improve the existing complaints handling mechanism. These include setting up an ad hoc committee to assess the professional performance of medical practitioners, incorporating more lay members into the Medical Council, enhancing the transparency of its operation, giving wider publicity to the complaint procedures through production and distribution of information leaflets. We support these proposals and urge the Medical Council to implement them as soon as possible. We also hope that the debate today will arouse the attention of the Medical Council and other health care professional bodies and induce them to further conduct an in-depth review of their procedures for handling complaints from patients, with a view to ensuring the fairness, openness, credibility and reliability of the Medical Council Hong Kong relevant complaint handling mechanisms. The Health and Welfare Bureau is prepared to discuss the relevant details with the various health care professions.

In his original motion, Mr Michael HO has referred to the setting up of an independent mechanism. In this connection, perhaps we should first determine what roles and functions this independent mechanism should perform. If the ultimate purpose of this independent mechanism is to arbitrate in certain disputes, we are afraid there are bound to be problems. Since medicine is a highly specialized subject of study, it is extremely difficult for laymen to determine whether the conduct and performance of a health care professional is appropriate or up to standard. In the end, in order to safeguard their own interests, health care professionals cannot but resort to some unnecessary protective measures which will not do any good to the patients concerned. For this reason, Hong Kong and many other countries in the world have resolved to enact laws to provide for the right to "self-regulation" of the various health care professions.

However, I should like to remind the different health care professions that this right to "self-regulation" cannot be taken for granted. The first and foremost condition for the exercise of this right is the ability of the health care professions to command the trust of the community; besides, they also need to undertake the social responsibility of safeguarding public interest in exercising their rights. In the event of this principle being violated, a huge force of pressure will be gathered within the community to press the health care profession concerned to investigate the cause of violation. If a certain profession should lose the trust of the community in them, it would be very difficult for the "self-regulation" mechanism to operate. Hence, the relevant regulatory bodies should put in more efforts to explain to the public their respective procedure for handling complaints. That way, the trust of the public in the professions will be enhanced, thereby benefiting the complaint handling mechanism as a whole.

I should also like to take this opportunity to respond to the amendment proposed by Dr LEONG Che-hung to urge the Government to strengthen the role of the DH in monitoring health care institutions outside the public sector. At present, the DH monitors the facilities and operation of private hospitals through its licensing system, with a view to ensuring the standard of the health care services provided by these hospitals. In addition, the DH is also empowered by law to monitor the sale of drugs and thereby contribute to the prevention of drug abuse. I agree that the DH can take on more responsibilities of monitoring the quality of health care services and achieving even better results. We will certainly take this into careful consideration.

Madam President, the Government of the Special Administrative Region understands very well that because patients do not have the medical knowledge

and information that health care professionals are well versed in, we must have in place an effective mechanism for handling medical incidents and related complaints to safeguard the interests of patients. To command the trust of patients and the various health care professions, it is necessary for this mechanism to be fair and objective. That way, patients will have confidence in the medical treatment given to them, while health care professionals will be free of the worries that might cause them to resort to using protective measures to safeguard their own interests. If there should be mutual distrust between patients and health care professionals, it would not be possible for the health care system to function effectively.

Hence, I believe we should take into consideration the following two basic principles when formulating improvement measures.

First, the complaint mechanism must remain simple, convenient, fair and open, so that both the complainants and the health care professionals being complained of will be assured of receiving fair treatment.

Second, like any other specialized professions in Hong Kong, health care services is a highly specialized subject of study. It is therefore more effective and appropriate for members of the health care sector to assess the conduct and performance of health care professionals. Nevertheless, as I said before, the "self-regulation" mechanism must operate on the basis of the trust of the community at large.

We will take into careful consideration all factors concerned and strive to strike a balance between these two principles, with a view to ensuring that the complaint handling mechanism and system will safeguard the interests of patients in an impartial manner, thereby further enhancing the quality of health care services. Upon completion of detailed studies in this respect, we will consult the public and the health care sector extensively on our proposals.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr LEONG Che-hung to Mr Michael HO's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr LEONG Che-hung rose to claim a division.

PRESIDENT (in Cantonese): Dr LEONG Che-hung has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Timothy FOK and Mr FUNG Chi-kin voted for the amendment.

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 amendment.

Geographical Constituencies and Election Committee:

Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted for the amendment.

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, Mr Andrew

WONG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 13 were in favour of the amendment and eight against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, seven were in favour of the amendment and 17 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): Mr Michael HO, you may now reply and you have six minutes 37 seconds.

MR MICHAEL HO (in Cantonese): Madam President, let me first of all express my gratitude to all those Members who have spoken in this debate. I wish, however, to clarify several points, and I also want to make a last-minute attempt to get Members' support lest the voting results today may give us "two noes".

Mr NG Leung-sing, Mr Gary CHENG and several other Members expressed their concern about whether or not the medical profession can continue to regulate itself. Here, I must make clear the point that my motion does not ask the Government to regulate the profession. Even after the establishment of an independent committee, at the end of the complaint process, regulation still rests in the hands of the profession itself. I hope Members can take a look at the list of tables I have prepared for them. The information contained in these tables show that under the complaint mechanisms in the United Kingdom, Australia and Ireland, the disciplinary hearing at the end of the complaint process is always conducted by the relevant professional body. The only thing is that there is also an organization responsible for assisting a complainant in sorting out all the relevant information before lodging his complaint. I hope that Members can take a look at this paper. In any case, I have not asked the Government to regulate the profession.

According to Mr Howard YOUNG, since we already have two mechanisms, the establishment of an independent committee will only make all these mechanisms even more complex and cumbersome. I think that Mr Howard YOUNG really does not know what is going on. Actually, we have far more than just two mechanisms. The two mechanisms mentioned by him were the Medical Council of Hong Kong and the Public Complaints Committee under the HA. However, let me tell him that there are many more professional bodies in Hong Kong, including the Medical Council of Hong Kong and various other professional bodies such as those relating to nurses, midwives, physiotherapists, occupational therapists, radiologists, opticians, medical laboratory technicians, chiropractors and Chinese medicine practitioners. Besides, there are many other unregistered professional bodies such as those relating to dieticians, orthopedists and clinical psychologists. So, how can people figure out which bodies they should approach to lodge their complaints? A friend of mine, who is an occupational therapist, once told me that after practising as an occupational therapist for many years, his mother still called him a physiotherapist. Even a mother who is so close to her son still makes such a mistake. So, the case with ordinary people can be easily imagined.

Members in principle support our request that the Department of Health should step up its supervision of medical institutions outside the public sector. However, just what are we actually discussing? How should the supervision be stepped up? What should require enhanced supervision? Although I have not worked out any specific details on the Medical Complaints Commission proposed by me, all the examples in the information I have supplied to Members can show how the powers of this Commission can be clearly specified by the law. The information is so clear and detailed, so I hope that Members can make reference to it. And, if my proposal is really implemented in the future, we will not of course copy the foreign experience blindly; instead, we will study such experience and then work out a scheme of our own. I would not criticize our colleagues in the medical sector for "cronyism". However, I must say that members of the public really feel that way, because every time after a medical incident, there is always no explanation at all. Some doctor friends of mine told me that they were also very unhappy about the series of recent medical incidents, because these incidents had impaired their professional reputation and eroded the confidence of the public in them.

In the five cases of vegetable babies mentioned by Mr LEUNG Yiu-chung, following the investigation conducted by the three-member ad hoc group, no error was identified, and no detailed account of the problems was given. So, people simply did not know what had actually happened. If an investigation reveals any errors, the relevant authorities should face the problems, admit their mistakes and assume responsibility. I am sure that no one in the medical sector can really claim infallibility. The point is that if we can face the mistakes, it is always possible for us to restore public confidence in us.

Lastly, I must say that some points in the Secretary's reply are not at all fair. Actually, I have explained my position very clearly in my speech. So, why did the Secretary still say that an independent mechanism or the regulation of professionals by laymen would not work? Surely, I agree that the regulation of professionals by laymen will not work, but I have made it very clear that I am not asking for this. Rather, I am simply asking for the establishment of a mechanism to assist people in lodging complaints. That way, they will not be confused by a huge pile of papers and medical records, not knowing where to lodge their complaints, or not knowing what to complain about.

Madam President, I hope that after the debate today, the Government will still study the experience of foreign countries. And, I also hope that following the release of a Green Paper, some organizations can be set up to assist people in lodging their complaints. The professional autonomy mentioned by the Secretary should not be taken for granted, because a profession must do well before it can command the trust of the public. I also wish to remind Members that people will not necessarily have confidence in these organizations, for much will depend on the performance of these organizations. If they fail to perform well and to correct their mistakes as early as possible, people will lose confidence in them still further.

I so submit.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Michael HO rose to claim a division.

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

PRESIDENT (in Cantonese): Voting shall now start.

PRESIDENT (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

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

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mrs Selina CHOW, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Timothy FOK and Mr FUNG Chi-kin voted against the motion.

Geographical Constituencies and Election Committee:

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, Mr Andrew WONG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted for the motion.

Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 10 were in favour of the motion and 11 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 17 were in favour of the motion and seven 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.

PRESIDENT (in Cantonese): Second motion: Working hours.

WORKING HOURS

MR LAU CHIN-SHEK (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, I have just passed the Secretary for Health and Welfare a note asking him to stay in this Chamber if he does not need to urgently attend to some important business because the topic of our debate today is related to the family life and personal health of people, thus, it is not only related to the Education and Manpower Bureau but also falls within the policy scope of the Health and Welfare Bureau. I am very pleased that he is present.

The expression "longer and longer working hours, lower and lower wages" adequately describes the plight of wage earners at large. Three weeks ago, Mr LEE Cheuk-yan proposed a motion debate over a "minimum wage" on behalf of the Hong Kong Confederation of Trade Unions (CTU). Today, I propose another motion on regulating working hours. Both motions are the major guests of the CTU targeted at the present situation of the labour market.

The information of the Census and Statistics Department shows that in the first quarter of 2000, 595 000 workers work 60 hours or more every week. This figure is more than twice that given at the beginning of the 1990s and is almost 40% more than that given before the outbreak of the financial turmoil three years ago. There are actually many flesh and blood wage earners behind these "ice-cold" figures who sacrificed love for their spouses, filial piety for their parents and care for their children's studies and growth to long working hours.

The day before yesterday, I met some colleagues of the Labour Department and a lady told me after the meeting that her mother was 90 years old this year and she felt happy for me after she learnt that I had returned to Guangzhou to visit my mother. She paid attention to the media reports on my visits and knew a lot about my mother. I would like to express my heartfelt thanks to the kindness this lady had extended to me. I believe this colleague of the Labour Department fully understands the importance Chinese attach to family and blood relationship. I also hope that the Government will think about the adverse effects of excessively long working hours on the family life of workers.

I know a Mr WONG who works as a security guard. As he works six days a week and 12 hours a day, leaving some time for rest and grooming, meals and transport, he only has two hours left to spend with his family. Mr WONG told me frankly that as he is too tired after working, he often goes to sleep as soon as he gets home. He wanted to have tea with his family on his rest days but he is not very willing to go when he is waken by his wife and he often wants to sleep a little longer, thus, they will have a brush many a time.

The case of Mr WONG is not an individual example, and many wage earners in Hong Kong have similar experience. I believe Honourable colleagues present may feel the same. When we put our tedious work aside, calm down and think about our family we are sorry sometimes and think that we have let them down. Earlier on, the Hong Kong Council of Social Service conducted a survey and 70% of the respondents thought that excessively long working hours had affected their family relationship. Senior social workers providing family counselling services say that working long hours for long makes people irritable and neglect loving care for their family. In the course of time, family relationship may deteriorate and develop into family problems. In fact, many cases of seeking assistance because of marital discord and corrupted children are more or less related to excessively long working hours.

Working long hours not only affects the family life of workers but also poses a threat to their health and life. The CTU conducted a telephone survey a few days ago and respondents from the transportation industry indicated that they worked as long as 17 hours a day. Last year, a survey conducted by the Hong Kong Storage and Transportation Industry Staff Association showed that almost 60% of the respondents admitted that they sometimes or often dozed off while driving. Among them, 8.4% drivers admitted that accidents had occurred as a result. Lacking sufficient rest, traffic accidents involving professional drivers have greatly increased in recent years and the lives of professional drivers and other road users are seriously threatened.

Moreover, frequent overtime work is the major cause of industrial accidents in the construction industry and other industries requiring manual labour. Even if clerical staff work overtime for long, they will easily suffer from occupational diseases, occupational strain injuries and other chronic illnesses.

A friend of mine works as a station master. Like Mr WONG, he works 12 hours a day. He likes to write poems in his spare time, and he has been granted a Youth Literary Award and is thought highly of in the cultural sector. It is a great pity that this freelance poet suffers from a chronic illness after working overtime for long and has completely stopped writing these few years. The themes of most of his poems are centred around social changes and the daily life of the working class. He rethinks profoundly our daily life in an artistic form and upgrades the quality of our cultural life. I am sorry that this friend has become ill as a result of excessively long working hours and this is also a loss for Hong Kong people.

Madam President, it is an indisputable fact that wage earners in Hong Kong have to work excessively long hours and it is undeniable that overtime work impairs workers' health and family life. I believe it is a pressing task to enact a law to regulate working hours. In 1996, the International Labour Organization conducted a survey on the legislation of some 120 countries on working hours and it was found that less than 20 countries did not have legislation regulating working hours, and only the United Kingdom and Hong Kong were developed economies without legislation governing working hours. Today, the new Labour Party Government in the United Kingdom has enacted a law governing working hours and only Hong Kong is extending the flesh and blood workshops of the 19th century which is an insult for Hong Kong indeed.

The CTU has made reference to the experience of eight neighbouring Asian countries and found that most of them have implemented an eight-hour work system and all these countries have legislative provisions for overtime pay. Overtime pay ranges from 1.25 to 1.5 times the normal wages while overtime pay on rest days ranges from 1.25 to two times the normal wages. As compared with our neighbouring countries, our per capita Gross Domestic Product ranks first in Asia, second only to Japan, but we rank last in respect of working hours protection. The Government should really conduct a review.

The CTU proposes that the Government should enact a law to regulate working hours as soon as possible, stipulating that workers should work eight hours a day or 44 hours a week, and any work after regular working hours should be deemed as overtime work. With reference to the 1.5 times system adopted by most industries, we also propose that overtime pay should be equal to 150% of the normal wages. As to manual work and dangerous industries such as the construction industry and drivers in the transportation industry, we think that they should not work overtime for more than two hours a day.

Madam President, I know that Members representing the business and industrial sectors worry that regulating working hours may affect the flexibility of our economy and perhaps they are also worried about the damage done to our overall competitiveness. In fact, most countries in the world have similar legislation and regulating working hours have not damaged their economies. According to Mr HK NG, foreign affairs controller of the Hong Kong Institute of Human Resource Management, long working hours are undesirable from the management point of view for it would destabilize employee sentiments and increase incidence of argument, thus heightening the probability of mistakes. I hope Members representing the commercial and industrial sectors will not over worry themselves because regulation on working hours will not damage the economy. On the contrary, it will help improve the productivity of employees. Mr LEE Cheuk-yan will speak more on the productivity and training of workers later.

I believe the Secretary for Education and Manpower will give some specious reasons to oppose today's motion later, therefore, when I started to speak, I called upon the Deputy Secretary for Health and Welfare to stay in the hope that he would help me lobby the Secretary for Education and Manpower.

Is the Government publicizing "Your children's future hangs on parental care"? As parental care takes time, how can workers who work more than 12 hours a day allocate their time? Do they have to forego sleep and rest? If so, how will officials promoting "Healthy living into the 21st century" who encourage people to have adequate rest and suitable exercises react? I believe the Deputy Secretary and Dr YEOH who is absent today are concerned about the personal health and family life of Hong Kong people. If colleagues of the Education and Manpower Bureau fail to co-operate, will the efforts made by the Health and Welfare Bureau be wasted?

Madam President, when the Most Revd Peter KWONG gave a Christmas message last year, he raised a series of questions, and they include: What will be the effects of frequent overtime work on human nature? Will it turn people into slaves of the economy? Will it destroy human nature? All these questions are worth pondering by employers, employees and government officials alike.

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

Mr LAU Chin-shek moved the following motion: (Translation)

"That, as there is a tendency for workers in Hong Kong to work increasingly long hours and some are even required to work on rest days, which not only causes harm to their health but also affects their family life, and deprives them of the time for pursuing continuing education, this Council urges the Administration to expeditiously legislate for regulating workers' working hours."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAU Chin-shek, as set out on the Agenda, be passed. Does any Member wish to speak?"

DR LUI MING-WAH (in Cantonese): Madam President, as the representative of the labour sector, Mr LAU Chin-shek has moved that the Administration should legislate for regulating working hours. He has reasons for doing so, but his justifications are inadequate.

Firstly, the increase in working hours only illustrates that the demand for labour exceeds the supply in our economy at this stage. There is an imbalance of supply and demand in the labour market as a result of economic restructuring because the Government has not tried its best to persuade outgoing manufacturing industries to stay or vigorously develop new industries, and the pace of increase in new jobs fails to catch up with the pace of population growth, thus, there are more hands than needed.

Secondly, compensation is given for increased working hours and employers have only failed to calculate these separately. For instance, a certain security guard receives a monthly salary of \$6,000 for 12 hours of work a day for five days a week. Evidently, pay for daily overtime work has been included in his salary of \$6,000. If he refuses to accept the job, it may be because he finds the salary unsatisfactory and it may have nothing to do with long working hours.

Thirdly, if we legislate to regulate working hours, it is the same as raising the wage level. Business costs in Hong Kong will substantially increase and the overall competitiveness will decrease, our economy will go downhill, industries and businesses will close down and there will be more intense wage reduction and layoff. There will be less job opportunities and the salaried class will suffer. The outcome will be contrary to what Mr LAU desires. Therefore, regulating working hours is not a good method.

Fourthly, the employment conditions such as working hours and remuneration in our society are determined by market supply and demand, and we should not legislate to regulate these, otherwise, there will be no end of trouble.

Madam President, Mr LAU's motion is nominally related to working hours but in essence, it is asking to raise the wage level of the low-income group. As far as I know, resident medical practitioners in hospitals work more than 10 hours a day, and a friend of mine who works with a major international finance company works round the clock, however, they find the remuneration acceptable and they are highly motivated.

Madam President, I would like to take this opportunity to advise Mr LAU and other colleagues that the distribution of wealth in society should be determined by the market, and it is a negative move with residual defects to

distribute social wealth by artificial intervention. In fact, the labour sector should co-operate with the industrial and business sectors to urge the Government to develop our economy, especially the manufacturing industry. Only by doing so can the labour market be expanded to benefit the salaried class in Hong Kong. I hope that Mr LAU Chin-shek will agree with me. Thank you.

MR LEE KAI-MING (in Cantonese): Madam President, driven by export growth and internal demand, there is a 14.3% economic growth in the first quarter which illustrates that Hong Kong is on the road to full economic recovery. Although this is a heartening message, we must consciously know that labour at large have paid a bitter price in the painful course of economic adjustment and they are forced to accept substantial wage reduction in order to adapt to the market demand. Thus, there are a large group of low-income workers in the community. There has recently been a slight fall in the unemployment rate, and this is closely linked to the fact that labour at large are forced to adapt to the changes in the economic situation, and they have bravely borne and accepted reduced wages and benefits.

With wages reduced, many workers are forced to work part-time or overtime for more income in order to make ends meet. According to a survey conducted by the International Labour Organization of the United Nations in 1997 on the per capita working hours of various places, workers in East Asia including Hong Kong work 8.48 hours a day. As compared with Norway with the shortest per capita working hours of 5.16 hours a day, Hong Kong workers work 3.32 hours more every day, and there is a difference of 64%. I believe the situation has been even worse after the financial turmoil. Members present including Dr LUI work more than eight hours a day but our working conditions are better than the average low-income workers for we do not have to toil at high temperatures or work outdoors. While we enjoy air-conditioning, labour at large work more than 10 hours a day under adverse working conditions, and even if those who insist on self-reliance and refuse to accept Comprehensive Social Security Assistance (CSSA) work more than 10 hours a day, they receive less than CSSA payments. Is that fair? The community should really be concerned about this. The situation of these workers who make unremitting efforts, work overtime and struggle hard for their livelihood is worrying indeed. Working overtime for long will essentially impair workers' health and lead to more accidents. For instance, a recent survey conducted by the Hong Kong

Storage and Transportation Industry Staff Association shows that many professional drivers work more than 13 hours a day, thus, they doze off while driving, often resulting in accidents. Although the Government has made efforts to promote publicity and education on occupational safety and health as well as enact corresponding legislation for years, if we do not legislate promptly to regulate workers' working hours, we can hardly stop industrial accidents from happening.

As we all know, our economic development has reached an advanced level in the international arena and is more advanced than our neighbours. However, we lag behind mainland China, Taiwan and Singapore in respect of working hours protection. Most employees in Hong Kong work overtime for long, but they are not given overtime allowances reasonably.

Madam President, hardworking and exerting Hong Kong people are the most precious wealth of Hong Kong, and the approach of the technological era makes us understand that the application of high technologies can improve productivity and competitiveness, as well as pushing economic development. The policy address of the Chief Executive has also taken "quality people" as its theme, advocating such objectives as the promotion of information technology education and lifelong learning. Yet, for workers aged over 40 who have lower academic levels and lower skills, what the Government has done is after all limited and it fails to give these people effective help. We should let these people receive retraining and continued education so that they will learn to master modern technologies, hence increasing productivity and competitiveness. The value of their work will also be increased and they do not have to rely on part-time or overtime work to increase income to make ends meet. In my view, apart from expeditiously enacting relevant legislation to regulate employees' working hours and protect workers' occupational health, the Government should ensure employees will enjoy the benefit of reasonable overtime allowances for overtime work. As a result of the Enhanced Productivity Programme, many civil servants do not receive allowances for overtime work and this is inhuman. Furthermore, the Government should inject more resources into retraining to help lower-skilled workers undergo skills transformation. We also urge employers to adopt corresponding skills training measures and actively encourage workers to receive on-the-job retraining to upgrade their skills. This way, enterprises will be benefitted and labour relations will also be improved. It is also a pressing task to legislate to regulate employees' working hours and safeguard overtime allowances for overtime work. The Government should no

longer advocate that "working hours are flexibly determined by the market" and it should really take back these hackneyed expressions.

With these remarks, I support the motion.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the working hours of labour in Hong Kong have always been determined and adjusted according to the market needs of different industries. At the peak season of an industry, an employer will often ask workers to work overtime and workers will willingly to do so in order to increase income. But the situation has greatly changed in recent years. As a result of adverse economic situation, workers' bargaining power has become lower and lower, and overtime work and excessive workload without reasonable reward has become a new trend in the labour market. This warrants concern by the community and the Government.

Madam President, in 1886, labour in Hong Kong initiated a strike and demonstration on May 1, fighting for eight-hour work, eight-hour rest and eight-hour further study which laid a foundation for the May 1 Labour Day henceforth. At that time, the working hours of an average worker were just like those of Hong Kong workers today. They worked 15 to 17 hours a day, and when they got home after work, they did not even have sufficient time for rest and taking care of their family, needless to say pursuing further studies in their spare time.

Article 1 of the International Labour Convention concluded in 1919 is related to working hours and the Working Hours (Industry) Convention 1919 applies to many industries including mining, cleaning and construction industries. In accordance with the Convention, workers shall work eight hours a day, 48 hours a week. Later, many other conventions applicable to individual industries were also made.

Although Hong Kong is an international big city and labour began to fight for protection of labour interests and working hours over 100 years ago, they still do not enjoy such protection today. Although the Employment Ordinance was enacted in 1968, no stipulations have been made on working hours so far. Compared to other places, countries and regions, Hong Kong is obviously lagging behind. For example, Singapore and the Mainland give labour much better protection. Chapter IV of the Labour Law stipulates that daily working

hours shall not exceed eight hours and average weekly working hours shall not exceed 44 hours. For overtime work, it is stipulated that labour shall not work overtime for more than three hours in order not to affect their health. Moreover, overtime pay shall not be less than "150%", "double pay" shall be given for work on rest days in lieu of compensation leave while "triple pay" shall be given for work on statutory holidays. Singapore has similar stipulations on working hours, and an industry should file an application with the manpower departments if overtime work is required. Besides, overtime work shall not exceed the stipulated weekly working hours and overtime pay of not less than "150%" shall be given.

As the Hong Kong Government has not done anything in respect of working hours and overtime pay, we have had heated arguments over this issue for a long time. While the bargaining power of the working class is so low today, I think the Government needs to stipulate working hours, especially after we have learnt a lesson in the past. This lesson made us become aware of the plight of labour today. When our economy took off in the 1970s and 1980s, the working class depended on overtime and good attendance bonus for additional income, and workers usually worked over 10 hours a day.

Frankly speaking, to make ends meet, workers did not have any chance to take up further studies. Facing changes in society, workers knew very well that they needed to pursue further studies and they would like to do so. Yet, did they have time to take up further studies after working hard for survival and food? They have paid the price, and in the face of the economic and intellectual transformation today, they fail to catch up with the development of society. Who made them lose the chance to pursue further studies? It is because the Government has never looked squarely at these matters in the past.

Honestly, the Government should consider limiting working hours in the light of the present situation, especially when we see that blue-collar grass-roots workers and clerical staff have to work very long hours. I hope that the Government will show us that the conditions that the labour sector has been fighting for over the past century will be implemented in Hong Kong which is so advanced today.

The FTU supports the establishment of a system to limit working hours and we especially stress that, in the course of setting the relevant limit, the Government should pay special attention to some job types that are dangerous

and require heavy and manual labour, and expeditiously legislate to limit the working hours of these job types, otherwise, it will pose immediate threats to the occupational safety and health of workers. In recent years, the FTU has received similar cases of complaint and we think that the Government must look squarely at the relevant matters.

Furthermore, while establishing a system to limit working hours, the Government should provide other matching measures such as minimum wage protection and clearly stipulate hours of and pay for overtime work to really protect workers' interests. Without these measures, we worry that some employers will only act according to their will. If so, we think that workers' wages and benefits will not be really protected.

Madam President, the FTU and I support today's motion. Thank you.

MR HO SAI-CHU (in Cantonese): Madam President, as mentioned by Mr LAU Chin-shek, according to recent government statistics, as at the end of last year, more than 600 000 people had to work more than 60 hours a week. Assuming that these people worked six days a week, their average working hours daily would be over 10 hours. The Liberal Party does not deny the existence of this, but we do not think that we should introduce any legislative control on the number of working hours for workers. We are of the view that the existing labour legislation can already provide adequate protection to employees, one example being the requirement that an employee shall be entitled to one day of rest after working for seven days. Any further legislation will only reduce the flexibility in respect of working hours, to the disadvantage of both employees and employers.

The Liberal Party is of the view that any rigid rule on the number of working hours, such as a maximum of eight hours daily, will not only reduce flexibility, but also make it impossible for employees to increase their income by working overtime. In the end, this will only achieve the opposite result of affecting the income of workers. A press survey has been conducted recently to ascertain people's preference in respect of more resting time and more income. Most of the respondents choose higher income. If we legislate against overtime work altogether, or if we require overtime work not to exceed a certain limit, or if we restrict workers' working hours in one way or another, then their desire to earn more income will decrease correspondingly. Actually, what the

Government should do is to strictly enforce the existing Employment Ordinance, so as to prevent unscrupulous employers from ignoring the law.

Moreover, many people think that workers are not given enough resting time during their working hours. But this is simply not true in reality. If employees keep on working for a long time without any rest, their performance will surely be affected. This is a point which employers can well understand even if the several Members did not raise it just now. That is why in many organizations now, employees are given a break of several minutes to half an hour after working for a certain period of time. This shows that legislation is not always the only means to achieve our desired purposes. Excessive legislative control will only impair labour relations and the business environment.

In the case of bus drivers, for example, many people think that they have to drive all day long and thus do not have enough rest. However, in reality, in addition to their lunch break lasting for half an hour to one hour, they also have a break of several minutes after each driving journey. Some bus companies even make it a rule that drivers can rest for half an hour after working for five hours. Therefore, it can be said that drivers do have enough resting time.

Over the past 10 years, Hong Kong has undergone rapid economic restructuring, with its economy moving from labour-intensive to knowledge-based activities. As a result, high value-added activities are now the emphasis in every segment of society. Actually, blue-collar workers are not the only ones who face the problem of long working hours. A few years ago, who could have imagined that bank staff who usually work fixed hours in air-conditioned offices are now required to sacrifice their holidays and "tout" for mortgage business in new housing development sites? In our increasingly competitive society, not only blue-collar workers, but also all employees, are forced to face many new challenges brought about by economic restructuring. Therefore, only those who are prepared to meet challenges can continue to survive in the new economy.

The Liberal Party is of the view that the labour organizations fighting for the rights and interests of workers must also get to know the new trends of the world. At a time when the new economy is developing rapidly all over the world, these organizations must reflect on how best to enable workers to adapt to the requirements of the new economy, so that they can become a group with

competitiveness. It is only in this way that workers can meet the new challenges brought about by the new economy.

Let us look at Singapore, our main competitor, as an example. There, the National Trade Union Congress has conducted a study which comes up with this observation: With the approach of the new economy and the associated reorganization and closure of enterprises, technological advance and changes in the business environment, stable jobs have become smaller in number. As a result, an employee may have to change their occupations several times in their working life. So, workers must receive continuous training, so as to equip themselves for different types of jobs.

Madam President, the wages and benefits of workers, the future of enterprises and the overall competitiveness of society are all closely connected in Hong Kong. And, the future of enterprises and the competitiveness of Hong Kong in turn depend on the availability of a competitive workforce. Therefore, the raising of work competitiveness is the only first step towards the promotion of economic development. To workers, this is the most realistic and pragmatic form of assistance. Hasty moves to impose legislative control will not thus work for the benefit of workers.

Just yesterday, I attended the International Labour Conference, the 88th International Labour Conference, and I have just returned from it. There were several items on the agenda of the conference, and the fourth of these items dealt with the proposal on abolishing five international labour conventions. Four of these conventions were on working hours — two on the mining industry, one on the textile industry and the other on public works projects. The rationale behind the abolition proposal was that all the parties concerned realized that fixed working hours should be abolished because it was difficult to lay down any fixed working hours for individual trades and industries. Therefore, we can see that the overall trend now is not in the direction of legislative control. We should seek to enable our workers to earn more income by fostering free trade and free economy. That way, it will be easier for our economy to compete with others, thereby achieving even greater economic progress.

With these remarks, I oppose the motion on behalf of the Liberal Party.

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

MR MICHAEL HO (in Cantonese): Mr Deputy, the ideal pattern of life may perhaps be eight hours of work, eight hours of sleep, and also eight hours of rest or entertainment. Regrettably, there is still a considerable gap between the working hours of our employed population at large and this ideal. Earlier on, the Democratic Party conducted a survey on the eve of May Day (Labour Day) and interviewed 503 members of the public about their working hours.

As indicated in the findings, more than 10% of the interviewees work seven days a week on average, while 5% have to work seven days week and at least 10 hours daily. According to the Employment Ordinance, every employee who has been continuously employed by the same employer shall be granted not less than one rest day in every period of seven days. However, of the 321 interviewees who meet this "4.18" requirement, more than 8% have to work seven days a week on average. This shows that many employers are either exploiting some loopholes in the law or using a carrot and stick approach to coerce their employees into agreeing to work on their rest days "voluntarily".

Actually, more than 50% of the interviewees were of the view that the appropriate weekly hours of work should be 44 or less, while another 30% plus opined that the maximum hours of work should not exceed 48 weekly. From this we can see that the public opinion is in support of legislating for the protection of overtime work.

More than 100 countries over the world have already enacted laws to provide for the protection of overtime work. In this connection, Hong Kong's neighbours like Singapore, Japan and Taiwan have also laid down regulations regarding working hours. Perhaps some people may worry that legislating for the protection of overtime work would impact on the economy of Hong Kong and our competitiveness. However, we should like to stress that long working hours cannot be equated with productivity enhancement or improvement in competitiveness. On the contrary, working exceedingly long hours over a long period of time will leave one with hardly enough time for rest, meals or sleep, let alone entertainment or further education. How could workers leading such kind of life find the chance to receive further training for self-improvement?

The Democratic Party hereby urges the Government to become a signatory to the Hours of Work Conventions, and to enact legislation on weekly hours of work and overtime work, with a view to providing reasonable protection for employees, and thereby improving the quality of life of the public.

With these remarks, Mr Deputy, I support the motion.

MRS SELINA CHOW (in Cantonese): Mr Deputy, because of this motion moved by Mr LAU Chin-shek today, my office conducted a telephone survey to interview more than 100 members of the wholesale and retail functional constituency to which I belong. I cannot say this is a scientific survey. I just wish to find out what business operators in the various trades of the wholesale and retail sector think about Mr LAU's motion. During the interviews, some remarked that while they had read in the newspaper the surveys conducted respectively by Mr LAU and the Democratic Party, for some unknown reasons nobody had ever asked for their opinion. According to these employers, life has in fact been very hard on them as well. I just hope Mr LEE Cheuk-yan will not say the ones we chose were all unscrupulous employers when he rises to speak later on. These employers are opposed to Mr LAU's motion for a very simple reason. Notwithstanding the figures provided by the Financial Secretary, including, for example, a 13% increase in the number of inbound visitors in the first quarter of the year, they could hardly see any improvement in their businesses. Actually, they also have to work very long hours. On top of that, they are also burdened by the high interest rates and the poor business performance. Although they are the bosses, they still have to take on some of the work. And overtime work is also extremely common among them, in particular those who are operators of small and medium businesses.

I believe Honourable Members do understand that the service sector — whether the retail industry or the catering industry — operate very long working hours in general. We have interviewed altogether 165 operators of a variety of small and medium retail enterprises and listened to their grievances. In this connection, close to 70% of them have raised strong objection to the Government legislating to regulate working hours, some 15% have adopted a wait-and-see attitude, while another 15% have indicated their support. Actually, they are very much in support of the motion in principle, for they consider that employers should concern themselves with the needs of their employees. But the question remains whether legislation on hours of work is an appropriate means applicable to their industries. With regard to the retail industry, for example, as often as not employees simply do not have any concrete work to do at all. In particular, with business being so stagnant these days, employees practically spend much of the day awaiting customers. This is very much unlike other trades and industries where the employees really have to work non-stop. Another example is the catering industry. As we all know, the industry has a practice of assigning a certain period during the day as the recess hours. That being the case, how are we going to consider the hours of work issue? The catering industry holds that the industry is a special case, legislating to regulate the working hours of its employees will only serve to undermine the flexibility of the

industry; besides, such an arrangement can hardly fit in the mode of operation of the industry. Unlike employees working in factories where the number of shifts required can fully be put under control, the working hours of employees engaged in the catering industry is controlled by the customers or consumers concerned; hence it is very difficult to regulate the working hours of the industry. Further still, the industry also holds that in a free market economy, it is not appropriate to handle everything by legislative means. These business operators also made use of the opportunity to express their concern that they have been faced with too many laws, so much so that the small and medium enterprises, in particular, just could not manage to cope any more. They requested me to advise the Government not to deal with everything by legislative means, in particular in these days when Hong Kong is facing keen competition from the outside and many tourists are complaining that a lot of things are more expensive in Hong Kong than in other places. Given that costs in other areas could not be duly adjusted, it would be very difficult for operators to remain in business if everything should be regulated by law. As regards those business operators who are in favour of legislation on working hours, some of them have pointed out specifically that this is by no means the right time to legislate to regulate working hours. Given that the economy of Hong Kong has yet to truly revive, if the Government should consider legislating to regulate the hours of work of employees, the impact on business operators — especially those in the service sector — would be very grave.

Just now Miss CHAN Yuen-han has referred to the situation in Singapore. However, since socialism is practised in Singapore, it would be very difficult for Hong Kong to follow suit.

Thank you, Mr Deputy.

MR JAMES TO (in Cantonese): Mr Deputy, perhaps I should also join in this discussion about the logic of certain points of view.

First of all, I should like to say that some of the views I heard just now were very interesting. It appears to me that the concerns of Honourable Members who have spoken on behalf of employers could largely be summarized into two points: firstly, flexibility; and secondly, the possible adverse impact on the competitiveness of Hong Kong. Actually, these two points are inter-related.

To begin with, to the employers, actually it may not necessarily be a good thing to permit workers to bid for jobs by offering to work increasingly long

hours without limit. Why? In the first place, we have safety concerns. There are in fact restrictions on the hours of work for certain types of work under the existing laws of Hong Kong. According to my understanding, it has been set out clearly under the licensing conditions for caretakers that employers must set a maximum limit for their hours of work when employing caretakers. This is because very grave consequences would be resulted if caretakers should doze off or feel exhausted when taking care of other people's properties. For this reason, the Subcommittee on Security and Guarding Services under the chairmanship of Mrs Miriam LAU has suggested imposing an additional licensing condition stating clearly that security guards must be given a period of rest after working for a certain number of hours. This is to ensure that security services companies will not require their employees to do overtime work. As we all know, the hours of work of pilots are not restricted by legislation. I understand that this has in fact given rise to considerable controversy before. Although the hours of work of pilots are not restricted by legislation, they are determined by International Air Services Agreements. Otherwise, passengers travelling by air would find themselves in very grave situations. From this we can see that for safety considerations, there must be restrictions on the hours of work of certain trades including construction site workers, drivers and even interns in the medical profession to which the Honourable Deputy President belongs to. Otherwise, passengers, patients, and even other people working in construction sites will find themselves exposed to dangers. Take construction workers as an example. While they may knock down other people or even cause others to suffer injury if they do not exercise care when carrying steel bars, their safety helmets may also hurt other people if dropped from height accidentally. Hence, from a safety point of view, there should at least be restrictions on the hours of work of the employees in certain industries and trades. Certainly, there are quite a number of laws enacted with emphasis on safety concerns and have thus given rise to considerable arguments. For instance, with regard to the requirement that workers working at height should fasten their safety belts, some people may question why they should not be allowed to have greater flexibility which contributes to higher competitiveness. Given that skilled bamboo scaffolding workers at master level would be able to enhance their marginal work efficiency by 5% or even higher if they should be allowed not to wear any safety belts, why must protective provisions be enacted to force them or even to make it a compulsory requirement for them to wear safety belts? Actually, the provisions are enacted out of safety reasons, which are in line with humanitarian concerns. If there should be any work-related injuries, the families of the workers concerned would certainly be affected, while the medical

expenses of the community as a whole would be increased as a result. Moreover, the provisions made under the laws concerned could all be traced back to the most fundamental humanitarian causes.

As regards the white-collar trades, it has been referred to by Mrs Selina CHOW just now that the competitiveness of our export and retail sectors has remained low, and that our products are higher in prices but not necessarily better in quality. In this connection, however, I should like to point out that it would be possible for a piece of computer software to contain bugs in it if the employee writing it should be suffering from exhaustion. Just because employees are required to work longer hours, it does not follow that all the work can be finished satisfactorily. While an employee may manage to complete the work at hand after working for 20 hours, we must not forget that if the employee writing the computer programme should accidentally doze off, the software might be attacked by some virus and hence ruin all the efforts made.

Many Members would think that — and Dr LUI Ming-wah has said it out directly — the request for restrictions on hours of work is in essence a request for higher wage levels for the lower-income classes. I should like to remind Members that if a piece of work to be completed within limited hours of work should be put out to tender (please allow me to explain with such an example), there might be employees claiming that they could work non-stop for 10 hours, 20 hours, or even 30 hours for the same amount of remuneration. But the problem remains that wage levels will not remain unchanged. If we restrict the hours of work of workers, with the remuneration for completing three pieces of work we can employ four workers instead of three to do the job. So, we can see from this that the expenses on employees as a whole will actually remain unchanged even though there are restrictions on the hours of work of workers. I hope other Members could refute my argument from an economist's point of view and see if it is really impossible for linear graphs to be altered. Having regard to the situation as a whole, I believe there should be some degree of flexibility.

On the other hand, I believe people of a certain wage level or above would naturally think quite differently about restrictions on hours of work. Take, for example, an employee with a monthly salary of \$100,000 and a greater degree of autonomy. In view of the high pay he enjoys, the employee should exercise flexibility in relation to his hours of work. As a matter of fact, in many cases such an employee would most probably be one of the owners of the company

concerned, or even enjoying the highest wage possible, which is the option on the shares of the company. I have no idea how Mr LEE Cheuk-yan and Mr LAU Chin-shek would think about this (perhaps I might be denounced by some people for raising such a proposal), but I think we could draw a line at a certain wage level above and stipulate that the hours of work of employees earning more than that shall not be subject to any restrictions. Just now Dr LUI Ming-wah has pointed out that it would not be feasible to require a chief executive to leave the office at a certain hour of the day, since there might still be management duties for he or she to complete then. As regards the employers to whom Mrs Selina CHOW has referred just now, we do not think their hours of work should necessarily be restricted; after all, they are the bosses. I certainly understand that employers are also working very hard, but the fact remains that whereas they could make development plans for their companies in their capacity as employers, their employees would not have such chances. Under the circumstances, what I could say is that while in practice we consider the question of restrictions on hours of work for different trades and industries on a case to case basis, it is not appropriate to deny the need for restrictions on hours of work as a concept.

Furthermore, why are there restrictions on hours of work in other countries? Apart from humanitarian considerations, restrictions on hours of work are also imposed in many countries to enable more people to be employed. This is in line with theories which concentrate on the background and rationale for restricting the hours of work of workers. As regards competitiveness, however, actually some adjustments have to be made if restrictions are to be imposed on hours of work. For those duties which must be completed within a certain period of time, the work might have to be shared between one and a half to two employees. In this connection, I should like to stress two points. Firstly, such adjustments may not necessarily cause expenses on wage to increase; and secondly, as shown in other countries and economies, such adjustments will not impact on competitiveness. Indeed, this is an inevitable process to make those adjustments. Why? Let me explain this with an example. In a situation where there are not enough computer programmers, if an employee is unable to produce a computer programme even after he has worked for 20 hours, the work may have to be shared by another employee or even a number of employees. This may be considered as an adjustment process, but not necessarily a drop in competitiveness.

With these remarks, I support the motion.

MR ANDREW CHENG (in Cantonese): Mr Deputy, the working hours of employees has always been an important concern of the Democratic Party. Compared to the minimum wage issue, this time we could make up our mind more easily; we have decided to give support to the motion on working hours and the protection of employees' rights and benefits moved by Mr LAU Chin-shek, Chairman of the Hong Kong Confederation of Trade Unions. Back in 1997, I moved a similar motion for debate in the former Legislative Council. Here is the wording of the motion moved by me then: "That this Council urges the Government to become a signatory to the Hours of Work Conventions, and to legislate as soon as possible to ensure that employees will receive reasonable reward for their overtime work." The motion and its original wording were passed by a majority in the former Legislative Council. Given the separate voting system, it is questionable whether the motion moved by Mr LAU Chin-shek today will be passed in this Council.

In any case, just now we have already heard a great many views and dissenting voices. I have read through the speeches made by Members of the former Legislative Council in the debate on the aforesaid motion held on 11 June 1997. In so doing, I noticed that the views raised by Members then were more or less the same as what they said just now. They just kept saying that the people of Hong Kong have been famous for their industrious spirit, and that there should be a free market economy for Hong Kong the structure of which should be free from influences. Actually, in their studies and surveys many scholars have expounded on their different views and opinions on a variety of labour markets. I just cannot understand why Members from the Liberal Party are still unwilling to sit back and listen to the different views of others. The last time I referred to the World Economic and Social Survey conducted by the United Nations. Perhaps let me now turn to the report on this survey, a chapter of which is concerned with a comparison of the flexibility of the labour markets in the United States, Japan and Europe. I would like to refer to this report simply because many Honourable colleagues, in particular those from the Liberal Party, have repeatedly mentioned that the success of Hong Kong is attributable to the flexibility of the labour market. But here I should like to refute their argument. I hold that we should not have blind faith in the flexibility of the labour market. According to the findings of the survey, of the three countries referred to just now, the labour market in the United States is the most flexible, which means that relatively speaking, it abides by the rules of the market. The Japanese market is the most inflexible since they adopt a system of employment for life and calculate salary according to seniority. But then the result of the study

shows that the structure of the Japanese labour market contributes most to the productivity and economic growth of Japan. As for the United States, once the market is not flourishing, there will be layoffs and pay reduction. In the end, the so-called flexible mode undermines the co-operation between employer and employee and makes employees less committed to their work, thus reducing their productivity. The labour market in Hong Kong is as flexible or even more flexible. However, this is not necessarily conducive to the economic development of Hong Kong.

Hence, I hope that the Liberal Party which upholds free market economy and flexibility of the market could review their belief. As a matter of fact, whether or not this motion today will be passed in this Council is largely dependent upon how Members from the Liberal Party and the Hong Kong Progressive Alliance (HKPA) choose to vote. Yet of the Members I referred to just now, only two Members from the Liberal Party are still present in this Chamber. It seems as if I am speaking to but the air. Nevertheless, I know my speech will be recorded in the Official Record of Proceedings. Although the motion I moved then was passed in the former Legislative Council, I am afraid this motion moved by Mr LAU Chin-shek will be negated as a result of the separate voting system and the voting decisions of Members from the Liberal Party and the HKPA. How regrettable!

Mr Deputy, society is progressing. To the majority of the wage earners in Hong Kong, however, the past two years have seen the wages and benefits of many of them being cut back repeatedly even though their hours of work have been on the increase all along. Given the difficulty of securing a job these days, many workers have to work no less than 10 hours a day Monday through Sunday. Working continuously over a long period will affect not only the physical and mental health of employees, but also their productivity and efficiency. Under certain circumstances, this may even imperil the lives of other people. In this connection, the Democratic Party has received complaints from some bus drivers. They told us that working 11 to 13 hours a day for a long period of time had left them physically and mentally exhausted, so much so that sometimes they just could not concentrate while they were driving. Although so far there have not been any cases of bus driver dozing off and causing accidents, we still need to address such problems because accidents can be fatal. Besides, the casualties caused will include not only the individual worker or driver concerned, since the lives of scores or even over a hundred of passengers will also be in peril.

We urge the Government to become a signatory to the Hours of Work Conventions and to enact legislation on weekly hours of work and overtime work in the light of the relevant standards set out under the Conventions, so as to ensure that employees will not be forced to work overtime, and that they will receive reasonable reward for their overtime work. The Democratic Party suggests stipulating that the basic hours of work shall not exceed 44 weekly, and that reward for overtime work be calculated at a rate of no less than 1.25 times of the employee's normal salary.

In addition, I should also like to say a few words on the issue of occupational safety and health. For more than a year, the Government has been actively implementing new initiatives in relation to occupational safety and health, trying to tell the world that Hong Kong has been making continuous progress in this respect. But when it comes to employees' rest period, the Government has been deferring actions. Legislating for the rest period of employees is certainly an integral part of policies on occupational health. In this connection, we just hope the Government will not defer actions any more, and that it will not make the lack of a consensus amongst the Labour Advisory Board an excuse for deferring the relevant legislative work. Both the Panel on Labour Matters and the Panel on Manpower of the Legislative Council hope that the Government will expeditiously enact legislation on employees' rest period to provide that employees having worked continuously for five hours shall be entitled to a period of rest to relieve the tiredness resulting from work and to safeguard their physical and mental health. This is the only way to enable employees to really enjoy their work and their lives, since their lives will be safeguarded more comprehensively on all fronts.

With these remarks, Mr Deputy, I support the motion.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, the issue we are now discussing in this Chamber is long working hours. Honourable Members who are opposed to the motion have spoken against legislation on hours of work on the ground that too much control would undermine flexibility. But why have we proposed legislation for this? As mentioned by many Members just now, it has been reflected in the surveys conducted by a number of organizations that the problem of exceedingly long working hours seems to be deteriorating lately.

The Neighbourhood and Workers Service Centre which I represent has also conducted a questionnaire survey. As indicated in the findings, of the employees surveyed, about 80% are currently working more than eight hours a day while more than 60% have seen marked increases in their working hours within the last six months. With regard to the latter case, we notice that the figure comprises 50% of the male employees and 70% of the female employees surveyed. Perhaps Members may be surprised to find that compared to their male counterparts, 20% more female employees have seen their hours of work increased. I believe the Government should be held responsible for such a phenomenon. In the past, the hours of work of women in certain specified industries were subject to restrictions set out under the Women and Young Persons (Industry) Regulations. Regrettably, however, since the Government must face up to the question of gender equality after the enactment of the Sex Discrimination Ordinance, it has become unacceptable for such provisions to remain as women-specific restrictions not applicable to male employees. In order to decide whether to relax the restrictions on women's hours of work or to extend the provisions to cover male employees, the Government has made a lot of research efforts to look into the situation. In the end, it has unsurprisingly decided to take the easy way out by lifting the restrictions on women's working hours, and thereby contributed to the present phenomenon: increase in working hours affects more female employees than their male counterparts.

While the Government has euphemistically called it a move to promote equality of the sexes, I consider it a highly despicable measure of the Government's, having regard that female employees have to work increasingly long hours since the relaxation of restrictions on their hours of work. We all know how grave the pernicious consequences of increasing the hours of work for women can be, in particular the cost to the well-being of the families concerned. Mr Deputy, the deteriorating juvenile delinquency situation and the tendency of domestic violence to spread have been discussed for many times in this Council before. Certainly, these are the issues we must address, but the problem remains that if parents are required to work exceedingly long hours, they can hardly afford to take good care of their children. We cannot look on indifferently as things continue to develop this way; otherwise, the cost to society and the burden on our social resources will become too enormous for us to bear. For these reasons, we should not concentrate on only the one-sided view that restrictions on hours of work will serve to undermine the competitiveness of Hong Kong. Even if such restrictions could impact on our competitiveness, the price that we need to pay for not regulating the hours of work would most probably be much greater.

Actually, does it follow that the competitiveness of an economy will certainly be undermined just because there are restrictions on hours of work? As pointed out by a number of Members who spoke just now and reflected clearly in the experiences of other countries, this just may not necessarily be the case. According to many economists, rather than undermining our competitiveness, restrictions on hours of work will bring about benefits to our economy. Just now an Honourable colleague already pointed it out that one of the benefits would be a lower rate of unemployment. With a lower unemployment rate, local consumer spending will pick up promptly, thereby guaranteeing our economy some room for development. We can see from this that instead of doing any harm to our economy, this cyclical process of development will provide us with lots of benefits. As such, we really should not consider the issue one-sidedly.

On the other hand, the Government has been emphasizing the importance of continuing education, lifelong learning and continuous training. In view of the exceedingly long working hours, just now a number of Honourable colleagues also questioned whether retraining could really be given to workers to enable them to switch to another trade or to adapt to the new development of our economy. Would the Government please inform us how a person working 12 hours every day could still find the time to pursue continuing education or receive retraining? Even for those workers who work six days a week and 12 hours daily, there would hardly be any time left in the week for learning and retraining purposes, to say nothing of those who work seven days a week. I just hope the Government could enlighten us on that.

In speaking on the motion today, an Honourable colleague has attributed long working hours to the current situation where job seekers outnumber job vacancies. For my part, I do not subscribe to this view. Hong Kong has lived through many hard times and economic downturns before, but none of those days saw the phenomenon that we are now faced with. Why is it that we are now in the midst of such a grave problem? Mr Deputy, I believe the crux of the problem lies in the fact that it was the Government who started this trend. With the Government constantly reminding the Civil Service of the importance of "enhanced productivity" and "cost efficiency", the trend has steadily swept through the free market where private enterprises are vying to copy the Government's practices. As a result, work that used to be shared among three employees will now be assigned to two instead. That being the case, it is inevitable that employees will have to work longer hours and under greater pressure.

Hence, I consider the Government to be the chief culprit at this stage, lowering wage levels and extending the hours of work of workers. Just now Mr LAU Chin-shek has referred to this truth: "the lower the wage level, the longer the hours of work". I believe this is a fact existing in Hong Kong. If we do not address the problem squarely, the negative effect it has on our community will continue to intensify. For this reason, I very much hope that the Government could really implement the policies that it has always been advocating. All along, the Government has attached importance to the "continuous training" for and "enhanced productivity" of individuals. But given the existing long hours of work, these objectives can hardly be achieved. I hope the Secretary could address these issues when he rises to speak later on.

Mr Deputy, I so submit.

MR JASPER TSANG (in Cantonese): Mr Deputy, I notice that many Honourable colleagues in this Council also feel that taking part in the debates has exceeded their normal working hours.

The DAB supports the motion moved by Mr LAU Chin-shek, Dr LUI Ming-wah said earlier that the motive behind this motion was to raise the wage levels of the low-income group. Mr Deputy, the DAB can state very clearly that when we consider legislating on the working hours, the first thing we need to consider is the working class, and that is, the low-income group that Dr LUI has mentioned. However, the legislative intent is not to raise the wage levels of the workers, but to protect their health and safeguard their legitimate rights.

We are aware of the examples mentioned by Dr LUI that executives, medical doctors and so on work round the clock. Mr Deputy, you know very well that if a doctor performs a major operation on a patient, he may need to work continuously for 10 to 20 hours. There are some executives who cannot leave their office when it is night-time. There are many senior government officials who have to work into the small hours. Having said that, these senior officials cannot escape from the pattern that has just been mentioned by Mr LAU Chin-shek, that is, the longer the working hours, the greater the possibility of making mistakes. Facts have shown that even the smartest government officials cannot hope to escape from this pattern.

I also know very well that many employers of small and medium enterprises have very long working hours. I know this very well because a member of my family is such an employer of a small and medium enterprise. When she was an employee, her working hours were very long, but she had regular working hours. After she has become the boss of a small company, things start to change. She has to work overtime to complete her clients' orders. At the end of the year, she has to settle the accounts. Once in a while she has to organize exhibitions and entertain her clients. There are no regular working hours for her. For the senior executives, senior officials, professionals and employers and so on, their work belongs to another kind of pattern. If we demand to legislate to require the Policy Secretary to stay in his office for a certain number of hours every day, that is unreasonable, but not because of the argument just now put forward by Mr LEE Kai-ming. He said that Members of this Council and the officials work in air-conditioned offices with better working conditions, and so it would not matter very much for them if they work longer hours. But the workers work in worse conditions and their working hours should be limited. Things are not like that at all. We need to work on the street, under the scorching sun and walk up flights of stairs in buildings with no lifts. So the point is people have different working conditions and so the pattern is different. When our senior officials and employers in the business have worked for some time, they can leave their jobs and recharge their batteries or to unwind. Just now I saw Mr Edward HO wearing a neck brace and I asked him what had happened. He said that he had a neck ache and his pain worsened after he had been pressed by the doctor. And so I told him that I had the same problem before and things did not improve very much after I had consulted the doctor. Then I took a three-day vacation and the pain in my neck was gone. But in the labour sector, as Miss CHAN Yuen-han and Mr LAU Chin-shek have said, the workers work a seven-day week and sometimes for a few months without any stop. Do they have a similar working pattern as the senior officials and the executives? They have an entirely different kind of pressure in work and from the working environment.

Now we are discussing the problem of regulating working hours. I approach the problem from a perspective of science and physiology. We cannot say that the longer the working hours, the greater will be the productivity and that a person's production will increase by proportions. That point has been raised by many Honourable Members just now and there is no need for me to repeat it here. Unless we do not believe in science, in physiology, in the fact that the human body is affected by many external factors, then we must admit

that when work has reached a certain extent, it will affect our health and efficiency. Some people may say that working hours should be determined by the free market, but the market is not omnipotent. If market forces can solve every problem there is, there will be no such things as the ban on child labour, and the enactment of labour legislation to protect occupational safety. Everything could then be left to the market. That is because if workers feel that some jobs are unsafe, they will not do it and if children think that certain things are no good for them, they will not do them as well.

Why do we think that we should legislate on this issue? Will the enactment of legislation on this reduce our flexibility and make us less competitive? Things will just be the opposite of what we may expect. If employers rely on this infinite extension of working hours of their employees to meet production targets, then it will lead to a diminished incentive to raise productivity, efficiency of work and competitiveness. If we think that a certain amount of production can be achieved with workers working continuously for eight hours, and so if the workers work continuously for 16 hours, the amount of production can be doubled, then there will be no need for us to bother about productivity and to make innovative changes to meet the needs of new economic developments. On the other hand, it is precisely because we have over-relied on the indefinite extension of working hours of the workers that impediments appear in our attempt to innovate and enhance productivity.

Mr Deputy, the DAB supports this motion because we have respect for science and we have considered the basic right of the workers to be protected by law. We lend our support to this motion.

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

MR LEE CHEUK-YAN (in Cantonese): Mr Deputy, I would like to remind Honourable Members that the motion moved by Mr LAU Chin-shek today is to urge regulation by legislation. The reason is, as many Honourable Members have said, the working hours for employees in Hong Kong are very long and the wages are very low. Besides, I would like to remind them that there is a background to the issue, that is, there is no collective bargaining right for employees and so they cannot bargain. Or it may be said that their bargaining power is very weak. If employees enjoy a great bargaining power, they can

arrive at some agreement on working hours with the employers. And so there would not be any need for legislation. But the situation now is different, the employees are deprived of their right to collective bargaining, their demand for minimum wage is rejected and there seems to be no chance of bringing working hours under regulation. Then what can these employees and workers do? The debate we have now touches on the question of the kind of society we are now in. Do we want to go back to the Victorian age of Charles DICKENS? Do we want to go back to the times of sweatshops a century ago? I would like to tell Mr Joseph WONG through the Deputy President that in the Labour Day this year, I felt deeply ashamed because the declaration made by the working class this year was still on an eight-hour day. The Labour Day in other countries dated back to more than a century ago and they had succeeded in getting an eight-hour day despite paying heavy prices in the course of fighting for it. We are more than a century behind other people. We are still fighting for what other people were fighting more than a century ago. And we have not been successful. What kind of society is ours? Do we want to go back to the age of Charles DICKENS? I hope the Government can think about it.

I would like to tell Members a familiar story from the *Bible*, from the *Book of Exodus*. The *Book of Exodus* tells how the Hebrews were enslaved. They were used to be assigned to making bricks, but the Pharaoh was moved to anger and he ordered the Hebrews to pick hay to make bricks, thereby increasing their labour. Then God heard their suffering and decided to set them free. Then Moses came and delivered the Hebrews. Who has heard the suffering of the workers in Hong Kong? They are living in an enslaved life of long working hours and low wages. Who is there to deliver them? The Government is deaf to their cries of suffering. The last time when we cast our votes by division, the result rang clear to the people of Hong Kong that this Council had failed to listen. Who then can listen to their suffering? The debate we have now is about what kind of society we want ours to be. Do we want to have a more humane society, or do we want to have one which enslaves its people and practises the inhumanity of man against man? Should we try to persuade the people of Hong Kong and all our employees that they should not be economic slaves and not to practise this enslaving capitalism? Do we have this ideal and mindset? The debate today is to probe into the kind of society we want and whether we want to say no to this capitalism which subjects people to becoming economic slaves.

As a matter of fact, just now I have said that the people of Hong Kong are economic slaves and that does not only apply to workers, the employers are economic slaves as well. Mrs Selina CHOW has said just now that the employers are in no way better off than their employees. They are all slaves to money. I am not talking about the issue of whether the employers are scrupulous or not, we are not talking about this issue at all today. What I am now saying is that the entire community has not thought of how to become a more humane society. The employers should in fact think about how they can suffer less and that they can be free from slavery. Of course, some people may think that I am saying this because that does not concern me. How can employers escape from being enslaved? But if our society can set up some standards so that the people can live a more humane life, then this can be done. I also hope that employers can lead a more humane life, however, the employees now are certainly leading a very inhumane life. Mr HO Sai-chu has said just now that the findings of some surveys show that the workers themselves want to have longer working hours. But that is because they have become economic slaves. I have never said that employers are slaves, please do not distort what I really want to say. I feel that the entire community of Hong Kong is one of slaves, economic slaves. That applies to employers as well. I only want to know when will this ever end? Mr LAU Chin-shek has said just now that legislating on working hours is very important to our family life, for long working hours make us sacrifice our family and even our next generation.

In addition, I would like to respond in particular to the views expressed by Mr HO Sai-chu just now. Mr HO cited the trade unions in Singapore which said that workers should undergo retraining all the time. But what is the situation in Hong Kong? We want our workers to adapt to the new economic developments, but the reality is that the working hours of our workers are too long and so they cannot undergo any retraining. When they cannot get any retraining, they may be accused of being not diversified in their skills and when their skills are not diversified enough, they cannot adapt to the new economic developments. If in the end of the day, workers cannot adapt to the new economic developments, there will be nothing to spur economic growth. We have been saying that there should be innovations in our economy, but that implies more training should be given to workers. If workers can have more chances of training, then working hours will become a very important factor to consider.

Then there is the question of fatigue mentioned by many Honourable Members just now. We often talk about productivity and we often also criticize sales staff in retail trades, workers in the catering industry and taxi drivers for their bad service. As I have said, all the people in Hong Kong are slaves and how can they give a good service to their clients? If we want to get good service from them, we need to be kinder to them, then we can expect them to give good service.

Lastly, I hope today's debate can be of help to Mr TUNG. Mr TUNG leads a seven to eleven working day, can he manage to have a high productivity? His popularity rating is very low now. He should regulate his working hours a bit to enhance his productivity.

Thank you, Mr Deputy.

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

MR JAMES TIEN (in Cantonese): Mr Deputy, the motion debate today is about working hours. I note that many of the motion debates in the Legislative Council this year are related to employees, but they are very piecemeal. For example, after the debate on minimum wage, there is the debate on whether the eight-hour working day is reasonable. I think we really need to find out what in fact has gone wrong.

Mr Deputy, one of the greatest problems that we have, and it is also one which has the consensus of all Hong Kong people, is the pegging of the Hong Kong dollar with the US dollar. All the parties — the Democratic Party, the DAB, the Hong Kong Federation of Trade Unions — and all the people support it and no one says that the Hong Kong dollar should unpeg with the US dollar. Why are our economy and our wages so much related to this? The prevailing inflation rate in the United States is 2% to 3%. We have a deflation of 5%. The prevailing interest rate in the United States is 9%. The interest rate in real terms is 9% minus 3% and that makes 6%. Our interest rate in real terms is 15%. Recently, I talked to the people from the banking sector and I asked them why was the interest rate for loans made out to small and medium enterprises set at 2% plus the premium rate while the interest rate for loans made out to home buyers is set at prime minus 2%. In the past, the situation was exactly the

opposite: those who borrowed loans for business would get a prime minus 2% interest rate while those who borrowed to buy flats would get a prime rate plus 2% interest rate. But the answer they gave was, "Things are not like that." They said that there were very few owners of small and medium enterprises who approached them for loans. I asked them if that was because the interest rate of 2% plus the premium rate was too expensive. They said, "No, the number of those investors or companies who apply loans from us has decreased a lot. There is not much business to be done in this market." The Government announced that the economic growth for the first quarter was 14%, and such a high growth rate was mainly due to the extremely weak performance in the first quarter last year. And it was also due to the fact that many technology-based stocks were listed in the first quarter of this year. That accounts for the impressive growth.

Let us look at some other figures. Since the introduction of Euro, from January last year to the present, the exchange rate set between Euro and US dollar fell from the original US\$1.18 to US\$0.9. That is to say, the European currency fell a total of 30% against the US dollar. We may say that when we buy goods from Germany, France and other European countries, there is a difference of 30% from the previous prices. Likewise, if we export goods to the United States, if our goods are to compete with those from Europe, or if tourists from Europe come to spend in Hong Kong, the difference will be 30% more than in the past. On the other hand, a worker who earns \$5,000 in Hong Kong is in fact earning an equivalent of \$6,500. If we are to show our support for minimum wage (the issue of collective bargaining will be another one), an eight-hour working day or a 10-hour working day and so on, and if we consider the prevailing exchange rate of the Hong Kong dollar, is that a realistic thing to do?

I agree entirely that the eight-hour working day is an appropriate one. Every one of us does not like working for 10 hours a day. But if the eight-hour working day is to be implemented and when people are saying that they are making too little if they manage to make \$4,000 by working eight hours a day; and when people are saying that they are making too little when they make about \$5,000, then what should we do? Mr LEE Cheuk-yan may say then that now the hourly wage in a McDonald's restaurant is only \$11, when there is an eight-hour working day, will the hourly wage fall to \$10 or \$9? Would that be more inhuman? When people are asking for a minimum wage and restricting the working hours at the same time, the only solution is unpegging the Hong Kong

dollar with the US dollar. For after the delinking, the Hong Kong dollar will be able to float freely and there will be a free economy. Wages can go up and we can follow the example of Singapore, Korea and Taiwan, and have our currency floating according to market forces. Our goods can be competitive again. But if we cannot solve this big question, even if you propose all kinds of issues for debate in a piecemeal manner, and talk about slaves all the time — though you are not attacking the employers in particular — what can we do when everyone is having such a bad time? Under the present economic circumstances, if the eight-hour working day is really to be implemented and if minimum wage is to be imposed (even if it is \$5,000 instead of \$5,890), all these restrictions will make it extremely difficult to do business. The employer in such a predicament may choose to close down in the end, and there will be more people unemployed. If that happens, how can you expect to have your demand for proper working hours fulfilled.

Therefore, I think that unless you can solve this big problem, I do not think the demand put forward can be fulfilled. You have brought up various issues one by one for debate. It sounds very nice to the ears and people will think it is reasonable, for they may ask themselves why they have to work so many hours a day. It is nice to work an eight-hour day. They may also ask why they can only make some \$5,000 a month and why they cannot make more money. However, from another perspective, if we really work only for eight hours a day, for the businessmen, the salary of some \$5,000 may be equal to some higher value. That will make our exports, re-exports and the tourist industry less competitive in the international markets. I think Honourable colleagues can understand this point. Ours is a very small economy. Our population is only some 6 million. There are not many natural resources. We have no oil and gold. All we have is the economic miracle that we have worked with our own hands. Our business opportunities come from exports and service industries. If every Honourable colleague agrees with what I have said just now on the pegging of the Hong Kong dollar with the US dollar, then what can we do on this major premise? The result will only be a fall in assets value and property prices. Talking about the fall in assets value, in Hong Kong, wage is a large part of assets. The attempt to avoid any fall in wages has made Hong Kong far less competitive than in the past.

On the other hand, if we support delinking the Hong Kong dollar with the US dollar and allow it to float until it reaches a proper price, then it is like raising

the salary of the workers. That is entirely possible. By that time, you may ask to have an eight-hour working day. That is something perfectly permissible under the economic circumstances, for our economy can find a new point of equilibrium. But if you do not want to have any changes and keep on presenting topics like minimum wage, restrictions on working hours and so on, even if you have not said that the employers are unscrupulous, you are implying that they do not support minimum wage but support the long working hours, or more than eight hours of work every day. That cannot solve the problem in any practical sense.

Mr Deputy, I so submit.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Deputy, first of all, I wish to give an account of the provisions on working hours contained in the existing labour legislation. The maximum number of working hours for some particular employees are set out in the Women and Young Persons (Industry) Regulations and the Employment of Children Regulations under the Employment Ordinance. The Women and Young Persons (Industry) Regulations provides that any person aged 15 but below 18 employed by an industrial undertaking shall not work for more than eight hours on any one day and for more than 48 hours in any one week. Under the employment of Children Regulations, a child aged 13 but below 15 who has completed Secondary Three can be employed to work in non-industrial undertakings only with the written consent of his or her parents. However, such a child shall not in any case work for more than eight hours on any one day.

In response to Mr LEUNG Yiu-chung's allegation that the number of working hours of women has increased following the removal of the relevant limit in 1997 from the Women and Young Persons (Industry) Regulations, I wish to point out that according to the figures released by the Census and Statistics Department, the median level of working hours for women over the recent three quarters has remained steady at 44 hours a week.

Moreover, under the Employment Ordinance, an employee employed by the same employer under a continuous contract shall be entitled to at least one day of rest after working for seven days; and, the employee is further entitled to seven days of paid annual leave after working for the employer for 12 months. The length of the employee's paid annual leave shall also be increased annually according to his years of service, up to a maximum of 14 days. Under the Holidays Ordinance, besides Sundays, there shall be 17 days of public holidays every year, 12 of which are statutory holidays. All these legislation can ensure that employees are able to enjoy days of rest and engage in pursuits outside their areas of work.

Besides the retail and catering trades mentioned by Mrs Selina CHOW, many other trades, such as insurance agents, property agents and domestic helpers, also need to follow flexible working hours owing to the special needs of their work. If we disregard the unique requirements of all these trades and occupations and impose a uniform number of working hours, then some employers and employees will be rendered unable to make appropriate adjustments in respect of working hours to cope with the needs of their business or work.

The labour market in Hong Kong has all along been marked by flexibility. Employers and employees can take account of their respective needs and conduct negotiations as a means of resolving many different problems, including arrangements relating to working hours. Flexibility has been a key to the economic success of Hong Kong. For this reason, any legislation on restricting the number of working hours will definitely affect the flexibility of the Hong Kong labour market and work against our long-held principle of free economy. Therefore, although all employees, including myself, would not want to work excessively long hours, we do not think that it is appropriate, on the basis of the above-mentioned reasons, to enact any legislation on restricting the number of working hours.

That said, I must add that we are still prepared to look into the possible adverse impacts of long working hours on employees from the perspective of occupational health. The Labour Department has launched an in-depth study on this issue, and it has consulted the views of the Occupational Safety and Health Committee under the Labour Advisory Board.

Currently, statutory provisions on resting time are found only in two pieces of Hong Kong legislation, namely, the Women and Young Persons (Industry) Regulations and the Employment of Children Regulations. The Women and Young Persons (Industry) Regulations provides that young persons employed by industrial undertakings must be given a resting time of at least 30 minutes after a continuous working period of five hours. Under the Employment of Children Regulations, children employed by non-industrial undertakings must be given a resting time of at least one hour after a continuous working period of five hours. The aim of these statutory provisions on resting time is to protect the health of young persons and children under employment and to prevent them from being over-worked. For other employees, they can draw up the relevant arrangements with their employers through the negotiations. Moreover, under the Occupational Safety and Health Ordinance, employers are obligated to take certain measures to ensure the sound health of their employees, including the drawing up of appropriate arrangements on resting time. We have been conducting publicity in this respect to remind employers of their obligation.

It is indeed difficult to draw up any statutory provisions on resting time. First, it may not be suitable to enforce any mandatory resting time arrangements for some individual trades and occupations. For example, since domestic helpers do not need to work on a non-stop basis during the day, their need for a statutory resting time is not so great. And, in the case of some particular occupations, such as those involving rescue, maintenance of law and order and medical care, the adoption of a statutory resting time is also not so suitable. If we disregard the unique circumstances of individual occupations and introduce a uniform statutory resting time for them, individual employers and employees will be rendered unable to adjust their working hours to cope with the needs of their business or work.

I believe that the best approach is to allow employers and employees to make arrangements on resting time through negotiations based on their unique circumstances. We will draw up a plan this year to publicize the benefits of flexible working hours among employers, so as to encourage them to negotiate with their employees on working out appropriate arrangements on resting time. Traditionally, the working hours of some individual occupations are longer than those of others, some examples being property management, catering and retailing. Our publicity efforts will first focus on these occupations. The Labour Department will also offer advisory services for both employers and employees.

The economy of Hong Kong has just started to show signs of recovery, so the Government does have some reservations about legislating on a ceiling for working hours. As I have just mentioned, the Labour Department has consulted the Occupational Safety and Health Committee under the Labour Advisory Board on the issue of resting time. The Department is now actively studying the issue and will consult the in due course.

Some Members have raised the point that long working hours may deprive employees of the opportunities of continuous learning. I agree that this may affect grass-roots workers to a certain extent. I am prepared to listen to Members' views on how best to encourage employers to support the initiatives of their employees to seek continuous learning.

Lastly, I must emphasize that the Government actually attaches very great importance to labour relations, the protection of employees' interests and occupational safety and health. Members representing the labour sector may well recall that so far during the current term of the Legislative Council, the Government has actually submitted quite a number of bills on improving the benefits and occupational safety and health of employees. The Government will continue to closely monitor all those issues which may affect the rights and interests of employees.

Thank you, Mr Deputy.

DEPUTY PRESIDENT (in Cantonese): Mr LAU Chin-shek, you may now reply. You still have four minutes and 33 seconds out of your original 15 minutes. After Mr LAU Chin-shek has given his reply, the debate shall end.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, I wish to thank those Honourable colleagues who have spoken just now. I would like to thank Mr James TIEN in particular, for he did not say that working hours should not be restricted, but rather the increase in working hours is a result of the Hong Kong dollar and US dollar peg. In addition, I would like to thank Mr Jasper TSANG, Mr James TO and Mr LEE Cheuk-yan for answering many questions I have in mind.

Concerning the exercise of free will and business flexibility in the free market, the Government and some Honourable Members have responded to these issues. Suppose the free market is not under any regulation, that is to say, the working environment and safety in the workplace are not under any legislative control, then can the employees choose dangerous jobs or working procedures? I wish to stress that the personal health of the workers and their family life cannot be sold in the market. And I want to stress again, the personal health of the workers and their family life are not to be sold in the market.

In addition, I would like to raise a point and that is about the effect of the restriction in working hours on efficiency. Just now some Honourable Members have raised questions on this point, but in fact, workers have to pay a price for working overtime. Long working hours will lead to more frequent injuries and accidents, and workers will be more prone to fatigue and occupational diseases. According to the findings of a survey conducted by the Faculty of Medicine in the University of Hong Kong, the financial losses incurred every year as a result of the diseases and injuries of workers amount to more than \$1.2 billion. Although we cannot assert that this is related directly or indirectly to overtime work, we can be certain that long working hours will affect efficiency and cause economic losses.

When we work non-stop and when market activities are not restricted, the workers are constantly kept at a state of readiness and they will bring their full potentials into play at all times, but what is the price they have to pay? Pressure, injuries, diseases and heavy medical bills. And also economic losses, health, life and family life. Things priceless. There is got to be a day when the price is life, but how are we to account for that loss? The Government has stipulated the holidays and rest days for workers and also the amount of rest time for them. But I would like to point out, three years have gone by since 1997 and during this period of three years, the number of people who have to work overtime has increased by 150 000. I have no idea how many more people will be working overtime after some time. Will the Government tell us by that time what the real situation is? Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Chin-shek, 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)

Mr James TIEN rose to claim a division.

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

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

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

Functional Constituencies:

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

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Timothy FOK and Dr TANG Siu-tong voted against the motion.

Mr Eric LI and Dr LEONG Che-hung abstained.

Geographical Constituencies and Election Committee:

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

Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

Prof NG Ching-fai and Mr MA Fung-kwok abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, seven were in favour of the motion, 11 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 21 were in favour of the motion, four against it and two abstained. 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 negated.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 14 June 2000.

Adjourned accordingly at twenty-eight minutes to Nine o'clock.

WRITTEN ANSWER**Written answer by the Secretary for the Environment and Food to Mr Fred LI's supplementary question to Question 3**

As regard the question on the number of residents affected by the 600 road sections where traffic noise exceeds 70dB during peak traffic flow, we regret to inform you that we do not have such information as the number of residents affected was not included in the study.

Annex II**WRITTEN ANSWER****Written answer by the Secretary for Education and Manpower to Miss CHOY So-yuk's supplementary question to Question 5**

Members may wish to know that it is difficult to establish whether online chatting is the cause or result of academic/emotional problems of students. Furthermore, the Education Department does not require school social worker, as part of their duties, to keep such statistics.

Annex III**WRITTEN ANSWER****Translation of written answer by the Secretary for Works to Mr James TO's supplementary question to Question 6**

We have inquired with the Hong Kong Industrial Estates Corporation and it confirmed that no specific requests have been received from grantees for the construction of the additional facilities. However, some grantees did suggest that improvements be made to such facilities as shopping malls and restaurants. The Corporation is currently examining the redevelopment of the area surrounding the Estate Centre building of the Tai Po industrial estate, including the feasibility of setting up other new facilities.

Annex IV

TELECOMMUNICATION (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Information
Technology and BroadcastingClauseAmendment Proposed

1

By deleting subclause (2) and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which this Ordinance is published in the Gazette.

(3) Section 3 (to the extent that it relates to section 6D(2)(a) of the principal Ordinance as amended by this Ordinance), section 4 (to the extent that it relates to the repeal of section 7 of the principal Ordinance and to sections 7(1) and (4) to (11) inclusive and 7A of the principal Ordinance as amended by this Ordinance), section 5(a)(ii) and (b) and section 17(a), (ab) and (ac) shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette."

2

In the proposed section 2 -

(a) in subsection (1) -

(i) by deleting the definition of "external services" and substituting -

"external services" (對外服務)
means telecommunications
services between -

ClauseAmendment Proposed

- (a) Hong Kong and one or more places outside Hong Kong; or
 - (b) two or more places outside Hong Kong where the services are routed through Hong Kong;"
- (ii) in the definition of "numbering plan", by adding "for" after "use";
- (iii) in the definition of "public place", by adding "to" after "permitted";
- (b) by deleting subsection (2) and substituting -
 - "(2) For the avoidance of doubt, it is hereby declared that -
 - (a) a notice under section 7C(1) and an order under section 32J(4) are not subsidiary legislation;
 - (b) an order under section 32I(1) or 32K(6) is subsidiary legislation."

ClauseAmendment Proposed

3

(a) In the proposed section 6A(3) -

(i) in paragraph (a), by adding "under this Ordinance" after "decision";

(ii) by deleting paragraph (b) and substituting -

"(b) forming an opinion or making a determination, direction or decision under this Ordinance -

(i) shall provide reasons in writing for it;

(ii) shall not depart from guidelines issued under section 6D which are applicable to the subject matter of the opinion, determination, direction or decision, as the case may be, unless he has provided reasons in writing for the departure."

(b) In the proposed section 6B -

(i) in subsection (2), by deleting "徵詢" and substituting "諮詢";

(ii) by deleting subsection (3).

ClauseAmendment Proposed

- (c) By adding -

"6C. Consultation

Before performing any function or exercising any power under this Ordinance, the Authority may consult with -

- (a) the persons who may be directly affected by the performance of that function or the exercise of that power, as the case may be; or
- (b) members of the public.

6D. Guidelines

(1) Subject to subsection (4), the Authority may, for the purpose of providing practical guidance in respect of any provisions of this Ordinance, issue such guidelines as in his opinion are suitable for that purpose.

(2) Without prejudice to the generality of subsection (1), the Authority shall, as soon as is practicable, issue guidelines -

- (a) indicating the manner in which he proposes to perform his function of determining applications for licences which may be issued by him, including the licensing criteria and other relevant matters he proposes to consider;

ClauseAmendment Proposed

- (b) subject to subsection (3), on the application of the principle referred to in section 14(5A)(a) in any arbitration proceedings.

(3) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2)(b), carry out such consultation -

- (a) with the persons who may be affected by the operation of section 14(1A); and
- (b) on the factors to be taken into account for the purposes of subsection (2)(b),

as is reasonable in all the circumstances of the case.

(4) Without prejudice to the generality of section 6C, the Authority shall, before issuing any guidelines -

- (a) for the purposes of the test of dominance prescribed in section 7L(2), carry out such consultation with the licensees in the relevant telecommunications market as is reasonable in all the circumstances of the case;
- (b) setting out principles governing the criteria for any determination under section 36A(1) and the matters to be considered for the

ClauseAmendment Proposed

purposes of section 36A(3) and (3B) in the application of section 36A(3) and (3B) to any such determination, carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case;

- (c) setting out principles governing the criteria for making a determination under section 36AA(6), carry out such consultation with -

(i) the telecommunications industry; and

(ii) such other persons who may be directly affected by such a determination,

as is reasonable in all the circumstances of the case."

4

- (a) In the proposed section 7, by adding -

"(11) Where the Authority refuses to issue a licence to a person, he shall provide to the person his reasons in writing for the refusal."

- (b) In the proposed section 7H, by deleting "practices generally" and substituting "principles generally".

ClauseAmendment Proposed

- (c) In the proposed section 7I -
- (i) in subsection (1), by adding ", or exercise his powers, in order to ensure the person's compliance with the provisions of this Ordinance, licence conditions, and the determinations and directions of the Authority, applicable to the person" after "functions";
 - (ii) in subsection (4), by deleting "a person" and substituting "the person supplying the information";
 - (iii) by adding -

"(5) For the avoidance of doubt, it is hereby declared that where a person supplies information reasonably requested under subsection (1) notwithstanding that the information is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the supply of that information contrary to that agreement.

(6) Nothing in this section shall require a person to supply information which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance."

ClauseAmendment Proposed

(d) In the proposed section 7J, by adding -

"(6) The Authority shall not exercise his power under subsection (1) in respect of any office, premises or place in such a way as to disrupt any operations being carried on therein -

(a) by a licensee or any other person;
and

(b) any more than is necessary for the proper exercise of that power in all the circumstances of the case.".

(e) By deleting the proposed section 7K(4).

(f) In the proposed section 7L(3)(e), by deleting everything after "guidelines" and substituting "referred to in section 6D(4)(a).".

(g) By deleting the proposed section 7M(2).

5 By deleting paragraph (a)(i) and substituting -

"(I) by adding "or created" after "appropriate licence granted";

(ia) by adding "or licensed" after "registered";".

ClauseAmendment Proposed

New

By adding -

**"5A. Application of section 9
to air transit or air
transhipment cargo**

Section 9A(1), (2), (3) and (6) is amended by repealing "radiocommunication" wherever it appears and substituting "radiocommunications".

7

(a) In paragraph (b) -

(i) in the proposed section 14(1B) -

(A) in paragraph (a), by deleting "and";

(B) in paragraph (b) -

(I) in subparagraphs (iii) and (iv), by deleting "public place" wherever it appears and substituting "land";

(II) in subparagraph (v), by deleting "subparagraph (ii)." and substituting "subparagraph (ii).";

(C) by adding -

(c) unless he has given a reasonable opportunity to the persons having a lawful interest in the land concerned and to the licensees concerned to

ClauseAmendment Proposed

make representations and has considered all representations made before he decides whether or not to grant the authorization; and

(d) unless he -

(i) gives reasons in writing for the grant of the authorization; and

(ii) specifies in writing the technical requirements, if any, of the right of access arising from the authorization.";

(ii) by adding after the proposed section 14(1C) -

"(1D) Where subsection (1A) is applicable -

(a) the Authority shall, upon application made to him by the licensee or the person having a lawful interest in the land concerned, specify in writing an interim fee (including the terms and conditions in accordance with which it shall be payable) to be paid by the licensee to the person; and

ClauseAmendment Proposed

(b) the licensee shall not exercise any rights conferred by the authorization referred to in that subsection on the licensee -

(i) until -

(A) the licensee and the person having a lawful interest in the land concerned come to an agreement referred to in subsection (5)(a);

(B) the determination of the fee referred to in subsection (5)(a) in the arbitration proceedings concerned for the purposes of subsection (5)(b);

(C) the payment of the interim fee concerned to the person or,

ClauseAmendment Proposed

if the interim fee is to be paid in instalments, upon the payment of the first instalment of the interim fee to the person; or

(D) such time as is agreed between the licensee and the person; and

(ii) except in compliance with any other conditions to which the authorization is subject."

(b) In paragraph (c), in the proposed section 14(2) -

(i) in paragraph (i), by adding "to any fixture or chattels found on the land or seabed" after "damage";

(ii) in paragraph (ii)(A), by deleting ", in the opinion of the Authority,".

(c) In paragraph (e) -

(i) in the proposed section 14(5) -

ClauseAmendment Proposed

(A) in paragraph (a), by deleting "that subsection" and substituting "subsection (2)(ii)";

(B) by deleting paragraph (b) and substituting -

"(b) in the absence of any such agreement within a reasonable time, then -

(i) the fees, and the terms and conditions in accordance with which it shall be payable, shall be determined by arbitration under the Arbitration Ordinance (Cap. 341); and

(ii) for the purpose of subparagraph (i), the licensee and the person having a lawful interest in the land concerned shall be regarded as having made an arbitration agreement within the meaning of that Ordinance the provisions of which agreement shall be deemed to include -

ClauseAmendment Proposed

(A) a provision that the fee, and the terms and conditions in accordance with which it shall be paid, shall, in the absence of agreement, be determined by a single arbitrator; and

(B) a provision equivalent to subsection (5B).";

(ii) by adding after the proposed section 14(5) -

"(5A) In any arbitration proceedings for the purposes of subsection (5)(b) -

(a) regard shall be given to -

(i) the principle that the fee to be paid shall be fair and reasonable in all the circumstances of the case, including, but

ClauseAmendment Proposed

not limited to, factors relating to cost, property-value and the benefits to be derived from the authorization concerned referred to in subsection (1A);

(ii) the guidelines issued by the Authority under section 6D(2)(b) on the application of the principle referred to in subparagraph (i) in any such proceedings; and

(iii) the reasons and technical requirements concerned, if any, referred to in subsection (1B)(d);

ClauseAmendment Proposed

- (b) regard shall not be given to the amount of any interim fee specified by virtue of the operation of subsection (1D).

(5B) Where in any arbitration proceedings for the purposes of subsection (5)(b) -

- (a) there is a dispute on a matter other than the technical requirements concerned, if any, referred to in subsection (1B)(d); and
- (b) the arbitrator is of the opinion that, without determining that matter -
 - (i) the licensee and the person concerned will not reach an agreement to give effect to the authorization concerned referred to in subsection (1A); or

ClauseAmendment Proposed

- (ii) the determination referred to in subsection (5)(b) cannot be made,

then the arbitrator may determine that matter in any manner fair and reasonable in all the circumstances of the case and not inconsistent with the authorization concerned referred to in subsection (1A).

(5C) In a determination referred to in subsection (5)(b), the arbitrator shall -

- (a) in specifying the fee to which the determination relates, include provisions for set-off in view of any interim fee paid by virtue of the operation of subsection (1D); and
- (b) specify that the fee to which it relates is payable for the period commencing on the first exercise of a right -
 - (i) conferred by the authorization

ClauseAmendment Proposed

concerned
referred to in
subsection
(1A); and

- (ii) by the licensee
concerned in
relation to the
land
concerned.";

(iii) by deleting the proposed section 14(6)(c);

(iv) by adding after the proposed section 14(7) -

"(8) For the avoidance of
doubt, it is hereby declared that -

- (a) where there is an
inconsistency
between any
provision of a
technical requirement
referred to in
subsection (1B)(d)
and any provision,
relating to public
safety, of any other
Ordinance, then the
second-mentioned
provision shall
prevail over the first-
mentioned provision
to the extent of the
inconsistency;

ClauseAmendment Proposed

- (b) compensation is not payable under subsection (2) in relation to any physical damage referred to in that subsection for which full compensation has been paid or is payable under any other provision of this Ordinance or under any other law."
- 8 In the proposed section 16(1), by adding "and such requirement shall not be unreasonably refused by the Authority or licensee, as the case may be" after "installation" where it last appears.
- 13 In the proposed section 19B(1) -
- (a) by adding ", in all the circumstances of the case, unreasonably" after "contract that";
- (b) by adding "to the extent only that it imposes such restriction" after "operation".
- 16 (a) By deleting the proposed section 32D(2) and substituting -
- "(2) Without prejudice to the generality of section 6C, before prescribing the standards and specifications under subsection (1), the Authority shall carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case."

ClauseAmendment Proposed

- (b) By deleting the proposed section 32G(2) and substituting -

"(2) Without prejudice to the generality of section 6C, before exercising his powers under sections 32H(2)(a) and (b) and 32I(1), the Authority shall carry out such consultation with -

(a) the telecommunications industry;
and

(b) such other persons who may be directly affected by the exercise of such powers,

as is reasonable in all the circumstances of the case.".

- (c) In the proposed section 32H(2)(a) and (b), by deleting "徵詢" and substituting "諮詢".
- (d) In the proposed section 32I(1), by deleting "徵詢" and substituting "諮詢".
- (e) By adding -

"PART VC

APPEALS RELATING TO SECTIONS 7K,
7L, 7M AND 7N

32L. Interpretation

In this Part -

"appeal" (上訴) means an appeal under section 32N(1);

ClauseAmendment Proposed

"Appeal Board" (上訴委員會) means the Telecommunications (Competition Provisions) Appeal Board established under section 32M(1);

"appeal subject matter" (標的事項), in relation to an appeal, means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) -

(a) to the extent to which it relates to section 7K, 7L, 7M or 7N or any licence condition relating to any such section; and

(b) which is the subject of the appeal;

"Chairman" (主席) means the Chairman of the Appeal Board appointed under section 32M(2);

"Deputy Chairman" (副主席) means a Deputy Chairman of the Appeal Board appointed under section 32M(2);

"panel member" (備選委員) means a member of the panel of persons appointed under section 32M(5).

32M. Establishment and membership of Appeal Board

(1) There is hereby established an appeal board called in English the "Telecommunications (Competition Provisions) Appeal Board" and in Chinese the "電訊(競爭條文)上訴委員會".

ClauseAmendment Proposed

(2) Subject to subsections (3) and (4), the Chief Executive shall appoint a person to be the Chairman of the Appeal Board and such other persons as he thinks fit to be Deputy Chairmen of the Appeal Board.

(3) A person shall not be appointed under subsection (2) unless the person is eligible to be appointed a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4).

(4) Subject to subsections (7) and (8), the Chairman and a Deputy Chairman shall each be appointed for a term of not more than 2 years but may be reappointed.

(5) The Chief Executive shall appoint a panel of persons not being public officers whom he considers suitable for appointment under section 320(1)(a)(ii) as members of the Appeal Board.

(6) An appointment under subsection (2) or (5) shall be notified in the Gazette.

(7) The Chairman, a Deputy Chairman or a panel member may at any time resign by notice in writing to the Chief Executive.

(8) The Chief Executive may revoke the appointment of the Chairman, a Deputy Chairman or a panel member on the ground of incapacity, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Chief Executive.

(9) The remuneration, if any, of the Chairman, a Deputy Chairman and a panel member shall be paid at a rate that the Financial Secretary determines.

ClauseAmendment Proposed**32N. Appeals to Appeal Board**

- (1) Any person aggrieved by -
- (a) an opinion, determination, direction or decision of the Authority relating to -
 - (i) section 7K, 7L, 7M or 7N; or
 - (ii) any licence condition relating to any such section; or
 - (b) any sanction or remedy imposed or to be imposed under this Ordinance by the Authority in consequence of a breach of any such section or any such licence condition,

may appeal to the Appeal Board against the opinion, determination, direction, decision, sanction or remedy, as the case may be, to the extent to which it relates to any such section or any such licence condition, as the case may be.

(2) Subject to subsection (3), an appeal shall not suspend the operation of the appeal subject matter.

(3) Where an appeal is made and the appeal subject matter falls within section 36C, then the appeal subject matter shall be suspended in its operation from the day on which the appeal is made until the appeal is determined, withdrawn or abandoned.

ClauseAmendment Proposed

(4) A person who wishes to make an appeal shall, not later than 14 days after he knows, or ought reasonably to have known, of the proposed appeal subject matter, lodge a notice of appeal with the Appeal Board.

**32O. Procedure and powers of
Appeal Board, etc.**

- (1) In the hearing of an appeal -
- (a) the Appeal Board shall consist of -
- (i) the Chairman or a Deputy Chairman who shall preside at the hearing; and
 - (ii) 2 panel members appointed by the Chairman or Deputy Chairman;
- (b) every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except a question of law which shall be determined by the Chairman or Deputy Chairman and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote;

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- (c) any party shall be entitled to be heard either in person or through a counsel or solicitor, and if any party is a company, through any of its directors or other officers, or if a partnership, through any of its partners;
- (d) subject to section 32P, the Appeal Board may -
 - (i) subject to subsection (2), receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law;
 - (ii) by notice in writing signed by the Chairman or Deputy Chairman, summon any person -
 - (A) to produce to it any document that is relevant to the appeal and is in his custody or under his control;

ClauseAmendment Proposed

- (B) to appear before it and to give evidence relevant to the appeal;
- (iii) administer oaths and affirmations;
- (iv) require evidence to be given on oath or affirmation;
- (v) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case;
- (vi) where the Appeal Board is satisfied that it is just and equitable in all the circumstances of the case to do so, require a party to the appeal to pay the costs of the Appeal Board in hearing the appeal;
- (vii) make an order prohibiting a person from publishing or otherwise disclosing

ClauseAmendment Proposed

any material the
Appeal Board
receives;

- (viii) make an order prohibiting the publication or other disclosure of any material the Appeal Board receives at a sitting, or part of a sitting, which is held in private;

(e) if the term of appointment of -

- (i) the Chairman or Deputy Chairman; or
- (ii) any panel member appointed under paragraph (a)(ii),

expires during the hearing, the Chairman, Deputy Chairman or panel member, as the case may be, may continue to hear the appeal until the appeal is determined.

(2) Subsection (1)(d)(i) shall not entitle a person to require the Appeal Board to receive and consider any material which had not been submitted to or made available to the Authority at any time before the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) was formed, made, imposed or to be imposed, as the case may be.

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(3) Costs referred to in subsection (1)(d)(vi) are recoverable as a civil debt.

(4) After hearing an appeal, the Appeal Board shall determine the appeal by upholding, varying or quashing the appeal subject matter and may make such consequential orders as may be necessary.

(5) Every decision of the Appeal Board under subsection (4) shall be in writing and contain a statement of the reasons for its decision.

(6) Every sitting of the Appeal Board shall be held in public unless the Appeal Board considers that in the interests of justice a sitting or part of a sitting should not be held in public in which case it may hold the sitting or part of the sitting in private.

(7) The Chairman may determine any matter of practice or procedure relating to the hearing of appeals where no provision governing such matter is made in this Ordinance or in regulations made thereunder.

32P. Privilege against disclosure

The person making an appeal and the Authority and, if different, any other person summoned under section 32O(1)(d)(ii) shall, for the purposes of the appeal, each have the same privileges in respect of the disclosure of any material as if the proceedings were proceedings before a court of law.

ClauseAmendment Proposed**32Q. Appeal Board's decision
is final**

Subject to section 32R, the determination of an appeal by the Appeal Board or any order as to costs made by the Appeal Board shall be final.

**32R. Case may be stated for
Court of Appeal**

(1) The Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case, the Court of Appeal may -

- (a) determine the question stated; or
- (b) remit the case to the Appeal Board, in whole or in part, for reconsideration in the light of the Court's determination.

(3) Where a case is stated under subsection (1), the Appeal Board shall not determine the relevant appeal before the Court of Appeal determines the relevant point of law.

**32S. Offences relating to appeals,
etc.**

(1) In relation to an appeal, any person who, without reasonable excuse, refuses or fails -

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- (a) to attend and give evidence when required to do so by the Appeal Board;
- (b) to answer truthfully and completely questions put to him by the Appeal Board; or
- (c) to produce any document which he is required by the Appeal Board to produce,

commits an offence and is liable on summary conviction to a fine at level 4.

(2) Any person who publishes or otherwise discloses any material in contravention of -

- (a) an order under section 32O(1)(d)(vii); or
- (b) subject to subsection (3), an order under section 32O(1)(d)(viii),

commits an offence and is liable on summary conviction to a fine at level 4.

(3) It shall be a defence for a person charged with an offence under subsection (2)(b) to prove that he did not know and had no reason for knowing that the Appeal Board had made an order under section 32O(1)(d)(viii) prohibiting the publication or other disclosure of the material concerned.

ClauseAmendment Proposed**32T. Immunity**

(1) The Chairman, a Deputy Chairman and a panel member have, in the performance of their duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

(2) A witness before the Appeal Board shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

32U. Rules

The Secretary for Information Technology and Broadcasting may make rules -

- (a) to provide for the lodging of appeals;
- (b) relating to the practice and procedure of the Appeal Board."

17

By deleting paragraph (a) and substituting -

- "(a) by repealing subsection (1);
- (ab) in subsection (1B), by repealing "subsection (1) or (3)" where it twice appears and substituting "section 7(8) or 7A";
- (ac) by repealing subsections (2) and (3);

ClauseAmendment Proposed

(ad) by adding -

"(4A) The Authority shall not exercise a power under subsection (4) unless the exercise of the power is, in all the circumstances of the case, proportionate and reasonable in relation to the contravention concerned referred to in that subsection giving rise to the exercise of the power.

(4B) Where the Authority proposes to exercise a power under subsection (4), he shall give the licensee or other person concerned a reasonable opportunity to make representations and shall consider all representations made before he decides whether or not to exercise that power in the case of the licensee or other person, as the case may be.

(4C) Where the Authority exercises a power under subsection (4), he shall provide reasons in writing for it to the licensee or other person concerned.";"

18

In the proposed section 35A -

- (a) in subsection (1), by adding "for the purposes of the Authority performing his functions, or exercising his powers, under this Ordinance in order to ensure the licensee's compliance with the provisions of this Ordinance, licence conditions, and the determinations and directions of the Authority, applicable to the licensee" after "the licensee";

ClauseAmendment Proposed

(b) by adding -

"(8) The Authority shall not disclose any document or account produced under this section except subject to the requirement in subsection (9) and if the Authority considers that it is in the public interest to disclose that document or account, as the case may be.

(9) The Authority shall give a licensee producing any document or account under this section a reasonable opportunity to make representations on a proposed disclosure of the document or account, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the document or account, as the case may be, if the Authority considers that the disclosure -

(a) would result in the release of information concerning the business, commercial or financial affairs of the licensee; and

(b) could reasonably be expected to affect adversely the licensee's lawful business, commercial or financial affairs.

(10) For the avoidance of doubt, it is hereby declared that where a person produces a document or account under this section notwithstanding that the document or account is the subject of a confidentiality agreement with another person that prevents the first-

ClauseAmendment Proposed

mentioned person from releasing the document or account, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the production of that document or account, as the case may be, contrary to that agreement.

(11) Nothing in this section shall require a person to produce any document or account which the person could not be compelled to produce in civil proceedings before the Court of First Instance."

19

(a) In paragraph (a) -

- (i) in the proposed section 36A(3B), by deleting "may be" and substituting "shall be";
- (ii) in the proposed section 36A(3D)(a), by deleting "telecommunication" and substituting "telecommunications".

(b) By adding -

"(ab) in subsection (4) -

- (i) by repealing "subsection (3)" and substituting "subsection (3D)";
- (ii) by adding "and the Authority has considered representations made before he decides whether or not to make such a determination" after "not be made";".

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- (c) In paragraph (b), in the proposed section 36A(5D), by deleting "or appeal".
- (d) By adding -
- "(ba) by repealing subsection (8);".
- (e) In paragraph (c) -
- (i) in the proposed section 36A(9), by deleting "徵詢" and substituting "諮詢";
- (ii) by adding immediately after the proposed section 36A(9) -
- "(10) In making a determination under subsection (1), the Authority shall give regard to -
- (a) the Government's policy objectives for the telecommunications industry;
- (b) consumer interests;
- (c) encouraging efficient investment in telecommunications infrastructure;
- (d) the nature and extent of competition among the parties to the interconnection concerned and their

ClauseAmendment Proposed

respective abilities to compete with each other fairly; and

- (e) such other matters as the Authority considers appropriate in the particular circumstances of the case."

20 In the proposed section 36AA -

(a) in subsection (1) -

(i) by deleting "or a person";

(ii) by deleting "or another person";

(b) by deleting subsection (2) and substituting -

"(2) Prior to issuing a direction in the public interest under subsection (1), the Authority shall provide a reasonable opportunity for the licensee, and any other interested party, to make representations on the matter and shall give consideration to all representations made before he decides whether or not to issue the direction.";

(c) in subsection (3)(d), by deleting "and persons";

(d) in subsection (4) -

(i) by deleting ", or another person authorized by the Authority,";

ClauseAmendment Proposed

- (ii) by deleting "or person" where it twice appears;
- (e) by deleting subsection (6) and substituting -
 - "(6) If the parties do not reach an agreement within a reasonable time, and the Authority requires shared use of the facility, then -
 - (a) the Authority may determine the terms and conditions for the shared use of the facility;
 - (b) the determination under paragraph (a) shall include terms and conditions providing for fair and reasonable compensation payable in all the circumstances of the case for the shared use of the facility;
 - (c) the compensation referred to in paragraph (b) shall include the relevant reasonable costs attributable to the provision, use or sharing of the facility;
 - (d) to calculate the costs referred to in paragraph (c), the Authority may select from alternative costing methods what he considers

ClauseAmendment Proposed

to be a fair and reasonable costing method.";

- (f) in subsection (7)(a), by deleting "人孔" and substituting "沙井".

22

- (a) In paragraph (b), by deleting subparagraphs (i) and (iii).
- (b) In paragraph (d), in the proposed section 36C(3B), by deleting "a financial penalty under subsection (3) is not" and substituting "if he were to impose a financial penalty under subsection (3) it would not be".
- (c) By deleting paragraphs (e) and (f) and substituting -

"(e) by repealing subsections (4) and (5) and substituting -

"(4) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.

(5) Subsection (1), (2) or (3A) shall not apply in the case of the licensee or person concerned unless the Authority is satisfied that the licensee or person, as the case may be, has been afforded a reasonable opportunity of complying with the requirement of any licence condition, provision of this Ordinance or regulation made thereunder, or direction, in respect of

ClauseAmendment Proposed

which that subsection is sought to be applied.

(5A) A financial penalty imposed under this section shall be recoverable as a civil debt due and payable to the Government.";

(f) by adding -

"(7) The Authority shall, before imposing a sanction under this section on a licensee or person concerned, afford the licensee or person concerned, as the case may be, a reasonable opportunity to make representations and shall consider all representations made before the Authority decides whether or not to impose such sanction."."

23

By deleting the proposed section 36D and substituting -

"36D. Authority may obtain information

(1) If the Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Authority's investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a licence condition, the Authority may serve a notice in writing on the person -

ClauseAmendment Proposed

- (a) requesting the person to -
 - (i) give the information or document in writing to the Authority; or
 - (ii) produce the document to the Authority,

as the case requires, before a date ("the relevant date") specified in the notice, being a date reasonable in all the circumstances of the case;

- (b) stating that if the person is of the view that he cannot, or does not wish to, comply with the request, then he may make representations in writing to the Authority as to why he is of that view before the relevant date; and
- (c) accompanied by a copy of this section in the Chinese and English languages.

(2) Where the Authority receives representations referred to in subsection (1)(b) from a person, the Authority shall -

- (a) consider them; and

ClauseAmendment Proposed

(b) serve a notice in writing on the person stating that the Authority has considered the representations and that -

(i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection; or

(ii) the notice under subsection (1) served on the person remains in force and the Authority will on a date specified in the notice under this subsection seek an order under subsection (3) unless the person has, before that date, complied with the notice under subsection (1) served on the person.

(3) Where a notice under subsection (1) served on a person has not been withdrawn under subsection (2)(b)(i) and the person has not complied with the notice before the relevant date, or before the date specified in the notice under subsection (2) served on the person, as the case requires, then a magistrate may -

ClauseAmendment Proposed

- (a) if satisfied by information on oath that there are reasonable grounds for believing that the person is, or is likely to be, in possession of the information or a document to which the first-mentioned notice relates and that the information or document is relevant to the Authority's investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a licence condition; and
- (b) after considering the representations, if any, referred to in subsection (1)(b) received by the Authority in consequence of the service of the notice,

issue an order that the person shall, within the time specified in the order, give the information or document in writing to the Authority or produce the document to the Authority, as the case requires.

(4) Any information or document to be given or produced to the Authority by a person in compliance with a notice under subsection (1) or an order under subsection (3) shall be so given or produced by reference to the information or document at the time of service of that notice except that the information or document may take account of any processing -

- (a) made between that time and the time when the information or document is so given or produced; and

ClauseAmendment Proposed

(b) that would have been made irrespective of the service of that notice.

(5) The Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (6) and if the Authority considers that it is in the public interest to disclose that information or document, as the case may be.

(6) The Authority shall give a person giving or producing any information or document under this section a reasonable opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the information or document, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document, as the case may be, contrary to that agreement.

(8) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.

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(9) A person commits an offence if he, without reasonable excuse -

- (a) fails to comply with an order under subsection (3);
- (b) fails to comply with subsection (4); or
- (c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(10) In this section, "processing" (處理), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise."

25 (a) In the proposed section 39A(1), by deleting "who is aggrieved by" and substituting "sustaining loss or damage from".

(b) By adding after the proposed section 39A -

"39B. Immunity

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable for any civil liability or claim whatever in respect of any act done or default made in the

ClauseAmendment Proposed

performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.

(2) The persons to whom subsection (1) applies are -

- (a) the Authority;
- (b) any public officer who is a delegate of the Authority under section 6; and
- (c) any other public officer assisting the Authority in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance."

26 In the proposed Schedule, by adding -

"8. Hotel Television Services Licence".

- Schedule 1
- (a) In section 1, by deleting "Governor in Council" and substituting "Chief Executive in Council".
 - (b) By deleting the subheading "**Miscellaneous Licences Regulations**" before section 12.
 - (c) By deleting section 12.

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Schedule 2,
Part 3

(a) By deleting -

"Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28)."

(b) By adding -

"Air Navigation (Hong Kong) Order 1995 (Cap. 448
sub. leg.)
section 35 and Schedule 12.

Discovery Bay Tunnel Link Regulation (Cap. 520
sub. leg.)
section 5."

Schedule 2,
Part 4

(a) In the entry relating to "Import and Export (Strategic
Commodities) Regulations", by adding "the entry of
3A002(a)(2) in Category 3 of the Dual-use Goods List and"
after "excluding".

(b) In the entry relating to "Telecommunications Regulations",
by adding "general condition 15 in the form of the Satellite
Master Antenna Television Licence," after "Schedule 3
(but excluding)".

(c) By deleting -

"Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28)."

and substituting -

"Legislative Council Ordinance (Cap. 542) as
amended by the Legislative Council
(Amendment) Ordinance 1999 (48 of 1999)
section 20Z."

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Schedule 2, By deleting -
Part 7

"Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28)".

Schedule 2, By adding -
Part 8

"Legislative Council Ordinance (Cap. 542) as amended by
the Legislative Council (Amendment) Ordinance
1999 (48 of 1999)
section 20Z".

ADAPTATION OF LAWS (NO. 17) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by adding "(other than sections 1A, 1B, 2A, 3A and 3 of Schedule 3)" after "Ordinance".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Sections 1A, 1B, 2A, 3A and 3 of Schedule 3 shall be deemed to have come into operation on 30 September 1999."</p>
Schedule 3	<p>(a) In the heading, by deleting "AND RELATED ORDINANCE".</p> <p>(b) By deleting the subheading "Midwives Registration Ordinance".</p> <p>(c) By adding before section 1 -</p> <p style="padding-left: 40px;">"1A. Section 2(1) of the Midwives Registration Ordinance (Cap. 162) is amended in the definition of "appointed member" by repealing "Governor" and substituting "Chief Executive".</p> <p style="padding-left: 40px;">1B. Section 3(2), (4), (5) and (5B) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive"."</p>

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 3, section 1	By deleting the section and substituting - "1. Section 3(7) is amended by repealing "Governor" and substituting "Chief Executive".".
Schedule 3,	By adding before section 2 - "2A. Section 10(6), (7) and (8) is amended by repealing "上訴法院" wherever it appears and substituting "上訴法庭".".
Schedule 3, section 2	By deleting "法庭" and substituting "上訴法庭".
Schedule 3	By adding before section 3 - "3A. Section 15(4) is amended by repealing "上訴法院" and substituting "上訴法庭".".
Schedule 3, section 3	By adding "(1)" after "23".
Schedule 3	By deleting everything after section 3.