OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 25 April 2001

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

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

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

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE ERIC LI KA-CHEUNG, 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 CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

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.

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

MEMBERS ABSENT:

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

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

THE HONOURABLE JAMES TO KUN-SUN

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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

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

MR LAM WOON-KWONG, G.B.S., J.P.
SECRETARY FOR HOME AFFAIRS

MR STEPHEN IP SHU-KWAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

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

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

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

MRS CARRIE YAU TSANG KA-LAI, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MRS FANNY LAW FAN CHIU-FUN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

MR DUNCAN WARREN PESCOD, J.P.
SECRETARY FOR THE CIVIL SERVICE

MR LO YIU-CHING, J.P.
SECRETARY FOR WORKS

DR EDGAR CHENG WAI-KIN, J.P.
HEAD, CENTRAL POLICY UNIT

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Chiropractors Registration (Fees) Regulation	79/2001
Chiropractors Registration Ordinance (Cap. 428) (Commencement) Notice 2001	80/2001
Statutes of the University of Hong Kong (Amendment) Statutes 2001	81/2001
Specification of Public Office	82/2001
Merchant Shipping (Registration) (Amendment) Ordinance 2001 (9 of 2001) (Commencement) Notice 2001	83/2001
Merchant Shipping (Registration) (Fees and Charges) (Amendment) Regulation 2001 (L.N. 49 of 2001) (Commencement) Notice 2001	84/2001

Other Papers

No. 78 — Audited Statement of Accounts of the Quality Education Fund together with the Director of Audit's Report for the year ended 31 August 2000

No. 79 — Audited Statement of Accounts of the Hong Kong Rotary Club Students' Loan Fund together with the Director of Audit's Report for the year ended 31 August 2000

No. 80 — Audited Statement of Accounts of the Sing Tao Foundation Students' Loan Fund together with the Director of Audit's Report for the year ended 31 August 2000

No. 81 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 2000-01 (Public Finance Ordinance : Section 8)

No. 82 — Report No. 36 of the Director of Audit on the results of value for money audits - March 2001

No. 83 — Hospital Authority Annual Report 1999-2000 with Statement of Accounts and Auditors' Report

No. 84 — Report and Statement of Accounts of the Samaritan Fund together with the Director of Audit's Report for the year ended 31 March 2000

No. 85 — Kowloon-Canton Railway Corporation Annual Report 2000

Report of the Bills Committee on Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. I would like to inform Members that question time normally does not exceed one and a half hours, with each question being allocated about 15 minutes. Supplementaries should be as concise as possible. Members should not raise more than one question or make statements when asking supplementaries.

First question.

Extending Scope of PayThruPost Service of Post Office

1. **MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, at present, the public can settle their electricity and Towngas bills at post offices by using the PayThruPost service. It is learnt that the Post Office has planned to extend the scope of this service to cover rates, government rents and water bills. In this connection, will the Government inform this Council whether:*

(a) the establishment and experience of the staff of the Post Office can cope with the demand from the extended service;

(b) it has consulted the staff of the Post Office before extending the scope of the service; if it has, of the consultation process and the outcome; and

(c) it has plans to reduce the staff establishment of the collection offices under the Treasury accordingly; if it has, of the number of staff to be cut and the timetable for its implementation?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, my reply to the various parts of the question raised by the Member is as follows:

(a) To facilitate the settlement of government bills by the public, the Post Office plans to extend the PayThruPost service in October this year or sometime later, to cover general government bill payments such as taxes, water bills, sewage charges, rates and government rents. To ensure that the staff concerned have adequate knowledge and experience to provide the additional services, the Post Office will provide them with training and practice in such areas as the identification of bill types and operation of computer before the collection of payment in respect of government bills is introduced. The Post Office also plans to employ some 40 additional staff to cope with the demand from the extension of service.

(b) The Post Office has always attached great importance to communication with its staff. According to information provided by the Post Office, in February 2000, well before the introduction of the PayThruPost service for electricity bills, the department already consulted its staff on the introduction of the service through the Postal Operations Committee, the Departmental Consultative Committee and the representatives of staff unions at various levels. The management also explained to staff the plan for introduction of the new service and listened to their views through various briefing sessions, the Work Improvement Team, and internal newsletters. Similar consultation had been carried out every time before the

scope of PayThruPost service was extended. Last December, through the various channels mentioned above, the Post Office informed its staff of and consulted them on the plan to collect payment in respect of government bills. The response of the staff was quite positive and a lot of valuable views were offered on operational procedures, manpower deployment, supporting facilities in terms of both softwares and hardwares, as well as security arrangements, to ensure effective delivery of the relevant services. Many of the views put forward have in fact been adopted by the department.

(c) When the PayThruPost service is extended to cover general government bill payments in October this year or sometime later, the existing five collection offices of the Treasury and the eight shroff offices at the New Territories District Offices of the Home Affairs Department (HAD) will be closed to avoid the overlap of service. As a result, about 80 posts in the Treasury and the HAD, involving mainly clerical grades, will be deleted. The Civil Service Bureau has been following up the issue with the two departments and will re-deploy the staff affected to other government departments. The Bureau has made it clear that no staff will be dismissed as a result of this extension of service.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, the Government said that 80 staff posts will be cut but the Post Office will employ 40 additional staff. Will the Government consider giving priority to the staff of the Treasury in recruiting the additional staff?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, as I have stated in the main reply, the staff affected are from clerical grades and the Government will re-deploy them to other government departments, so they will continue to be employed.

MR LEUNG FU-WAH (in Cantonese): *Madam President, I would like to ask: the Post Office said it would employ additional staff, but is there any particular proposal in respect of security that needs to be considered?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, in respect of security, the Post Office has been holding discussion with the Treasury all along, and will work and discuss the related matters in accordance with the guidelines of the Treasury. Details have not yet been finalized, but the department will follow the guidelines of the Treasury as regards the taking of cash deposits, remittance and cash delivery.

MR FREDERICK FUNG (in Cantonese): *Madam President, with regard to the first paragraph of the Secretary's main reply, I would like to ask if the Post Office, in stepping up training for its staff and taking on more staff, has considered providing certain basic banking services such as taking of cash deposits, remittance, and so on, in order to provide the public with another option for banks are now charging fees for their services?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the Post Office has no plan to provide banking services at the moment. (Annex I)

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the question I would like to ask is: following the collection of payment for government bills by post offices, the five collection offices of the Treasury and the eight shroff offices at the New Territories District Offices of the HAD will be closed to avoid an overlap of service, but are those post offices located "in the wilderness" close to these 13 collection and shroff offices? Will it be more convenient for the public if these 13 offices are retained?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the PayThruPost service will provide greater convenience for the public for there are 126 post offices located in the various parts of Hong Kong, Kowloon and the New Territories. I have also noted the geographical distribution of the post offices and found that there are on an average three to five post offices in the vicinity of the existing 13 collection and shroff offices; the number of nearby post offices ranges from as many as 10 to one at least.

MR FRED LI (in Cantonese): *Madam President, first of all, I must say that I very much welcome and support this service. However, as the Post Office is now a trading fund department and charges other departments for its services, will this extension of service be a form of subsidy to reconcile the rate of increase in postal charges in future? Will the provision of a series of additional services help lower the rate of increase in postal charges?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, according to the estimation of the Post Office, the extension of service can generate an additional revenue of $30 million, but the exact amount of income depends on the number of residents using this service. If the Post Office can generate an additional income from this extension of service, the pressure of a revision of postal charges will naturally be diminished.

MR CHAN KAM-LAM (in Cantonese): *Madam President, since its transformation into a trading fund department, the Post Office has been providing rather good services. But as the Secretary mentioned just now that the Post Office has over 100 post offices in the urban areas, I would like to know if the Government will consider the need to set up more post offices to cope with increased public demand resulted from the provision of additional services or extension of the scope of service by the Post Office?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, before considering the extension of this service, the Post Office had certainly taken account of its manpower arrangements. For the time being, the objective of the department is to enhance the productivity of its staff as far as possible, and so it will optimize the existing facilities of the post offices.

DR TANG SIU-TONG (in Cantonese): *Madam President, in the main question it is mentioned that electricity and Towngas bills can be paid via the PayThruPost service. But how much commission does the Post Office charge these privately-run utilities? Will it charge the Government a commission at the same rate?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the Post Office negotiated with the various companies on the fee-charging arrangements on the basis of the costs of service delivery. I believe the fee-charging arrangements have to be negotiated on a case by case basis given that the services are different.

PRESIDENT (in Cantonese): Dr TANG Siu-tong, is your supplementary question not answered?

DR TANG SIU-TONG (in Cantonese): *No, it was not. As Towngas and electricity bills can now be settled at post offices, what is the percentage of the commission charged by the Post Office?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I do not have such information at hand now, and I am not sure if it is appropriate to disclose such information from the Post Office's viewpoint for the Post Office has conducted business negotiations with the companies individually. The department may wish to provide other services as well or provide services for other companies in future. I think disclosing such information at this stage may affect the future negotiation of the department. So, if the Member wishes to have this information, I have to go back and consider carefully whether it can be disclosed. But I can see that there is some degree of sensitivity with this information. (Annex II)

MR LAU KONG-WAH (in Cantonese): *Madam President, at present, the collection service provided by the District Offices and the Treasury closes at 4.00 pm. I wonder if the service hours will be extended for public convenience after the introduction of such service by the Post Office?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I believe the hours during which the service is provided will follow the existing operating hours of the Post Office.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, as we can see from the main reply, apparently two departments will have to cut their staff by a total of 80. But after the service is transferred to the Post Office, the Post Office will only employ 40 additional staff. In my view, I do not think that the Post Office must employ 80 additional workers because 80 staff will have to be cut from those two departments. I do not hold the view for such a balance. I have also consulted the staff affected and they have expressed no disagreement either. However, I wish to ask the Government about the overall arrangements after the Post Office has extended the scope of its service. Just now the Honourable LEUNG Fu-wah mentioned the security aspect. If there is no problem with security, what has the Government actually done for it to conclude that there is not any problem? I hope the Government can provide me with more details.*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I have already responded to this question earlier on. The most important point is that the department had discussed it in detail with its staff before introducing this service or in considering the provision of this service. As I have mentioned in the main reply, in February 2000, before the introduction of the PayThruPost service, the Post Office had already held extensive discussions with its staff. Different levels of staff had been consulted on various occasions. Staff in all grades or associations of all levels of staff had been consulted every time before the scope of service was extended. The staff have provided many valuable views and I can tell Members some of the views they suggested. They have expressed views on the computers, typeface, computer operation, the need for additional facilities, where the machines should be placed, how to cope with the peak demand, the security measures to be taken, and so on. The staff have given their views on all these issues. The department has also taken these views into consideration and has accepted some of their suggestions.

Madam President, I am sorry that I might have spoken too fast in my earlier response. I wish to take this opportunity to revisit the supplementary question raised by Mr LAU just now about the service hours. After thinking the question over, I was aware that the collection of payment for bills may also involve remittance and cash delivery. Regarding the question on service hours asked by Mr LAU, I will provide the Member with a written reply. (Annex III)

MR FRED LI (in Cantonese): *Madam President, I wish to ask another supplementary question. Of the 100-odd post offices, some are very large in scale, but some of them are medium-sized and some are small. But if the collection service will be introduced at all post offices, the small post offices basically cannot open more counters to cope with this additional service, and this may even affect their normal postal services. So, has the Post Office considered turning the small post offices into larger ones, hence having the need to carry out plans of further expansion?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, at the moment, the plan of the Post Office is to provide this service with the existing facilities. But the Post Office will review the actual circumstances after the introduction of this service. Solutions can be worked out if problems are found then.

PRESIDENT (in Cantonese): Second question.

Manufacturing and Technological Database in Southern China and Hong Kong

2. **PROF NG CHING-FAI** (in Cantonese): *Madam President, I know that the former Industry Department had sponsored the Research Centre of the Hong Kong University of Science and Technology (HKUST) in developing a database on the web to enable the relevant trades and industries to effectively obtain information about the manufacturing industries and research institutions in Southern China and Hong Kong. This objective should be very worthwhile to support. But on 24 April this year, I found on the webpage of the database that the information therein was last updated on 12 June 1997. The part on official business statistics in Southern China contained information up to the year 1994 only, whereas the part on statistics in Hong Kong only provided information up to 1995 ……*

PRESIDENT (in Cantonese): Prof NG Ching-fai, the main question that I have permitted you to ask seems to be different from what you have just read out.

PROF NG CHING-FAI (in Cantonese): *Madam President, I wish to provide more background information.*

PRESIDENT (in Cantonese): Prof NG, I think you should not do so. Please raise your main question in its original wording.

PROF NG CHING-FAI (in Cantonese): *In this connection, will the Government inform this Council:*

(a) of the government department now tasked with monitoring the project and whether the department has regularly made assessment on the progress of the project to see if it is on schedule;

(b) of the total amount of public money spent so far on the development and management of the database; whether it has reviewed the usage and effectiveness of the database; if so, of the details of the review; if not, the reasons for that; and

(c) whether the Government has discussed with the Research Centre to enrich the content of the database?

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

(a) The database was a project funded by the former Industry Department under the then Industrial Support Fund. The project was carried out from July 1994 to June 1997. When the project was implemented, the former Industry Department was responsible for monitoring and regularly assessing the progress of the project to see if it was on schedule and in accordance with the original objectives. The project was completed in 1997. The former Industry Department and the Information Technology Committee under the then Industry and Technology Development Council have accepted the final report on the project and considered that the project was on schedule and met all its original objectives.

(b) The former Industry Department provided a total funding of $6,224,000 for the development of the database and its website. As regards the management and updating of the database, it was the original plan of the HKUST to fund the updating and maintenance of the database by the fees collected from users.

The former Industry Department had closely monitored the utilization and effectiveness of the database after the project was completed. However, the utilization of the database was ultimately not satisfactory and the fees collected from users were not sufficient to meet the cost of updating the database.

(c) The former Industry Department had proactively arranged discussions between the HKUST and the Hong Kong Trade Development Council to explore the possibility of jointly maintaining and updating the database. However, the two parties failed to reach any agreement at the end. We understand that the HKUST has no plan to strengthen the content of the database for the time being.

PRESIDENT (in Cantonese): Prof NG Ching-fai, do you wish to ask a supplementary question?

PROF NG CHING-FAI (in Cantonese): *Yes, Madam President. I wish to ask a supplementary question in relation to what the Secretary has just said. Certain parts of the webpage of this database, such as the section on FAQ (frequently asked questions), still showed that data processing was still underway some time ago, and this is quite different from what the Secretary has described in his main reply just now. However, after I had submitted this question to the Legislative Council Secretariat, I found that this section was deleted and no longer showed that it was being processed. This is, of course, consistent with the Secretary's main reply because the webpage has now been "completed". If such being the case, does the Secretary consider it worthwhile to retain this webpage?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): It seems that I must explain what happened in detail. In fact, when the application in respect of this project was first submitted in 1994, it was just a database with no website. But given the rapid development of the Internet in the course of this project, the HKUST later decided to provide a webpage under this project to facilitate access to the database by users. So, from this perspective, it can be said that the project has surpassed its original objectives.

As to why certain parts of the webpage have not yet been completed, from the explanation that we have been given, before 30 March 2001, two parts of the webpage were still being processed. One was the part concerning information on mainland authorities, and the other was the part on FAQ as pointed out by Prof NG just now. The HKUST has now completed the collection of information on mainland authorities. But as it turned out that not much information can be published, the HKUST decided not to upload the relevant information onto the Internet. The failure to complete the part on FAQ is purely due to a shortage of funds. As this is not part of the content that the HKUST was required to include in this project when the project was approved, but rather something subsequently introduced by the HKUST, the funding did not cover this area of work and therefore, the HKUST is unable to finish it. But basically, this will not affect the usage of the database.

Prof NG noticed that the part on FAQ was deleted after he had submitted his main question. The reason may be that the Innovation and Technology Commission, which takes over this area of work from the former Industry Department, had made inquires with the HKUST after receiving Prof NG's question, and the HKUST subsequently deleted this part since they cannot complete it. It is as simple as that.

As to whether it is worthwhile to retain this database, I believe the completed parts of the database do have some value. But if the information therein cannot be updated, the information will become obsolete and useless, and may even cause misunderstanding. I will discuss this problem with the Innovation and Technology Commission later and asked the Commission to discuss with the HKUST and see whether this database should continue to be uploaded onto the Internet if the HKUST cannot update the information therein.

DR LUI MING-WAH (in Cantonese): *Madam President, as far as I know, there are other webpages that suffer the same fate. Has the Government considered the commercial values and viability of these webpages when providing funding support for them? Is it a waste of public money if millions of dollars are allocated hastily for the operation of a webpage that lasts two years only?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the Government and the Information Technology Committee under the former Industry and Technology Development Council had certainly considered their business plans before the relevant projects were approved. We were given an undertaking by the HKUST that sufficient revenue would be generated to cover the expenditure by charging fees from users, and that the income from fees could also cover the updating work of the database. Regrettably, the utilization of the website was lower than expected, making it impossible for the HKUST to generate a sufficient income from users for the updating of information, and this is a problem.

The now-defunct Industrial Support Fund has been replaced by the Innovation and Technology Fund. When receiving applications in respect of these projects under the Innovation and Technology Fund, we will certainly examine their business plans very carefully and meticulously. We must be given assurances that after a database is set up, it will not become worthless, thus causing a waste of public money as a result of the failure to update the information therein.

MR NG LEUNG-SING (in Cantonese): *Madam President, in part (a) of the main reply the Secretary stated that the former Industry Department was responsible for monitoring and regularly assessing the progress of the project to see if it was on schedule and in accordance with the original objectives. He also mentioned that the final report on the project has been accepted. However, the Secretary said in part (b) that the utilization of the database was not satisfactory. Could it be that the Government was misled by certain information in the final report and thereafter endorsed the report, thus leading to these unsatisfactory consequences? Has the Government examined the validity of the information?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the two points mentioned by Mr NG Leung-sing are actually unrelated to each other. First, the final report is about whether or not the project was completed within the timeframe and scope as planned. The HKUST has definitely met this objective. That is why the former Industry Department accepted the report under the then Industrial Support Fund, and considered that the project was on schedule and met all its original objectives.

The low utilization rate registered after the database was set up bears no relationship to the final report, for the report has not mentioned the utilization rate at all. As the data relating to utilization were not yet available then, how could it be mentioned in the report? So, these two points are unrelated.

MR HENRY WU (in Cantonese): *Madam President, Mr NG Leung-sing had actually asked a supplementary question that I wished to ask. But still, I would like the Secretary to provide me with some other information. Does the Government know whether the low utilization of the webpage is due to the fact that the HKUST has charged users too high a fee?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I do not have such information. If the Member wishes to obtain this information, I will provide him with a written reply. (Annex IV)

MR JASPER TSANG (in Cantonese): *Madam President, I noticed that in part (a) of his main question, Prof NG Ching-fai asked which government department is now tasked with monitoring the project, but it seems that the Secretary's main reply has made no mention of which government department is responsible for monitoring the project. Is it that the Government no longer has any involvement in this project, therefore allows the project to stew in its own juice and no longer takes on a monitoring role to see if it should continue or if a review of its effectiveness is required? Can we say that this project is actually not monitored by any government department?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I missed out this part in my main reply. The Innovation and

Technology Commission has taken over this area of work of the former Industry Department and so, the Commission will continue to monitor this project. In my reply to Prof NG Ching-fai's supplementary question earlier, I already mentioned that as the utilization of the website cannot generate sufficient funds for the HKUST to update the information, so the website has been providing information up to 1994 and 1995 only. Prof NG Ching-fai, therefore, queried the worthiness of retaining this database. My reply was that initially the database was certainly of value, but as the information therein has become obsolete and perhaps useless, and will even cause misunderstanding, I said that I would take up this matter with the Innovation and Technology Commission later and ask the Commission to discuss with the HKUST to see whether the database should continue to be uploaded onto the Internet, which may mislead users, since the information contained therein is not updated and has become obsolete. We will take up this work.

DR RAYMOND HO (in Cantonese): *Madam President, in fact, the Manufacturing and Technological Database in Southern China and Hong Kong covers a wide range of areas and will certainly arouse enormous interest. But it has eventually failed to attract more users owing to the level of fees charged or because the information therein is not extensive and comprehensive enough. In allocating some $6 million as funding support for this project, has the Government considered whether the scope of the project is adequately comprehensive for sustained operation, or was the Government not careful enough to consider this clearly when providing funding for the project?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, in fact, in my replies to the previous supplementary questions, I have repeatedly addressed this question. First, in vetting the application in respect of this project, we had certainly completed all necessary procedures as required. It was only when the authorities concerned considered the project worthwhile and worthy of support that funding would be allocated. The former Industry Department had closely monitored the progress of this project, and a final report was submitted to it upon completion of the project. In examining and subsequently approving the final report on the project, the authorities concerned considered that the project was on schedule and met all its original objectives. In other words, all the work as pledged by the HKUST in its application has been completed. Ultimately, the project has not only met the

original objectives. It has actually surpassed the original objectives for a webpage has also been provided. Therefore, I think Dr Raymond HO's concerns are unwarranted.

In our consideration of this project, the HKUST had submitted its estimation of the utilization rate and considered that the fees payable by users would be enough for the updating of information in the database. In this connection, the HKUST may have been wrong in its estimation then.

PRESIDENT (in Cantonese): Last supplementary question.

PROF NG CHING-FAI (in Cantonese): *Madam President, I feel that this reflects the lacking in the concept of sustainability. Certainly, the project itself does merit support. But as the HKUST may not have considered the fees thoroughly, the database cannot be sustained. Innovation and technology must always move forward. Will the Secretary seriously discuss with the Innovation and Technology Commission and give a new life to this project? This is my principal objective. It is not my wish to see the Government taking a pessimistic step as to scrap this webpage.*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, what we must consider is that we have spent over $6 million on setting up this database and its webpage, however, without enough funding for updating the information in the database, the information have become obsolete and not very useful, if not useless. Yet, if we have to update the information in this database to make it useful, we must consider the cost required for the information to be updated yearly, and whether funding should be allocated out of the Innovation and Technology Fund or by other means. This will involve the use of public money and we will have to consider it in detail.

PRESIDENT (in Cantonese): Third question.

Crackdown on Sale of Pirated Optical Discs

3. **MR DAVID CHU** (in Cantonese): *Madam President, regarding the crackdown on the sale of pirated optical discs, will the Government inform this Council of:*

(a) the present number and geographical distribution of the retail black spots for pirated optical discs;

(b) the number of pirated optical discs seized in such retail outlets since January this year, together with their total estimated value; and

(c) as some lawless elements, in order to avoid arrest, display notices in the retail outlets, telling customers to put down their money for the pirated optical discs they want to buy, and then either pick up the optical discs themselves or go elsewhere to collect them, the measures in place to combat the sale of pirated optical discs in this way?

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

(a) At present, the retail black spots for pirated optical discs are located in Wan Chai, Mong Kok, Tsuen Wan, Kwai Chung, Sha Tin, Tai Po, Sheung Shui, Yuen Long and Tuen Mun, involving a total of about 100 outlets.

(b) From January to March this year, the Customs and Excise (C&E) Department seized some 1.55 million pirated optical discs at retail level with a total value of around $30 million involving 2 288 cases. About 90% of the discs were seized from shops in those retail black spots.

(c) In response to the practice of selling optical discs mentioned in part (c) of the question, C&E officers will monitor targets closely and make arrests once they collect the money or display optical discs.

In addition to ongoing raids at the retail level, the C&E Department will step up its efforts to collect and analyse intelligence and to combat the wholesaling and manufacturing of pirated optical discs by tracing their sources of supply.

MR DAVID CHU (in Cantonese): *Madam President, now that the summer holidays are drawing near, will the Secretary please inform us of the extent of youngsters' and students' involvement in the sale of pirated optical discs?*

PRESIDENT (in Cantonese): Mr CHU, do you wish to ask the Secretary a question on the extent of youngsters' and students' involvement in the sale of pirated optical discs?

MR DAVID CHU (in Cantonese): *Yes, a question on the extent.*

PRESIDENT (in Cantonese): Secretary for Commerce and Industry, this supplementary question deviates slightly from the topic of the main question. But if you have the information required at hand, you may reply to it.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I am certainly willing to answer Mr CHU's supplementary question. By youngsters, we mean people under the age of 16. The number of youngsters involving in the sale of pirated optical disc has indeed been rising in recent years, as evidenced by enforcement statistics. In 1998, the number of youngsters arrested for taking part in the sale of pirated optical discs was just 52, representing 3% of the total number of people arrested. In 1999, the number of youngsters arrested rose to 78, however still representing 3% of the total number of people arrested. In 2000, the number of youngsters arrested showed a marked increase, rising to 233 and representing 8% of the total number of people arrested. In January to March this year, the number of youngsters arrested was 45, representing 11% of the total number of people arrested. It can be seen that there has been a marked percentage increase. What actually are the reasons for the increasing number of youngsters involved in this type of offence? We believe that this may have something to do with the fact that prison sentences

were passed down by the Courts in most cases involving pirated optical discs in recent years. According to statistics, in 2000, about 80% of those involved in pirated optical disc cases were given prison sentences ranging from six months to eight months. For this reason and due to other possible factors, the number of adults willing to engage in this type of illegal activities has become smaller. As a result, lawless elements have shifted their targets to youngsters. Another reason may be that youngsters arrested for the sale of pirated optical discs are usually sentenced to Probation Orders or Community Service Orders instead of imprisonment.

MR AMBROSE LAU (in Cantonese): *Madam President, it is asked in part (c) of the main question whether it is possible to prosecute lawless elements selling pirated optical discs on a self-service basis, and it is stated in the Secretary's main reply that C&E officers will monitor targets closely and make arrests once they appear. May I ask, first, whether there have been any successful prosecutions following these arrests? Second, how effective are the existing attempts to combat this type of illegal activities? Since the crackdown on these illegal activities involves C&E manpower, I would like to ask whether the measures concerned are effective?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I do not have any statistics on successful prosecutions at hand. I shall make a written reply to Mr LAU later. (Annex V)

The C&E Department possesses sufficient manpower to deal with this problem; it has a task force of 420 officers, and as far as we know, when compared with its counterparts in other Asian cities, the Department possesses the largest pool of manpower to combat this problem. The enforcement statistics for the past few years show that the measures taken to combat this problem have worked very effectively. In 1999, for example, the C&E Department arrested more than 2 700 people, seized a total of 16 million optical discs suspected to be pirated and shattered 14 production lines with a total worth of more than $380 million. In 2000, it arrested more than 2 700 people, seized 8.4 million pirated optical discs and shattered eight production lines with a total worth of more than $180 million. In the first three months of this year, the Customs and Excise Department arrested 420 people and seized 2.1 million pirated optical discs with a total worth of some $40 million. One point which is

worth noting is that no production line has been shattered during the operations this year, and this is largely due to the Department's efforts to crack down on pirated optical discs. As a result of these efforts, lawless elements no longer dare to brazenly set up production lines in factory buildings, and they have instead moved to residential units where they continue to manufacture pirated optical discs using small machines. This shows precisely one successful aspect of the efforts of the C&E Department.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, the Secretary said just now that the black spots for the sale of pirated optical discs were mostly concentrated in about 100 outlets, but I can still see many mobile stalls on the streets. May I ask the Secretary whether the number of such mobile stalls has been increasing? And, how many people have been arrested?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, these people are illegal hawkers, not shop operators, and the C&E Department does not keep any statistics about them. As for the number of such illegal hawkers arrested during enforcement actions over the past two to three years, I can submit a written reply later. (Annex VI)

MISS CHOY SO-YUK (in Cantonese): *Madam President, it is said in the last part of the Secretary's main reply that the C&E Department will combat the wholesaling and manufacturing of pirated optical discs by tracing their sources of supply. Madam President, what we hear of more often are instead the actions taken to combat the retailing and manufacturing of pirated optical discs. May I ask the Secretary what actions has the C&E Department taken so far to combat the wholesaling of pirated optical discs?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the C&E Department has actually made a lot of efforts to combat the wholesaling and distribution of pirated optical discs over the past few years, and these actions have achieved great results. The enforcement figures I referred are not categorized. I shall compile the relevant figures later and submit a written reply to Miss CHOY. (Annex VII)

MR LAU KONG-WAH (in Cantonese): *Madam President, as shown by the figures quoted by the Secretary, the number of youngsters arrested the year before last was 78, and last year, the number of youngsters arrested was 233, which is a very large number in absolute terms. The rate for the year before last was 3%, and that for the first quarter of this year was 11%; the increase is very alarming and worrying. The Secretary also said that such a situation might have been caused by the fact that adults were given heavier sentences last year, while youngsters were given lighter ones. Then, can it be said that the practice of handing down heavier sentences on adults but lighter ones on youngsters has led more youngsters to try to earn "quick money"? Also, the Government has recently been considering the adoption of the Superintendent's Discretion Scheme as a means of dealing with this type of crimes among youngsters. Will this encourage more youngsters to defy the law?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the severity of sentences to be handed down on young criminals should be determined by the Judges and Magistrates concerned, and the matter is beyond the control of the Government. As far as I can remember, four or five years ago, the Courts rarely imposed any prison sentences. It was only after we had conducted vigorous publicity, after the Department of Justice had arranged meetings with the Judiciary, that they started to realize the severe impacts produced by this type of crimes on the economy of Hong Kong. So, a few years ago, they started to impose prison sentences. However, some young criminals are still sentenced to detention. In other words, youngsters are not only sentenced to Community Service Orders, Probation Orders or good behaviour bonds. In case of detention sentences, the youngsters concerned will be sent to training centres. As for the Superintendent's Discretion Scheme, the C&E Department has no intention of adopting it to deal with cases involving youngsters selling pirated optical discs. The reason, as pointed out by Mr LAU, is that the adoption of the Superintendent's Discretion Scheme may induce more illegal elements to hire youngsters to carry out such illicit activities for them. This is something we do not wish to see.

MR HOWARD YOUNG (in Cantonese): *Madam President, it is mentioned in part (b) of the Secretary's main reply that some 1.55 million pirated optical discs with a total value of around $30 million have been seized. This is of course an estimated sum. May I ask the Secretary what the basis of the estimation is? I*

notice that in many supermarkets, copy-righted optical discs are just sold at a price of $10 each. Has the Government tried to work out its estimation by referring to copy-righted optical discs sold at higher prices? Or, has it made its estimation by referring to those sold at ordinary price levels?

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the total value in question is of course an estimation. On the basis of the figure given in my main reply, it can be deduced that the estimated average price per disc is about $20. As for whether this is a reasonable estimation, I do not think that the answer is of any substantial practical significance, for it is just a statistical analysis aimed at working out a rough total value. Even if we change the estimated average price to $10, and even if the total value thus goes down to $15.5 million, what we get will just be a reduced figure bearing little practical significance.

PRESIDENT (in Cantonese): Last supplementary question.

DR TANG SIU-TONG (in Cantonese): *Madam President, the Secretary said in part (b) of the main reply that 1.55 million pirated optical discs with a total value of $30 million were seized in the first three months of this year. He then commented that this might not be the total value, but that the problem did not lie here. May I ask the Government whether it has ever made any estimation on the approximate sales volume of pirated optical discs every year and on the total value involved? There must be very high profits or else no one would have been willing to engage in this business at the risk of being prosecuted.*

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, we have never made any estimation in this respect. What we have are just the statistics on the number of pirated optical discs seized. I do not think that the estimation referred to is very meaningful. What is most important is the fact that over the past three years, the number of such outlets has gone down from some 1 000 to about 100. This shows precisely that the Government and the C&E Department are determined to combat this type of illegal activities which seriously affect our economy, and that their determined efforts have yielded very good results over the past three years.

PRESIDENT (in Cantonese): Fourth question.

Introduction of Anti-racial Discrimination Legislation

4. **MISS MARGARET NG**: *Madam President, given the Government's obligation under international human rights treaties to eradicate racial discrimination in Hong Kong, will the Government inform this Council whether the Administration has plans to introduce anti-racial discrimination legislation; if so, of the legislative timetable and the present progress, and whether public consultation will be held; if not, of the reasons for that?*

SECRETARY FOR HOME AFFAIRS: Madam President, the Government is committed to the promotion of equal opportunities for all and firmly believes that all forms of discrimination, including racial discrimination, are wrong. At the same time, we believe that each form of discrimination has its own characteristics, including the particular ways in which they may be manifest in Hong Kong. Therefore, strategies for combating them must be appropriate to the particular form of discrimination that they are intended to address. Thus, in the case of discrimination on the grounds of sex, disability and family status, we have taken the legislative approach. In the case of discrimination on the grounds of race and sexual orientation, our considered view, following extensive research and public consultation, has been that a combination of administrative measures and public education offers the better way forward.

Hong Kong does have laws against racial discrimination. Article 22 of the Bill of Rights (BOR), which reproduces Article 26 of the International Covenant on Civil and Political Rights (ICCPR), prohibits the Government and all public authorities, and any person acting on behalf of the Government or a public authority, from engaging in practices that entail racial discrimination. There are also adequate provisions in our domestic law to prohibit racially motivated acts of violence (or the incitement to such acts), and activities, whether of individuals or organizations, aimed at inciting racial hatred. We are aware that calls have continued for specific legislation against acts of discrimination on the basis of race between private individuals or private organizations. But it was clear from the response to our study and public consultation in 1997 that anti-discrimination legislation in this area would not have received wide public support then. However, we recognize that circumstances may change and that

it is important that we monitor developments closely. This is what we have done since 1997, listening carefully to the views of different sectors of the community, weighing the advantages and disadvantages of change versus the *status quo*. To assist us in reassessing the latest public views, we are now planning to proactively engage the community, including the ethnic minorities, in another round of active dialogue on this issue.

MISS MARGARET NG: *Madam President, the success of the Equal Opportunities Commission (EOC) has proved that legislation is the best public education. I believe that the Secretary himself has commended the success of the EOC. Any undue delay will be taken by the international community to mean that the Government of the Hong Kong Special Administrative Region is not serious about anti-discrimination. Will the Secretary tell us about the special characteristics of sex or family status discrimination which make them suitable for legislation but not in the case of racial discrimination? Madam President, on the information supplied to this Council by the Chairperson of the EOC, most of the complaints on racial discrimination also have to do with employment, employment opportunities, goods and services.*

SECRETARY FOR HOME AFFAIRS: Madam President, when we worked on the legislation against sex, disability and family status discrimination on those grounds, we have already explained in full why we did that. In our last round of consultation in 1997, we have also explained and consulted widely on whether legislation is the best way forward to tackle this particular form of discrimination. I think all these have been put on public record clearly and there is no need for me to repeat them here. We do recognize that on the one hand, it is very important for us to be able to have wide public support before we introduce legislation. But on the other hand, we do recognize the argument made to us from time to time, especially more recently, that for a form of discrimination of this nature which involves almost by definition the minorities as in the case of Hong Kong, we should not just make the judgment on the basis of numbers. We do have to try to understand the feelings, the situation and the circumstances now being faced by the ethnic minorities themselves. We do intend to engage the wider community in a dialogue to understand more deeply how the general public feel about this particular subject, rather than just to engage in yet another round of quantitative consultation or assessing the public views just on the quantitative basis. Madam President, I can say at this stage that we will conduct

another round of serious talks with the various parties and we will reassess the need for legislation in this area.

MS AUDREY EU: *Madam President, the Secretary has said just now that when it comes to discrimination, the whole essence is discrimination of the minority by the majority. Therefore, it is really no argument to say that anti-discrimination legislation would not receive public support. Having said that, in the last part of the reply, the Secretary has mentioned that the Government will weigh the advantages and disadvantages of change versus the status quo. Can the Administration please tell us what the advantages and disadvantages of change versus the status quo are when it comes to racial discrimination of the minority by the majority?*

SECRETARY FOR HOME AFFAIRS: Madam President, I should reiterate that the Government has an open mind on this subject. But before we decide on whether we should consider legislation, we really need to tap on the public pulse seriously and carefully. On a subject of this nature, the ethnic minorities have told us that they do not want to see the bulk of the community being put in a position against these minorities. This is after all a harmonious society. This is after all a city where violence of any form is almost unheard of on the basis of racial discrimination. This is after all a city of migrants where people try to live together. No matter how different they are, they try to live together, work together and prosper together harmoniously. Thus, in taking any step on this subject, we have to be very sensitive to the feelings of not just the minorities, but also the majorities. And that is why in this forthcoming exercise, we choose the dialogue approach rather than the survey approach as we did in the past. We will be talking to people more deeply rather than just asking them simple questions like whether they support legislation or not. We will, after this particular exercise, of course in the usual way, listen to the views of this legislature. And in the process, we will keep the relevant Panels informed of the progress.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I do not quite understand why even up to this day the Secretary is still arguing on the issue of whether or not legislation should be proceeded with. Article 39 of the Basic Law clearly states that "The provisions of the International Covenant on Civil*

and Political Rights, the International Covenant on Economic, Social and Cultural Rights …… shall be implemented through the laws of the Hong Kong Special Administrative Region." These two international covenants state that racial discrimination shall not be allowed to exist, and the Basic Law provides that the two covenants shall be implemented through the laws. But to date we are still arguing whether we should legislate on this or not. Would the Secretary not think that it would be a contravention of the two international covenants and the Basic Law if the SAR Government does not legislate against racial discrimination? I see Mr Michael SUEN shaking his head, it seems that he wishes to make a reply to this supplementary question.

PRESIDENT (in Cantonese): Mr LEE, you do not have to indicate which Policy Secretary should make a reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we are of course well aware of the related provisions in the covenants. However, the fact that the covenants put forward these provisions does not mean that those places or countries which comply with the covenants must legislate on these at once. Each place or country should take into account its own particular social and economic conditions and make the best judgment to decide what step should be taken at what stage. I would like to stress that the SAR Government is open about this. We shall be happy to legislate on this if we can be sure that this would promote racial harmony and reduce discrimination. However, we need to consider and make a judgment on whether we should adopt the approach of legislation at this stage. We shall be glad to engage in a dialogue with all sectors of the community on this issue.

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

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the Secretary has not answered the part of my question on the Basic Law. I have asked the Secretary clearly whether the actions taken by the Government is in contravention of the Basic Law?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, to the best of my knowledge, we have not contravened the Basic Law.

MISS MARGARET NG: *Madam President, the Chairperson of the EOC herself is in support of legislation and she is going to say this in Geneva quite soon. May I ask the Secretary, concerning the next round of consultation that he has told us about, when is it going to take place? Can he tell us the date on which it will take place, the form in which it will take place and the schedule for our conclusion?*

SECRETARY FOR HOME AFFAIRS: Madam President, we are now planning to take this forward. Our aim is try to complete the round within this year, with a view to coming up with an opinion by early next year.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the Secretary has said earlier that there has been no contravention of the Basic Law. May I ask why there is no contravention? The Basic Law stipulates clearly that the provisions of the international covenants shall be implemented through the laws of the SAR, but the SAR Government has not enacted any laws for their implementation. That can be deemed to have contravened the Basic Law. I would like the Secretary to explain why he says that the Government has not contravened the Basic Law.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I have explained when I replied to the supplementary question raised by Mr LEE Cheuk-yan, regarding these international covenants, the time when we should implement their provisions and whether we should implement them at all, will depend on the individual circumstances of the particular place or country concerned and this is to be decided by the government of that place or country. That applies to the SAR Government as well. As far as we know, and we have sought advice from the Secretary for Justice, the fact that at this point in time we have not legislated against racial discrimination does not constitute a contravention of the Basic Law.

PRESIDENT (in Cantonese): Fifth question.

Source of Financial Fundings for Sports Activities

5. **MR TIMOTHY FOK** (in Cantonese): *Madam President, the Secretary for Home Affairs told the Finance Committee of the Legislative Council last month that the Administration would study ways to assist members of the sports community in solving the financial difficulties they encountered in organizing sports activities after losing the sponsorship of the tobacco industry, and it was identifying suitable sponsors for them. In this connection, will the Government inform this Council of:*

(a) the details and completion time of the above study; and

(b) the progress of identifying suitable sponsors?

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

(a) The Policy Commitment of the Bureau this year includes assessing the balance of resources required to meet the needs of sports development in the next five years. Specifically, we would begin work on a detailed blueprint for strategic sports development and the resources required up to the year 2005.

In order to take forward this commitment, we have just established a dedicated team — the Sports Policy Review Team — within the Home Affairs Bureau. As part of its remit, this team will conduct research and analysis of the existing funding strategies and the allocation of resources for sports development. This will include reviewing support for sports associations in the organization of major competitions and other events. We aim to complete the first part of the review by October this year.

(b) As the major funding body for sports development in the Special Administrative Region, the Sports Development Board provides direct subvention to the National Sports Associations (NSAs) and also plays an important role in assisting the Associations in

identifying suitable sponsors. In particular, the Board runs a "Sports Sponsorship Advisory Service", which is aimed at helping the NSAs to attract sponsors from the commercial sector. Since its establishment in 1991, the Service has generated some $135 million worth of sponsorship, benefiting some 20 different sports associations and over 70 sports programmes. These efforts will go on.

MR TIMOTHY FOK (in Cantonese): *Madam President, I know that the Bureau has made great efforts to take forward long-term sports policies, but the sports community has a pressing demand for resources and I hope that the Secretary will implement the policies at an early date.*

I know that the Sports Development Board has worked very hard but it could only secure some $130 million worth of sponsorship in a decade and I believe it cannot make up for the loss brought about by the loss of a sponsor. Can the Secretary take some interim measures to improve the situation, or consider how it can put out a fire close at hand with water close at hand?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we understand that the sports community is concerned about the insufficient and unstable sources of resources for sports development. When we review the overall sports policies, we will consider how we can look for some other stable and suitable sources of capital for sports development.

Concerning a fire close at hand, we have enough water at the moment for the fire I can foresee and I think the fire should not burn to briskly, therefore, it will not be too late for us to get water later. *(Laughter)*

MR AMBROSE LAU (in Cantonese): *Madam President, one of the key points of the question is that the organization of sports activities by the sports community will be affected after they have lost the sponsorship of the tobacco industry, and the main thrust of question asked is whether the Government could identify suitable sponsors to remedy the situation. However, it seems that the main reply has not made a proper response to the question. Can the Secretary explain this further?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we have attempted this question from a broader perspective.

At present, the capital for sports activities mainly comes from public money and only slightly from sponsors. One of the points we consider is how we can find more sponsors and I think it is appropriate for us to do so. However, we should also have a comprehensive view of sports development before reconsidering the needs for resources and the deficiency in resources in the future. We can then consider whether we should consider other ways of sponsoring apart from public money sponsoring and commercial sponsoring. We have approached this question from a wider angle.

MR HOWARD YOUNG (in Cantonese): *Madam President, Mr FOK has said from the start that the sports community had lost the sponsorship of the tobacco industry, and he also said just now that $135 million could not make up for the sponsorship lost. Can the Secretary tell us the extent to which the $135 million can make up for the sponsorship lost? Has he really calculated the amounts of sponsorship from the tobacco industry that the sports community has lost?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not have such information at hand, but I recall that the tobacco industry does not sponsor all sports activities. Actually, the Sports Development Board and other commercial sponsors mainly sponsor sports activities. Formerly, the sponsorship of the tobacco industry was mainly focussed on some of the larger international competitions and activities that would attract a large audience, but events for sports development could never have achieved such effects. The Sports Development Board was not entirely deprived of success in its identification of sponsors and it has enlisted support for some basic and popular sports activities. Let me give some examples. For example, it obtained $9.2 million worth of sponsorship for the Youth Football Promotion Scheme, $5 million worth of sponsorship for the elite athletes study scheme and $12 million worth of sponsorship for the Hong Kong Coach Education Programme. Therefore, we have made our response to this question from a more comprehensive angle. The problems faced by the sports community do not come from the loss of small amounts of sponsorship for a few activities by the tobacco industry, but they lie in the lack of long term resources for comprehensive sports development.

MR ANDREW CHENG (in Cantonese): *Madam President, I understand that the crux of the problem is how we can solve the financial difficulties that would be encountered by the sports community after losing the sponsorship of the tobacco industry. However, in his main reply, the Secretary has humorously commented that some events were only distant fires, and that there might be distant water, from such an answer, it could only be deduced that the Government could study the problems slowly and then put out distant fire with distant water. Yet, I think that with no progress in sports development, it would mean retrogression. When the Secretary replied to part (a) of the question, he said that the team would conduct research and analysis of the existing funding strategies and the allocation of resources for sports development, but he had not mentioned how the Government could ensure that there would be adequate resources in the future after losing the sponsorship of the tobacco industry. Even though the Government would work out strategies and allocate resources, the problem still lies in insufficient water and insufficient money. Does the Government have any strategy to attract and encourage sponsors to join the Government in its promotion of sports development?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, this is precisely one important scope of the review to be conducted by the newly established team.

Madam President, I wish to emphasize once again that there is no direct link between the resources required for sports development and the loss of sponsorship by the tobacco industry. As far as I know, the tobacco industry has only sponsored a small number of sports activities and its sponsorship was limited to large activities to be broadcast on television that drew a large audience. However, comprehensive sports development entails much more. Therefore, apart from the losses that would be brought about by the loss of sponsorship by the tobacco industry, many sports associations are also concerned about whether the Government can provide them with reliable and long-term sources of capital so that they need not worry year after year about the funding for the coming year.

MR ANDREW CHENG (in Cantonese): *Excuse me, Madam President.*

PRESIDENT (in Cantonese): Mr Andrew CHENG, has your supplementary not been answered?

MR ANDREW CHENG (in Cantonese): *Madam President, the Secretary's main reply and supplementary reply have focussed on the strategy for fund allocation, in other words, how funds should be allocated, rather than how funds could be attracted, is that right? Can the Secretary assure us that the Government's policy and the scope of study of the team will also cover how funds can be attracted in future for the promotion of comprehensive sports development?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I can confirm that the scope of study referred to by Mr CHENG would be included in the scope of review by the team.

MR CHAN KAM-LAM (in Cantonese): *Madam President, non-governmental subsidies are certainly quite important to sports development and the Government surely has policies and practice for the allocation of resources, the two are complementary to each other.*

Would the Secretary tell us whether the Government has more far-sighted views on the policies for the development of sports and cultural activities? Last year, we strived vigorously to bid for hosting the 2006 Asian Games, albeit without success, but do we intend to bid for hosting the next Asian Games? How should we set our objectives? Would the team consider these areas?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the Sports Development Board and the two former Municipal Councils had their respective strategies for long-term sports development in the past. After the abolition of the two Municipal Councils, the Home Affairs Bureau wishes to conduct a review on long-term sports development in the light of a new structure and a new environment and the sports community's increasing concern for long-term resources and sports development. One of the scopes of the latest review certainly includes studying, in respect of the overall sports development, whether Hong Kong needs to or how it should actively participate in large international sporting events, or even organize large international sporting events. We would also conduct a policy review in the hope of working out a proposal and by then, we will also listen to the views of the general public.

MR HENRY WU (in Cantonese): *Madam President, perhaps I should declare interests first. I am a member of the Tennis Foundation and a council member of the Hong Kong Tennis Association.*

As the Secretary has said, enormous capital is very often required in organizing international events and in the past the organizers have actually needed the sponsorship of the tobacco industry. After losing the sponsorship of the tobacco industry, the organizers encountered hardships and very often they do not know how to raise funds. As these international events are highly advantageous to the sports community and people in Hong Kong, I would like to ask the Secretary — it seems that the Secretary has not directly answered this part of the question in his main reply — if the Government has records of the sports activities sponsored by the tobacco industry or the amounts of sponsorship for certain events in the past decade? Does the Sports Development Board have records of the amounts of sponsorship in the past decade? Has the Government evaluated the amounts of sponsorship made by the tobacco industry for these activities in the past decade?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not have such figures at hand and I will try to look up such figures. (Annex VIII)

Madam President, I wish to emphasize again that there is no direct link between organizing visually attractive sports activities that will be viewed by a large television audience or audience on the field and promoting the overall development of sports. The two are somewhat related but not the same. To the Government and the community, if we are to promote comprehensive sports development, we should consider the needs for resources and that these needs should be greater than the sponsorship made by the tobacco industry and by some large sponsors whose decisions to sponsor are merely based on the size of the audience. We should also look after some sports events which may not have a large audience on the field and which television stations may not be willing to broadcast. If we wish to participate in international events or when we know that the whole community will be benefitted through these sports activities, we should consider how we can obtain adequate sources of capital for these sports activities that are less popular and are considered a minority.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Report of the Construction Industry Review Committee

6. **MR ABRAHAM SHEK**: *Madam President, in connection with Construct for Excellence — Report of the Construction Industry Review Committee (CIRC) submitted by the CIRC to the Chief Executive on 18 January this year, will the Government inform this Council:*

(a) of its study, decision and follow-up actions taken on the 109 improvement measures recommended in the report; and

(b) whether it will accept the report's recommendation to set up a statutory co-ordinating body for the construction industry; if so, of the specific plan and timetable for the setting up of such a body?

SECRETARY FOR WORKS: Madam President,

(a) We welcome the report of the CIRC and agree to its objective to improve the overall performance of the construction industry. We have carefully and thoroughly studied the findings and recommendations of the CIRC and have consulted concerned bureaux and departments within the Government. We consider that many improvement measures are worth pursuing. Indeed, of the 109 improvement measures put forward by the CIRC, many are being implemented or on which actions have been initiated by various bureaux and departments. An example is the implementation of a mandatory construction worker registration scheme. The proposed scheme is to ensure the quality of construction works through certification of workers' skill levels and to provide more reliable data on labour supply for manpower planning, training and retraining purposes. However, there are some recommendations which may involve complicated issues and have other implications. Further studies and wider consultation on these recommendations are considered necessary before deciding on the necessary follow-up actions. Noting that there is a strong support across the construction industry to promote improvement in the industry, we are committed to working with the industry to

facilitate development of a healthy and reliable industry. We are now working closely with relevant government bureaux and departments with a view to finalizing our views on the recommendations and examining the best way forward. We will propose very shortly an overall strategy in taking forward the recommendations.

(b) As regards the recommendation to set up an industry co-ordinating body, we note that there is a strong groundswell of support across the construction industry for the recommendation. It will take some time before specific plan and timetable can be worked out. Our overall strategy to be proposed shortly as mentioned in (a) above will include our view on this subject.

Operation of Innovation and Technology Fund

7. **DR LUI MING-WAH** (in Chinese): *Madam President, the Innovation and Technology Fund (ITF) was established in November 1999 to facilitate innovation and technology upgrading in industries. There are four programmes under the ITF, namely, Innovation and Technology Support Programme, University-Industry Collaboration Programme, General Support Programme and Small Entrepreneur Research Assistance Programme (SERAP). Regarding the operation of the ITF, will the Government inform this Council:*

(a) of the number of projects and the amount of funding approved to date, with a breakdown of the approved projects and recipient companies by sector for each of the programmes; and

(b) given that the SERAP provides financing for technology entrepreneurs on a dollar-for-dollar matching basis, and that the grant will only be recouped if the project is able to attract follow-on investment or generate revenue, of the number of recipient companies which have already started repaying the grant to the SERAP; and of the estimated economic benefits that have been brought to Hong Kong by these projects?

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President,

(a) As at 31 March 2001, the number of projects approved under the ITF was 155, with the total approved amount reaching $355 million.

A breakdown of the approved projects by the four programmes of the ITF is as follows:

Programme	*Number of Approved Projects*	*Approved Amount*
Innovation and Technology Support Programme	52	$223 million
University-Industry Collaboration Programme	46	$70 million
General Support Programme	15	$25 million
Small Entrepreneur Research Assistance Programme (SERAP)	42	$37 million
Total:	155	$355 million

A breakdown of the recipient companies by sector is set out in the Annex. Moreover, since the ITF is not only granted to private companies, but also to other institutions such as universities, industry support organizations, trade and industry associations and public organizations, we have set out the sectoral distribution of these non-private-sector recipients at the Annex for the sake of completeness.

(b) In general, projects funded under the SERAP take one to two years to complete. As we have only started to approve projects under the

ITF from November 1999, only one project has been completed so far. Since this project has just been completed and the product concerned has yet to be launched into the market, the company has not generated any revenue and we have not recouped any funds so far.

As the funded companies under SERAP are rather small in scale (their number of employees has to be less than 20) and many of them are start-up companies, we do not expect those companies which have just completed their projects to be able to bring substantial economic benefits to Hong Kong immediately. With regard to the only completed project, the funding support from SERAP has resulted in four Engineer posts in the company. Besides, even though the 41 other funded projects have not been completed yet and many of them are still in the stage of research and development, they have already brought about 125 job opportunities to Hong Kong. Most of these jobs are research and development posts requiring high technological expertise such as Engineer posts.

Annex

Innovation and Technology Fund
Breakdown of Recipient Companies / Institutions by Sector
(1 November 1999 to 31 March 2001)

Sector	*Projects awarded to Private companies* [note 1]		*Projects awarded to other institutions (e.g. universities, industry support organizations)* [note 2]		*Total*	
	Number of Projects	*Approved Amounts ($million)*	*Number of Projects*	*Approved Amounts ($million)*	*Number of Projects*	*Approved Amounts ($million)*
Information Technology	32	27.04	18	66.91	50	93.95
Electrical and Electronics	16	27.64	8	63.96	24	91.6

Sector	*Projects awarded to Private companies* [note 1]		*Projects awarded to other institutions (e.g. universities, industry support organizations)* [note 2]		*Total*	
	Number of Projects	*Approved Amounts ($million)*	*Number of Projects*	*Approved Amounts ($million)*	*Number of Projects*	*Approved Amounts ($million)*
Environmental Technology	10	21.08	3	6.68	13	27.76
Biotechnology	9	8.7	6	25.08	15	33.78
Traditional Chinese Medicine	8	12.13	4	28.62	12	40.75
Manufacturing Technology	6	3.98	12	23.9	18	27.88
New Materials	5	5.35	1	1.7	6	7.05
Textiles/ Clothing/ Footwear	2	0.8	4	5.07	6	5.87
Printing and Publishing	-	-	1	1.2	1	1.2
Telecommunications	-	-	1	1.49	1	1.49
Food and Beverage	-	-	1	1.1	1	1.1
Transportation	-	-	1	0.84	1	0.84
Cross-sectoral	-	-	5	19.32	5	19.32
Others	-	-	2	2.5	2	2.5
Total	88	106.72	67	248.37	155	355.09 (say 355)

Note 1 The projects in this column are approved under the University-Industry Collaboration Programme and the SERAP.

Note 2 The projects in this column are approved under the Innovation and Technology Support Programme and the General Support Programme.

Imposition of Criminal Compulsory Measures on Hong Kong Residents in Mainland

8. **MS AUDREY EU** (in Chinese): *Madam President, regarding the imposition of criminal compulsory measures on Hong Kong residents by the relevant authorities in the Mainland and the established reciprocal notification mechanism between the mainland public security authorities and the Hong Kong Police Force in respect of residents of the other side who have been detained or arrested for suspected criminal offences, or died of unnatural deaths, will the Government inform this Council:*

(a) of the number of Hong Kong residents who have been subject to criminal compulsory measures by units other than public security authorities in the Mainland since the reunification, together with a breakdown by grounds for detention, and the respective numbers of those who have been released and those who are still serving their sentences; and

(b) whether it will consider discussing with the relevant mainland authorities the possibility of:

(i) including those units, other than public security authorities, which have the power to impose criminal compulsory measures in the list of mainland authorities participating in the notification mechanism; and

(ii) extending the ambit of the notification mechanism so that arrangements can be made for officers of the Government of the Hong Kong Special Administrative Region (SAR) and the relevant families to visit those Hong Kong residents detained by the mainland authorities;

if it will, of the details; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): Madam President,

(a) Among the requests for assistance from Hong Kong residents dealt with by the Immigration Department since the reunification, 58

persons have been subject to criminal compulsory measures imposed by units other than public security authorities in the Mainland. These mainly include the customs authorities and the People's Procuratorates. The grounds for imposing criminal compulsory measures and the number of persons involved are given below:

Grounds for Detention	*Number of Persons*
Smuggling	50
Corruption	4
Smuggling of drugs	2
Bribery	1
Possession of guns	1

Among them, 29 have been released and returned to Hong Kong, and two cases (involving two persons) have been withdrawn by those seeking assistance, while the remaining 26 cases (involving 27 persons) are still being followed up.

(b) (i) The scope of the reciprocal notification mechanism covers the public security authorities and the customs authorities in the Mainland. Among the requests for assistance received from Hong Kong residents, 97% are related to the imposition of criminal compulsory measures by the public security authorities and the customs authorities in the Mainland. It is therefore a pragmatic arrangement to cover these mainland authorities at the outset when the notification mechanism starts to operate. The authorities concerned on both sides are free to lodge inquiries each other in case of doubt or if there is any case or any item which has not been notified. The establishment of the reciprocal notification mechanism is a good starting point. As the mechanism became operative on 1 January this year, it is at an early stage of operation. We will, in conjunction with the mainland authorities concerned, review the operation and scope of the mechanism from time to time to consider whether there is room for improvement. Whenever requests for assistance are

received from Hong Kong residents or their families, we will make inquiries, take appropriate follow-up actions and render all practical assistance to them, no matter whether or not the cases fall within the scope of the notification mechanism.

(ii) The reciprocal notification mechanism is an administrative arrangement implemented on the basis of mutual respect for the relevant laws of both parties. According to the mainland laws, the SAR Government has no right of access to those Hong Kong residents detained in the Mainland. However, statutes in the Mainland provide that persons in custody may exchange correspondence with and meet their close relatives, subject to the agreement of the authorities which handle their cases and the approval of the public security authorities. In addition, the detainees have the right to meet their legal representatives while they are in custody.

Transfer of Provision of General Out-patient Service from Department of Health to Hospital Authority

9. **MR MICHAEL MAK** (in Chinese): *Madam President, in the consultation document on health care reforms entitled "Lifelong Investment in Health", the Administration proposed to transfer the provision of general out-patient service from the Department of Health (DH) to the Hospital Authority (HA). For that purpose, the Government will implement a pilot scheme in five general out-patient clinics to try out a new mode of operation. In this connection, will the Government inform this Council:*

(a) of the implementation timetable, staffing arrangement, expenditure required and specific mode of operation of the pilot scheme; and

(b) whether it has assessed if the transfer of the DH's general out-patient service to the HA will affect the salaries, terms and conditions of employment for and the morale of the staff now working in the out-patient clinics?

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

(a) The pilot scheme to introduce family medicine practice in five general out-patient clinics (GOPCs) is an initiative under the Policy Objectives for 2001-02.

After discussion between the Health and Welfare Bureau, the HA and the DH, the following five GOPCs will be transferred from the DH to the HA in phases during the 2001-02 financial year:

(i) Sai Ying Pun Jockey Club Clinic (including evening clinic)

(ii) Cheung Sha Wan Jockey Club Clinic (including evening clinic)

(iii) East Kowloon Polyclinic

(iv) Tseung Kwan O Jockey Club Clinic

(v) Yan Oi Polyclinic

A total of $75 million has been allocated to fund this pilot scheme. The number and mix of the HA staffing for the pilot clinics are being worked out between the DH and HA.

While the number of discs allocated and the fee levels will remain unchanged for the five clinics upon their transfer to the HA, their mode of operation will be different from the present practice. In future, outpatient services will be provided in a multi-disciplinary manner, comprising family physicians, primary care nurses, clinic assistants, clinic clerks pharmacists, dispensers and allied health professionals. There will also be enhanced interface with different community service providers to provide patients with more holistic and continuous care.

(b) Staff members of the DH affected by this scheme will be retained in the DH and re-deployed to other duties within the Department. Their terms of employment will not be affected. Briefings for the

DH staff have been arranged through Department Consultative Committee Meeting, clinic visits and departmental circular to explain the background of the pilot scheme and to reassure staff that all serving staff of these five clinics will be retained by the DH. The pilot clinics will be staffed by the HA employees whose remuneration and staff benefits will be governed by their terms of employment and the HA's human resource policy. Staff group consultation and training will be conducted to ensure the successful commissioning and implementation of the pilot scheme.

Noise Nuisance Caused by West Rail Project

10. **MR ALBERT HO** (in Chinese): *Madam President, regarding the noise nuisance caused by the West Rail project to residents in the vicinity, will the Government inform this Council of:*

(a) the criteria adopted by the authority for issuing construction noise permits (CNPs) to the contractors of the project for carrying out construction works in the evening and on public holidays;

(b) the number of CNPs issued last year to the contractors of the project, and the average period of validity of these CNPs; and

(c) the number of complaints about noise nuisance caused by the project which the Environmental Protection Department (EPD) received last year?

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

(a) In considering applications for CNP, the EPD as the Noise Control Authority will assess the noise impact in accordance with the relevant Technical Memoranda issued under the Noise Control Ordinance. The EPD will issue a CNP with appropriate conditions attached if the construction noise could meet the relevant noise limit. Under certain special circumstances, the EPD may consider granting CNPs with special conditions attached even if the

construction noise might exceed the limit. For example, the EPD has issued CNPs to contractors of the West Rail project for certain works the carrying out of which during the restricted hours would cause less inconvenience or nuisance to the public than during daytime on weekdays.

(b) Between April 2000 and end-March 2001, the EPD issued 206 CNPs to contractors of the West Rail project for works within the restricted hours. In general, these CNPs had a validity period ranging from three days to a maximum of six months. About 60% of the CNPs issued were with a validity of six months.

(c) During the year 2000, the EPD received a total of 129 complaints against construction noise relating to the West Rail project.

Waiting Time for Admission to Courses Provided by Vocational Training Bodies

11. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, I have received a complaint from a member of the public who alleged that when he applied at the end of 1996 for a 60-day Crawler-mounted Mobile Crane Operation Course provided by the Construction Industry Training Authority (CITA), he was informed that he had to wait until August 2002 before he could be admitted to the course. In connection with the waiting time for admission to courses provided by various public-funded vocational training bodies, will the Government inform this Council:*

(a) whether the CITA has taken any measures, such as increasing training places, in the past five years to shorten the waiting time for admission to the course; if so, of the details; if not, the reasons for that; and

(b) of the courses provided by various vocational training bodies last year which had a waiting time for admission exceeding 12 months, and the measures such bodies have taken to shorten the waiting time for such courses?

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

(a) The Crawler-mounted Mobile Crane Operation Course provided by the CITA aims at familiarizing the trainees with the operation of crawler-mounted cranes, which are mainly used in foundation and site formation works for lifting heavy equipment or materials. The CITA mainly draws reference to the supply and demand conditions of the construction industry when working out the number of training places each year. Since the demand for crane operators varies with the number of major works projects launched and completed, the number of job vacancies for crane operators fluctuates accordingly. In the past two academic years, 48 trainees completed the 60-day Crawler-mounted Mobile Crane Operation Course, but only 31 of them were successfully placed with the help of the CITA. The employment prospect for these trainees was not entirely satisfactory. According to the statistics of the CITA, during the period from 1 December 1993 to 31 December 2000, a total of 2 155 persons passed the trade test and became qualified crawler-mounted crane operators. Hence, there are already a considerable number of trained crane operators available in the market. In these circumstances, the CITA has no plan to increase the number of training places for the Course for fear that this will lead to an over-supply of crane operators and exacerbate the unemployment situation in this trade.

In view of the long waiting time for admission to the Course and the limited job vacancies for crane operators, the CITA often advises applicants on the waiting list to enrol in other courses which have ready vacancies and offer better employment prospect.

(b) For all courses provided by the Clothing Industry Training Authority last year, the waiting time for admission was less than 12 months. Courses provided by the CITA and the Vocational Training Council (VTC) which have a waiting time for admission exceeding 12 months and the corresponding measures taken to shorten their waiting time are set out below:

CITA

Courses which have a waiting time for admission exceeding 12 months include the Crawler-mounted Mobile Crane Operation Course, Computer Aided Drafting Course, Excavation Operation Course, Wheeled Telescopic Mobile Crane Operation Course and Tower Crane Operation Course.

As mentioned above, the CITA has worked out the number of training places mainly in accordance with the supply and demand conditions of he industry. When the CITA decides on the number of courses to be provided, employment opportunity is the major consideration. If the waiting time for admission to certain courses exceeds 12 months, the CITA will write to the applicants, informing them of the approximate waiting time and recommending them to apply for admission to other courses which have shorter waiting time.

VTC

Listed below are two courses provided by the VTC which have a waiting time for admission exceeding 12 months:

(i) LPG Vehicle Servicing Course

The VTC's Automobile Industry Training Centre now offers about 400 training places a year. As there is an overwhelming number of applicants (about 700 applicants are waiting for admission), the waiting time for admission is normally over one year. In view of this, the VTC is considering the possibility of using the LPG Vehicle Servicing Workshop of the Hong Kong Institute of Vocational Education (Lee Wai Lee Campus) or hiring other venues to increase the number of training places and shorten the waiting time for admission.

(ii) Electrician/Electrical Fitter Upgrading Course

As there is a significant number of applicants (the aggregated number of applicants amounts to 1 200), the waiting time for admission is normally 13 months. The VTC's Electrical Industry Training Centre has already increased the number of training places from 400 in 1999-2000 to 960 in 2000-01 and further to 1 080 in 2001-02. In the meantime, the VTC is renovating the workshop in the Kwai Chung Training Centre for the purpose of further increasing the number of training places so as to shorten the waiting time for the course.

Corporatization of Government Departments

12. **MR JAMES TIEN** (in Chinese): *Madam President, regarding the corporatization of government departments, will the Government inform this Council:*

(a) of the current progress and outcome of the study carried out in respect of this issue; and

(b) whether it is considering corporatizing other government departments besides the Survey and Mapping Office (SMO) of the Lands Department; if so, of the details; if not, the reasons for that?

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): Madam President, the Administration is at present working on a proposal to corporatize the SMO of the Lands Department. We have already undertaken a number of thorough studies on the viability of the proposed Survey and Mapping Corporation (SMC). These include:

(i) the formulation of a sound business plan;

(ii) a compensation package for affected staff, which gives them the choice of remaining the in the Civil Service or taking voluntary retirement and taking on SMC employment conditions; and

(iii) preparation of a draft Survey and Mapping Corporation Bill.

We are consulting with the affected staff and staff associations, the Panel on Planning, Lands and Works and the Panel on Public Service of the Legislative Council, and other major stakeholders, with a view to explaining further our proposals and answering questions. We hope to introduce the Survey and Mapping Bill into the Legislative Council as soon as possible.

Apart from the SMO, we have no firm proposals to corporatize any other government departments at present. We are, however, committed to enhancing public sector productivity which includes exploring further private sector involvement in the delivery of public services.

Disclosure of Information in Kindergarten Profiles by Kindergartens

13. **MISS CHOY SO-YUK** (in Chinese): *Madam President, last month, the Home-School Co-operation Committee of the Education Department published this year's A Profile of Kindergartens (the Profile) . It was reported that 124 kindergartens had refused to include in the Profile information on the miscellaneous fees they would charge on the parents. In this connection, will the Government inform this Council whether:*

(a) it has assessed if such practice of these kindergartens has compromised the parents' right to be informed; and

(b) it will consider ordering all kindergartens to make public such information; if not, of the reasons for that?

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President, to provide parents with more information to help them choose a suitable kindergarten for their children, and to enhance the transparency of school operations, the Committee on Home-School Co-operation and the Education Department jointly publish the Profile. First issued in the 1999-2000 school year, the Profile provides a brief account of all kindergartens in Hong Kong.

The Profile contains information of the current school year. As from this school year, it also includes information on miscellaneous fees charged by individual kindergartens. Such information is provided by the schools on a voluntary basis. Of the 772 kindergartens covered by the Profile, 648 have provided the information. The publication of the Profile has aroused much public attention. Parents are particularly concerned about the level of fees. Some kindergartens even took the initiative to promptly amend the date they had provided. It is also important for parents to know which kindergarten has not released relevant information. This would alert them to seek further information as and when necessary.

Administration Circular No. 19/2000 issued by the Education Department reminds kindergartens of the need to proactively provide, in their leaflets, notices or admission application forms, parents seeking admission for their children in the coming school year with basic information of the school, including school fees and other charges (that is, miscellaneous fees). This is to ensure that parents have information on the fees and charges of the kindergartens to assist them in choosing a kindergarten for their children.

In view of the above, irrespective of whether a kindergarten has provided all information concerning miscellaneous fees in the Profile, parents' right to be informed in this area is adequately protected. For the time being, the Government has no intention to direct all kindergartens to publish such information in the Profile.

Impact of Decline in Property Prices on Financing of Enterprises

14. **MR KENNETH TING** (in Chinese): *Madam President, regarding the impact of the decline in property prices on the financing of enterprises, will the Government inform this Council:*

(a) whether it has assessed how the decline of property prices in recent years affected the commercial and industrial enterprises, in particular the small and medium enterprises (SMEs), in obtaining loans from financial institutions; and

(b) of the measures in place to encourage financial institutions, in processing loan applications by enterprises, to put more emphasis

on the business prospects of the enterprises concerned than on the value of the property used as collateral; and of the effectiveness of such measures?

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President,

(a) The Government has not conducted an assessment on how the decline in property prices has affected local businesses in obtaining loans from financial institutions and will find it difficult to do so. Although loan data with a breakdown by economic sector are available from the Hong Kong Monetary Authority (HKMA), these data merely reflect the overall lending situation, which is subject to a number of factors. These include the liquidity level of lending institutions as well as the financial position, business prospect, credit record, and cash flow of individual enterprises. Whether individual enterprises can provide collateral (including property) and the price movement of these collateral is but another of these many factors. It is therefore impossible to assess the overall financing situation of the business sector based on this factor alone.

However, according to the business sector and the lending institutions, the decline in property prices did pose some financing difficulties for certain enterprises, especially the SMEs. The major reason is that many such enterprises had to rely on properties as collateral to obtain loans, either because their business performance and financial conditions had failed to meet the requirements of the lending institutions, or they were unable to provide these institutions with detailed financial records or business plans for reference. In addition, quite a number of well-run enterprises had also obtained increased credit limit from banks by means of mortgage when property prices were high. When the value of property collaterals depreciate as a result of a downturn in the real estate market, the banking sector will naturally consider tightening up their credits. As a result, enterprises that relied on property collaterals for their financing will be affected.

(b) The HKMA has always encouraged banks to take into careful consideration the financial position, business prospect, cash flow, capital resources and other financial commitments of loan applicants instead of relying too much on collateral.

The HKMA has included this guiding principle in the recently published Supervisory Policy Manual and requested the banking sector's adherence. Moreover, to increase the transparency of commercial credit record, the HKMA is considering the establishment of a "Commercial Credit Reference Agency" in Hong Kong. The Agency will help banks assess the financial position of enterprises, improve risk management and reduce reliance on collateral. Consultation results reveal that the banking sector in general believes that the Agency should help more SMEs with good credit records and business prospects to obtain loans.

In addition, the Trade and Industry Department (TID) has also taken steps over the past six months to encourage banks and other credit institutions to give more consideration to the strengths of individual SMEs rather than extending credits based on the mortgage of properties alone. Response from financial institutions has been favourable. Some banks and finance companies have announced that they will consider factors other than "bricks and mortar collateral" in vetting loans. In future, the TID will continue with its liaison and promotional efforts in this aspect.

Apart from the banking sector, which needs to change its business culture and practices, the SMEs would also have to make corresponding changes, such as improving their financial transparency, financial management capability and overall competitiveness. The TID and other statutory bodies, such as the Hong Kong Trade Development Council and the Hong Kong Productivity Council, together with various support organizations and professional bodies, have organized regular talks on various topics aimed at providing SMEs with the know-how for starting, building and expanding their business. The topics covered include financial management, corporate governance, and financing arrangement. We believe that such activities will enhance SMEs' awareness of the importance of better corporate governance and

financial management and hence enable them to secure loans more easily.

Secondary One Students Required to Attend Schools in Other Districts

15. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, regarding the issue of Form One students attending secondary schools in districts other than those in which they attended their primary schools (other districts), will the Government inform this Council:*

(a) of the number of Secondary One students who have to commute to schools in other districts in the current school year, and its percentage in the total number of Secondary One students; how these figures compare to those in the two previous school years;

(b) of the estimated number of Secondary One students who will have to commute to schools in other districts in the next school year;

(c) of the five districts expected to have the greatest numbers of students from other districts in the next school year; of the number of Secondary One students, the number of secondary schools completed and the additional number of Secondary One school places in each of these five districts in each of the past three years; whether land has been reserved in these districts for building schools; if so, of the details; if not, the reasons for that; and

(d) of the five districts which had the greatest numbers of newly-completed secondary schools in the past three years, and the number of Secondary One students from other districts and the additional number of Secondary One school places in these five districts in each of the past three years?

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President, before responding to the questions of the Honourable Member, it may be helpful if I first set out the Government's planning parameters for primary and secondary schools, and how the Secondary School Places Allocation (SSPA) system operates.

At present, the provision of primary school places is planned on a district basis to reduce the need for young pupils to travel a long distance. Secondary school places are planned on a territory-wide basis, although subject to the availability of suitable sites, new secondary schools are built to meet local demand.

Under the SSPA system, the whole of Hong Kong is divided into 18 secondary schools nets. Primary Six students are allocated to different school nets according to the districts where their primary schools are located. In addition to all secondary schools in the district, a school net may also include some secondary school places in other districts. This arrangement takes account of the number of students and choice. A Primary Six student will only be allocated to secondary schools belonging to his/her school net under the SSPA system. However, a student may apply for any secondary school in Hong Kong and be admitted through the 10% discretionary places, the allocation of which is determined by the secondary school.

Part (a)

The number and percentage of Primary Six students who have been allocated secondary school places in other districts in the 1998-99, 1999-2000 and 2000-01 school years are:

	1998-99	*1999-2000*	*2000-01*
Number of students (percentage)	7 413 (10.9%)	8 499 (12.1%)	9 504 (12.6%)

Part (b)

The Education Department (ED) estimates that about 8 900 Primary Six students will be allocated secondary school places in other districts under the SSPA system in the 2001-02 school year.

Part (c)

The ED estimates that, in the 2001-02 school year, the Central and Western, Yau Tsim Mong, Sham Shui Po, Kowloon City and Wong Tai Sin districts will have the greatest number of Primary Six students allocated

secondary school places in other districts. The number of Secondary One students, and the number of new secondary schools completed (as well as additional Secondary One places thus provided) in these districts in the 1998-99, 1999-2000 and 2000-01 school years are:

	1998-99		*1999-2000*		*2000-01*	
District	*No. of Secondary One students*	*No. of new schools (Secondary One places)*	*No. of Secondary One students*	*No. of new schools (Secondary One places)*	*No. of Secondary One students*	*No. of new schools (Secondary One places)*
Central and Western	2 743	-	2 696	-	2 648	-
Yau Tsim Mong	2 932	-	2 851	-	3 397	2 (560)
Sham Shui Po	4 186	-	3 779	-	4 053	-
Kowloon City	6 667	-	6 507	-	6 733	-
Wong Tai Sin	4 062	-	4 275	-	4 448	-

We have reserved a total of 15 sites in Central and Western, Sham Shui Po, Kowloon City and Wong Tai Sin, which will become available between now and 2010 for the construction of new secondary schools. Details are:

District	*Number of sites*	*Remarks*
Central and Western	1	Site available in 2007
Sham Shui Po	2	Sites available now; schools under construction
	2	Sites available in 2004

District	*Number of sites*	*Remarks*
Kowloon City	2	Sites available now; school construction under planning
	4	Sites available in 2005
	1	Site available in 2006
Wong Tai Sin	1	Site available now; school under construction
	1	Site available in 2003
	1	Site available in 2005

Part (d)

The Hong Kong East, Yuen Long, North, Tai Po and Sai Kung districts had the greatest number of new secondary schools completed in the 1998-99, 1999-2000 and 2000-01 school years. In these three school years, the number of Secondary One students from other districts, and the number of new secondary schools completed (as well as additional Secondary One places thus provided) in these five districts are shown as follows:

	1998-99		*1999-2000*		*2000-01*	
District	*No. of Secondary One students from other districts*	*No. of new schools (Secondary One places)*	*No. of Secondary One students from other districts*	*No. of new schools (Secondary One places)*	*No. of Secondary One students from other districts*	*No. of new schools (Secondary One places)*
Hong Kong East	373	1 (240)	791	3 (720)	964	2 (275)
Yuen Long	125	1 (240)	53	2 (480)	60	2 (240)
North	52	1 (400)	47	1 (240)	55	1 (280)
Tai Po	45	2 (480)	45	1 (240)	74	-
Sai Kung	60	2 (320)	494	3 (720)	887	-

Use of Chinese and English in Matters Relating to Operation of Stock Market

16. **MR NG LEUNG-SING** (in Chinese): *Madam President, in relation to the Government's sale of part of its interest in the MTR Corporation Limited (MTRC) through an initial public offering in October last year, I have received a complaint from a member of the public who had intended to subscribe for MTRC shares, alleging that one of the receiving banks had refused to accept his subscription on grounds of his failure to complete the address box in the share subscription application form (subscription form) in English. In connection with the use of Chinese and English in matters relating to the operation of the stock market, will the Government inform this Council whether:*

(a) it has assessed if the requirement that subscription forms must be completed in English is unfair to people who do not know English; if the assessment result is in the affirmative, in what way it should be held responsible in respect of those whose subscription forms had thus been rejected, and whether it will abolish such a requirement when shares of public organizations are offered for sale in the future; and

(b) it is aware of any measures taken in the past two years as well as those which will be taken by the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong to facilitate and stipulate the use of both the Chinese and English languages by securities intermediaries in matters relating to the operation of the stock market, for the convenience of the investing public?

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

(a) Existing regulations and rules have no specific requirements as to what language should be used in the completion of share application forms. Issuers in an Initial Public Offer can require the share application forms be completed in a specified language as a condition for the application of shares. The current market practice is to require investors to complete the "name" and "address" columns in English. As share registrars in Hong Kong currently use English for the production of share certificates and

processing of registers of shareholders, their computer systems are not equipped to process information in Chinese. Hence, issuers have to obtain the two types of personal particulars in English. Generally, investors are reminded in share application forms that such information has to be completed in English. The MTR Privatization Share Offer held last October also followed this market practice. The issuer had reminded applicants of the requirement to complete their names and addresses in English.

For the convenience of investors, the SFC will discuss with members of the Federation of Share Registrars and market participants to encourage them to upgrade their computer systems and explore other possible means to allow investors to complete share application forms, including information such as names and addresses, in Chinese in future.

(b) The SFC and the Stock Exchange of Hong Kong require all investor communications issued by listed companies to be in Chinese and English. The Companies Ordinance and the Listing Rules also stipulate that prospectuses, listing documents and circulars and so on must be available in Chinese and English. Furthermore, paragraph 6.1 of the Code of Conduct of Persons Registered with the Securities and Futures Commission requires that registered persons should enter into a written agreement, risk disclosure, or supporting document, if applicable, with each client before services are provided to the client. These documents should be in Chinese or English according to the language preference of the client.

Traffic Accidents in Mainland Involving Hong Kong Residents

17. **MISS LI FUNG-YING** (in Chinese): *Madam President, on the 25th of last month, a coach fully loaded with Hong Kong residents had an accident on the Shenzhen-Shantou Expressway on its way back to Hong Kong, resulting in many casualties. Regarding Hong Kong residents who died or sustained injuries as a result of traffic accidents outside the Territory and the related assistance mechanism of the relevant authorities, will the Government inform this Council:*

(a) as a reciprocal notification mechanism has been established between the Mainland Public Security Authorities (Mainland Authorities) and the Hong Kong Police Force (HKPF) in respect of residents of the other side who have been detained or arrested, or died of unnatural deaths, whether the Mainland Authorities has notified the HKPF of this incident at the earliest possible time; if so, of the details; if not, the reasons for that;

(b) of the total number of Hong Kong residents who died or sustained injuries in the past three years as a result of traffic accidents in the Mainland, and the number of such accidents;

(c) of its promotion efforts to publicize the contact telephone number of the Assistance to Hong Kong Residents Unit of the Immigration Department; and

(d) whether it has identified room for improvement regarding the assistance it provides to Hong Kong residents outside the Territory?

SECRETARY FOR SECURITY (in Chinese): Madam President,

(a) Under the notification mechanism, the Notification Unit of the Ministry of Public Security should notify the Hong Kong police of the unnatural deaths of Hong Kong residents in the Mainland and the imposition of criminal compulsory measures on Hong Kong residents by the mainland public security authorities or customs authorities. Regarding the traffic accident on the Shenzhen-Shantou Expressway on the 25th of last month, during which two Hong Kong residents were killed and many were injured, in view of the need for immediate contingency measures, the Shantou Public Security Bureau sent the particulars of the casualties directly to the Immigration Department for liaison and follow-up actions. Detailed information (including the names, age, sex, addresses in Hong Kong and conditions of the casualties, as well as the names of the hospitals where they were admitted) was faxed to the Immigration Department on 26 March, approximately 22 hours after the accident. A formal notification issued by the Mainland Notification Unit was received on 28 March. Since it was an

urgent case, and we had to take prompt actions to facilitate the return of injured Hong Kong residents for medical treatment, the relevant Public Security Bureau therefore notified the Immigration Department as soon as possible of the casualties, prior to the formal notification by the Ministry of Public Security.

(b) The Government of the Hong Kong Special Administrative Region (SAR) does not have any statistics on the number of Hong Kong residents who were killed or injured as a result of traffic accidents in the Mainland or other countries. According to the information provided by the Travel Industry Council of Hong Kong, a total of nine traffic accidents involving coaches used by Hong Kong tour groups had taken place in the Mainland in the past three years, resulting in the deaths of two persons and the injury of 154 persons. As regards more serious accidents involving cross boundary coaches in the Mainland, apart from the one which occurred on the Shenzhen-Shantou Expressway on the 25th of last month, in which 40 Hong Kong passengers were injured and two were killed, two accidents also occurred in July 2000 and January 2001 respectively, resulting in the injury of 66 passengers in total.

(c) The purpose of setting up the Assistance to Hong Kong Residents Unit (the Unit) in the Immigration Department is to provide practical assistance to Hong Kong residents in need of help when they are in distress abroad or in the Mainland.

The following channels are used to publicize the work of the Unit and its contact telephone number (office hours: 2829 3010; non-office hours: 2543 1958):

(i) In the leaflet on "協助在內地的香港居民服務指南" published by the Immigration Department, in addition to setting out the scope of assistance to be provided by the SAR Government, the contact telephone numbers and addresses of the Unit and the Beijing Office are also included;

(ii) In the booklets《內地刑事訴訟簡介》and《與被拘留、逮捕者有關的內地刑事法律、法規實用資料》published respectively by the Security Bureau and the Beijing Office last

year, the contact telephone numbers of the Unit and the Beijing Office are also provided;

(iii) The leaflet and booklets mentioned in items (i) and (ii) above are distributed to the public free of charge at the Information Office and branch offices of the Immigration Department, the Beijing Office and District Offices. The relevant information is also made available on the website of the SAR Government;

(iv) With the assistance of the Travel Industry Council of Hong Kong and the Hong Kong Guangdong Boundary Crossing Bus Association Company Limited, the relevant leaflets are distributed to local residents who travel outside Hong Kong; and

(v) In case a special or serious incident happens outside Hong Kong involving deaths or injury of Hong Kong people, the Immigration Department will activate emergency contingency measure immediately and will publicize the Unit's hotline numbers to the public through the media so that they can make inquiries or seek assistance where necessary.

(d) Upon receipt of requests for assistance from Hong Kong residents who are in distress abroad or in the Mainland, the SAR Government will provide all the practical assistance in the light of the nature of their cases concerned. We will contact the relevant Chinese Consulates through the Office of the Commissioner of the Ministry of Foreign Affairs of People's Republic of China in the SAR in order to render assistance to Hong Kong people who are in distress in the countries concerned. Similarly, through the assistance of the Beijing Office, we will provide assistance to Hong Kong people who are in distress in the Mainland. Besides, the Immigration Department will contact the families of the concerned persons in order to notify them of the updated developments and to take any necessary follow-up actions on their requests.

We will review the existing mechanism from time to time so that appropriate improvements could be made. The notification

mechanism which became operative on 1 January 2001 is a new improvement measure. Furthermore, the Beijing Office has operated an advance account since mid-March this year to provide repayable emergency financial aid to Hong Kong residents who are in urgent need of such assistance in the Mainland.

We will continue to monitor the operation of the existing mechanism and the new initiatives mentioned above. We will also conduct reviews from time to time to ensure that Hong Kong residents who are in distress abroad or in the Mainland will be provided with prompt and practical assistance.

Daily Turnover of Stock Projected by Government and SFC When Preparing Budgets

18. **MR ERIC LI** (in Chinese): *Madam President, regarding the effect of the projected level of average daily turnover and the actual turnover in respect of stock transactions on the budgets of the Administration and the Securities and Futures Commission (SFC), will the Government inform this Council:*

(a) of the projected level of average daily turnover for the year 2001-02 when it worked out the income from stamp duty on stock transactions for that year, and the basis on which the projection was made;

(b) of the basis on which the SFC worked out the average daily turnover of stock for the year 2001-02 as around $11 billion when it prepared its budget for that year;

(c) of the income in stamp duty on stock transactions for the year 2001-02 with reference to the SFC's projected level of stock turnover; and

(d) whether the Government and the SFC will make public revised estimates of the relevant revenues from time to time in the light of the actual daily turnover of stock in the coming few months, so as to avoid sending confusing messages to the market; if not, of the reasons for that?

SECRETARY FOR THE TREASURY (in Chinese): Madam President,

(a) The Government's estimate of the revenue from stamp duty on stock transactions for 2001-02 was based on the actual daily average of stamp duty received from stock transactions between April and December 2000, plus a projected modest growth for budgeting purpose and a reduction of 11% to take into account the effect of our proposal to reduce the duty rate in the Budget. This, in effect, is equivalent to assuming an average daily turnover of around $11 billion in the stock market for 2001-02.

(b) When preparing its budget for 2001-02 in February 2001, the SFC projected that the average daily turnover of stock transactions for 2001-02 would be around $11 billion. This projection was made primarily in the light of the average daily turnover for the 10 months from April 2000 to January 2001, which stood at $11.3 billion.

(c) As the projected daily turnover of the stock market for 2001-02 underlying both the SFC budget and the Government's original estimate for stamp duty on stock transactions for 2001-02 is similar, the income from stamp duty on stock transactions with reference to the SFC's projected level of stock turnover would be the same as that projected by the Government based on the Government's projected level of stock turnover.

(d) The Government's established practice is to announce revised estimates for all its recurrent revenue items in the current financial year, including stamp duty on stock transactions, on the day when we announce the Budget for the subsequent financial year. This is done for the purpose of the Government's annual budget exercise. The revised estimates on revenue from stamp duty on stock transactions are not intended to be an official forecast of the stock market performance. We do not see the need to revise our estimates on revenue from stamp duty on stock transactions and to announce such revised estimates from time to time during the course of a financial year.

The SFC's projection of turnover on stock transactions is made for the sole purpose of estimating its annual income from transaction levy. It is not intended to provide any indication of market trends on stock transaction levels for reference by the market. It is therefore the SFC's standing practice to provide the revised estimates of its income and expenditure for the current financial year to reflect the updated situation only in the context of drawing up its budget for the following financial year. The SFC has no plan to deviate from its existing practice.

Merging of Co-existent Overseas Offices of Hong Kong on Economics, Trade and Tourism Located in Same Cities

19. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, in view of the co-existence of the overseas Hong Kong Economic and Trade Offices (ETOs), offices of the Hong Kong Trade Development Council (TDC) and the Hong Kong Tourism Board (HKTB) in many major cities of the world, will the Government inform this Council:*

(a) of the existing staff establishment and annual payroll of each of these offices; and

(b) whether it has considered merging the offices located in the same city in order to save public expenditure; if so, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President,

(a) At present, the Government, the TDC and the HKTB concurrently maintain offices in New York, London, Toronto, Tokyo, Sydney and Singapore. The establishment and estimated staff costs of these offices in the year 2001-02 are as follows:

	Hong Kong Economic and Trade Offices		*TDC's Offices*		*HKTB's Offices*	
	Establishment	*Staff Cost ($ million)*	*Establishment*	*Staff Cost ($ million)*	*Establishment*	*Staff Cost ($ million)*
New York	20	11.2	13	7.7	5	3.4
London	22	14.9	9	5.3	14	6.2
Toronto	11	6.3	6	1.7	3	1.1
Tokyo	15	14.3	13	8.4	10	7.6
Sydney	12	6.5	6	1.4	8	3.4
Singapore	11	5.9	6	1.6	12	5.1

(b) The key responsibility of the Government's ETOs overseas is to promote Hong Kong's economic and trade interests. Actual tasks carried out by the ETOs include monitoring and reporting on developments which are likely to affect such interests (for example, implementation of new policies or legislation by foreign governments); lobbying or negotiating with the host governments on specific trade issues; maintaining close liaison with overseas businessmen, politicians and media with a view to fostering better understanding of Hong Kong and promoting Hong Kong's image; and promoting inward investment.

The key responsibility of the TDC's overseas offices is to promote Hong Kong's products and services, helping Hong Kong companies penetrate overseas markets. Actual tasks carried out by these offices include providing assistance to Hong Kong companies participating in product or services exhibitions held in the host countries in respect of design of exhibition stands and publicity; providing trade matching services; collecting market intelligence; rendering support to overseas Hong Kong business associations with a view to maintaining and expanding networks of overseas business relations; as well as arranging visit and exchange activities for business missions organized by the TDC.

As regards the HKTB's overseas offices, their key responsibility is to spearhead the marketing and promotion of Hong Kong as a world-class tourist destination, raising the level of interest in visiting Hong Kong. Actual tasks carried out by these offices include

providing practical travel information and assistance to the travel trade and media in the respective regions to facilitate tours to Hong Kong or reporting on Hong Kong's advantages as a tourist destination.

Since the Government's ETOs and the overseas offices of the TDC and the HKTB have different scopes of work, objectives and targets, and past experience showed that the arrangement whereby three dedicated institutions dealt with external economic and trade matters, trade promotion and tourism promotion respectively was an effective one, the Government has no plan to merge the overseas offices of these three institutions. To merge the offices merely for the purpose of saving resources would result in loss in distinctiveness of these offices' current work foci, thus undermining the effectiveness of their work.

Nevertheless, when circumstances permit, the Government, the TDC and the HKTB would co-locate their overseas offices in one building. The offices of the three institutions in Sydney are housed in one building, whereas in both London and Singapore, the respective ETO and HKTB office are housed in one building. In addition, the overseas offices of these three institutions maintain regular liaison and communication, and where appropriate will join hands in organizing events to promote Hong Kong's image or other promotional events, with a view to achieving synergy and avoiding duplication of resources.

Unavailability of Sea Water for Flushing in Yuen Long District

20. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the unavailability of sea water for flushing in the Yuen Long District, will the Government inform this Council:*

(a) of the volume of fresh water used for flushing in the district, and its percentage in the total volume of fresh water consumed by the district, in each of the past three years;

(b) of the reasons why it is still unable to supply sea water for flushing to the district; and

(c) whether it has plans to supply sea water for flushing to the district in the near future; if it has, of the details; if not, the reasons for that?

SECRETARY FOR WORKS (in Chinese): Madam President,

(a) In each of the past three years, the volume of fresh water used for flushing in Yuen Long, and as the percentage of the total volume of fresh water consumed by the district, are as follow:

	Volume of fresh water used for flushing (million cubic metres)	*As percentage of total volume of fresh water consumed*
1998	7.67	20.2%
1999	8.40	21.4%
2000	9.13	22.7%

(b) The Government reviews from time to time the feasibility of supplying sea water for flushing to the Yuen Long District. From the geographical point of view, the nearest source of sea water for supply to Yuen Long is Deep Bay. However, the water quality there is not up to the standard for flushing purpose. As it is very expensive to install additional facilities to treat the sea water, it is not appropriate to draw water from Deep Bay for supply to Yuen Long. The Government has also considered another option of supplying sea water from a more distant source at Tuen Mun. However, in view of the high capital cost, operation and maintenance costs, and after considering the present level of population of Yuen Long and the scale of capital investment, the Government considers this option not in line with the value-for-money principle. Moreover, it cannot achieve the target of making the best use of available resources.

(c) According the present population forecast of Yuen Long, it still cannot make the best use of available resources to provide sea water

for flushing to Yuen Long in the near future. Nevertheless, there is already a comprehensive fresh water supply system in Yuen Long. Residents in Yuen Long can enjoy fresh water for flushing in accordance with the Waterworks Ordinance and each household has 30 cu m of free fresh water for flushing for every four months. This quantity is sufficient for most households in Hong Kong. In the long run, the Government will review the feasibility of supplying sea water to Yuen Long in light of the latest population forecast so that the sea water can be supplied to Yuen Long in due course.

STATEMENT

PRESIDENT (in Cantonese): Statement. Chief Secretary for Administration will make a statement on "The Legislative Council and the Administration Working in Partnership".

In accordance with Rule 28(2) of the Rules of Procedure, no debate may arise on the statement but I may in my discretion allow short questions to be put to the Chief Secretary for Administration for the purpose of elucidating it.

The Legislative Council and the Administration Working in Partnership

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, with your permission, I would like to take the opportunity of my last attendance at the Legislative Council in my official capacity as the Chief Secretary for Administration to speak on an issue that is close to all our hearts, that is, the relationship between the Legislative Council and the Administration and the need for us to work in constructive partnership to serve our community.

The Basic Law sets out the different roles and functions of the executive and the legislature. Given our different mandates, it is hardly surprising that we may not always see eye to eye on every single issue. However, such differences should not mask the fact that on a day-to-day basis, we work closely with this Council and we expend considerable energy and time in responding to Members' concerns. In many areas, and in a spirit of give and take, we have together achieved a great deal in the public interest.

As I have said on several occasions in the past, I and my colleagues fully appreciate and accept our constitutional obligation to be accountable to this legislature. We understand that by engaging you in debates and discussions, explaining and defending our proposals, policies and decisions, and as is so often the case, modifying our proposals to accommodate the views of Members, that we stand a far better chance of having them understood, accepted and supported by the community at large.

My personal involvement with this Council dates back to 1989 when I was first appointed as a Member of this Council in my official capacity as the Secretary for Economic Services. I have worked closely with the Council since 1993 as head of the Civil Service, and for an almost equal period in my present capacity as the Chief Secretary for Administration both before and after the handover. Over these years, I have witnessed some major changes within this Council and consequential improvement in our relationship.

Firstly, the make-up of the Council has changed. When I took up the job of Chief Secretary in 1993, the Council comprised 18 directly elected Members, 21 Members returned by functional constituencies, 18 appointed Members and three ex-officio Members. Today, all Members are elected in one way or another, without a single appointed or ex-officio Member. As a result of this evolution, the Administration does not have a single vote in this Council. The passage, or otherwise, of our policies, legislative and financial proposals rests very much on the merits of our case and whether we can persuade Members that the wider interests of the community has been satisfied.

Secondly, the management of the Council has also changed. In 1993, Mr John SWAINE, elected from amongst and by Members of this Council, took over from the then Governor as the President of this Council. In 1994, Members elected from among themselves the Chairmen of the Finance Committee and the Public Works Subcommittee, and the Financial Secretary and myself ceased to chair these committees. In the same year, the Legislative Council Secretariat was delinked from the Administration and all civil servants were replaced by contract staff directly employed by the Legislative Council Commission. Developments in the past decade have put Members at the helm and given Members complete charge over the Council's business.

With the handover, the powers of the Council are now set out clearly in the Basic Law. Members can amend or reject the Administration's legislative

proposals; Members can refuse to accept the Administration's financial proposals; Members can set up select committees to inquire into all aspects of the Administration's activities, and Members can initiate debates on almost any subject of public interest. There is no doubt that Members exercise these powers robustly.

As the Council becomes more autonomous and representative, the issue of partnership between the Administration and Members of this Council has topped our agenda. Better co-operation between the Administration and the Council has been a regularly discussed topic in the past several years. The transformation of the then informal OMELCO Panel system into formal committees of this Council in 1993 was a significant development for this co-operative relationship.

In 1996, the Administration made it a standing practice to consult the appropriate Panel of the Legislative Council on all major policy, legislative or financial proposals as early as practicable before their formal introduction into the Council or the Finance Committee. Where for any reason this could not be done, the Administration also made it a point to explain the circumstances fully when the proposal was put forward. We have adhered to this practice to this day. The Panel system is an invaluable forum for us to engage Members in the policy formulation process and to explain the Government's position and exchange ideas with Members on a wide range of issues.

In order to strengthen this conduit between the Administration and Members, we have had further exchanges with this Council since October last year. As a result, we have undertaken to enhance co-operation with Members in a number of areas, including:

— We will draw attention to and account for, where appropriate, variations in our final position from the view that we put to Members in earlier Panel discussions. To give effect to this latter point, we will need the relevant Panel to come to a definitive view at the conclusion of its discussion;

— We accept the Council's suggestion to allocate sufficient time for discussion of major government proposals at meetings of the relevant Panels. To ensure that the Government's proposals, especially those which are time critical, can be dealt with

expeditiously, we hope that government business will be given priority in the Panels' deliberation. To facilitate a fruitful and early exchange of views, we also hope that the membership will represent all the different political affiliations or parties and that Members will attend and participate actively in Panel discussions;

— We will provide periodic updates of the Legislative Programme that we draw up for each legislative session to facilitate Members in planning their legislative work; and

— We will continue to submit in advance the amendments that we propose to be made to bills to the relevant Bills Committees. To ensure the effectiveness of the system, we expect Members to do the same with regard to their proposed amendments.

Madam President, all these measures underline the importance that we in the Administration attach to forging a constructive partnership with the legislature. I have no doubt that these efforts will continue under the able leadership of Mr Donald TSANG as the Chief Secretary for Administration.

As for myself, I will step down from my post at the start of next week. I have spent the better part of my life in the Civil Service. It has been a long but rewarding journey and I leave the service a wiser and better person than when I started in 1962. I have enjoyed my involvement with the legislature even though on occasions, it has been a painful experience personally. But I have always respected the Council's constitutional right to question and to criticize. In response, I have always been prepared to listen and to learn.

I would like to take this opportunity to pay tribute to you, Madam President, for your fair-mindedness in presiding over the business of this Council, and for your personal efforts in promoting a more cordial and harmonious relationship between the Administration and Members of this Council. I pay tribute to the Chairman and the Vice-Chairman of the House Committee, both past and present, with whom I met on a regular basis to discuss Council business, for their role in facilitating communication and co-operation between the Administration and Members of this Council. Apart from discussing the day-to-day business of this Council, I am grateful to them for keeping me informed of some of the major issues of particular concern to Members. Last but not least, I pay tribute to all Members for your diligence and perseverance in discharging

your duties and in holding the Administration to account. I think life would be far easier for all of us in the Administration if you were less conscientious. *(Laughter)*

Finally, I thank you, Madam President, and all Members of the legislature, both past and present, for the courtesy that you have shown me over the years and for your friendship and support. Nothing that has happened in these past seven years has moved my strong personal conviction that this Council has an important check-and-balance role to perform. I think we need to set aside prejudices and partisan politics and work together in mutual trust and respect to serve the people of Hong Kong. We must redouble our efforts on this front within the constitutional framework imposed by the Basic Law. The community expects nothing less.

Thank you, Madam President.

(All Members pay their tribute by tapping on the table)

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

REVENUE BILL 2001

REVENUE (NO. 2) BILL 2001

REVENUE (NO. 3) BILL 2001

CLERK (in Cantonese): Revenue Bill 2001
Revenue (No. 2) Bill 2001
Revenue (No. 3) Bill 2001.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

REVENUE BILL 2001

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, today, I shall move three omnibus bills in the Legislative Council for the purpose of implementing the various revenue proposals set out in the 2001-02 Budget.

I move the Second Reading of the Revenue Bill 2001.

The object of the Bill is to implement three of the proposals in the Budget which seek to increase revenue, namely, a 5% increase in tobacco duty, an increase from 30% to 40% of the *ad valorem* duty rate on liquors with an alcoholic content of 30% or below and a 10% increase in driving licence fees and in vehicle licence fees for private cars, motor cycles and motor tricycles.

To begin with, the Bill proposes to increase tobacco duty by 5%. We estimate that the proposal will generate an additional revenue of $130 million in 2001-02, and within the period covered by the Medium Range Forecast, that is, within the next four years to 2004-05, the total increase in revenue is estimated to be $580 million. Besides bringing increased revenue, the proposed increase in tobacco duty will also help the Government achieve its objective of encouraging people to smoke less for the sake of their own health. As pointed out by the Financial Secretary in his Budget, we are confident that the proposed tobacco duty increase should not lead to a rise in the sale of contraband cigarettes by lawless elements. Our confidence is built upon the effective enforcement actions taken by the Customs and Excise (C&E) Department.

Following the Government's allocation of additional resources to the C&E Department in 2001-02 for the purpose of stepping up enforcement actions, the C&E Department has achieved very obvious results in combating the sale of contraband cigarettes. In the past one year, there was a 40% increase in the number of detected cases involving the sale of contraband cigarettes, and the number of black spots for the sale of contraband cigarettes also dropped sharply by 70%. During the same period, the prices of contraband cigarettes rose by 10%, while the sale volume of duty-paid cigarettes went up by nearly 10%. The C&E Department will continue to take effective enforcement actions to protect the revenue of the Government.

The second proposal of the Bill aims to introduce an increase from 30% to 40% of the *ad valorem* duty rate on liquors with an alcoholic content of 30% or below. This proposal will increase the revenue of the Government by $90 million in 2001-02, and in the four years covered by the Medium Range Forecast, there will be a additional revenue of $360 million. The proposal will produce very mild effects only; in the case of beer, a popular kind of drink among most people, the tax increase per can will just be in the range of 10 cents to 30 cents. Whether such a mild duty increase should be shifted to consumers is a commercial decision for suppliers of alcoholic beverages to make. In any case, we do not think that such a mild adjustment will affect people's desire to consume these alcoholic beverages, and so, we also do not think that the duty increase will achieve the opposite result of reducing revenue.

I also wish to point out that ever since 1994, when the Government abolished the mixed system of *ad valorem* and specific duties and replaced it with the existing *ad valorem* duty system, which is simple and fairer, there has not been any increase in the duty rate on liquors. It must also be noted that following the change in the duty system, the duty on a can of beer has become much lower than it used to be. Even after the duty adjustment now being proposed, the duty on one can of beer will still be lower than that under the old system, by as much as 30%. For this reason, we do not think that the proposal will produce any substantial effects on the industries concerned.

I understand that some in the community are of the view that increases in tobacco and alcoholic beverage duties may affect people's livelihood. The Government does not agree to this view. It is our view that tobacco and alcoholic beverages are not daily necessities, and so they will not directly affect people's livelihood.

The third proposal of the Bill seeks to introduce a 10% increase in driving licence fees and in vehicle licence fees for private cars, motor cycles and motor tricycles. The new driving licence fees and vehicle licence fees will apply to all new driving licences and new vehicle licences for private cars, motor cycles and motor tricycles, and they will also be applied to all renewals of driving licences and vehicle licences on or after 7 July. This proposal is expected to generate an additional government revenue of $160 million in 2001-02, and during the four years covered by the Medium Range Forecast, it will generate additional revenue of $1.1 billion.

We have put forward this proposal for two main reasons. First, since 1991, the Government has never adjusted the fees concerned, but the cumulative inflation rate for this period was 52%. So, we are convinced that it is actually possible to introduce a mild adjustment, so as to reduce the operating deficit of the Government.

Second, a selective adjustment of licence fees, targeting only at private cars, motor cycles and motor tricycles, will not affect the transport sector. And, to owners of private cars, motor cycles and motor tricycles, a 10% increase is also very mild. For private cars with a capacity smaller than 2 500 cc, which occupy 80% of all registered petrol private cars, the actual increase will just be in the range of $385 to $570; those occupying 15% of all the registered private cars, that is, private cars with a capacity between 2 500 cc and 3 500 cc, the actual increase will be just $755. And, the increase will only reach the range of $940 to $1,125 in the case of private cars with a capacity of more than 3 500 cc, that is, those occupying only 5% of all the registered private cars. We believe that this proposal will not impose any heavy burden on vehicle owners.

As for the 10% increase in driving licence fees, we think that its effect on the daily expenses of motorists will be negligible, because the increases for individual types of licences will range from $5 to $75 only. What is more, according to the statistics of the Transport Department, as at 31 March, about 90% of the 1.54 million people who hold either full driving licences or renewable driving licences are holding licences with a 10-year validity period. This means that the proposal will produce no immediate effect on them.

To sum up, all the three proposed measures are aimed at helping the Government to achieve fiscal balance and to reduce operating deficit during the Medium Range Forecast period. Since the scope of impacts is very small and the rates are very mild, the proposals will neither hinder our overall economic growth nor affect people's livelihood. For the protection of public revenue, the three proposals in the Budget has already started to take effect at 2.30 pm on 7 March under a Public Revenue Protection Order. Under the Order, these proposals will carry legal effect for a maximum period of four months. In other words, if the Bill cannot be passed by the Legislative Council before 7 July, these proposals will cease to be effective on that day. Therefore, the Government hopes that the Legislative Council can scrutinize and pass the Appropriation Bill 2001 as soon as possible, so as to ensure that before the Order loses legal effect on 7 July, legislation can be enacted to implement the proposals.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue Bill 2001 be read the Second time.

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

REVENUE (NO. 2) BILL 2001

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move that the Revenue (No. 2) Bill 2001 be read the Second time.

The Bill seeks to give effect to three revenue proposals put forward by the Financial Secretary in the 2001-02 Budget. These include increasing the maximum amount of deduction for self-education expenses under salaries tax, increasing the Air Passenger Departure Tax (APDT) and widening the tax base to include passengers departing by helicopter, as well as increasing the maximum charge for on-street parking meters.

The first proposal in the Bill to increase the maximum amount of deduction for self-education expenses from the existing $30,000 to $40,000 seeks to further encourage continuous education and life-long learning among the working population to cater to the ever-changing market demands and working conditions. Under the existing legislation, taxpayers may deduct from their taxable income fees and expenses paid in respect of courses of education or professional courses undertaken to gain or maintain qualifications for use in any employment so that their salaries tax are reduced. The maximum deduction is $30,000.

In determining the increase, we have made reference to fees for courses of study and education provided by tertiary institutions, educational groups and professional bodies. We trust that after increasing the amount of deduction to $40,000, taxpayers may deduct from their taxable income under salaries tax all or most of the fees paid for courses in tertiary or professional education. We hope that the increased amount of deduction will help to encourage more employees to undertake continuous education for self-improvement. We expect that the proposal, if passed, will cost $10 million in 2001-02 and $70 million over the four-year period to 2004-05.

The second proposal in the Bill seeks to increase the APDT from the existing $50 to $80 and widen the tax base to include passengers departing by helicopter. We estimate that the two proposals will yield additional revenue of $170 million in 2001-02 and $1.3 billion over the four-year period to 2004-05.

The increase will not affect tourism adversely. Nor will it affect airline businesses or airport operation, given that the APDT would still constitute an insignificant portion of the price of air tickets and the overall cost of travelling. Actually, after the proposed increase, our APDT will still be among the lowest in the region for international flights, compared to places such as Bangkok, Manila, Sydney, Japan, Kuala Lumpur, mainland China, Macao and so on. We trust an increase of $30 should have no impact in attracting tourists to Hong Kong. Nor should it deter local residents from air travel. For tourists, the availability of attractive tourist spots, good transport and infrastructure facilities, quality service and good public security are far more important. The proposed mild increase in the APDT will not be a determining factor.

Indeed, in the 1996-97 Budget, we increased the APDT from $50 to $100. The experience has shown that the increase did not affect the number of tourists visiting Hong Kong. On the contrary, the number of tourists visiting Hong Kong rose from 13.92 million in 1995-96 to 14.95 million in 1996-97, representing an increase of approximately 7.5%. The proposed increase for the coming year is less than the increase proposed last time. We therefore have reason to believe that increasing APDT will do no harm to the tourism industry.

We propose to widen the tax base of APDT to cover all passengers departing by helicopter on the ground of equity. Under the existing Air Passenger Departure Tax Ordinance, every passenger departing from Hong Kong by aircraft at the Hong Kong International Airport (HKIA) shall pay an APDT. Under the Air Passenger Departure Tax Ordinance, "aircraft" is defined to include both fixed-wing and rotary-wing aircraft. As helicopter is a rotary-wing aircraft, passengers departing by helicopter from the HKIA are already included in the tax net. Nevertheless, passengers departing from Hong Kong at the Heliport at the Hong Kong Macau Ferry Terminal are not required to pay the $50 APDT because in the Ordinance, "airport" means the HKIA. On the ground of equity, we propose to widen the tax base to include passengers departing from Hong Kong at the Heliport or at other heliports in the territory. We trust passengers departing from Hong Kong by helicopter can afford the proposed $80 APDT.

We propose that the list of names of additional heliports be inserted in the Bill in the form of a schedule so that the Director of Civil Aviation may amend the list when such need arises in future. Moreover, any proposed amendments to the list must be passed by the Legislative Council in the form of subsidiary legislation before they can come into effect.

The third proposal in the Bill seeks to increase the maximum charge for on-street parking meters from the existing $2 to $3 for 15 minutes. The proposal is put forward mainly for revenue and traffic management reasons.

On-street parking meter charges have always been a stable source of income for the Government. Since 1995-96, such charges have generated an annual revenue of at least $200 million. Furthermore, the charges have not been increased since 1994. This proposal should generate additional revenue of $110 million in 2001-02 and $500 million over the period of the Medium Range Forecast to 2004-05.

In terms of traffic management, increasing the maximum charge for on-street parking meters will result in a more effective distribution of on-street parking spaces. Regular surveys undertaken by the Transport Department on the utilization of parking spaces reveal that there is a high utilization rate of 90%, both on weekdays and weekends, of metered parking spaces in busy areas such as Wan Chai, Causeway Bay, and the Yau Tsim Mong districts. These parking spaces will not be able to satisfy the short-term needs of drivers. The proposed increase will bring the hourly rate for on-street parking to $12, which is closer to, but still considerably below, the charges of $20 or more made by off-street carparks in busy locations. This should help traffic management by discouraging the use of metered parking for lengthy periods.

In summary, the two proposals to increase revenue serve the same purposes as the three proposals contained in the Revenue Bill 2001 that I tabled a short while ago. That means we would like to increase recurrent revenue, reduce overall deficit and minimize operating deficit during the period covered by the Medium Range Forecast, on the premise that the economic growth and people's livelihood are not affected.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue (No. 2) Bill 2001 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.

REVENUE (NO. 3) BILL 2001

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move the Second Reading of the Revenue (No. 3) Bill 2001.

The Bill seeks to implement the two related proposals made by the Financial Secretary in the 2001-02 Budget, that is, to reduce the stamp duty on stock transaction from the existing *ad valorem* rate of 0.225% to 0.2% and increase the rate of levy on securities transactions by 0.002 percentage point for the purpose of setting up a new Investor Compensation Fund. The two proposals are meant to strengthen the competitiveness of Hong Kong's financial market.

If Hong Kong is to sustain its position as an international financial centre, the stock market must be made more competitive. Other stock markets around the world, such as those in the United States, Germany, Japan, Singapore and New Zealand, do not levy any stamp duty for securities transactions. The reduction or abolition of this tax item has become a worldwide trend. In the 2000-01 Budget, the Government took the initiative to reduce the stamp duty on stock transactions by 10%. The finance sector was also urged to reduce the commission for stockbrokers which occupied two thirds of the total costs in stock transactions. The sector was also encouraged to liberalize the market to foster healthy competitions among the brokers and to increase the sector's competitiveness in face of outside competitions.

Our appeal has led to positive response from the Hong Kong Exchanges and Clearing Limited (HKEx). The HKEx has decided that with effect from 1 April 2002, the minimum brokerage commission rate will be abolished and the brokerage trading rights will be opened up. To complement the efforts made by the sector and to further enhance the competitiveness of our stock market, we propose to reduce stamp duty on stock transactions by 11%, that is, to reduce the stamp duty from 0.225% to 0.2% per round of transaction.

We estimate that the proposal to reduce stamp duty in this Bill would cost the Government $680 million in 2001-02 and $4.17 billion over the Medium Range Forecast period up to 2004-05. However, we do not consider this reduction on the stamp duty purely as a revenue concession. Rather, it is a positive move to promote the further development of our financial market and should bring about additional revenues for the Government over time.

Section 52(1) of the existing Securities and Futures Commission Ordinance stipulates that the purchaser and the seller of a transaction recorded on or notified to the Stock Exchange of Hong Kong (SEHK) shall each of them be liable to pay to the Securities and Futures Commission (SFC) a levy at such rate as may be specified by order of the Chief Executive in Council. At present, the transaction levy is charged at the rate of 0.01% per side of the consideration of the transaction and the levy income collected is equally shared between the SFC and the SEHK. In the past, the SEHK and the SFC injected the levy income both in a direct and indirect manner to a statutory fund called the Unified Exchange Compensation Fund (UECF).

Investors compensation arrangements are an important part of the efforts made in investors' protection and will help boost investors' confidence and promote market development. The SFC issued a consultation paper in 7 March to propose the setting up of the new Investor Compensation Fund to replace the two compensation funds set up for the securities and commodity futures markets. The existing coverage of the compensation arrangements is enlarged and compensation amount payable per investor is also laid down.

As for funding, money for the new Fund at its initial stages of operation would come from the transfer of the balance of the existing UECF and the Commodity Exchange Compensation Fund (CECF) which is estimated to be $655.8 million. The SFC will determine the risk borne by the new Fund on the basis of historic data and future market developments. It has reached the conclusion that under stable circumstances, the Fund should be backed up by $1 billion to provide a reasonable degree of protection to the investors.

To achieve this expeditiously, the SFC proposed to increase the existing levy on securities transactions by 0.002% and to put in the levy income to the existing UECF so that when the new Fund is set up, the amount of money can be transferred directly to the new Fund. Our current thinking is that the proposed levy increase would last until the new Fund has accumulated $1 billion. The

time needed for the new Fund to accumulate into $1 billion would depend on the frequency of claims as a result of default by stockbrokers and commodity futures contract dealers as well as trading volume in the markets. In the absence of major mishaps, the SFC expects that the objective can be reached in a few years from now.

The SFC has solicited views from the public on the new compensation arrangements. The consultation period has expired on 6 April. From the views gathered, it can be seen that those in the market and the Consumer Council are generally in favour of the new arrangements. When devising the details for implementation, the SFC will take into account the views gathered.

Moreover, since the SEHK has become a subsidiary of the HKEx which is a commercial entity, we consider it no longer justifiable for SEHK to rely on the statutory levy as a source of income. In fact, the HKEx has applied to the SFC for the levy of a new trading fee. Therefore, we also propose to remove portion of the levy going to the HKEx which is levied at 0.005% per side of the consideration of transaction. Taking into account this proposal and the proposed increase in the levy rate by 0.002% as mentioned earlier to build up the new Investor Compensation Fund, the existing levy rate will be revised downwards to 0.007% per side of the consideration of the transaction.

We propose to implement the stamp duty reduction and the levy adjustment at the same time, hence their inclusion in the same Bill. With the passage of the two proposals, they will have the effect of bringing down the transactions cost to investors and enhancing investors' protection. Subject to the deliberations on the Bill in the Legislative Council and its passage, we intend to implement the two proposals in July 2001, taking into account the need for the HKEx and the industry to make the necessary adjustments to their operation systems before the new rates come into force.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue (No. 3) Bill 2001 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): This Council now resumes the Second Reading debate on the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL

Resumption of debate on Second Reading which was moved on 1 November 2000

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

MISS CYD HO (in Cantonese): Madam President, first, as Chairman of the Bills Committee on the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill (the Bills Committee), I will report on the deliberations of the Bills Committee.

As there is no control mechanism governing the operation of voluntary drug treatment and rehabilitation centres, this Bill seeks to provide for a licensing scheme for treatment centres providing those services and residential accommodation in order to protect the well-being of persons undergoing treatment in these centres.

The Bills Committee has held nine meetings with the Administration. In addition, it has met with representatives of the Hong Kong Council of Social Service and 12 agencies operating such centres and visited two centres.

One main focus of the deliberations of the Bills Committee was the protection of the personal data of persons undergoing treatment.

When the licensing scheme is implemented, centres will be required to keep a simple register of residents' information, such as their names, identity card numbers, addresses, date of admission and contact details of at least one relative or contact person.

Clause 23 of the Bill provides that any statement or admission made by a person seeking treatment or rehabilitation at a centre or any information obtained or removed from a centre shall be inadmissible as evidence in any proceedings against him under the Dangerous Drugs Ordinance. Members note that the Administration has added the provision based on the advice of the Privacy Commissioner for Personal Data.

The Administration has pointed out that in addition to the protection under the Bill, there is also protection under the Personal Data (Privacy) Ordinance. In case a person considers that the information sought by the Director of Social Welfare (DSW) is in excess of the purpose of the Bill, the person can always resort to the Ordinance for remedy.

The Bills Committee was also concerned about the arrangements for the prosecution of offences under the Bill.

Under clauses 18(5) and 18(6) of the Bill, the DSW is required to deliver to the police any book, document or other article removed from a centre for the purposes of prosecution. Members were greatly concerned about the stipulations of the two clauses lest residents' or former residents' privacy would be compromised and their rehabilitation process be disrupted due to the need to assist the police in certain investigations. Moreover, as a result of police investigations, the rehabilitated might suffer harassment from their former drug dependent cronies. Members have therefore requested the Administration to consider letting the DSW take up all matters relating to the prosecution of any offence under the Bill as such an arrangement would afford greater protection of the personal information of the residents and former residents concerned.

After considering the Bills Committee's suggestion, the Administration agrees to have the DSW assume the role of prosecutor for offences under the Bill. It will therefore amend clauses 18(5) and 18(6) to delete the provision in respect of passing information to the police and to require the DSW to return to the centres the documents obtained within six months if no notice of refusal or cancellation is given to the treatment centres or no prosecution is instituted.

The Bills Committee has considered in detail the appeal mechanism provided under clause 24 of the Bill. Under clause 24(3), the effect of a

decision of the DSW not to issue a licence or certificate of exemption, or to cancel a licence or certificate of exemption that is appealed against shall be suspended as from the day on which the appeal is made until such appeal is disposed of, withdrawn or abandoned, unless such suspension would, in the opinion of the DSW, be contrary to the public interest. Members have expressed concern about the meaning and the wide scope of public interest and the possible use of it to override the suspension of the DSW's decision under the appeal procedure.

The Administration, however, has pointed out that in proposing clause 24(3), the first consideration is to protect the well-being of drug dependent persons and the interest of the community at large. The clause allows the DSW to react promptly to urgent scenarios. The Administration points out that the DSW will only invoke the clause most exceptionally. If the affected centres consider that the DSW has invoked the clause on a wrong premise or there are irregularities in the procedures, they can seek judicial review on the DSW's decision.

Following further discussion, members agree that the DSW should state clearly the ground on which his opinion is based in the notice of his decision. The Administration will move an amendment to effect this change.

Madam President, the Bills Committee supports the resumption of the Second Reading on the Bill and the amendments to be moved by the Secretary for Security in the Committee stage later.

Madam President, the following are some of my views on the Bill. Actually, the deliberations on the Bill have gone quite smoothly. The Government has responded positively to the various controversies, views and debates, and made amendments based on most of the views expressed by the Bills Committee. As the Chief Secretary for Administration said earlier, our work will be much smoother if the executive authorities and the legislature can exchange their views.

However, I wish to point out one thing about the enforcement of the law after its commencement. Most of these rehabilitation centres are located in remote areas and outlying islands, in order to isolate the drug dependent persons from the outside world. The facilities and living environment in the

rehabilitation centres are extremely poor. We can hardly imagine that those undergoing treatment have to live in containers. The water and electricity supply and lighting systems in the centres are very poor indeed and they are extremely short of money. Without financial assistance, it would be almost impossible for them to improve the conditions in the rehabilitation centres in accordance with the requirements of the law. Thus, during the deliberations on the Bill, members expressed the view that the Administration should actively follow up the question of whether these organizations could apply for adequate funding from the relevant funds for upgrading works after the passage of the Bill. If they are suddenly asked to carry out works such as slope maintenance, certainly they will not be able to fulfil the requirements of the law.

Madam President, I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak? If not, I will call upon the Secretary for Security to reply.

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill seeks to establish a licensing scheme which meets the needs of a modern society for voluntary residential drug treatment and rehabilitation centres in order to protect the well-being of persons undergoing treatment in these centres. It is hoped that through such a licensing scheme, the quality of drug treatment and rehabilitation services can be further raised.

To minimize the impact of this licensing scheme on the existing drug dependent persons treatment and rehabilitation centres, the Government will issue a certificate of exemption to give an exemption period of four years for centres subvented by the Government, and a further four years for centres not subvented by the Government. These exemption periods are meant to enable centres to improve the conditions of their premises to meet the licensing requirements. Sufficient assistance will be provided to these centres to help them comply with the licensing requirements. As a matter of fact, since the licensing scheme has been put forward for public consultation in 1998, many of these centres have made improvements.

I would like to take this opportunity to offer my special thanks to Miss Cyd HO, the Chairman of the Bills Committee, as well as members of the Bills Committee, for their in-depth and effective discussion on the contents of the Bill and the many improvement proposals which they have put forward in the course of their deliberations on the Bill. I will propose a number of amendments in the Committee stage, all of which have been discussed in the meetings of the Bills Committee and have been endorsed and supported by members.

Madam President, I hope Honourable Members will support the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill and the amendments which will be proposed in the Committee stage. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

Council went into Committee.

Committee Stage

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

DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

CLERK (in Cantonese): Clauses 1 to 15, 19 to 23, 25 to 29, 31 and 32.

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 16, 17, 18, 24 and 30.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now as set out in the paper circularized to Members.

Clause 18 of the Bill originally proposes to require the Social Welfare Department (SWD) to deliver to the police the information removed from a treatment centre to assist the police in the investigation of any offence under the Bill. However, in order to afford greater protection for the personal information of the residents concerned, members of the Bills Committee proposed that the SWD should assume the role of investigator for offences under the Bill. The SWD will therefore not be required to pass documents which may

contain personal information of the residents to the police. This is in line with the investigations related to other licences issued by the SWD such as those for residential care homes for the elderly. To implement the above proposal, I will move to amend clauses 18(5) and 18(6) which require the SWD to deliver to the police any information removed from a treatment centre for the purpose of investigating any offence under the Bill.

In addition, I will move the amendment of the Chinese version of clause 18(4) of the Bill to delete "在有需要時使用" and substituting "使用所需的". The amendment is meant to bring the Chinese version more in conformity with the meaning in the English version and this amendment will not lead to any change in the original meaning of the clause.

Clause 24 subsections (1) and (2) provides an appeal mechanism. Such a mechanism stipulates that if any person aggrieved by any decision made by the Director of Social Welfare in respect of the issue or the renewal of, and the cancellation of, a licence or a certificate of exemption may appeal to the Administrative Appeals Board. During the process of appeal, the effect of a decision of the Director that is appealed against shall be suspended until the appeal is disposed of, withdrawn or abandoned, unless such suspension would, in the opinion of the Director, be contrary to the public interest. To enable the person lodging an appeal to know under what grounds the effect of the Director's decision is not suspended during the appeal process, we agree to amend clause 24(3) to require the Director to state clearly the ground on which his opinion is based in the notice of his decision, that is, why a suspension of his decision would be contrary to the public interest.

Madam Chairman, I move the amendment to clauses 16(3), 17(1)(b) and 30(2)(b)(i). All the amendments are purely changes made to the text to achieve consistency in the wording used in the Bill and will not affect the content of the Bill in any substantial manner.

Proposed amendments

Clause 16 (see Annex IX)

Clause 17 (see Annex IX)

Clause 18 (see Annex IX)

Clause 24 (see Annex IX)

Clause 30 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 16, 17, 18, 24 and 30 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):	Headings before new clause 31A	Dangerous Drugs Ordinance
	New clause 31A	Prohibition against disclosure of records.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that heading before new clause 31A and new clause 31A, as set out in the paper circularized to Members, be read the Second time.

The new clause adds an amendment to the Dangerous Drugs Ordinance in the consequential amendment.

Section 49D of the Dangerous Drugs Ordinance (Cap. 134) stipulates that except where a disclosure is made under a few exceptional cases, any person who discloses any record of confidential information which is kept by the Central Registry of Drug Abuse or a reporting agency, or permits access to any such record commits an offence. Such records kept by a treatment centre may be inspected by the Director of Social Welfare (DSW) to ensure the centre's compliance of the requirements of the Bill.

Clause 18 of the Bill requires that a treatment centre should provide the relevant information to the DSW. To allow drug treatment centres to provide information in accordance with the Bill without contravening the Dangerous Drugs Ordinance, I propose to amend section 49D of the Dangerous Drugs Ordinance so that the provision of relevant information for complying with the requirements of the Bill will not be in breach of section 49D.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That heading before new clause 31A and new clause 31A 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): Heading before new clause 31A and new clause 31A.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that heading before new clause 31A and new clause 31A be added to the Bill.

Proposed additions

Heading before new clause 31A (see Annex IX)

New clause 31A (see Annex IX)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That heading before new clause 31A and new clause 31A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to the schedule, as set out in the paper circularized to Members.

According to clause 2 of the Bill, a "drug dependent person" means a person who is suffering from the psychophysical state in which the usual or increasing doses of a dangerous drug (as defined in the Dangerous Drugs Ordinance (Cap. 134)) or a specified substance are required to prevent the onset of withdrawal symptoms". The specified substances listed in the Schedule are not dangerous drugs as defined under the Dangerous Drugs Ordinance. As Ketamine has been listed as a dangerous drug under the Dangerous Drugs Ordinance since December 2000, I propose the deletion of Ketamine from the list of specified substances in the schedule of the Bill.

Proposed amendment

Schedule (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL

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

Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

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. Since Members are already very familiar with the rules concerning time limits on speeches, I will not repeat them here. I just wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Expediting the establishment of a commercial credit reference agency.

EXPEDITING THE ESTABLISHMENT OF A COMMERCIAL CREDIT REFERENCE AGENCY

MR AMBROSE LAU (in Cantonese): Madam President, the need to establish a commercial credit reference agency (CCRA) in Hong Kong is generally recognized by all sectors of the community. The establishment of a CCRA will be beneficial to commercial enterprises, particularly the small and medium enterprises (SMEs), for it can improve the standard and transparency of their financial management. It can also strengthen the credit risk management of financial institutions, and contribute to the stability of the banking sector. This will facilitate the reasonable allocation of credit funds in Hong Kong and bring forth a win-win situation for a great many SMEs and the banking sector.

Before the Asian financial turmoil when property prices in Hong Kong had consistently been escalating, property was most often used as collateral for bank loans, and a collateral-based lending culture was thus formed. In the wake of the financial turmoil, the market value of property pledged as collateral for credit facilities continuously diminished. The tightening of bank credit due to depreciation of property and assets has made it difficult for many SMEs to obtain bank financing. As a result, they are faced with cashflow problems and have to trim their production scale, cut staff or reduce staff wages , or even wind up their business.

On the other hand, the lending channels of banks have become narrower and narrower. In respect of lending to enterprises by business types, the

amounts of loans granted for the purpose of trade financing, manufacturing, wholesale and retail, and so on, have continuously dropped. Overflowing with cash, and in order to find outlets for capital, banks have been competing fiercely in the property mortgage, credit card and personal loan markets by, among other things, lowering the interest rate for mortgage loan once and over again, dragging themselves into rounds of vicious competition. In the long term, the stability of the banking system will be jeopardized, and we can see that the shrinkage of the local loan market is not conducive to the many SMEs and the banking sector. To remove these obstacles to the healthy development of the Hong Kong economy, it is necessary to expedite the establishment of a CCRA, so that authorized institutions can reduce their undue reliance on collateral, and accord more consideration on a company's track record, operational benefits, reputation, data and information, financial status and business prospects, thereby providing effective credit support for commercial enterprises, particularly the SMEs. SEMs with good credit records can benefit from the scheme. Through enhancing the transparency of credit records, they may be able to secure loans more easily; and this can also facilitate continued co-operation with borrowers and thus maintain the stability of the credit market.

In July last year, the Hong Kong Monetary Authority (HKMA) published a consultation paper on the proposal to set up a CCRA and conducted a public consultation exercise that lasted three months. While results of research studies and the consultation exercise conducted by the HKMA indicate majority support for setting up a CCRA, views are diverse on such issues as the system of the CCRA, its framework and *modus operandi*. There are still a myriad of issues that require further discussion. They include the scope of coverage of the CCRA, both in terms of the types of enterprises and the types of data; whether participation from authorized institutions should be voluntary or mandatory; whether the CCRA should be publicly or privately-run; the monitoring role of the Government; and how privacy can be safeguarded in the disclosure of customers' information. The HKMA, the financial sector and commercial enterprises must specifically study these issues very carefully and must work in concert to come up with practicable proposals.

I moved this motion today in the hope that members of the community and Members of the Legislative Council can put our heads together to urge the Administration to expedite the establishment of a CCRA. Madam President, a fully-fledged CCRA should, in principle, cover all commercial enterprises in Hong Kong, whether they are large, medium or small in size. But most of the

banks, deposit-taking companies and business associations that have submitted views on the consultation paper consider that the CCRA must carefully select the types of enterprises to be targeted at for the purpose of data collection. They hold that initially the scheme should start with the SMEs or most of the non-listed companies only, and that the CCRA should be further extended to listed companies after the data of SMEs are included in the database effectively and operational experiences accumulated. On the definition of SMEs, the HKMA considers that it should refer to non-listed companies. The advantage of this definition is that if participation by authorized institutions is made mandatory, this clear definition can prevent disputes and leave little room for discretion by authorized institutions. Furthermore, non-listed companies are generally less transparent; and if this definition is adopted, while the inclusion of some large companies can facilitate the disclosure of information by these companies, which is conducive to the establishment of a fully-fledged CCRA, defining SMEs as non-listed companies is nevertheless too sweeping a definition, and will mix up non-listed large companies with the genuine SMEs.

Madam President, the establishment of a CCRA involves the mode of participation by authorized institutions, which can be either voluntary or mandatory by nature. These two options have their pros and cons. The advantage of voluntary participation is that it is in line with the established *laissez-faire* economic policy of Hong Kong. But given data confidentiality and competition among banks, some banks are unwilling to participate voluntarily. So, it is very difficult to set up a fully-fledged CCRA through pure market behaviours. In fact, surveys of the HKMA show that if participation is voluntary, 35% of the respondents (including some major banks) will not contribute data to the CCRA. The merits of mandatory participation are that it can rectify market failure, ensure the comprehensiveness and effectiveness of the CCRA, remove the obstacles posed by data confidentiality and competition to the establishment of a fully-fledged CCRA, and also obtain all information about liabilities, thus ensuring a level playing field in the market. Yet, mandatory participation does have some shortcomings. Firstly, customers who do not wish to disclose their information may be driven to shift their lending overseas, thus damaging Hong Kong's position as an international financial centre. Secondly, it will signal a departure from Hong Kong's long-held principle of non-intervention. The consultation paper of the HKMA stated that mandatory participation is necessary. In the course of consultation, the Deposit-taking Companies Association, individual licensed banks and individual business associations expressed support for the proposal of the HKMA, but there was no

consensus view among members of the Hong Kong Association of Banks. Regarding the mode of participation in other countries, participation is not mandatory in the United States and Singapore. In Malaysia, however, their credit reference agency was established by the central bank.

It is provided in law that financial institutions must contribute information to the database. In Mexico, while participation by lending institutions is not mandatory, banks are required by law to set aside a reserve in an amount equivalent to a loan if the loan is granted without verifying the borrower's credit record via the agency.

Madam President, as to whether the CCRA should be publicly or privately-owned, and on the question of regulation, we must also weigh their pros and cons before a decision can be made. The community generally supports some forms of public sector involvement in the CCRA and in the regulation of the database, in order to ensure that the data are handled properly and prices for relevant services are fair and reasonable, and to foster the confidence of banks and the corporate sector in the CCRA. But during consultation, members of the public were not particularly supportive of a CCRA owned and managed by the public sector. A publicly-owned CCRA will have credibility, and can effectively prevent the misuse of information and ensure reasonable pricing. However, it may be considered an instance of market intervention. The merit of a privately-run CCRA is that it counteracts the impression of market intervention by the Government, but a privately-run CCRA may lack credibility and the prices for services may not necessarily be fair and reasonable. In other countries, three modes of operation are existing, some credit reference agencies are privately-run, some are managed by the central bank, and in some cases a mixed mode is adopted.

Madam President, on the scope of coverage of the CCRA, a majority of banks and deposit-taking companies that have expressed their views consider that both positive and negative data should be collected. Positive data may include the amount of credit facilities granted, the outstanding balance, the monthly repayment amount, and the form of collateral provided by the borrower. Negative data may include reports on overdue payment and number of delinquencies. The scope of these positive and negative data should be further defined explicitly. Some banks are concerned that their positive data in the CCRA may be used by competitors to provide more attractive terms for their customers. They, therefore, have reservations about the collection of positive

data. However, collecting positive data alone will affect the comprehensiveness of the CCRA, preventing lending institutions from having a full picture of the overall financial conditions and credit records of the relevant enterprises.

Moreover, the consultation paper proposed to develop a rating system for individual customers as a composite risk index. However, some business associations consider that the CCRA should be neutral by nature and that its duty is to collect objective data, so it should not be mixed up with credit rating agencies.

Madam President, the legal arrangements for disclosure of customers' information by the CCRA involve complicated and tedious legislative procedures as well as the protection of privacy. There are views that legislation should be made to require authorized institutions to disclose their customers' information and the CCRA should be empowered by law to provide information for lending institutions. This can guarantee that authorized institutions will not breach their responsibilities to customers, and their burden of having to seek consent from customers will be eased, which will facilitate the implementation of the scheme. Nevertheless, these legal arrangements may involve issues such as the protection of privacy, human rights, and so on. Therefore, the relevant arrangements should strike a reasonable balance among efficiency, privacy and human rights. In particular, the coverage of personal data of owners or sole proprietors of enterprises must comply with the provisions of the Personal Data (Privacy) Ordinance. Results of the consultation show that the establishment of a CCRA is generally supported by all sectors in the community. Therefore, the HKMA should expeditiously conduct studies and implement specific proposals. It should fully consider all views so as to strike a balance among the interests of all sectors and expeditiously create a win-win situation for the local corporate sector and the banking industry without delay.

Madam President, I so submit.

Mr Ambrose LAU moved the following motion: (Translation)

"That, as the establishment of a commercial credit reference agency (CCRA) will help to increase the financing channels for small and medium enterprises and reduce authorized lending institutions' reliance on collateral, this Council urges the Government and the Hong Kong Monetary Authority to expeditiously conclude the study on issues such as

the CCRA's functions, structural framework, mode of operation, pace of development as well as the scope of information to be shared among lending institutions and their powers and responsibilities, and to put forward specific proposals for promoting a consensus among the financial sector and the enterprises on how the CCRA scheme should be implemented."

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Ambrose LAU be passed.

MR KENNETH TING (in Cantonese): Madam Deputy, small and medium enterprises (SMEs) have had difficulties in obtaining financing for quite some time. Since the financial turmoil, the slump in the property market has led directly to a sharp drop in the value of collateral. As a result, it has become increasingly difficult for SMEs to obtain loans. In view of this, the Federation of Hong Kong Industries and the Liberal Party have urged banks to change their policy of lending on collateral to one that would approve loans by looking more at the track record or development plans of the enterprises instead. Recently, some banks have introduced so-called SME loan schemes, considering loan applications mainly on the merit of the account balances and financial reports of the enterprises. But the change has merely been formal and has not yet achieved a general trend. Banks are generally still overcautious about lending to SMEs.

For this reason, we are pleased that the Government is studying the establishment of a commercial credit reference agency (CCRA) in the light of the financing needs of SMEs and in order to enhance the transparency of the market and strengthen the risk management of the banking sector. In the Liberal Party's view, no matter how the economy develops and restructures, SMEs are still the mainstay of the Hong Kong economy. Therefore, in establishing the CCRA, the environment for the development of SMEs should be the main consideration and suitable measures should be provided to benefit SMEs.

We hope that the establishment of the CCRA will help, to a certain extent, to reduce the reliance of authorized lending institutions on collateral, so that they will more comprehensively consider the track record and the financial profile of the enterprises as well as the prospects of the industries, and more actively and efficiently provide credit support to the business sector, especially to SMEs. The Liberal Party also believes that the CCRA can enable credit institutions, overseas investors and businessmen to have a better understanding of and greater confidence in local SMEs in terms of finance and management. This will promote their co-operation with Hong Kong enterprises.

However, there is still controversy in the community about the details of the CCRA. For instance, in terms of the coverage of data subjects, the Liberal Party is of the view that the scheme should start off with SMEs only. As for other suggestions, such as the inclusion of listed companies which are not blue chips, they can be explored after the CCRA commences operation because there are certain difficulties in defining them.

With regard to the structural framework of the CCRA, the consultation paper proposes four options. In the Liberal Party's view, the first and second options, which propose that the CCRA should be owned by the public sector and the banking sector alone respectively, will arouse arguments for reasons of efficiency and fairness and are therefore not desirable. As for the third option, which proposes that the CCRA should be owned jointly and regulated by the banking sector and the Government, it has the greatest number of advantages. It will inspire public confidence in the safeguarding of the confidentiality of data and to a certain extent alleviate fears of government intervention as well as obstacles created by the banks' conservative credit policy. With regard to the fourth option, which proposes private ownership, an effective regulatory framework must be set up to regulate the setting of charges and quality of service of a private CCRA. The question of whether the market will be monopolized should also be studied.

As the data of the CCRA may affect the credit rating of enterprises by the financial sector and will easily arouse disputes, the Government needs to establish an appeal mechanism to provide a channel of appeal to enterprises affected by incorrect information. In addition, in the Liberal Party's view, the CCRA should have a strict regulatory framework to ensure that it is operated under a high degree of transparency and that its data remain confidential. It should also ensure that personal data are protected in accordance with the Personal Data (Privacy) Ordinance.

Madam Deputy, the Monetary Authority has not provided a definite timetable for the establishment of a CCRA. In our view, there are growing cries in the market for a CCRA. With the continuing credit squeeze, the establishment of a CCRA has become more imperative. Thus, we hope the Administration can expeditiously conclude the study on the CCRA and put forward specific proposals for promoting a consensus among the financial sector and the enterprises on how the scheme should be implemented, so that the Legislative Council can deliberate on the relevant legislation soon. If the CCRA can be established at an early date, it will be able to help SMEs out of their financing difficulties.

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

MR ALBERT HO (in Cantonese): Madam Deputy, the Democratic Party supports in principle the proposal to set up a commercial credit reference agency (CCRA) in order that information in the lending market can be made more transparent and that the small and medium enterprises (SMEs) can obtain capital more easily. We are very much concerned about the problems to be brought about by the proposal, such as privacy, confidentiality of information and fair competition and so on. We urge that the Government should examine these issues carefully before any concrete measures are adopted.

There are always difficulties for SMEs in securing loans from the banks. In my opinion, the most important reason is that the banks do not have enough confidence in the SMEs. It is just like the situation whereby one company closes down while the other starts its business, as the Government has described the SME market, reflecting the problems faced by SMEs in the high risks involved in financing. If the SMEs are unable to offer anything as collateral or produce any proofs of orders, the banks will not undertake the risk of making out loans of a large amount or for a long tenor. However, if Hong Kong is going to move to a knowledge-based economy or if the enterprises are going to upgrade their technology, then there should be long-term and stable capital investment. If improvements are not made in the local enterprises' attempt to secure more capital, this may pose as a major obstacle to our economic restructuring. The establishment of a CCRA can certainly improve the amount of credit information available and their reliability. It can also enhance the transparency of the financial situation of the SMEs which can serve as an important source of reference for banks in their vetting and approval of loan applications. The reduction of information costs will help make the banks to be more positive in approving loan applications from the SMEs.

Madam Deputy, the issues related to the setting up of the CCRA should be dealt with very carefully. On the issue of privacy, the consultation paper released by the Hong Kong Monetary Authority (HKMA) raises the issue of whether or not legislation should be enacted in connection with the CCRA in order that banks would be compelled to disclose information of their clients. However, findings of a survey conducted by the HKMA show that there are about 30% of the banks who say that they are bound by contractual obligations and cannot disclose the information of their clients to the CCRA. Even if the banks are not bound by any express contractual terms and conditions, they are still obliged under common law to keep the information of their clients confidential. Therefore, if legislation is to be enacted to compel banks to disclose such information, would this mean that the legislation will override all contractual and common law obligations on the confidentiality of client information? More studies should be made on this issue and a clarification has to be made.

Madam Deputy, the HKMA has proposed another option. When loan applications or renewals are to be made, the banks may obtain the consent of the clients to release their personal information to the CCRA. The question is, what can be done if the clients do not give their consent to make their personal information public? Must the banks reject such loan applications? Would this compel the borrowers to seek financing overseas? Or will this lead to the situation that the borrower is compelled to make his personal information public, hence forfeiting his right to choose since he is left with no other options? If banks still approve of loan applications from clients who refuse to make their information public, then no one will be willing to make their information public and it will be difficult for the CCRA to operate.

It is hard to separate the SMEs from the credit standing of their owners. For example, some owners will be guarantors for corporate loans and in this case, should the CCRA include information on the owners as well? If information of the owners is disclosed, would that be a contravention of the Personal Data (Privacy) Ordinance? The Privacy Commissioner for Personal Data makes a special point that the line between personal data and the information required by banks in processing loan applications may get blurred. As to how privacy can be protected while not affecting the operation of the CCRA, there is a need to explored further and deeper and it must never be taken lightly.

Madam Deputy, the Government should explain more about the security measures to be adopted in the CCRA. Though there is a high degree of credibility in the CCRA and that it can avoid the improper use for commercial purposes by private sector companies, the Democratic Party still has great reservations about the holding of too much personal data of members of the public by public sector organizations. We are concerned that these public sector organizations may likewise abuse these data for other uses. So an effective set of security measures and guidelines to their use should be carefully devised. This will help dispel our concerns as mentioned above.

Madam Deputy, lastly, I will talk about the issue of fair competition. The HKMA suggests the setting up of only one comprehensive CCRA. If this idea is proved to be successful, would it adversely affect the private sector commercial credit agency which is in operation? That is worrying. The proposed CCRA will compel banks to provide credit information. Obviously, the CCRA would be more comprehensive than the private sector commercial credit agency. The CCRA will enjoy a greater competitive edge. We should make an assessment of how the CCRA will affect the private sector commercial credit agency.

Madam Deputy, on behalf of the Democratic Party, I support the motion moved by Mr Ambrose LAU. I also urge the Government to carefully consider all the problems which may arise when it is to put forward specific proposals. The findings of the study should be released in the form of a consultation paper to facilitate public response and discussion.

Madam Deputy, I so submit. Thank you.

DR RAYMOND HO (in Cantonese): Madam Deputy, from November 1999 to October 2000, the Business Registration Office of the Government recorded a total of 79 300 cancellations in business registration. During that period, 3 027 companies had sought voluntary liquidation while 931 companies were compulsorily liquidated. Although the statistics had not been categorized by the size or scale of such companies, I believe many small and medium enterprises (SMEs) are on the winding-up list, considering that SMEs account for 98% of the total number of business establishments in Hong Kong. Despite government statistics had not shown causes for the liquidation of these companies, it is believed that many of them had financing problems.

In fact, financing has long been a major problem for SMEs. It is because when local banks receive loan applications from SMEs, their major concern is still the property-based collateral, instead of the results or the earnings; let alone the prospects of these SMEs. In the wake of the economic depression in recent years, the financing problem of SMEs has become more apparent. After being urged by this Council, the Government introduced the "SME Financing Scheme", which can only provide some sort of short-term relief to the SMEs, but the Government has yet to find a once-and-for-all solution for the financing trouble of the SMEs.

In order to find a long-term solution for the financing problem of SMEs, I have all along supported the feasibility of establishing a commercial credit reference agency (CCRA) in Hong Kong. As far as I know, operations of SMEs are not so transparent. Therefore, the banking sector tends to adopt a more cautious and conservative approach when it scrutinizes credit applications from SMEs, and it often asks for property as the main collateral, that is, "bricks and mortar"-based collateral. The establishment of the CCRA is a helpful means to improve this undesirable situation. On the one hand, the CCRA may help improve the standard of financial management as well as the transparency of these commercial establishments, particularly the SMEs. On the other hand, it is also favourable to the improvement of credit risk management of financial institutions as well as the stability of the banking system. Besides, to a certain extent, the establishment of the CCRA will help play down the lending institutions' over-dependency on property-based collateral, turning them instead to a more comprehensive consideration of the results and business prospects of the SMEs.

In order to make the CCRA work, the coverage of the CCRA is vitally important. Taking into account that the anticipated objective may not be achievable via the adoption of a voluntary mechanism, I am inclined to support a compulsory mechanism which requires the compulsory participation of all authorized lending institutions, so as to ensure the coverage of the CCRA as well as the preservation of a level playing field. However, in view of the collection of data of business establishments may provoke large-scale firms to turn to overseas financial institutions, which will undermine the status of Hong Kong as an international financial centre; we may only include the data of unlisted SMEs at the initial stages of the introduction of the CCRA. Sizeable firms, in particular listed companies, do have a higher transparency; thus information on the conditions of these companies can be obtained without much difficulty. In view of that, the question of whether to include the data of such companies into the database of the CCRA can be discussed at a later stage.

In spite of this, considering purely from the perspective of loan approval procedures, authorized lending institutions should provide positive and negative credit information, since they are vital reference to the approval of loan applications. Given that the establishment of the CCRA involves the provision of customer information by authorized lending institutions, as well as the provision of information to those making inquiries through the CCRA, the Government should make appropriate legal arrangements with regard to the disclosure of personal information.

Certainly, the form of ownership of the CCRA is also another issue that deserves investigation. Further discussions within the relevant industry is necessary. However, regardless of the form of ownership of the CCRA, government regulatory measures are necessary to ensure the proper administration of relevant information and to maintain a fair and reasonable charging level for the relevant services.

Madam Deputy, the establishment of the CCRA will help solve problems the SMEs are facing. I hope the Government and the Hong Kong Monetary Authority can complete the relevant study and proposals without delay, and have them implemented. Madam Deputy, I so submit. Thank you.

MR HUI CHEUNG-CHING (in Cantonese): Madam Deputy, financing has long been a major problem to small and medium enterprises (SMEs) at the start-up, development and consolidation stages of their business. Though the present property market has stabilized, most SMEs have become owners of negative assets since they could only obtain loans by using their property as a collateral as required by the banks. In comparison with the first year or two after the Asian financial turmoil, despite the financing pressure has been slightly alleviated, it is still a major task to be tackled. In view of this, the Government and the Hong Kong Monetary Authority (HKMA) had conducted studies in the establishment of a commercial credit reference agency (CCRA) in response to the call from the commercial sector, in particular from SMEs, so that more financing tools with less dependence on collateral-based loans could be introduced. Unfortunately, it has already been two years since then, but the specific measures, proposals and timetable for the establishment of the CCRA are still not yet finalized.

In recent years, the Government of Hong Kong has introduced a number of new financing measures, such as the Small Entrepreneur Research Assistance

Programme of the Innovation and Technology Commission (ITC) and the Innovation Loan Scheme of the Hong Kong Industrial Technology Centre Corporation (HKITCC). Both of them are mainly targetted at technology-based SMEs, and so only a small number of SMEs can benefit from the schemes. The Government points out that with the passing of the Asian financial turmoil, most of the local banks are making efforts to get a share of the SME lending market as they have ample supply of capital. However, because most of the banks do not have comprehensive information on the aspect of financial management of SMEs, very few SMEs can secure such loans without trouble. As a result, many SMEs have resorted to seek RMB loans from banks in the Mainland. In fact, to many SMEs, those financing institutions currently assisting them are either charging too much or providing them with unsuitable credit facilities or short-term loans, which are of limited use. For this reason, I do not wish to see the study on the establishment of the CCRA being slowed down because of the introduction of some new financing measures on the part of the authorities.

Last year, the Hong Kong Chinese Importers' & Exporters' Association, of which I am a member, invited Professor LIU Pak-wai and Professor Richard WONG, economists and professors of The Chinese University of Hong Kong and the University of Hong Kong respectively, to conduct a study on the ways which SMEs should deal with the economic difficulties and the economic restructuring problem, as well as on the prospects of the SMEs. With regard to solving the financing difficulty of SMEs, the two professors agreed that the Government should encourage the banking sector to establish the CCRA. The Government should seize the current trend of the need to diversify the banking business in the face of fierce competition, and encourage the banking industry to speed up the establishment of the CCRA.

Generally speaking, information in the CCRA can be divided into two levels. The first level is only a registration of the total amount of loans of the companies, which should be helpful to banks in the approval process of new loans and the prevention of excessive borrowing. The database of the second level shall include detailed corporate lending estimations, such as records of default in payment or non-payment. As the credit database builds up, banks will be able to obtain more information to distinguish between good and bad credit standing among SMEs. By doing so, they will be able to evaluate the comprehensive credit risk of SMEs in a easier and more confident way. Besides, it will be easier for SMEs to secure credit facilities from banks by virtue of their own ability, performance and prospects. As the CCRA becomes mature, we can also expect the bank lending rate to go down.

Madam Deputy, we have to overcome countless technical difficulties before we can develop a successful CCRA in Hong Kong, including issues such as how to strike a balance between the right of privacy and the right to know. In the meantime, the authorities should keep on strengthening SMEs' knowledge and skill in financial management, so that more SMEs can enjoy the benefit when the CCRA is introduced. I so submit to support the motion.

MR CHAN KAM-LAM (in Cantonese): Madam Deputy, the lending policy of the local banks tends to be very conservative. Most of the banks will only lend money to people who can offer their property as collateral. But with the downturn in the property market in recent years, many of the properties used as a collateral have become negative assets, and their ability to raise loans is consequently affected. On the other hand, banks and finance companies can only use properties as the major requirement for lending, it is because the companies who want to secure loans are usually unable to furnish a comprehensive financial statement, so the banks have to be very cautious in lending money.

In fact, many banks are not willing to engage in the present competition for the mortgage loan market for it will incur loss to them. If only the financial situation of the small and medium enterprises (SMEs) can be more transparent, the banks would be quite willing to increase the line of credit extended to the SMEs. According to a survey made by the Hong Kong Monetary Authority (HKMA) in April, more than 90% of the respondent financial institutions are of the opinion that the information which needs most to be collected is that related to the SMEs and not that of listed companies or blue chips companies. There are three quarters of the respondent companies who think that the setting up of a credit reference agency will make them more willing to lend money to these SMEs and will reduce their dependence on collateral. In addition, 90% of the respondents think that the agency can help them in their credit assessment work, increase their ability to detect financial difficulties of their clients in advance and improve on the operating environment of these lending institutions in Hong Kong.

From this survey, it can be seen that many banks and lending institutions find it difficult to assess the risk of lending money to the SMEs. As a result, they can only rely on fixed and tangible assets like properties as the most effective collateral for loans.

Madam Deputy, the Democratic Alliance for Betterment of Hong Kong (DAB) thinks that not only can the setting up of a CCRA help the SMEs in their financing activities, it can also stabilize the monitoring system in the banks. Many of the developed and developing countries have set up similar commercial credit reference agencies in an attempt to adjust and control the banking system.

Take for example the case of Mexico. In 1997, the country set up a similar agency and its main objective was to rectify the loan default situation in the country. The result was quite encouraging. The bad debts for banks in Mexico dropped by about 30%. The central bank in Germany did not have available sufficient information of the total liabilities of the corporate borrowers and so it had often run into difficulties when these companies closed down. The central bank of Germany then also set up such a credit reference agency and the credit institutions are required to report to the credit reference agency every quarter the information about their liabilities in the last three months. This policy does help stabilize the banking system. As for nearby places like Malaysia, the central bank there set up a credit reference agency at the beginning of the 1980s as a regulatory instrument for banks with loans of a large amount or overdue loans.

As an international financial centre, Hong Kong should set up a credit reference agency as well. But the question of whether or not a non-commercial mode of operation of using the central bank should be adopted, as in the countries mentioned above, will need to be studied carefully. For matters pertaining to implementation, like whether or not the companies should be compelled to report to the credit reference agency their financial status and things of the sort, the issue of confidentiality should be taken well into account for that may lead to the disclosure of private information. Take the example of the disclosure of the personal data of the property owners in the Land Registry, it is believed that many owners would often receive telephone calls from people like real estate agents who ask them to sell their property because their contact telephone numbers have been disclosed. Some celebrities are harassed because their personal data have been disclosed by the media. Therefore, the DAB hopes that more attention could be given to confidentiality measures when the confidentiality mechanisms in the credit reference agency are to be devised.

Madam Deputy, the last point I wish to make is that after the setting up of the CCRA, banks will be in a position to understand the credit standing of the borrowers more rapidly. However, the lending culture of the banks should be changed as well, and that is the tendency to use property as collateral. At

present, banks do not generally have staff who are well-acquainted with the commerce and industries and the hi-tech industries to assess the credit worthiness of the applicants. Banks are at a loss when handling loan applications from certain fast-growing trades. If we are to give a full play to the competitive edge we have in finance, and if the financial institutions we have still attach such an importance to using real estate as collateral, then how can we turn Hong Kong into an international financial centre? How can we expect the local credit business to grow?

Madam Deputy, with the accession of China to the World Trade Organization, it is believed that our businessmen will be able to benefit from the vast opportunities which arise. Hong Kong will not only play the role of the middleman to facilitate foreign businessmen who want to invest in China as it is doing now, Hong Kong will also be able to penetrate into the mainland market by virtue of its acquaintance with the investment conditions in the Mainland. So the SMEs in Hong Kong are in urgent need of assistance in financing to help them upgrade their productivity, through which the greater growth in our economy will be spurred.

Madam Deputy, I so submit to support the motion.

MS AUDREY EU (in Cantonese): Madam Deputy, in the wording of the motion moved by Mr Ambrose LAU, the advantages of setting up a commercial credit reference agency (CCRA) have been mentioned. The views gathered as a result of the two-month consultation period last year showed that the majority favoured the setting up of the CCRA. It is therefore necessary that the functions of the CCRA, its structural framework and mode of operation should be determined as soon as possible. However, we also need to examine carefully some of the details involved.

In the paper submitted to the Legislative Council by the Hong Kong Monetary Authority (HKMA), we can see a prototype of the CCRA. This include features such as a certain degree of regulation that the authorized lending institutions will be subject to; that they must submit information of their clients to the CCRA; that the CCRA is to be owned by private organizations but is under the supervision of public sector institutions; that only information on SMEs is held at the initial stages of the operation of the CCRA; and that the CCRA should have available both positive and negative credit records. With regard to this sketchy outline of the CCRA, there are a few points which I think are worth our attention.

First, the issue of equity. It is against the equity principle that the CCRA will only hold credit information of the SMEs while large companies are exempted from having their credit information stored in the CCRA on a mandatory basis. Since authorized lending institutions are compelled to submit the credit information of their clients to the CCRA, there is no way for the clients to object to this and their information will be stored in the CCRA. As this is done in a mandatory manner, the collection of information should be applied to all. Large companies should not be exempted because they may have record of good credit or that they have the capacity to seek financing overseas. As the CCRA is required to store both positive and negative information, so when the SMEs have any unfavourable credit records, the banks will be able to find out once they conduct searches at the CCRA. However, if large companies are exempted from revealing negative information in their credit history, they could keep this a secret since this is not stored in the CCRA. Hence the large companies will stand a better chance than the SMEs in securing loans. That is unfair to the SMEs.

The next point is on regulation. I agree with the HKMA that in the absence of any compulsory requirements to require authorized lending institutions to take part in the CCRA, the CCRA will become nothing but a name and cannot effectively operate. However, I am concerned about this kind of regulation. For when any institution has too much and too great powers, this may easily lead to other problems. The most worrying is once the SMEs have any unfavourable credit history stored in the CCRA, they may have no further chance of securing any loans in future.

Madam Deputy, at present when there is no mandatory requirement to join the CCRA, when SMEs which try to raise a loan from a bank fail in their application for the loan, they can gather more information to prove their business prospects and substantiate their plans for expansion, and then turn to another bank for loans. If they fail again, they may still turn to other banks for loans. They have a lot of chances to try. However, when later their credit history is to be stored in the CCRA, the banks will rely to a very large extent on the information in the CCRA or the report compiled by the CCRA to decide whether or not they will lend to these applicants. In this way, those SMEs which have failed to secure loans or that their credit history is not so favourable will find it difficult to raise loans. They will find it hard to start all over again.

As a matter of fact, the HKMA admits that those SMEs without a high standard of credit history will not necessarily benefit from the setting up of the

CCRA. It remains, of course, that we should not tolerate some SMEs which are not progressive enough and which only want to borrow money from the banks to solve their immediate problems but fail to set any long-term goals for themselves. Having said that, there are quite a number of SMEs having credit history smeared by the problem of liquidity brought about by the financial turmoil. These companies are not lacking in ambition or a drive to do well, nor are they being complacent. If the setting up of the CCRA will prevent these companies from raising finds to make a fresh start, then the setting of the CCRA will have indeed defeated its purpose.

Lastly, I would like to talk about the protection of privacy and the fiduciary duty of the CCRA. The CCRA is expected to get hold of most, if not all, of the credit information of the commercial institutions in Hong Kong. There must be very stringent safeguards on the confidentiality of the information stored. No divulgence or mistakes in this regard are permitted. Moreover, the information it stores and the credit standing reports it compiles would bear great impact to the SMEs. The problem of corruption may arise easily. That is why the regulatory bodies must pay more attention in this regard and devise effective preventive measures. Channels for complaints must be in place to enable SMEs to lodge complaints whenever they are unfairly or unreasonably treated. Madam Deputy, I so submit to support the motion.

DR TANG SIU-TONG (in Cantonese): Madam Deputy, as Mr Ambrose LAU said a short while ago, financing is a source of difficulty for small and medium enterprises (SMEs) at different stages of their development. At present, the Government is trying to promote the application of information technology and the transformation of high value-added enterprises. That means SMEs have to undergo greater pressures in financing. It has been reported that the Small and Medium Enterprises Committee has considered many proposals to help SMEs tackle their financing problems. These proposals include a statutory financial body subsidized by the Government, instructions given by the Hong Kong Monetary Authority (HKMA) to financial institutions to set aside a certain proportion of the loans for business starters and so on. However, these proposals are deemed to have low feasibility, while among the few proposals that are rated as highly feasible is the establishment of a commercial credit reference agency (CCRA).

In the past 20 years, enterprises (especially SMEs) which did not have real properties had found it difficult to obtain loans from banks. The use of real

properties as collateral in financing has the advantage of obtaining loans rather easily in the absence of any track record, credit or complete financial records for SMEs. The disadvantage is that, when the property market plummets, banks would hasten to tighten lending to reduce risks arising from devaluating property values, despite the sound performance, good credit or wholesome financial records of the SMEs. In other words, setting up a CCRA expeditiously would absorb the impact on the loan market which relies heavily on real properties as collateral from a contingency like the Asian financial crisis in 1998 and would help eliminate victimization of decent borrowers as financial institutions tighten up their lending facilities.

The setting up of a CCRA certainly involves a number of legal issues and issues on business ethics. We must not underestimate the complexity of the problem. Documents from the HKMA reveal that a relevant working group is looking into the possibility of setting up a licensing regime for an "exclusive" operator, considering that only a sole operator is possible for the Hong Kong market. The idea may enhance simplicity for the regulatory body and operation for the licensee. However, it may also give rise to some complicated problems. How can monopoly be prevented, given a sole CCRA? How would the HKMA supervise the CCRA, being an "exclusive" operator? Would excessively close supervision by the HKMA render the CCRA a subsidiary of the HKMA? Would excessively loose supervision by the HKMA create an uncontrolled regime? Although the CCRA may help some SMEs to obtain loans more easily, would banks lending money to SMEs that have good performances and financial management but borrow from several banks become unnecessarily cautious due to information from the CCRA, in such a way that they will be forced to reduce lending?

Notwithstanding the numerous problems involved in the setting up of a CCRA, it can nevertheless be an incentive for SMEs to raise their credit transparency, facilitate financing, and even enhance the ability of financial institutions to assess credit risks so that they may expand the credit market. Hence, the system provides mutual benefit to all parties. The financial sector should not lose a ship for a halfpenny worth of tar, and it should reach a consensus in respect of the details for the realization of the CCRA.

More often than not, the low transparency in the financial management of SMEs creates a hurdle between them and the banks when they approach the banks for financing. Thus, if the Administration would like to see a CCRA that achieves twice the result with half the effort, it should work harder to promote

the operation transparency and improve the financial and accounting management of SMEs. The Hong Kong Progressive Alliance thinks the Administration should work closer with other financial and professional accounting bodies by periodically holding more forums or talks at no or minimal charges, with the focus on helping SMEs understand the requirements of financial institutions in providing capital and ways to meet these requirements.

A moment ago, Ms Audrey EU spoke about a mandatory CCRA. I think this is probably outside the scope of our present discussion. I opine that SMEs are not bound to provide the information. The reason is that if they do not need any loans, they would not require the assistance of the CCRA.

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

MR DAVID CHU (in Cantonese): Madam Deputy, the Hong Kong Progressive Alliance (HKPA) supports the establishment of a commercial credit reference agency (CCRA) for two reasons. Firstly, a CCRA may reduce the reliance of authorized lending institutions on collateral, making them more willing to extend loans to SMEs. Secondly, in the long run, this idea can help strengthen the risk management of lending institutions and the stability of the banking system. In fact, CCRAs have long been established in many countries (such as the United States, Germany and Malaysia), and their experience indicates that CCRAs can serve the above purposes; the International Monetary Fund also welcomes the decision of the Hong Kong Monetary Authority (HKMA) to establish a CCRA. The HKPA thinks that since SMEs form the backbone of our economy and employ over 90% of our labour force, the Government should create a business environment conducive to their development. The job opportunities of Hong Kong people can only be safeguarded if our SMEs become stronger.

According to a study conducted in 1999 by the HKMA on the financing situation of SMEs, the availability of bank financing is generally considered inadequate by these enterprises. Proprietors of SMEs have to rely mainly on their own savings or loans with properties as collateral when starting up or expanding their businesses. According to the survey findings of the HKMA, 56% loans obtained by the respondents of the SME are to a large extent offered with properties as collateral. However, since the fall of property prices during the Asian financial crisis and in the subsequent two to three years, it has become more difficult for SMEs to secure financing from banks. Though the Government once established a Special Finance Scheme for Small and Medium

Enterprises to assist SMEs, the Scheme was only a temporary measure and could not meet the financing needs of the large number of SMEs. After all, financial institutions are still the most effective financing source for SMEs. What is gratifying is that the liquid capital of banks has recently been increased as our economy becomes more stable. With a record low loan-to-deposit ratio, banks are seeking lending opportunities one after another, and it is believed that the chance for SMEs to secure loans will increase. The establishment of a CCRA will promote further developments in this respect. Besides, to SMEs themselves, while a CCRA can increase their transparency, it will also lead to improvements in their accounting and management systems. This will have a positive effect on improving the structure of our enterprises and upgrading their quality as a whole.

Madam Deputy, the HKPA understands that though the establishment of a CCRA is the unanimous wish of all sectors in the community, a lot of practical problems are involved, and there is still a wide range of views among market participants. Furthermore, the establishment of a CCRA will also involve problems like the scope of data collection in relation to loan clients, the safeguarding of privacy and the formulation of a technical definition for SMEs. A working group has been set up by the HKMA to study the various problems relating to a CCRA, and it will also start working on the drafting of the legal framework required. The HKPA urges the HKMA and the Administration to communicate and co-operate fully with all authorized institutions, the financial sector and enterprises during their planning and decisions-making process, in such a way that a practical and feasible solution could be put forward to acquire extensive support for the CCRA.

With these remarks, I support the motion.

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

MR NG LEUNG-SING (in Cantonese): Madam Deputy, as a result of the changes in credit demands of various trades and industries, it is only natural for the banking sector to feel the need for some kind of commercial credit reference information. However, market developments have so far failed to meet this demand. The reasons are many-fold and complicated, and the need to maintain the confidentiality of credit information and the competition among banking institutions are naturally some of such reasons. All these factors have hindered

the development of commercial credit reference services in the market. Under such circumstances, enterprise financing has been affected to some extent. In particular, small and medium enterprises (SMEs) have encountered even more financing difficulties, for they usually do not maintain any satisfactory accounting records. When discussing the motion today, if we simply wish to placate SMEs, we may as well urge the Government take the lead, or even adopt executive and legislative measures to back up the establishment of a commercial credit reference agency (CCRA). And, we may also argue that this is a positive measure that will enhance and perfect the financial infrastructure of Hong Kong. In terms of its broad direction, and also from the theoretical point of view, this proposal seems to deserve our consideration, but we must conduct prudent and pragmatic assessments.

After in-depth consideration, I notice that some specific problems relating to the establishment of a CCRA must still require very careful consideration. First of all, as far as the operating framework of a CCRA is concerned, since all client information collected by a CCRA is confidential and of high business value, it will not be desirable for a CCRA to be wholly owned and operated by a private organization. Furthermore, if a CCRA is privately owned and operated, there will be profit considerations. If it is mandatory for banks to provide a CCRA with credit information on their clients, then in addition to an increase in their day-to-day workload, banks may also have to pay higher fees to obtain information from a CCRA. The Government is now exploring the possibility of granting exclusive rights to a private operator, so we should be even more careful about the fees issue because of the resultant absence of competitions. If a CCRA is owned by the HKMA, the above concerns may easily be removed. Some people are worried that the free market mechanism of Hong Kong may be hampered if a public institution is empowered to collect bank clients' credit information on a mandatory basis. Such a worry should also be considered seriously. However, if a CCRA is empowered only to collect voluntarily submitted information and provide credit information to banks, then this worry may be easily alleviated, particularly if a proper monitoring mechanism and stringent legislative measures are put in place to ensure its independent operation and to prevent the Government from the accessing and using information inappropriately.

As regards the scope of information to be collected by a CCRA, it should be carefully determined, so as to prevent certain financing activities from being transferred to overseas markets. In particular, some big enterprises may seek funding from overseas markets in order to avoid furnishing information to a

CCRA, and this possibility should not be neglected. A CCRA, at least at its early stage, should be targeted at collating information about SMEs. The scope of its operations should only be gradually extended after it has accumulated practical experience and built up its credibility. As regards how SMEs should be defined, both complicated and technical issues are involved. Further studies should also be conducted on non-listed companies to see whether some of them should be exempted from credit information collection. From the perspective of practical banking operation the scope of credit information collection should be explicitly and clearly defined, so that a clear line can be drawn to avoid complicated operations and controversies. This is the only way to ensure greater fairness in the provision of information and the integrity and reliability of the CCRA data bank.

As for the information on clients to be collected by a CCRA, both positive and negative information should naturally be included, if the CCRA is to function effectively. Therefore, the use of such information should be more strictly prescribed, so as to prevent lending institutions from competing for better clients by abusing such information, or even distorting normal market competition. To SMEs, while a CCRA may make it more convenient for them to seek financing, it may also have some disadvantages, because the availability of comprehensive information may enable banks to access both their positive and negative credit records. Therefore, SMEs should be given a more comprehensive understanding of the sort of assistance on financing that will be provided through the establishment of a CCRA.

Madam Deputy, I so submit.

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, I believe the motion today is not that controversial, because if the policy objective aims at helping small and medium enterprises (SMEs) to solve the problem in financing, then it is very likely that the motion will be carried. However, if we are really going to establish a CCRA, of course, first of all, we will have to solve a number of issues in the legal framework.

I wish to give a little warning here. That is, if the privacy and mandatory issues are not resolved satisfactorily, it would be better not to start dealing with the issue of deposit insurance. Everybody will support the project and feel happy if the relevant issues are solved prior to the introduction of the project. I consider that of great importance. As a result, if the motion today is carried, I

hope the Government will take it as the basis for the enactment of legislation. However, even if legislation is drawn up, I still hope that before the policy is implemented (to implement means that the Government should adopt the practice of the white bill), we should study the legal basis before debating on the issue thoroughly. The motion proposed by Mr Ambrose LAU is quite unequivocal, as he has enumerated all the benefits in the motion. Of course, there is no reason for us to argue with those benefits as well as the relevant policy objective. However, when the policy objective is launched, it may bring about a number of problems.

Some Honourable Members mentioned earlier that to certain companies with good objectives, they might not be able to secure a loan once they got a poor rating in the credit assessment. To certain SMEs, the future situation will be far worse than before. In that case, they will come to this Council and query us why we should endorse such a scheme. Hence, we have to study the issue carefully, even though we are striving for the benefit of SMEs or tackle the matter for their well-being, they do not know the pros and cons of the policy. Even if the policy is launched, those who can see the upside of the policy will not express gratitude, but those who see the downside will surely come and blame the Legislative Council.

Therefore, this is the message I would like to put across: even the motion today is carried, it does not necessarily mean that it is a blank cheque which allows the Government to fill in the amount as it pleases. I hope the Government understands that even the motion is carried today, a specific consultation should be conducted prior to the introduction of the relevant policy, when the relevant motion, the legal basis, the legislation or the bill itself are put forward to this Council, in order to dispel doubts of legislators, bankers and SMEs. I hope every party can deal with the matter with great caution. I have to repeat that even the motion is carried today, it does not necessarily mean that we will give the green light to any bill put forward by the Government to this Council in future. In the meantime, we will support the policy objective.

Thank you, Madam Deputy.

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

(No Member responded)

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Deputy, first of all, I should like to thank Mr Ambrose LAU for moving the motion today, so that we can have the opportunity to listen to Honourable Members' views on the establishment of a commercial credit reference agency (CCRA), and to keep Members abreast of the latest progress of the CCRA study conducted by the Hong Kong Monetary Authority (HKMA).

I believe Members can all recall that in his Budget speech last year the Financial Secretary mentioned that the HKMA would study the proposal to set up a CCRA in Hong Kong. A consultation paper setting out a number of recommendations concerning the desirability and feasibility of a CCRA was subsequently published by the HKMA in July last year to solicit opinions from the public.

According to the results of the consultation, most authorized institutions consider that the commercial credit information available from the existing credit database is by no means comprehensive. In particular, they feel that there is a lack of credit information on the small and medium enterprises (SMEs) operating in Hong Kong. Apart from that, there is also widespread recognition in the market of the desirability of Hong Kong establishing a fully-fledged CCRA.

The most important benefits of establishing a fully-fledged CCRA is that it can improve the credit risk management of authorized institutions and reinforce borrower discipline, thereby enhancing the soundness and stability of the banking system in Hong Kong. Besides, corporate borrowers would also be likely to benefit from higher credit transparency resulting in more competitive loan pricing. This is particularly of importance to SMEs. At present, SMEs generally have difficulty in obtaining loans from authorized institutions. One of the common reasons is that due to the poor transparency and inadequate information disclosure on the part of the SMEs, authorized institutions can hardly conduct any comprehensive credit risk analysis. Taking into consideration the prudent lending principle, many authorized institutions tend to rely on collateral in lending to their clients.

In view of the aforementioned factors, the HKMA considers there is sufficient reasons in support of Hong Kong establishing a CCRA. To a certain extent, the CCRA can help to reduce the reliance of lenders on collateral and increase their willingness to provide SMEs with loans. In the end, banks will also benefit from the increase in lending opportunities. Hence, the HKMA believes that the establishment of a CCRA will create a win-win situation for both the banking industry and the SMEs.

Naturally, the establishment of a CCRA does not necessarily mean that the financing problem of SMEs will be resolved right away. This is because it takes the good efforts of many parties concerned to enhance the transparency of SMEs, and credit reference is only one of the important factors. There are also other areas calling for improvement, including the financial information of the SME concerned, such as the accuracy of its profit-loss account, cash flow situation, auditing standard and so on. Nevertheless, we still believe that the credit information and record of enterprises are very important to banks in making lending decisions. As such, the establishment of a CCRA should be of benefits, to a certain extent, to enterprises' financing arrangement.

While all parties concerned have taken a positive attitude towards the proposal to establish a CCRA in Hong Kong, the question remains how we are going to implement a proposal that suits the needs of Hong Kong. The HKMA holds that any proposal in this respect should at least fulfill the following two conditions. Firstly, authorized institutions must contribute to the CCRA their clients' credit information under certain appropriate requirements; and secondly, the CCRA should have in place proper confidentiality mechanism to safeguard the information collected.

In order to solicit views from all sectors on the design of the CCRA, including the issues mentioned in the motion today, such as the CCRA's functions, structural framework, mode of operation, pace of development, as well as the scope of information to be shared among lending institutions and their powers and responsibilities, the HKMA has set up a multi-sector working group at the beginning of the year to further look into the opinions collected before putting forward any specific suggestions. The working group is chaired by the Deputy Chief Executive of the HKMA and comprises representatives from the commercial and industrial sectors, the banking industry, Office of the Privacy Commissioner for Personal Data, Financial Services Bureau, Commerce and Industry Bureau, as well as the HKMA. Apart from the working group, we will also continue to solicit opinions from the public and the Legislative Council on the CCRA through different channels. Last month, for example, we have furnished the Legislative Council Panel on Financial Affairs with a brief account of the progress of the designing work of the CCRA.

The working group is now actively examining the design of the CCRA. With regard to the views raised by Honourable Members just now, we believe a number of points raised in Members' speeches are worth giving special attention

to, and they are: firstly, whether it should be made mandatory for authorized institutions to contribute credit information to the CCRA; secondly, how should the information stored at the CCRA be safeguarded; thirdly, what measures can be taken to enhance the participation of SMEs and to reflect their needs; fourthly, the mode of operation and monitoring of the CCRA; and fifthly, the pace of development. The working group is now looking vigorously into these issues, which are also Members' issues of concern. I should like to take this opportunity to explain our views in relation to these five issues.

First of all, should participation in the CCRA be made mandatory? This question should be considered from two aspects; namely, whether it should be made mandatory for all authorized institutions to participate in the scheme, and whether it should be mandatory for authorized institutions to contribute to the CCRA the credit information of their clients. From a confidentiality point of view, participation in the CCRA on a voluntary basis is naturally less controversial. However, we should also take into consideration whether this mode of participation can achieve the objective of setting up a CCRA, as the feasibility of this mode depends very much on the willingness of the authorized institutions to participate. Many authorized institutions, in particular large banks, may be unwilling to join the CCRA because they do not wish to share with their competitors some exclusive credit information, lest they will lose their clients to the competitors. Moreover, if they should be given a choice, corporate borrowers, and particularly those with records of defaulting on loan repayments, might not be willing to contribute or disclose their own credit information. As regards clients without any negative credit records, if they are deeply in debt they might selectively disclose only information that is of benefit to them, thereby hiding their real credit situation.

For these reasons, it will be very difficult for the CCRA to collect sufficient and accurate information if authorized institutions are to participate on a voluntary basis. Naturally, this mode of participation will not contribute much towards the objective of improving the risk management of authorized institutions and thereby helping SMEs in obtaining loans. Apart from mandatory participation and voluntary participation, there are of course other modes of participation which can be adopted in the light of the different types of credit information concerned.

According to the results of some overseas studies, if the CCRA could have more data and information, including some positive data, it should be able to help authorized institutions to carry out credit assessment in a more comprehensive manner. On the other hand, some authorized institutions have opined that if the CCRA should have in place both the positive and negative information on the SMEs, such as the liability level, nature of debts, debt repayment records and records of defaulting on debt repayment, it could help them a lot in assessing the loan applications from new clients. Apart from that, these studies have also considered the question of whether or not there should be any rules governing the utilization of the CCRA.

After taking into consideration the opinions from different parties, the working group has come up with the view that a completely voluntary mode of participation is not the most effective option for the CCRA. Hence, the general opinion is supportive of setting up mandatory requirements to a certain extent in order to make it necessary for authorized institutions to participate in the CCRA, thereby ensuring the coverage of the CCRA and maintaining a level playing field in the market. The working group will continue to look into the matter further.

With regard to the confidentiality of the information concerned, whether from the point of view of business activities or from a personal point of view, credit information is indeed very sensitive. We therefore agree very much with Members it is imperative that special care be taken to safeguard the confidentiality of the information stored in the CCRA. For this reason, we must deal with the matter very carefully in designing the various parts of the CCRA, with a view to ensuring that the credit information concerned will be sufficient and effectively safeguarded. Indeed, this is an important factor to building up the confidence of the public in the CCRA and to winning their support for the scheme.

The HKMA also notes that in many places where disclosure of information has been made mandatory, the proper use of the information concerned is safeguarded by means of legislation. One important point of consideration in this connection is whether or not the credit information of the natural person owning the relevant enterprises should be disclosed. The reason why this point must be taken into consideration is that the credit situation of a SME and that of its owner are inseparable in most cases, as the collateral for the loan may be provided by the owner of the SME. The Privacy Commissioner for Personal Data holds that any personal data, including those relating to the owners or

shareholders of enterprises, are all subject to the provisions under the Personal Data (Privacy) Ordinance. For instance, unless the person concerned has given his or her consent, the personal data collected can only be put into the uses as stated when the data are being collected.

The working group will also study in detail other issues relating to the confidentiality of credit information, including the accuracy, protection and use of the information stored at the CCRA, measures to prevent loss of information, unauthorized entry to the CCRA, the use of the data concerned by government departments and law enforcement agencies and so on. We will actively look into the various suggestions made by Members, including the confidentiality measures and standards, the effectiveness and feasibility of such measures and so on, with a view to ensuring that the various protection measures are in line with the objective of setting up the CCRA on the one hand, and capable of providing sufficient protection for the relevant data on the other.

Madam Deputy, just now Members have expressed concern over the question of whether or not the opinions of SMEs could be reflected fully in the design process of the CCRA. As I said earlier, the objective of setting up the CCRA is to improve the risk management of authorized institutions as well as to improve the transparency of SMEs. Naturally, we will attach great importance to the views from SMEs. Last year, we conducted a public consultation of the proposal on CCRA and received submissions from many business and industrial organizations, including the Hong Kong General Chamber of Commerce, the Chinese General Chamber of Commerce and the Federation of Hong Kong Industries. Their views have already been taken into thorough consideration by the HKMA. Moreover, two of the members of the working group are representatives from SMEs and the Commerce and Industry Bureau respectively. In order to give further weight to the voices from SMEs, the HKMA has already written to a number of trade associations inviting them to nominate representatives for joining the working group. Further still, the working group will also consult the business and industrial sector, particularly associations of SMEs, on certain specific issues.

According to the public consultation findings, the public sector should participate in monitoring the CCRA to give a boost to the confidence of the public in the data handled by the CCRA, and to ensure that the various services charges are set at a reasonable level. But then again, public opinion does not particularly support putting the CCRA in the ownership of the public sector in

order to have the said objective achieved. On the contrary, the public considers that further studies should be conducted to find out how the CCRA could be owned by the private sector but monitored by the public sector. On the other hand, given the small scale of the market in Hong Kong, it may not be possible for the market to accept more than one data agency; and it is also considered that it would add to their administrative costs if authorized institutions should be required to contribute information to more than one agency. For these reasons, the working group is now studying the feasibility of setting up the CCRA on a franchised basis. If the franchised system is considered to be the best mode of operation at the end of the day, we will then look into the statutory framework to be adopted to achieve the most effective monitoring effects.

Regarding the pace of development, as I said just now, the scope of the scheme covers mainly the SMEs, so that the transparency of their credit information can be enhanced, thereby improving their chances of obtaining loans and negotiating better terms of loans with the lenders concerned. At the same time, some are concerned that if the CCRA should collect credit information of large enterprises as well, these companies might turn to lenders overseas for loans, thus damaging the status of Hong Kong as an international financial centre. It has been pointed out by some institutions that if the amount of loan borrowed by large enterprises should be higher than that of SMEs, the bilateral vetting to be conducted by lenders could be more cost-effective. Consolidating the views expressed by different sectors, we believe that extra care must be taken to determine the targets for collecting credit data under the CCRA scheme, and that it would be more reasonable if only the credit information about SMEs should be collected at the initial stage of implementation. As regards the question of whether or not the scope of the CCRA should be extended to larger enterprises in the future, we believe this should be considered in detail upon laying the foundation of the CCRA. The working group is now deliberating on a precise and feasible definition of SMEs.

There has been a view that the CCRA may well be developed into a credit rating institution. For the time being, the HKMA does not have any intention in this connection. We hold that at the initial stage of its development, the CCRA should maintain a clear and simple objective, with its focus being laid on the collection, consolidation and transmission of credit information on SMEs. As regards other value-added services, they could be considered later in the light of the future market development.

Madam Deputy, the objective of setting up the CCRA is to improve the risk management of authorized institutions and enhance the stability of the banking industry as a whole, with a view to improving the transparency of enterprises, particularly that of credit information about SMEs, thereby enabling authorized institutions to conduct more comprehensive financing assessment of and to offer loans to enterprises in accordance with the prudent loan assessment principles.

As pointed out by Members in their speeches, a number of important issues are involved in the design of the CCRA, including the mode of participation, mode of operation, confidentiality of information and so on. Since these issues must all be handled with great care, attempts to implement the CCRA scheme hastily will only produce the opposite results. When considering the various options available, extra care must be taken to attach importance to a number of basic principles, including the provision of adequate measures to protect the privacy of the owners of the credit data concerned, as well as the need to maintain a fair competition environment for businesses. The option to be adopted must be in line with the objective of setting up the CCRA, practicable and feasible, in order to achieve the intended effects.

The working group will submit the entire set of proposals to the Government upon completing the drafting work. Naturally, Members of this Council will have the chance to express their views on the various proposals. This is because the various points we raised just now, as referred to by Members, are related to certain important principles and must therefore be looked into prudently. Indeed, I have already pointed out that the CCRA must not be set up hastily. We certainly understand that Members would like to see the early implementation of the scheme; hence, we will decide on how the CCRA scheme should be brought into effect and operation as soon as practicable upon considering Members' views and the opinions raised by the public.

Thank you, Madam Deputy.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): Mr Ambrose LAU, you may now reply. You have up to three minutes and 47 seconds.

MR AMBROSE LAU (in Cantonese): Madam President, first of all, I have to thank colleagues for speaking in support of the establishment of a commercial credit reference agency (CCRA).

Members have put forward constructive proposals on the details relating to the establishment of a CCRA. I hope the Government and the HKMA will give full consideration to the comments of the Legislative Council in planning for the establishment of the CCRA.

Nevertheless, from the speeches of Members, we could see that to set up a practicable CCRA with long term benefits, some problems have yet to be dealt with as difference in opinion still persists. I trust that Members will agree a CCRA is going to be a very important infrastructure in the financial system of Hong Kong. This will have a far-reaching effect on the economy of Hong Kong. When properly established, the CCRA will receive support across the board and this is conducive to developments in the financial market whereby lending activities will be promoted. If, on the contrary, the CCRA is not properly established and preparatory work is not sufficiently carefully done, problems will arise when it comes into operation. Then, the CCRA will not only fail to bring into full play the merits normally expected of such an agency, but it will also bring great harm to the financial system of Hong Kong.

Hong Kong has been following the principles of a free market economy and it abides by market principles. This has been a main contributing factor to the success of Hong Kong. This is what the Administration should adhere to in planning for the establishment of a CCRA.

Madam President, I reiterate my demand on the Government for any early completion of the relevant research work. I do not mean the Government should hastily put forward plans that have not been fully studied or discussed. The establishment of a CCRA involves complicated issues such as legal issues, supervision and execution. The Administration must conduct in-depth research on all relevant issues; otherwise it will once again do harm although it has good intentions.

Lastly, I would like to urge the HKMA and the Government to continue to hold in-depth discussions about the establishment of a CCRA with authorized institutions, business organizations, professional bodies and other sectors with a view to reaching a consensus.

I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Ambrose LAU 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 Philip WONG rose to claim a division.

PRESIDENT (in Cantonese): Dr Philip WONG 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 the result will be displayed.

Functional Constituencies:

Mr Kenneth TING, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr Timothy FOK, Mr LAW Chi-kwong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Tommy CHEUNG, Mr Michael MAK, Mr LEUNG Fu-wah and Mr IP Kwok-him voted for the motion.

Dr Philip WONG voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Miss CHOY So-yuk, Mr SZETO Wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU, Mr David CHU, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted for 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, 20 were in favour of the motion and one against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present and 19 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

PRESIDENT (in Cantonese): Second motion: Effective protection of statutory rights and benefits of employees.

EFFECTIVE PROTECTION OF STATUTORY RIGHTS AND BENEFITS OF EMPLOYEES

MR LEUNG FU-WAH (in Cantonese): Madam President, there are only six days to go before 1 May, the International Labour Day. The original purpose of the International Labour Day is to give society a chance to show its respect for workers, and to enable the broad masses of employees who earn their living by selling their labour to voice their grievances and struggle for their legitimate rights.

I have moved this motion today with the aim of initiating a debate in this Council, so that the Government and the various strata of society can be urged to treat the reasonable and legitimate rights and benefits of wage earners with fairness and good sense.

When it comes to the labour legislation of Hong Kong, we can see that over the past three decades or so, owing to the struggles put up by wage earners and trade unions, and thanks to the consultative mechanism provided by the Labour Advisory Board (LAB), where employers and employees are both represented, the rights of the working class people have gradually been accorded better protection through the law-making process of the Legislative Council. The tasks of enforcement and adjudication following the legislative process are undertaken respectively by the Labour Department and the Labour Tribunal.

The first and second points of my motion today aim to plug the loopholes in the existing legislation through the introduction of reasonable improvements to cope with social changes.

Under the existing Employment Ordinance, an employee can be entitled to the various rights specified in the labour laws only if he has worked for the same employer for a continuous period of four weeks, each week with 18 worked hours or more. This is commonly called the "4-1-18" requirement, which is an improvement on the "4-3-6" requirement. The change from the "4-3-6" requirement to the "4-1-18" requirement is a measure to plug the loopholes. The "4-1-18" requirement was put in place in 1990, and 10 years has passed since then. Over these years, as a result of our economic restructuring, very significant changes have occurred to the mode of employment in the labour market, with the employment of part-time and hourly-paid workers becoming the major market trend. Many employers have tried to evade the granting of statutory rights to their employees by deliberately limiting the working hours of their employees to no more than 17 hours per week, or by limiting their working weeks per month to three. They may even ask their employees to work for 18 hours a week during the first three weeks and then deliberately reduce their working hours to under 18 hours during the fourth week. All the deliberate measures mentioned above will drive employees out of the coverage of statutory protection. These "meticulous" arrangements are often found in large-scale enterprises and corporations (such as the betting centres of the Jockey Club and supermarkets). Despite their strong financial background, and despite their stable manpower demand, they have still resorted to these measures. We think this is extremely unfair to workers. We also think that the failure of the relevant legislation to cope with the realities is also a cause of the exploitation experienced by workers.

I urge this Council to accept the proposal on introducing a further improvement by replacing the "4-1-18" requirement with the "4-0-72" requirement. Under this proposal, the requirement on 18 working hours per week will be removed, and this is to be replaced by another requirement on 72 working hours for four weeks. This proposal will not impose any extra burden on employers unless they have been "taking advantage of the loopholes". Therefore, I can see no reason for any objection.

Madam President, the justification for the second point of the motion is even more straightforward. The 10 000 or so non-civil service contract employees of the Government are also government employees, but why are they not protected by the laws? Under the existing policy, the Employment Ordinance is not applicable to civil servants, and they are subject to the regulation of the Civil Service Regulations. But it is also specified that the Civil Service Regulations is not applicable to the non-civil service contract employees of the Government. Since the Employment Ordinance is not applicable to government employees, if these contract staff are involved in any labour disputes, they will thus be entirely helpless and desperate; there is no legal justification for them to take their disputes to statutory bodies like the Labour Department and the Labour Tribunal for arbitration, and they can only resort to the channels for complaints provided by management. Our society upholds the rule of law, so if some employees are put under a mechanism whereby their rights can be protected only when heads of department themselves see the need to act like a good employer, such a mechanism is bound to be fragile. Some time ago, when the Secretary for the Civil Service, Mr Joseph WONG, replied to my oral question, he said that employees who were not satisfied with the decisions of their departmental management had the right to institute lawsuits. But to the average wage earners, instituting a lawsuit against the Government at their own expense is simply something completely out of the question. The motion aims only to give a legal justification for referring this type of disputes to the Labour Department and the Labour Tribunal. We cannot see how this will cause any losses to the Government.

The problem connected with the third point of the motion is caused by the lack of strict enforcement actions on the part of the Labour Department.

My motion aims to impose punitive measures to deal with employers who deliberately try to delay the payment of statutory compensation to their employees. I refer to deliberate delay here. What is meant by deliberate delay?

I mean the kind of delay that still occurs even when there is no dispute whatsoever about the act of dismissal, the length of service of the employee concerned and the basis of wage calculation. Under the Employment Ordinance, all the formulas for calculating employee compensation are already clearly set out. Unfortunately, what we see from the real situation is rather different. In the course of their mediation in labour disputes, many of our trade union staff notice that many employers have tried to employ delaying tactics; they simply refuse to answer any questions from their employees, for their aim is to pass their cases to the Labour Department or the Labour Tribunal. The workload of the Labour Department and the Labour Tribunal is very heavy, as can be seen from the fact that trials have to be held at night. Conservatively estimated, the whole process, from the making of listing arrangements at the Labour Department to an actual trial before the Labour Tribunal, may take at least three months or even six months. When the unemployment rate is so high now, can an employee find a new job easily, even if he wishes to? However, while they are waiting, they cannot receive any compensation. So, they would have "practically nothing to eat, not even any grains", as the Cantonese colloquialism goes. Some unscrupulous employers who see the low bargaining power of their employees have thus acted in open defiance of the law by offering compensation at a discounted rate of 80% or even lower. We are naturally very angry at seeing the acceptance of such offers by some employees. However, we also have to appreciate what these employees think — they are just wage earners, they practically live from hand to mouth, and "no work will mean no food" to them. So, since they are in desperate need of the compensation to support their living, they cannot possibly continue pursuing their recovery actions.

There is still another point. Even if the Labour Tribunal subsequently rules that the employer must pay the statutory compensation, and even if the employee can thus recover the compensation in full, all the employee will get would just be the minimum amount specified in the Employment Ordinance. Is this reasonable? The matter has dragged on for several months, but the employee is not given any extra compensation in the form of interest. Does this mean that the time of wage earners is entirely worthless? What is even harder to understand is that notwithstanding it is clearly stated in the Employees' Compensation Ordinance that any employer who delays the payment of statutory compensation to their employees is required to pay a surcharge, this is still the case.

I must also point out here that the Labour Department, as a mediator in labour disputes, has always emphasized its neutrality and its position of fostering voluntary negotiations between the two sides. This approach has indirectly encouraged unscrupulous employers to totally disregard government bodies like the Labour Department and the Labour Tribunal, thus severely hindering employees' struggles for their legitimate rights and benefits.

Because of time constraint, I can describe only one or two actual cases for Members' reference. A certain seafood restaurant in Kwun Tong was involved in five to seven cases of staff dismissal without any payment of compensation in the past three years. Let me give an account of the case involving a pantry captain of the restaurant for Members' reference. The pantry captain has worked for six years and five months in the restaurant, and he had never taken any paid annual leave and statutory holidays during this period. Then, in 1999, he discovered that he had contracted cancer, and for this reason, he was hospitalized from July to October that year. After his discharge from hospital, he followed the normal procedures and submitted to the restaurant management a medical certificate certifying his period of hospitalization. However, the restaurant refused to pay him any sick leave allowance, which should amount to four-fifths of his wages. When he resumed work after recovery, he repeatedly tried to recover the allowance from the restaurant, but it still refused. Then, when he lodged a complaint with the Labour Department, he was dismissed at once. And, he was given no compensation after his dismissal. The employer concerned was regarded as a kind of "devil" at the Kwun Tong office of the Labour Department, because whenever he went to the office, he would speak foul language like a triad element, and he simply ignored the mediation of the Labour Officers there. He even insinuated that the Labour Department was just being meddlesome, and threatened the claimant that he should not try to stir up troubles. After mediation, he still refused to pay any compensation. So, in the end, the worker had no alternative but to approach the Labour Tribunal. But after the lengthy trial of the Labour Tribunal, he could only get back the minimum claim amount specified in the labour laws, that is, his severance payment, long service payment, holiday wages and allowances for his annual leave and sick leave. In this particular case, we fail to see how the Labour Department has ever sought to prosecute and penalize the employer who refused to pay the compensation due to his employee.

My moving of this motion is in fact supported by the rest of the two Members representing the labour sector, namely, Miss LI Fung-ying and Mr

CHAN Kwok-keung, and I also have the unanimous support of the six employees' representatives on the LAB. The support I have shows that the labour sector sees an urgent need in resolving the problem. I hope that the motion can be passed in this Council. That way, the Labour Department can be urged to strictly enforce the relevant provisions of the labour laws for the real protection of workers' legitimate rights and benefits.

Mr LEUNG Fu-wah moved the following motion: (Translation)

"That, although the Employment Ordinance has been in force for many years, it still happens that employees are often denied statutory compensation in the event of labour disputes; and in view of the changes in the employment patterns in Hong Kong, employment-related ordinances need to be amended accordingly so that more employed persons are protected by law; in this regard, this Council urges the Government to:

(a) relax the definition of "continuous contract" in the Employment Ordinance to reasonably cover all paid employees, including part-time employees;

(b) extend the applicability of the Employment Ordinance to government employees on non-civil service contract terms; and

(c) impose punitive measures on employers who deliberately delay making statutory payments, such as the severance payment, so as to ensure effective protection of the statutory rights and benefits of employees."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Fu-wah be passed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan will move an amendment to this motion, as printed on the Agenda. In accordance with Rule 34(4) of the Rules of Procedure, the motion and the amendment will now be debated together in a joint debate.

I now call upon Mr LEE Cheuk-yan to speak and move his amendment.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I move that Mr LEUNG Fu-wah's motion be amended, as set out on the Agenda.

Madam President, today is indeed a very appropriate time to move this motion, because right before the International Labour Day on 1 May, in this meeting of the Legislative Council, we can seriously consider whether labour rights are given any real protection in Hong Kong now. I think that besides aiming to offer real protection to employees' statutory rights and benefits, the motion also aims to create a level playing field that fosters healthy competition among enterprises. Since a handful of "employers with no conscience" have been trying to evade the granting of statutory rights and benefits to their employees by exploiting the loopholes in the labour laws, "employers with a conscience" have to compete with these unscrupulous employers on an unequal basis. If we can plug the loopholes in these laws, we will be able to set down some fairer rules of the game that are binding on everybody. That way, "employers with no conscience" can be prevented from exploiting any loopholes in the laws and from evading their responsibility. Therefore, I hope that through this debate, we can return justice to those "employers with a conscience". I also hope that Members who represent good employers can all support the original motion and the amendment.

In essence, the original motion and the amendment both aim to deal with the "orphans" and "handicaps" of the existing labour legislation. By "orphans", I mean those workers who are not covered by the existing labour legislation, who are not thus protected by the laws. I wish to name three types of these "orphans" today: first, part-time employees; second, government contract employees not employed on civil service terms; and, third, self-employed persons. By "handicaps", I mean the loopholes in the labour legislation, such as those relating to workers who are unreasonably dismissed or not protected by the laws, the off-setting of terminal payment and Mandatory Provident Fund (MPF) and the lack of strict enforcement actions, which have deterred legislation from producing its intended effect. In view of the time restraint, I shall confine myself only to the "orphans" of labour legislation. The Honourable LAU Chin-shek will afterwards discuss how the "handicaps" in labour legislation could be amended on behalf of the Hong Kong Christian Industrial Committee.

Madam President, as we all know and also as pointed out by Mr LEUNG Fu-wah just now, the existing Employment Ordinance is marked by an issue commonly referred to as the "4-1-18" requirement — an employee must have

worked for the same employer for a continuous period of four weeks each with at least 18 worked hours before he can enjoy such benefits as rest days, paid holidays, annual leave, severance payment, long service payment and so on. In our community, there is an increasing trend towards employment on a casual basis which is due to two reasons. The first reason may not have anything to do with the intention of the people concerned, and one example is the job of home helpers, which is understandably casual in nature. I do not think that employers of home helpers will deliberately limit the working hours of these helpers to 18. There are also some organizations which need to employ workers on a casual basis; one example is the Mass Transit Railway Corporation Limited, which may really to need to hire workers to keep order on the platform just for two hours in the morning. These examples do not involve any purposeful intent to limit the working hours of employees to 18.

The second reason, however, involve acts which make us very angry; some employers have deliberately limited the working hours of their employers to fewer than 18 because of non-business related considerations. Let me quote a recent complaint I have received as an example, one which is made by a man applying for a part-time job in the Wellcome Supermarket. To begin with, let me point out that the Wellcome Supermarket will only allow a part-time employee to work up to a maximum of 17 hours a week. A certain part-time employee, however, wished to work more hours. So, the branch manager concerned asked him to present the identity card of his wife, so that he could work for another 17 hours. With this arrangement, the same part-time employee could work for 34 hours without being noticed by top management. But in the end, the manager was dismissed, for Wellcome has always been very strict with the requirement that the number of working hours per week for one part-time worker can never exceed 17. The Wellcome is a very huge supermarket chain which occupies 50% of the market share, but it has still treated its employees in this way, deliberately trying to evade its responsibility under the labour laws.

There is another example. The Catering and Hotels Industries Employees' General Union under the Hong Kong Confederation of Trade Unions is now assisting the 10 000 or so part-time employees of the banquet divisions of various hotels in fighting for their leave benefits. When VIPs attend banquets, do they know that the people serving them are all casuals workers? By casual, I mean those workers who are assembled by "snakeheads" to work for hotels, and the number of their working hours per week may be as

large as 50 to 60. Some of them have even worked for the same hotels for five to six years, but they have never enjoyed any leave benefits. They have never requested such benefits from their employers, for they have the wrong idea that casual workers are not entitled to these benefits. But they have recently been told by the General Union that they too are entitled to such benefits. So, the General Union has recently started to approach these hotels one by one, in the hope of helping these workers to retrieve their leave benefits.

Actually, these benefits are fully legitimate and clearly set out in the labour laws. And, even if the General Union does not approach them for negotiations, these hotels should have offered these benefits to their employees since the very beginning. But the Hong Kong Hotels Association issued a letter yesterday, condemning the General Union. This is just like a thief accusing others of theft. It is said in the letter that the intervention of the General Union in the labour dispute has served to turn the whole thing into a political issue. It is also said that the indiscriminate staging of protests by the General Union has smeared the labour relations in the hotel industry. We went to these hotels to ask them to give their employees their legitimate leave benefits, but these hotels refused, so we staged protests. Do Members think that we were wrong? Some of these hotels agreed to offer these benefits, but attached the condition that if a worker once stopped working for just one week, that is, just one week in six whole years, then they would not offer such benefits to the worker. That being the case, were we wrong in staging protests? After the protests, our negotiations with the hotels started to bear fruits. It is now agreed that there would be no leave benefits for anyone who has stopped working for four weeks. This is a bit more reasonable. Having looked at what happened, do Members still think that we were wrong in staging the protests? I just wonder why the Hong Kong Hotels Association had the face to take such a pre-emptive move, to accuse us of indiscriminately staging protests. Next week, we may probably have to stage another protest, because one more hotel has said that it will not offer such benefits.

The problem now is that since we are taking actions to recover leave benefits for part-time employees, some hotels have started to adopt a "3-1-18" system. This means that an employee will be given no work after he has worked for three weeks. I have also heard that the four hotels situated in Admiralty are planning to join hands on the implementation of this system. I mean, after a worker has worked for three weeks for one of these hotels, he will be transferred to another one of the four to continue his work. With this "3-1-

18" system, these casuals can never expect to receive any leave benefits. Now that they have resorted to a measure like this, should we stage a protest? If we do so, should Members also join our protest? These hotels are in fact making deliberate attempts to evade their responsibility under the labour legislation. I hope the Hong Kong Hotels Association know that if they do not want us to stage any protests, they must first make improvements. Unfortunately, the Association has instead criticized these casual workers, saying that their claim was caused by a greedy desire to obtain the benefits of permanent employees, and that acceding to their claim would be unfair to permanent employees. These hotels have described these casual workers' demand for legitimate benefits as being unfair to permanent employees. Faced with such a tactic of "disassimilation", I must say that the Hong Kong Hotels Association has no idea whatsoever about what fairness should mean. Fairness should mean compliance with the law. Fairness should mean equal treatment for all without distinguishing casual workers from permanent employees.

By quoting all these examples, I aim to prove that the existing labour laws are full of loopholes. For this reason, we propose to abolish the entire "4-1-18" requirement altogether and to learn from the International Labour Convention, which offers benefits to workers on a pro-rata instead of full-scale basis. The reason is that it may well be difficult to offer benefits on a full-scale basis. For example, if we are talking about an annual leave of one week, and if a certain worker only works for one day a week, then, on a pro-rata basis, he should be offered one day of annual leave. We are of the view that this can eliminate the problem of "orphans" connected with the labour laws.

The next issue I wish to discuss is about self-employed persons. As we know, many construction site workers have been forced to become self-employed persons, so they are no longer qualified for the protection under the Employment Ordinance. Recently, I have discussed an idea with the Hong Kong Construction Association, and the Chairman of the Association also accepts my view: All workers entering a construction to work, whether they are self-employed or under employment, shall be protected under the same formula. This is because the premium for an insurance policy is set by taking account of the contract value, which means that there should not be any problem even if many more people are brought under coverage. I am very interested in knowing whether this can solve the problem faced by construction site workers who have been forced to become self-employed persons because of MPF contributions. We are also of the view that we should really explore whether

the existing safety legislation should also protect service-providers including self-employed persons, instead of merely protecting employees.

The last "orphans" are those non-civil service contract staff of the Government whom Mr LEUNG Fu-wah has mentioned. The way in which these contract employees are treated is also very harsh. Why does the Government evade from dealing with this problem? What does the Government have to fear, even if somebody brings his case before the Labour Tribunal for a ruling? I think that this will do no harm, and I also think that all employees should be allowed to resolve their labour disputes through efficient, low-priced and simple procedures.

Madam President, I think that even if we voice our views today, we cannot possibly solve the problems. So, I appeal to Members who are listening to me to join our rally on 1 May.

Mr LEE Cheuk-yan moved the following amendment: (Translation)

"To delete "and" after "non-civil service contract terms;" and substitute with "(c) formulate measures to prevent employers from covering up the actual employment relationship by means of contracts for service in order to shirk their statutory duties towards their employees, and to examine the possibility of extending to the self-employed the applicability of the occupational safety and industrial accident victims protection system; (d) amend Part VIA of the Employment Ordinance in order to grant employees the right against unfair dismissal, and to abolish the requirement that the severance payments or long service payments payable to employees on a pro-rata basis under the provisions of that Part be reduced by the employers' contributions to the occupational retirement schemes or mandatory provident fund schemes; and"; to delete "(c)" and substitute with "(e)"; and to add "or fail to grant their employees statutory rest days, statutory holidays or annual leave," after "impose punitive measures on employers who deliberately delay making statutory payments, such as the severance payment,"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to Mr LEUNG Fu-wah's motion, be passed.

MISS LI FUNG-YING (in Cantonese): Madam President, on the eve of a great festival for the labour sector on 1 May, the International Labour Day, I think it is very meaningful to hold a discussion on "Effective protection of statutory rights and benefits of employees" so that employers, employees and the community can know more about the labour issues. I hope the biggest employer, our SAR Government, can keep itself abreast of the times and conform to public opinions by coming to grips with workers' demands, enhancing equality and justice but curbing polarization. Indeed, we have faced too much unequal treatment. The same piece of work may generate different pay; workers' holidays are differentiated into public holidays and labour holidays. Even among civil servants, we have pensionable officers, contract officers and officers on non-civil service contracts and so on, just to name a few.

Hong Kong economy has undergone a rapid re-structuring and experienced the sweeping blow of the Asian financial turmoil. Both factors contribute to profound changes in the way employers recruit employees. In addition to what is usually referred to as full-time staff (that is, monthly-paid staff) or daily-paid staff, the local labour force sees the birth of a new breed of workers: part-time or hourly-rated workers. Like most wage earners, they toil quietly in every trade, contributing their share of work towards the prosperity of Hong Kong. With the exception of some cases where employers say they need hourly-rated employees out of the demands of a special work arrangement, in most other cases, employers are just dodging their legal responsibilities by employing part-time workers or hourly-rated workers, as some Members from labour unions or the labour sector pointed out a short while ago. The reason is that the present Employment Ordinance applies only to employees under "continuous contracts", which means, as some colleagues have pointed out, employees who work for the same employers continuously for four weeks or more and for at least 18 hours per week. We name that requirement in short as "4-1-18". Employees whose working hours do not reach that criteria will not be covered by the Employment Ordinance. They cannot enjoy any rest days, paid holidays, paid annual leave, maternity leave with pay, sick leave allowance, severance payment or long service payment.

Similarly, the present Employment Ordinance does not apply to government employees under non-civil service contracts (nor are these employees protected by the Civil Service Regulations). Although the Civil Service Bureau stressed that the Government has employed such employees on conditions better than those stipulated by the Employment Ordinance, and that an internal mechanism for complaints is in place, it would not be difficult to imagine

the feeling of helplessness when employees are confronted with labour disputes or unfair treatments and when they have to fight a lone battle against their departments, albeit on justified grounds. The Government should not have deprived such employees of the basic lawful rights they are entitled to. That is to say, during labour disputes, they should be able to rely on the Employment Ordinance and the basic protection contained therein by lodging complaints to instituting proceedings through the Labour Department or the Labour Tribunal as a more open and fair channel to solve their problems. Why does the Government not accede to a simple request as such?

Due to some loopholes in the existing law, many employers would use whatever means they can find to dodge their lawful responsibilities and exploit their employees further and further. Some Members have cited examples evidencing this phenomenon. For example, a sizable company in Hong Kong has come up with contrived arrangements dealing out work for employees at a 17.5-hour week or a 17.5-hour plus 15-minute week, which is a 17-hour and 45-minute week. This has been done to a downright unethical extent. It is after the Asian financial turmoil in particular that some companies focus on short-term benefits by sacrificing amicable labour relations through amending employment contracts unilaterally to force employees to become self-employed. Thus, monthly-paid workers are dismissed and are replaced by hourly-paid workers or contract workers just to compromise the lawful rights of their employees. Now, there exist a group of workers who cannot enjoy the protection of the Employment Ordinance though they have worked for the same employers for eight or 10 years because they cannot satisfy the requirements of "continuous contracts" as defined under the law. We often stress that Hong Kong is a place under the rule of law and people are equal before the law. Madam President, to this group of disadvantaged workers, where is equality? The law should treat everyone equally and protect all workers just as the Employees Compensation Ordinance and the now effective Mandatory Provident Fund Schemes Ordinance do. There should not be a distinction between full-time, part-time, hourly-rated workers or workers under "continuous contracts". All should be protected. We, the Federation of Hong Kong and Kowloon Labour Unions, have been making demands on the Government to put all employees under the protection of the Employment Ordinance once they become employed. Unfortunately, the Government has still employed "delaying tactics". It fails to see developments in the labour market but stresses that there are only a few disadvantaged workers as such and put them beyond the protection of the law.

We hope the Government can make suitable arrangements and impose severe penalties on some employers who teases the law and intentionally compromise the lawful rights of employees. Only in this way, can the Government deter such behaviour. I hope the Government can target at such law-breaking employers. The Government should conduct a full review on all laws, in particular, laws that have for some time been controversial on sick leave allowance, labour holidays, public holidays and laws involving discrimination and unfair treatment.

Madam President, undeniably, labour and capital have conflicts of interest. The enactment of the Employment Ordinance seeks to use the law as a yardstick to protect everyone's interests. I hope the Government can give further thoughts to these issues and adopt the views of Members. Thank you.

PRESIDENT (in Cantonese): Miss LI, your time is up. Please sit down.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, there is now a group of employees neglected by the protection of the Employment Ordinance. They are "special" part-time workers. They are different from the genuine part-time workers, who work part-time to the demands of the particular kind of work they undertake. Some are part-time home helpers, working for only several hours a day. Some are home helpers who do baby-sitting or foodstuff purchasing and cooking chores for double-income families when their children leave school. These part-time workers benefit both themselves and their employers. Indeed, many housewives want to take care of their families but at the same time want to secure some income, so they are pleased to do such part-time work.

The "special" part-time workers I was referring to work a certain number of hours but just below 18 hours a week. For instance, I saw an advertisement from a bank for staff specifying that work is to be performed on a 17-hour week. This mode is widely applied by some retail trades, fast-food shops and chain stores. However, a small number of working hours yields less income. Another tactics employed is that one week out of four consecutive working weeks is chosen in which an employee is allowed to work for 17 hours.

Part-time workers work in such a way not because of the nature of the work but because employers deliberately force employees to be precluded from

satisfying the "4-1-18" requirement in order to dodge certain legal responsibilities that have to be shouldered by employers. In fact, protections in the Employment Ordinance represent only very basic and minimal protections, such as wages in lieu of notice, long service payments and severance payments. Employers who want to dodge even the most basic responsibility to provide protection for their employees are unscrupulous. I believe no law-abiding employers with a conscience will tolerate such employers

Earlier, we, including several Members from the labour sector and the Labour Advisory Board, proposed a 72 hours four-week in requirement. That means employees who have worked for 72 hours in four consecutive weeks will come under the protection of the Employment Ordinance. This proposal can extend the protection under the Employment Ordinance to employees who have to work only 17 hours in one of a four-week period. The total number of working hours needed under the proposal is the same as that required under the "4-1-18" scheme.

In his motion, Mr LEUNG Fu-wah did not spell out this proposal. He only said he proposed to extend the applicability of the Employment Ordinance to part-time employees. That was because he did not want the focus of the debate to fall on the feasibility of the proposal or on whether it is the best proposal. Rather, the focus should be set on extending the applicability of the Employment Ordinance and protection granted to employees. Despite that, I believe Mr LEUNG's demand is one we would all agree to.

Another extension of the applicability of the Employment Ordinance that should be considered is coverage for non-civil service employees employed by the Government.

No civil servant is now under the protection of the Employment Ordinance. The terms of employment and service conditions of pensionable civil servants and contract civil servants are governed by the Civil Service Regulations, which, however, do not apply to government employees under non-civil service contracts and such employees are not protected by the Employment Ordinance either.

All that relates to the terms of employment and salary for such employees is hinged upon the undertaking made by some government officers, who said "terms will not be worse than those under the Employment Ordinance".

Despite this undertaking, which is a *de facto* statement, disputes sometimes are unavoidable. While an ordinary employee may seek assistance from the Labour Department or even arbitration from the Labour Tribunal, civil servants can only turn to their employer, which is the Government, not a third party, for complaints. How can there be a fair arbitration?

We have contacted government employees under non-civil service contracts on many occasions and found they have very low bargaining powers. Should a labour dispute arise, they often fail to get objective treatment because they do not have the chance of arbitration by a third party. One way to improve the situation is to extend the applicability of the Employment Ordinance to such employees. The Government, being an employer of employees under non-civil service contracts, should be governed by similar laws as those governing other employers.

The Employment Ordinance has been implemented for many years, providing minimal protection to employees. As we enter the 21st century, more and more employees, however, fail to obtain even the most basic protection. We very much detest this. The Labour Department and employers should appreciate the importance of keeping abreast of the times by making suitable amendments to the law so that employees entitled to protection are granted the protection they deserve. I urge colleagues to support Mr LEUNG Fu-wah's motion and the amendments by Mr LEE Cheuk-yan.

Madam President, I so submit.

MR TOMMY CHEUNG (in Cantonese): Madam President, the motion tabled is mainly about the Employment Ordinance. But when the business sector discuss it, they are at a disadvantage because they will often be accused of being "employers with no conscience". This afternoon, many workers outside the Legislative Council building vigorously chanted and accused employers of being crooks. To be fair, out of the thousands of employers in Hong Kong, it is not surprising to find some unscrupulous ones, but the number should be small. Are there "employees with no conscience"? Certainly, there are. But then, employers would just keep their mouths shut, neither would they hold rallies loudly outside the Legislative Council building. Why? Because most employers are rational enough and they understand that a vast majority of the employees are good.

In the original motion and the amendment tabled today, Members from the labour sector request that the applicability of the Employment Ordinance be extended to include more workers. I must state at the outset that recruiting part-time workers does not mean exploiting them. Not extending the applicability of the Employment Ordinance to these workers does not mean there is exploitation. On the other hand, extending the applicability of the Employment Ordinance to cover more workers does not mean they may obtain more protection. The "4-0-72" proposal now being suggested may result in some employers making their staff work for 71 hours and then stop at that. How can workers be protected? Very often, an addition may come up with something less and Members from the labour sector may have done harm although they have good intentions.

As an example, let us start with Mr LEUNG Fu-wah's motion, in which it is proposed that the definition of "continuous contract" in the Employment Ordinance be relaxed. He is suggesting that the present "4-1-18" requirement be changed to "4-0-72", that is, a requirement that an employee should work for 72 hours in four consecutive weeks in order to come under the protection of the Employment Ordinance. Members from the labour sector, out of their wishful thinking, regard the "4-0-72" proposal a more protective one for our workers. This is a rather childish thought. Have they studied the possibility that under the "4-0-72" proposal, employees may get even less working hours than those under the "4-1-18" proposal? Thus, the new proposal may even result in an even smaller number of working hours in a month for part-time workers, thus compromising the rights of part-time workers to work more hours and causing them to have their income reduced. Changing from "4-1-18" to "4-0-72" would increase administrative work for employers but reduce income for employees. What good is done for either party? At the end of the day, workers may find the loss outweighs the gain.

To the catering industry, there was a time in the past when full-time staff could be recruited in huge numbers because most of them worked at low salaries and on monthly basis. Now, the wages of part-time workers in the industry are high but business is unsteady. Because the catering industry is suffering from a lull in their business, operators have to employ temporary relief workers to tackle the work arising from a sudden influx of business. Indeed, many countries, such as the United States, recruit part-time workers to cater for work demands at a time when business is unsteady yet wages are high.

I must reiterate that recruiting part-time workers is never a manoeuvre used by employers to exploit their staff. In the catering industry and in many other types of work, part-time workers do not require the provision of welfare applicable to full-time ones. The reality is that the hourly rates of part-time workers are much higher than their full-time counterparts. Higher wages have in fact compensated for the welfare they should have been given.

I understand the Labour Department and the Census and Statistics Department will be completing a detailed survey on part-time work before the end of the year. Members should wait till the survey is completed, when the latest information is ready for everyone before deciding whether it is necessary to amend the law.

Mr LEE Cheuk-yan's amendment contains a proposal to abolish the requirement that the employers' contributions to mandatory provident fund (MPF) schemes be offset by the severance payments or long service payments payable to employees. The Liberal Party cannot accept that proposal. The offsetting mechanism made by employers for employees in respect of occupational retirement schemes has been implemented for many years. With the coming into force of the Mandatory Provident Fund Schemes Ordinance, the practice is now extended to cover the MPF schemes. If the practice is discontinued, then employers are in effect required to provide to employees both MPF schemes and severance payments or long service payments. Hence, there is going to be a duplication of welfare benefits. Contributions to the MPF schemes alone have already been a heavy burden to operators in the catering industry, the retail trade and other trades. Before operators can regain their strength, there is now a suggestion that employees must be provided with full severance payments or long service payments. It is rather like having unionists run our businesses. If that were the case, it would be very difficult to attract investors to do business in Hong Kong.

Moreover, it has only been a few months since the implementation of the MPF schemes. I recall that when the Government started to promote the MPF schemes, employers were told that severance payments could be offset by the employers' contributions to the MPF schemes and that was a major reason used in persuading employers to join MPF schemes. Now that the MPF schemes are in place and if the Government says the offsetting is not possible but full severance payments must be made, the Government would have been very dishonest. I am afraid this would cause more confusion and further antagonize employers.

The last part of the motion is about punitive measures on employers. The Liberal Party regards this amendment to the relevant law unnecessary because there are already clear and adequate punitive measures in existing laws and the Labour Department are conducting periodic inspections to enforce the laws. The Liberal Party does not understand why employers are being singled out through additional penalties on them. I wish to remind Members from the labour sector that many employers have already lost their savings of a life time. If additional punitive measures were imposed, there is a possibility that employers may end up in jail. Is that the intention? Such threats can only drive all employers and investors to withdraw their investments and labour unions would have a difficult time helping an army of unemployed workers to find jobs. Can the unionists succeed in finding enough jobs for everyone?

Mr LEE Cheuk-yan mentioned earlier that in our debate today some employers with a good conscience should be applauded. I only wish to remind Members that Hong Kong has been enjoying amicable labour relations. We should not amend our laws frequently just because a handful of the employers have shown unethical behaviour. For the above considerations, the Liberal Party opposes the motion and the amendment.

Madam President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, recently the labour sector in Taiwan has come up with a popular concept named "pure labour", meaning the relation between employers and employees has returned to one of pure transaction of labour. Employers are willing to offer wages in exchange for labour only. They are reluctant to assume any responsibilities as regards workers' basic rights, benefits, and so on.

"Pure labour" is surely not very popular in Hong Kong. However, in real life, I think that the situation of Hong Kong can definitely catch up with that in Taiwan. Why would I say that? Many colleagues have just mentioned that many employers are now trying hard to prevent their employees from meeting the requirement of "continuous contract" under which employees must "work consecutively for four weeks and for 18 hours a week", so as to shirk their responsibility of providing benefits to the employees. Recently, the situation has worsened. I believe Madam President has been told that, with the implementation of the MPF Scheme, many employers have forced their employees to change their status to that of self-employed persons, thereby

depriving them of all their rights and interests. This point has also been raised by a number of Honourable Members earlier. I cannot help asking this question: Is our society becoming less and less compassionate? What happens to the rights, interests and dignity of workers?

Madam President, with the establishment of the Government of the Special Administrative Region, the 1 May Labour Day was declared a statutory paid holiday. What is the purpose of doing so? The answer is we hope to upgrade the status of workers and ensure that their dignity is protected. It is indeed very ironic that what happens in real life always turns out to be the opposite. This is why I do not find the gathering held at Government House on 1 May very meaningful. Given the situation faced by most workers nowadays, there is really not much they should be pleased with. Today, the Labour Day is no longer of significance. Workers no longer work for eight hours. Instead, they work for 12 hours or more. What is the point of celebrating the Labour Day? Unless we can actually achieve the purpose of the Labour Day, the celebration will just be meaningless.

Madam President, my colleagues in this Council have pointed out more than once that some employers (not all of them) have racked their brains to dodge responsibilities just because Members representing the labour sector have been asking too much. Subsequently, employers are forced to resolve the problem with an "equally comparable" method. Madam President, sometimes I would quietly think about this question: Are we asking too much? For instance, we hope our workers can enjoy one-day paid leave after working for one week. Are we asking too much? Under the requirement of "working consecutively for four weeks and for 18 hours a week", however, many workers are not given any holiday although they have worked for one week simply because they have failed to work more than 18 hours. Is it fair? Madam President, we are not making an excessive demand. We just hope our society can become more compassionate and those "unscrupulous" employers can refrain from treating workers in this way. What is more, we hope the Government can adopt a more positive attitude in providing the grassroots with better protection.

Madam President, Mrs Sophie LEUNG who was sitting besides me, is not here at the moment. She has always criticized us for using the term "employers with no conscience" because she believed that would trigger conflicts between employers and employees. However, I would like to make this point: Will it be possible for us to create an antagonistic relationship between employees and employers simply by inciting the employees? Mrs Sophie LEUNG has just

come back. Madam President, the employees' grievances are often caused by the tactics used by the employers, not by instigation on the part of some people. As what I have just said, subsequent to the implementation of the MPF Scheme, some employers have forced their employees to change their status to that of self-employed persons. I wonder if these employers have considered the consequences of doing so. As self-employed persons are not covered by workmen's compensation insurance, they will not be protected if they suffer any work-related injuries.

Madam President, I have recently come across a case in which an employee after being forced to change his status to a self-employed person, died unfortunately in an industrial accident. Eventually, no compensation was given to him just because he was a self-employed person. Madam President, what can we do about it? If one of our colleagues here in this Chamber were that employee or his family member, what will he or she think? What can we do to redress the grievances of the employee? In my opinion, that the employees' discontent and indignation are often caused by their unscrupulous employers, not by the so-called "trouble-makers" like us or nosy labour representatives.

Some people may say that the existing laws have already provided employees with substantial protection. As Mr Tommy CHEUNG said earlier in debate, there has been sufficient protection in many aspects. But has he ever considered that these are even more the loopholes in the existing laws? Just now, I have mentioned the point that some workers work for 17 or 18 hours a week. Therefore, we should not say we can ignore this problem at the moment. Of course, I understand that Hong Kong is still suffering from economic hardships. At the same time, many small and medium enterprises (SMEs) are still in trouble. However, can we ignore the difficulties of "wage earners" simply because operators of SMEs or employers are still now in dire straits? I hope the dignity and interests of wage earners will not be compromised as a result of what is involved in the discussion today. In time of economic difficulties, we must understand that we must share the same boat. We will not be sharing the same boat if we only care for the employers' interests at the expense of the employees.

We propose to amend the Bill today because we want to plug the loopholes, not because we want to ask for more rights. In fact, the loopholes existing in the Ordinance have already caused hundreds of thousands of employees great difficulties.

Madam President, I so submit.

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

DR LUI MING-WAH (in Cantonese): Madam President, I understand fully the reasons behind the moving of the motion of "effective protection of statutory rights and benefits of employees" by the Honourable LEUNG Fu-wah and I also appreciate the motive of the Honourable LEE Cheuk-yan's amendment. Both Mr LEUNG and Mr LEE represent the rights and benefits of the labour sector. To speak for the labour sector is indeed worth encouraging. However, we must take the reality into consideration: first, with the constant amendments and legislation over the past decades, labour laws in Hong Kong are already next to perfection; second, the Labour Advisory Board in Hong Kong has been noted for its reputation and fairness in handling matters relating to labour legislation. Its work and recommendations should be respected.

Madam President, as the saying goes, "Even fingers are not equal in length". Some unscrupulous employers have made use of the grey areas in law to do something detrimental to the rights and benefits of employees. I definitely oppose that. However, we should not casually amend the law just because of an isolated incident. This is not showing of respect to the law.

Madam President, as the crux of the problem lies in law enforcement, we should urge the Government to perfect the procedures of law enforcement and punish the unscrupulous employers.

However, I would like to pay tribute to Members representing the rights and benefits of employees. They have chosen to move this motion in this meeting, the last one held before Labour Day on first of May to arouse attention and stimulate discussion. Though their painstaking efforts warrant my sympathy, I cannot subscribe to their rationale.

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

MR FREDERICK FUNG (in Cantonese): Madam President, in the wake of the financial turmoil, many employers choose to hire more temporary or part-time staff in order to reduce operating costs. Up to March 2001, more than 110 000 part-time workers in Hong Kong have failed to enjoy such statutory labour benefits as paid sick-leave, rest days and labour holidays because they cannot

meet the requirement of being an employee employed under a "continuous contract" as provided for in the Employment Ordinance. According to the existing Employment Ordinance, employees should work for an employer continuously for four weeks or more, and for at least 18 hours a week before they are considered to be employed under a continuous contract and are entitled to enjoy the abovementioned benefits and holidays, as well as benefits yet to be mentioned, such as maternity protection, severance payment, and so on.

Some employers have tried every possible means in order to shirk their responsibility to give their employees the benefits and protection as required by the law. For instance, they might allow their employees to work 17 hours or even 17.5 hours a week, or to work for the first three weeks in a month only, in order to exploit the legal loopholes, thus depriving their employees of labour protection. I was even told that a woman has worked for a large chain supermarket as an odd-job worker for an hourly wage of $19. As her working hours per week is less than 18, she is not protected by the Employment Ordinance. For two years, her employer has deliberately limited her working hours to less than 18 so that she has been unable to enjoy the abovementioned protection.

Recently, even the contractors awarded the toilet cleansing work by the Food and Environmental Hygiene Department reportedly resorted to similar practices. As a result, workers employed by these contractors were unable to enjoy those benefits. What should the Government do in order to resolve this problem? Both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I share the several principles put forward in the original motion and the amendment. In the course of discussion, however, I would like to tell Members from the labour and business sectors a story. I believe Members have heard of this story before: Once upon a time, there was a monkey. Everyday, its master would feed it by giving it four bananas in the morning and three in the evening. Considering such arrangement not good enough, the master later changed his mind by feeding the money with three bananas in the morning and four in the evening. And, at the end, the monkey "protested". In fact, this is the story about "a monkey which always changed its mind". Is "4-1-18" or "4-0-72" better? Even if the arrangement of "4-0-72" is implemented, employers may still be able to limit the working period of their employees to 71 or 71.5 hours a month. It will then give rise to another legal loophole. I do not want to hold discussion or trigger disputes as regards the example. I absolutely agree with the principles involved but how can we achieve our objective in concrete terms? The relevant bureau must help us to find the

solution. I certainly do not want to see workers in Hong Kong being deprived of their due benefits by their employers who resort to the tactic of "changing mind constantly".

Earlier on in the debate, the Honourable Tommy CHEUNG also talked about a similar story of changing minds. In his opinion, although some employers have not given their employees such benefits, they have offered higher wages. The logic involved is therefore the same. In spite of what the companies referred to by the Honourable Member have done, I can see that many workers are not given even "three in the morning and four in the evening". They might receive "three in the morning but one in the evening" only. However, they cannot stop working. I believe the Honourable Member was just trying to cite an example by saying that some employers have chosen to offer higher wages in lieu of benefits. Can the Honourable Member guarantee that all employers in the sector referred to by him are following this practice, or even go so far as to guarantee all employers in other sectors are following this practice too? I do not believe in the example he cited. I will only treat it as a story or a fable. In my opinion, the relevant protection is essential. Perhaps the labour sector, business sector and employers should endeavour to work out a better way to ensure employees are given their due protection, so as to prevent the occurrence of the phenomenon of "constantly changing one's mind". Actually, the focus of my speech is to appeal to employers not to "change their mind constantly".

On the other hand, I would like to make a mention of our largest employer — the Government — currently employing a large number of government employees on non-civil service contract terms. These employees are protected neither by employment regulations enacted with respect to the civil service regime nor by the Employment Ordinance. I feel very sorry that the Government, which poses as the biggest employer in Hong Kong, has failed to set a good example.

Madam President, according to the information provided by the Labour Department, up to 7 094 claims concerning unpaid wages and deduction of wages have been lodged in 1999, representing an increase of 15% over 1998 when some 6 100 claims have been received. The number of cases received in the first 11 months of 2000 is similar to that in the whole of 1999. In other words, the total figure of 2000, calculated up to the year-end, must be higher than the one in 1999. The number of cases claiming unpaid wages or compensation for deduction of wages has indeed reflected the fact that workers

suffer losses in face of these problems. Here is a truth that cannot be refuted by whatever means: Employers must pay wages to workers for their hard labour. I hope the Secretary can examine what can be done to ensure all employers put this principle into actual implementation.

The labour market in Hong Kong is changing. It is indeed necessary for the Employment Ordinance to make corresponding improvements in light of changes to deal with and plug the loopholes in the existing laws. This will ensure that employees can get back their due wages, holidays, benefits, and so on, for their hard work and labour.

Both the Hong Kong Association for Democracy and People's Livelihood and I support Mr LEUNG Fu-wah's motion and Mr LEE Cheuk-yan's amendment.

Thank you, Madam President.

MR HOWARD YOUNG (in Cantonese): Madam President, currently, employees being protected under the Employment Ordinance have to work for an employer continuously for four weeks or more, and for at least 18 hours a week. This is the so-called "4-4-18" formula. Subsequent to the changes in the employment pattern in Hong Kong, there is a rising trend in employing part-time employees. For this reason, some people proposed that the definition of "continuous contract" should be relaxed to cover part-time employees as well. In other words, the topic for today's discussion should be whether part-time employees should enjoy the same benefits as permanent employees.

Actually, part-time employees are not totally unprotected. Even part-time employees who cannot actually meet the requirement of "4-1-18" are still protected in certain aspects. Like permanent staff, they are entitled to statutory holidays, wage protection, duty-related injury or death compensation, and even protection offered under the Mandatory Provident Fund scheme, which took effect earlier this year. We should recognize that protection and benefits are not entirely the same. Earlier on in the debate, the Honourable Tommy CHEUNG mentioned the practice of some employers operating restaurants. At this juncture, I would like to respond to a question raised by the Honourable Frederick FUNG a moment ago. Insofar as the hotel industry is concerned, some employers are actually willing to hire part-time staff by offering them hourly wages higher than those received by permanent staff. Of course, I am

talking about employees of the same rank. We will easily get the result by multiplying the hourly wage by the number of working hours. This is aimed at compensating the part-time staff for they are unable to enjoy certain benefits, such as holidays, which are given to permanent staff only. Such an arrangement not only would allow flexibility in deploying manpower, but would also reduce unnecessary administrative and management work, cut down expenses, and streamline working procedures. In our opinion, the enforcement of protection can be effected in a more compulsory manner, while benefits can be given through a flexible approach. Furthermore, there is an administrative problem: Many hotels and restaurants are actually relying on a third party in hiring a certain number of staff to cope with their different operational needs everyday. As a result, the employees will not know directly which employees have reported duty and which employees have not. What they ask for is just having a sufficient number of people to work. It is actually extremely difficult for them to have a detailed knowledge of the employees who have worked for over 18 hours and those who have worked less. I will not believe that they will make a deliberate arrangement to limit the working hours of their employees to 17 hours per week because they simply do not have the time to do this. This also explains why a number of employers prefer offering a higher daily wage or hourly wage because this is good for both temporary part-time staff and employers.

Part-time workers might not have just one part-time job. They might work for a number of part-time jobs at the same time. If the scope of protection provided for in the Employment Ordinance is extended to cover part-time employees, it will be difficult to ascertain that they are not enjoying multiple benefits. This will aggravate the administrative pressure on employers, in particular operators of small and medium enterprises.

Just now, the Honourable LEE Cheuk-yan mentioned the situation of the hotel industry. I have also received some complaints from the industry alleging that, in handling or mediating disputes, the Labour Department has only cared about the labour side while ignoring the importance of giving support to the management side. Under the Labour Department, the Labour Relations Division is responsible for mediating labour disputes, whereas the Workplace Consultation Promotion Unit is responsible for encouraging the labour and management sides to conduct effective communication, consultation and voluntary negotiations, in order to eliminate labour differences and maintain a good relationship between the two sides. It was reported recently that certain hotels had encountered some labour problems. As the labour side has chosen to

stage a sit-in protest outside a hotel, the employer of the hotel decided to seek help from the Labour Department to mediate the dispute. But as far as I know it, the Labour Department has not reacted positively. It has even made a lot of excuses and indicated that there was nothing it could do to help. The argument it held was: it was not the right time for the Labour Department to intervene. This is really absurd. In my opinion, three parties would incur losses if the labour side stages a protest outside a grand hotel — the three parties are the customers, the employer and the staff. It is most ridiculous that even after numerous appeals for help, the relevant authority has not conducted any investigation to dig out the truth. Finally, it just persuaded the employer to compensate the employees to avoid trouble and embarrassment. This "ostrich" policy has brought great disappointment to the employer. Therefore, I would like to appeal to the Government to review the existing system for co-ordinating labour relations. At the same time, the Labour Department should, making the most of its intermediary role, lobby the parties concerned with a positive in disputes between the labour and management sides, in order to improve their relations.

As for whether the scope of protection should be extended to cover part-time employees, I think the Administration should consult the industries likely to be affected extensively, particularly the hotel and catering industries, in order to acquire a full understanding of whether this idea will produce any adverse impact on those industries.

Madam President, I so submit.

MISS CHOY SO-YUK (in Cantonese): Madam President, having experienced serious challenges in these past few years, the economy of Hong Kong is now in the midst of a restructuring process. For this reason, the environment and difficulties facing both the workers and their employers are indeed very much different from what they have seen in the past. One of the most obvious changes is that the mode of employment tends to be more flexible, and that the number of labourers employed on short-term contracts or non-fixed working hours has increased tremendously. Further still, with the economic environment deteriorating, the number of labour disputes has also been on the increase. Under the circumstances, it is indeed necessary to review the existing Employment Ordinance to see if it can still cater for the need of the times.

To begin with, at present, the Employment Ordinance prescribes that the contract of employment of an employee is considered a continuous contract if the employee concerned has worked for the same employer for a period of four or more weeks and at least 18 hours per week. Besides, labour rights and benefits such as paid sickness day, statutory holiday and severance payment are protected under the Employment Ordinance only if they are effective under a continuous contract. I trust that the relevant requirement of the Ordinance is made on the grounds that since part-time job and full-time job are, to a certain extent, not the same, the benefits for part-time and full-time employees should not be entitled to the same benefits. Given that they have their own full-time jobs, part-time employees can only work on their part-time jobs for a few hours weekly. As such, there is no need to duplicate the protection for part-time employees. Moreover, such provisions under the Employment Ordinance can also help to alleviate the burden on employers while enhancing their flexibility in recruiting employees and allocating resources.

On the other hand, however, one thing we should not overlook is that more and more firms are recruiting part-time employees as replacement for full-time employees, and that more and more workers are relying solely on part-time employment to earn a living. As indicated in some statistics, there were some 110 000-odd workers taking up part-time jobs in 1999, representing an increase of over 30% compared to 1997. With regard to these part-time employees, while their weekly working hours could be as long as 16 hours to 17 hours, the nature of their job was no different from that of full-time employees. Bearing that in mind, it does not seem to be reasonable for the Employment Ordinance to overlook the rights and benefits of these part-time employees. Moreover, some employers have in fact exploited the continuous contract requirement under the Ordinance and turned many of their full-time employees into part-time employees to avoid giving them the rights and benefits they are entitled to.

But then, the problem remains that when deciding whether or not the Employment Ordinance should be amended, we need to take into consideration a number of issues. For example, in the event the employee concerned having a full-time job already or working on several part-time jobs, how are we going to resolve the problem of duplicated protection? If part-time employees should be entitled to the same benefits as full-time employees', would be fair to the employers concerned and even the full-time employees working for the same firms? Furthermore, at the present moment when the economic environment in

Hong Kong is in the course of improvement while many small and medium enterprises are still in the midst of various difficulties, will any improvement to the Employment Ordinance add to the burden on these employers? If the cost for part-time employees should be increased tremendously, employers would most probably resort to employing full-time workers or having the work shared by the existing part-time employees. In the end, the number of part-time employment would be decreased. In view of the complexities involved, the Government should really look into the matter in depth and solicit opinion extensively.

Madam President, another issue that is closely related to the rights and benefits of workers is the assurance that employers cannot deliberately delay making the statutory payments that employees are entitled to. I trust that no one would object to this major principle. As a matter of fact, according to the Employment Ordinance, employers deliberately delay making statutory payments are liable to criminal charges. Last year, for example, the Labour Department has successfully instituted prosecution against 54 cases of employers defaulting on wage payments. The employers concerned were fined some $10,000 to $15,000. As regards deliberate default on severance payment, it is also a criminal offence. According to section 31O of the Employment Ordinance, where an employee is entitled to a severance payment under the Ordinance, and when the Minor Employment Claims Adjudication Board or Labour Tribunal has ordered that any sum in respect of severance payment is payable by an employer, the sum shall be paid within 14 days from the date of the order concerned. An employer who without reasonable excuse fails to comply with the order shall be guilty of an offence and shall be liable on conviction to a fine at level 5. In order to provide workers with full protection, I hold that the Government should enhance its law enforcement efforts and institute prosecution against employers who have breached the law, so as to achieve a deterrent effect. The Government should also step up its promotion efforts to enable employers to understand the result of offending the law on the one hand, and to enable employees to understand better their own rights and benefits as well as the available channels for complaint on the other.

Madam President, the success of Hong Kong and the development of our economy owe a lot to the harmonious relationship and close co-operation between employers and employees. To preserve this good tradition, the labour laws in force in Hong Kong must take into consideration the interests of both the employers and the employees as far as practicable. For this is a fair and

reasonable approach to dealing with labour matters. On the other hand, since the Labour Advisory Board (LAB) have been operating smoothly and reflecting fully the interests of both the labour side and the management side, any amendments to labour laws should be made in accordance with the decisions of the LAB. Madam President, I so submit.

MR ANDREW CHENG (in Cantonese): Madam President, we find that the protection for employees has become weaker and weaker in recent years as more and more employers have taken advantage of the loopholes and blind spots in the law and they have taken up less responsibility for their employees in order to reduce costs. These examples show that the Employment Ordinance has gradually failed to effectively protect the rights and benefits of employees in Hong Kong.

In recent years, a lot of employers tend to employ more and more causal workers and they employ part-time workers in substitution for full-time workers. The employment of part-time workers is advantageous because it will be more flexible for employers and employees. However, the employment of casual workers should definitely not become a tool to deprive workers of their rights and benefits or to evade legal responsibilities. There are quite a few examples in which the employers employ workers under the terms of "4-1-16" (not less than 16 hours of work a week for four consecutive weeks) or "4-1-17" (not less than 17 hours of work a week for four consecutive weeks) so as to avoid giving them the protection they should have according to the law.

When the Panel on Manpower discussed early last year whether the definition of "continuous contract" under the Employment Ordinance should be amended, the Administration said it was not necessary to do so because the existing definition of "continuous contract" has already covered around 99% of the employees, including part-time employees. That being the case, even if the definition of "continuous contract" is deleted so that all workers, whether part-time or full-time employees, can enjoy the same benefits, the costs so increased should be very limited. Therefore, I hope Members, especially those from the business sector, will not be over-sensitive about the proposal made by the Honourable LEUNG Fu-wah today because the proposal to improve the rights and benefits of workers may not necessarily increase the costs of Members from the business sector or the industry.

Government officials have pointed out that the existing law or measures have covered a lot of problems including the problems mentioned above. For example, the Labour Tribunal can adjudicate that there are continuous employment relationships between employers who intentionally adopt "4-1-17" (not less than 17 hours of work a week for four consecutive weeks) and their employees. Yet, why did the law not specify this more clearly? Even if the law has clearly specified the responsibilities of employers, some of them often will not obey the law. For instance, some employers intentionally delay making severance payments and ignore the adjudication of the Labour Tribunal. The Administration really needs to amend the relevant law to specifically protect the rights and benefits of employees. It should also take stronger punitive measures against "employers with no conscience" who do not obey the law and intentionally evade responsibilities in order that the relevant law can give a deterring effect.

Another unreasonable point is that the law does not protect government employees on non-civil service contract terms. According to the Civil Service Bureau, although the Employment Ordinance does not apply to government employees, the Government as a good employer will try its best to ensure that the non-civil service contract terms for government employees will not be less favourable than the terms under the labour legislation. This is a matter of principle and it is unreasonable that while employees are generally protected under the Employment Ordinance and over 100 000 civil servants are protected by the Civil Service Regulations, government employees on non-civil service contract terms are not protected by law.

The Government has concluded contracts with these employees but there is no specific provision in the existing Labour Tribunal Ordinance that the ordinance is binding upon the Government and the courts have not explicitly judged whether the Tribunal has the right to adjudicate on disputes between the Government and its employees over employment contracts. The problem will emerge when there are disputes between employees on non-civil service contract terms and the Government. The internal practice is after all an internal practice and statutory protection is unalterable, so the Government cannot subjectively say that it is a good employer who will not treat its employees unfairly. As regards the issue that the law does not protect government employees on non-civil service contract terms, the Government should definitely consider whether they should have the protection given to civil servants.

The Democratic Party thinks the abolition of the requirement that the severance payments or long service payments payable to unreasonably dismissed employees be offset by employers' contributions to the occupational retirement schemes or mandatory provident fund schemes absolutely deserves consideration. But we think that severance payments and long service payments are somewhat different in essence. Severance payments are compensation to employees who have been dismissed while long service payments are more closely linked with retirement benefits. Therefore, regardless of whether or not employers have unreasonably dismissed their employees, severance payments should not be offset by the employers' contributions to the occupational retirement schemes or mandatory provident fund schemes, but we consideration can certainly be made in respect of long service payments. The Democratic Party hopes that the Administration will consider and follow up this issue again.

Recently, especially after the implementation of the mandatory provident fund system, more and more employers have changed the employment contracts of employees into service contracts, so, employees become self-employed and they are deprived of benefits, protection and such compensation as compensation for work-related injuries. This is very unfair but as the employment market remains gloomy and the unemployment rate in the new quarter has climbed to 4.6% again, employees have to swallow their fury despite the fact that they have been forced to become self-employed. The Government should look squarely at the problems and prevent employers to take advantage of the legal loophole to deprive employees of the benefits they should enjoy.

Madam President, next Tuesday is the Labour Day on first of May and Hong Kong people have already enjoyed the Labour Day holiday for three years. On the eve of the Labour Day holiday, I hope that the Government will really protect the statutory rights and benefits of manual workers by law.

Madam President, I support the motion and the amendment on behalf of the Democratic Party.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, according to the latest figures released by the Government, the rate of unemployment in Hong Kong has again risen. In this connection, the unemployment for the period between January and March was 4.6%, representing an increase of 0.1 percentage point or an additional unemployed population of 5 000.

It is also revealed another survey that about 4.5% of the enterprises in Hong Kong will be laying off employees or cutting back on their manpower resources in the coming quarter of the year, and that most of such enterprises are the small and medium enterprises (SMEs).

According to an index survey of the business environment of SMEs conducted by the Hong Kong Productivity Council in December last year, while more than 50% of the SMEs interviewed indicated that they would impose a freeze on their employees' wage levels, another 2.2% said they would consider implementing a wage cut.

The purpose of my citing three different figures in a row is to demonstrate that the employment situation in Hong Kong is by no means optimistic. What is more, there have also been many news reports on employers violating labour laws recently. As discovered by the Labour Department recently, for instance, several contractors responsible for cleaning public lavatories are suspected of not giving employees any statutory holidays in breach of the law. Besides, there have also been news reports of unscrupulous contractors who have been so mean as to make employees work 14.5 hours daily for extremely low wages and granting employees only eight days' of vacation even though they have been working for almost two years.

Madam President, these cases of serious welfare deprivation on employees are indeed disturbing. Actually, the Employment Ordinance in force in Hong Kong has set out clearly a series of provisions providing protection for employees, why is it that there are still so many cases of welfare deprivation on employees? I believe this situation is worth looking into carefully.

Madam President, with regard to the motion on effective protection of statutory rights and benefits of employees moved by the Honourable LEUNG Fu-wah today, the Democratic Alliance for Betterment of Hong Kong (DAB) is in support of the three proposals contained therein to amend the Employment Ordinance. On behalf of the DAB, I will now expound our views on each of these proposals.

The first proposal is to relax the definition of continuous contract. In recent years, as a measure to streamline manpower, many companies have resorted to employing part-time employees to work during peak business hours only. On the other hand, as workers are generally earning less these days, more members of the public have to take up part-time jobs to earn more money

in supplement of their livelihood. According to the Government, under the existing provision, only those employees who have worked for their employers for a reasonable number of hours under a continuous contract could enjoy all the benefits provided for under the Employment Ordinance. The DAB does understand the intent of the provisions. However, as I can recall, at a meeting of the Legislative Council Panel on Manpower held early last year, many Members have raised a number of cases as examples to demonstrate that certain employers were employing a large number of temporary workers working for 17.5 hours weekly, just slightly less than the 18 hours requirement prescribed in the law. There were other employers who required their employees to work additional hours during the first three weeks of their employment, and then shortened their working hours to less than 18 in the fourth week, rendering the employees' terms of employment to fall outside the definition of continuous contract and making it impossible for the employees to enjoy the various benefits under the Employment Ordinance, including rest day, paid annual leave and so on.

Madam President, the unfair treatment suffered by part-time employees is fully attributable to loopholes in the law arising from the narrow definition of continuous contract prescribed in the Employment Ordinance. As such, there is indeed a need for the Government to amend the Ordinance to perfect the relevant provisions. Earlier on, Mr LEUNG Fu-wah has proposed to extend the scope of application of the Employment Ordinance, so that employees who have worked for at least 72 hours in a month could also enjoy the benefits prescribed in the Ordinance. In addition to plugging the loopholes mentioned, this proposal has also taken into account the intent of the Government in drawing up the continuous contract requirement. Given that it can serve two purposes, we consider this proposal worthy of support.

Secondly, the motion proposes to extend the applicability of the Employment Ordinance to government employees on non-civil service contract terms. In this connection, the Government has claimed that as a good employer, the terms of employment it offered would not be inferior to the standard prescribed in the Employment Ordinance, hence there was no need to extend the applicability of the Ordinance. I am afraid the DAB just could not agree with this view. As a matter of fact, if the applicability of the Ordinance should be extended, the Government would not suffer any losses or incur additional expenses. What is more, it could set a good example and show the society that the Government is willing to take the lead in observing the spirit of the Employment Ordinance, thereby winning more support for the Ordinance and enabling more "wage earners" to enjoy the benefits contained therein. The

DAB therefore hopes very much that the Government can actively take this proposal into consideration.

Thirdly, the motion seeks to impose punitive measures on employers who deliberately delay making statutory payments. According to my understanding, although the Employment Ordinance has provided for a number of statutory payments, such as severance payment and long service payment, and also the penalty for employers failing to make such payments, in many cases employees would need to negotiate with their employers over a long time or even resort to legal proceedings to obtain those statutory payments. To the employees, this arrangement is just so unfair. For this reason, the DAB supports that it should be stated in no unclear terms under the Employment Ordinance that employers who deliberately delay making such statutory payments should provide the employees concerned with additional compensation.

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

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

MISS MARGARET NG (in Cantonese): Madam President, although I have no expertise in labour matters, I feel that I need to take this opportunity to express my views in this respect. In my opinion, since Hong Kong has pledged to provide certain forms of protection for workers under the relevant international conventions and covenants, we have a responsibility to draw up laws to give effect to such protection.

Article 36 of the Basic Law, for example, stipulates that "Hong Kong residents shall have the right to social welfare in accordance with law. The welfare benefits and retirement security of the labour force shall be protected by law." It is therefore imperative that we give effect to these provisions. In addition, Article 39 of the Basic Law also makes it clear that "the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (SAR)." These are the requirements imposed on us by the Basic Law. Hence, the SAR Government has not only the right but also the responsibility to give effect to these provisions.

Madam President, in dealing with labour disputes, the legal profession would very often notice that because of the many loopholes in the existing legislation on labour, there could hardly be any real protection for the rights that workers are entitled to under the relevant conventions and covenants. For example, as pointed out clearly in the motion today, employees are often denied of their statutory compensation in the event of labour disputes. As such, we need to examine carefully what protection the various mechanisms provided for under the law, such as collective bargaining, have offered to them. Despite the fact that Article 27 of the Basic Law makes it clear that Hong Kong residents shall have the right and freedom to form and join trade unions, and to strike, and that Hong Kong also has in place laws providing protection for workers' rights to industrial action and collective bargaining, the relevant provisions are by no means complete or adequate. Workers shall have the right to take action if such action will not pose any threat to their employers. However, if the action concerned should cause their employers to suffer losses, their rights to such action would not be protected by the law any more. Loopholes of this kind are abundant in the law. Madam President, given that the legislation providing protection for workers' right to collective bargaining and to industrial action in the event of labour disputes are far from beyond reproach, it is all the more necessary for us to perfect the laws providing for the protection of employees' statutory rights and benefits.

Actually, the cases referred to by Mr LEUNG Fu-wah and Mr LEE Cheuk-yan in their speeches are not unfamiliar to us (I was not in this Chamber when they spoke, but the two Honourable Members had issued papers beforehand to explain to us the contents of their speeches). Indeed, we have heard about the situation of part-time workers, for example, for many years. Many employees have been forced to accept employment as part-time workers simply because their employers are unwilling to shoulder the benefits that long-term employees are entitled to under the Employment Ordinance. However, even though they are employed as part-time workers, these employees are in fact doing the job of full-time workers. Further still, the law has also stipulated that for a contract of employment to be considered as a continuous contract entitling the employee to different forms of labour welfare, the employee concerned has to work for more than 18 hours in a week. As such, it is very easy for employers to dodge their statutory responsibility, causing their employees to suffer losses. Actually, we do not need any further explanation on those phenomena relating to part-time employment, continuous contract and unfair dismissal I referred to just now, since we would come across such cases or hear about them in our daily lives.

Madam President, even if it is for the sake of the rule of law, we still should ensure that the laws we draw up are effective. If the meaning and objective of a certain piece of legislation are very clearly set out, but due to the constraints of the provisions contained therein it cannot be implemented or will very easily be exploited by some people as a loophole in the law, we must consciously improve and refine the legislation concerned in a very careful manner, so that the welfare of workers can really be taken good care of. As regards the level of welfare that workers should be entitled to, naturally an understanding as well as consensus in this connection should be reached through negotiation and exchange of ideas. Nevertheless, I hold that we basically have a responsibility to safeguard the welfare of workers.

Madam President, in addition to voting for both the original motion and the amendment later on, I should also like to take this opportunity to stress that the situation before us is not that we would offer protection for the benefits of certain workers because the policies concerned favour those workers, or that out of economic considerations, we do not have to safeguard the welfare of certain workers if we do not wish to do so. Rather, we have to make the laws concerned perfect to safeguard the rights and benefits of employees because we are required by international conventions and covenants as well as the Basic Law to shoulder our responsibility in safeguarding such rights and benefits for our workers.

Madam President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): Madam President, since the Labour Day on 1 May is only a few days away, I think it is very meaningful for us to discuss labour rights and benefits in this Chamber today. In their speeches, Honourable Members have talked about the present conditions of the Hong Kong labour force and the views of the labour sector. We can also take this opportunity to make suggestions to employers and the Government on ways to enhance the protection of employees' rights and benefits and to solve problems relating to labour rights and benefits through the enactment of legislation or other measures.

Here, I would like to add one point. Sometimes we would come across scenarios where even though the cases have been resolved through the mediation of the Labour Department, some "employers with no conscience" are still

unwilling to accept that workers are entitled to protection under the labour legislation. Or, even if the Labour Tribunal has ruled in favour of employees, such employers are still unwilling to pay compensations granted under the employees' rights and benefits entitlements. Under such circumstances, since employers are unwilling to pay compensations, they will purposely delay payments. According to the existing system, employees may have to apply for a writ of fieri facias or bankruptcy order to have the judgment enforced, while employers may also appeal to a higher court. If that happens, very often, employees will have to seek legal aid and engage the service of lawyers, otherwise they may be at a disadvantageous position. However, if they have to apply for legal aid, they will be required to pass an asset test. If employees fail to pass this test, they may find themselves in a very perplexed and helpless position.

Hence, I hope that the Government can find ways to help the employee concerned in relation to this issue. If the Labour Tribunal rules that employees should be granted rights and benefits in accordance with their entitlement, I think the Government should devote major efforts to help such employees to go through the necessary legal procedures. Thus, they will not be left high and dry and have to go through tedious procedures in fighting for their entitlements. I hope that the Government will consider this suggestion as well when it studies the relevant issue.

MR LAU CHIN-SHEK (in Cantonese): Madam President, the Honourable Tommy CHEUNG has just asked us not to casually name employers as "employers with no conscience". I have to elucidate that we have just referred to a very small number of employers who are unscrupulous. We have not casually described employers as "employers with no conscience" and we have only referred it to those employers who made us indignant.

First of all, we have referred to employers who forced employees reluctantly to become self-employed. In doing so, employees will not get compensation even if they are injured or die of injuries sustained in the course of work. We have also referred to employers who made us indignant. They make their employees work for three weeks and then suspend them from working for one week, causing workers never to be continuously employed and they will not enjoy such benefits as holidays, sick leave, maternity leave, severance payment or long service payment.

Mr CHEUNG has also said that casual workers have higher wages. We all know that casual workers have higher wages because employers often employ casual workers when they are the busiest, therefore, the workers have to work harder. Their work is very unstable and they will not know whether they have to work the day after today. Unlike employees on permanent terms, casual workers in hotels do not get a share of the tips, needless to say any other compensation.

Mr Howard YOUNG has just said that the protesters are "breaking their rice bowls", but the problem is that some employers have even failed to give their employees the legally specified pay for their leave. Some employers are willing to do so at last and some have also allowed casual workers to become employees on permanent terms. These employers who are willing to rectify their mistakes are worth praising. In this connection, I would like to applaud the Mandarin Hotel.

Madam President, an employee may be granted remedies against his employer by the Labour Tribunal under Part VIA of the Employment Ordinance if he is dismissed by the employer other than for a valid reason within the meaning of section 32K, and the dismissal meets the three conditions below. The three conditions are as follows:

(a) he is unreasonably dismissed by the employer because the employer intends to extinguish or reduce the statutory benefits (such as long service payment) to be conferred upon the employee;

(b) the employer unreasonably varies the employment terms of the employee because the employer intends to extinguish or reduce the statutory benefits to be conferred upon the employee;

(c) an employee is unlawfully dismissed during the period of her pregnancy or work-related injuries or on any sickness day taken by the employee in respect of which sickness allowance is payable or by reason of his exercising his right to be a member of a trade union or by means of the fact that the employee has given evidence, in any proceeding for the enforcement of the ordinance.

The proposals made in the amendment are pinpointed at condition (a) and condition (b) above. For convenience's sake, "unlawful dismissal" in my following speech also includes making unreasonable variations to employment terms.

Back in the 1970s, the labour sector has already requested the Government to introduce a bill on unfair dismissal. It is simply because a worker is not the goods of the employer and he should not be at the employer's disposal. We have especially taken into account the fact that a paid job is the only source of income of most workers, therefore, we must fight — I must stress, in any case, dismissal of a worker by an employer must be made on reasonable grounds. Otherwise, the livelihood of workers will be greatly affected and not protected. It is a pity that, under Part VIA of the Employment Ordinance, workers can only be protected against unreasonable dismissal in the case the employer intends to extinguish or reduce statutory benefits such as long service payment to be conferred upon the employee. In other words, an employer can arbitrarily dismiss an employee only if he has no intention to extinguish or reduce the statutory benefits to be conferred upon the employee. For example, an employer can dismiss an employee on the grounds that he has a potbelly, single eyelids or a strand of white hair on his forehead, but such grounds are obviously extremely unreasonable.

The Government always thinks that Part VIA of the Employment Ordinance has actually protected workers against unreasonable dismissal. I hope that the Secretary will go through section 32A and section 32L carefully before repeating his argument. Section 32A has specified that only when an employer has the intention of evading payment of statutory benefits can an unreasonably dismissed employee make a claim at the Labour Tribunal. Section 32L requires the Labour Tribunal to take into consideration the circumstances of a claim including the length of time that the employee has been employed under that contract of employment with the employer as compared to the length of qualifying service required for such statutory benefits as long service payment to be conferred upon the employee. Precisely because of these two provisions, a worker who have worked with an employer for almost five years (a worker who has worked almost "long enough" to be entitled to long service payment) can successfully get compensation for unreasonable dismissal while other workers cannot get any protection at all. Therefore, the Hong Kong Confederation of Trade Unions (CTU) suggests that the Government should amend section 32A and section 32L so that an employer must have reasonable grounds before dismissing an employee in any case to protect all employees in Hong Kong against unfair dismissal.

The CTU also thinks that the compensation arrangements for unfair dismissal are unreasonable. If the Labour Tribunal adjudicates that the employee should be granted remedies, it can make an order for reinstatement of

the employee under section 32N or make an award of terminal payments to be payable by the employer to the employee under section 32O.

There are nine items of terminal payments according to the law. The payments look "abundant" at first glance, but they have actually been exaggerated. Eight of the nine items are the rights and benefits originally enjoyed by employees. The only additional benefit is that even if the length of service of the unreasonably dismissed employee falls short of the length of qualifying service required for severance payment or long service payment, he can get severance payment or long service payment on a pro-rata basis. Yet, section 32O(7) and section 32O(8) specify that the contributions made by the employer to an occupational retirement scheme or a Mandatory Provident Fund (MPF) scheme should be deducted from the severance payment or long service payment made on a pro-rata basis. This reduction arrangement voids the only additional benefit under the termination payment because the employee will almost fail to obtain any compensation. In other words, after the MPF scheme has been implemented for some time, even if the tribunal adjudicates that the employer has infringed upon the right of the employee, the victim will not get any compensation.

I wish to particularly elucidate one point. The proposed abolition of the arrangement to offset the contributions made by the employer to an occupational retirement scheme or a MPF scheme by the severance payment or long service payment in the amendment is only applicable to cases of unfair dismissal but not other cases of dismissal. It is different from what Mr CHEUNG has just said.

Madam President, another proposal in the amendment is to urge the Government to impose punitive measures on employers who fail to grant their employees statutory rest days, statutory holidays or annual leave.

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

MRS SOPHIE LEUNG (in Cantonese): Madam President, whenever I hear learned Honourable Members using the phrase "with no conscience" inside (the phrase is used very often in this Chamber) or outside this Chamber, I will become very tense because a scene that made me very sad would come back to my mind. In this scene, the wife of the employer of a small enterprise asked me why people often use such a phrase and she even cried. She wondered what the

fault of her husband was — her husband did not cry but she did. She said that her two children were still very young and a "ban-mui" (Filipino tweeny) looked after them while she worked seven days a week in the factory. Why did she still have to subject to such bullying? She toiled with the dozens of workers in her factory. Why was she still being bullied? Why should our colleagues use the phrase "employers with no conscience"?

Madam President, I know this is not the topic of our debate today but the words "employers with no conscience" have been used many times today and a lot of colleagues have used the phrase. We can verify an argument by making different remarks and we need not to adopt such a sarcastic attitude because it is particularly unfair to small and medium enterprises (SMEs). Would the employers of large enterprises mind if their enterprises were the target? They can make investments all over the world as they like and they are unconcerned even if they have been so abused. They have managers handle everything and there are human resources managers and many other managers — Members can ask the Honourable SIN Chung-kai who often get in touch with large organizations. Large organizations would not mind even if they were abused. After they have been so abused, they will spend tens of thousands of dollars to make improvements if they like, or just remain indifferent if they do not like.

Why should my colleagues say so? More than 90% of the companies in Hong Kong are SMEs, why do we have to abuse them? Their business is declining under the present economic circumstances, why do we have to boycott them? Will they feel good? Do Members think that the motion will be carried after they have abused those employers? Will they feel very comfortable? Will they sleep well when they go home? Have we created job opportunities? What have we done apart from employing dozens of personal assistants? I really hope that Members will calmly consider the English saying "to pick someone of your own size to have a fight". Why do colleagues say so? Why can we not put forward arguments to persuade and convince others in this Chamber? Why do we use such words that made a group of innocent people feel down? I fully agree with Miss Margaret NG that this is discrimination. Why do we have to discriminate against these employers who work hard in silence? We should not do so and I hope colleagues will never use such words again.

Concerning the motion today, I know that our labour legislation is not good enough as compared with that of other countries, but it is still better than that of a lot of regions. For instance, the departure arrangements of some

countries may not be as good. However, as Miss Margaret NG has said, if there are departure arrangements, similar arrangements should be made for all work types. I understand her and I always admire Miss Margaret NG for her faithfulness to the law. Yet, we are not discussing whether we should be faithful to the law now.

I believe today nobody will agree that we should take the road back. But if you ask employers: "would you prefer returning to the 1980s when the economy started to take off on the condition that you have to implement many additional employee protection provisions or maintaining the existing economic situation without implementing any employee protection provision?" I can say that 100% of the employers will take the road back to the 1980s when the economy started to take off. As a Member has said, some are "playing fast and loose". Similarly, if we ask employees: "would you prefer returning to the 1980s when the economy started to take off when there is not any employee protection provision or maintaining the present situation in which there are employee protection provisions hastily approved by this Council between now and the end of the 1980s?" I can also say that 100% of the employees will prefer returning to the 1980s when the economy only started to take off. That is the reality.

I would like to share with colleagues another fact; that is, part-time employment or self-employment will be the future trend. In the future, this will not only be the mode of employment of workers at the lower level but also of those holding higher-paying posts. For example, will a law firm employ a team of lawyers in the future? It will not necessarily be the case. I can tell that there will be a tendency for lawyers to become self-employed, for this is the future trend of the 21st century. Will this happen in the information technology (IT) sector? I can say that the same will happen. Let us consider the developing IT market in India in which many people are self-employed and are free from restraint.

Madam President, lastly, I will become very agitated whenever someone uses the phrase "with no conscience" because the scene will come back to my mind. There is no need for brilliant colleagues to use the phrase for they can put forward reasonable arguments. I will not go into the details of this motion any more and I only wish to say that whether we can enjoy the prosperity of the 1980s when the economy started to take off again all depends on whether we can make concerted efforts. As I have said in this Chamber before, we have to

understand what properties we have and in what direction should we go. Why have we lost all the properties we had in the 1980s today? It is also important for us to consider these issues for such are the main thrust. It is very important for us to consider how we can bring back the dawn of economic prosperity in the 1980s. Thank you, Madam President.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam President, one very important point that the Honourable LEUNG Fu-wah made in his letter addressed to all Members is that all legislation must keep up with the times. I wish to talk about this remark. When we in the labour sector analyse the situation, or even when we make or amend legislation here every day, we always make amendments or changes in keeping with the development of society.

The various points made in Mr LEUNG Fu-wah's motion actually reflect the changes in society. Many changes have taken place. Just now, Mrs Sophie LEUNG said in agitation that she was upset every time she heard someone talk about "employers with no conscience". In fact, whenever we bring up this issue during our debates, she used to react very strongly. I understand how she feels. I wish our society could return to the economic boom which lasted from the mid-'80s to the early '90s. If this was possible, I am sure the Secretary and the Deputy Director would not frown as much. Also, we would not need so much training and so many programmes to help the unemployed and underemployed. This is one of the changes that has taken place.

We also wish that there could again be an atmosphere and an environment in which workers could easily find a job. But objectively speaking, society has changed and the whole economic structure has changed. Our society has to compete with our neighbouring regions, but we have lost our leading position in the Asia Pacific region. In the old days, Hong Kong had its uniqueness as compared with Taiwan and the Mainland. They did not have what we had. But it seems to me that we no longer have this edge and we have to face competition. Our government has told us that we have to adjust to changes and develop high technology and a knowledge-based economy. Whether we agree or not, it is the objective reality. That is why when the Legislative Council

discussed the question of admission of professionals a while ago, labour organizations could only say that they did not object to the admission of certain professionals that Hong Kong lacked. Still, they hoped that the Government could exercise restraint to ensure that the admission of professionals scheme would not be abused. Frankly speaking, it is very hard for us to say so. There is a lot of struggle behind us. Faced with such changes, we are afraid that excessive moves will be made and that will affect the future development of Hong Kong. Whenever I discuss these issues, with colleagues, non-unionists or members of my political party, we feel strongly that we have a responsibility to the public for whatever we tell them. But we certainly will not give up protecting workers' interests.

I have talked briefly about the changes in the objective circumstances. I wonder if Members agree that we are facing an extremely urgent situation. Over the past few years, when we deal with these issues, we feel rather sad because workers do not have any bargaining power now. We have seen many concrete examples — Mrs Sophie LEUNG may not agree with me, but this is an objective fact. Earlier, Mr LEUNG Fu-wah got very agitated when he cited an example in the catering industry, although I am often more agitated than he is. To him, the people concerned were not negotiating at all but they were rather bargaining like what the triad members did. I am sure staff of the Labour Department who assisted in mediating at the frontline would know much better about this.

I have no intention of aggravating our differences. I just wish to point out that the Hong Kong economy is changing because we have to compete with our neighbouring regions. Our society is also changing but in the course of doing so, Hong Kong workers have become less and less competitive. Everyone in our society is in the same boat. While one group of people is sinking day by day, I believe everyone will ask the Government a question. The wages of 20% of employees are not pegged with social changes. Their wages are sinking rapidly in geometric progressions and their wage levels are approaching those of foreign domestic helpers. What should we do? Even if I do not discuss this from the workers' point of view, if we do not legislate to help these people and if we disregard their circumstances, they might find it better to receive Comprehensive Social Security Assistance. When a four-member household is able to receive $6,000 to $7,000 CSSA payments, will they still have any incentive to find jobs? The problem will affect the whole community.

Actually, when I talk about these issues, I do not want to sound too complicated. Nevertheless, I hope Members will have a wider field of vision. Faced with so many changes, should we not amend our Employment Ordinance accordingly? Frankly speaking, the three points proposed by my colleague in his motion are subject to limitations. He proposed the definition of "having worked for 72 hours during the period of four weeks". Do you think the labour sector agree to this unanimously? I know that many people wish to fight for better terms. For instance, I, CHAN Yuen-han, would have "0 hour" in mind instead of "100 hours". Earlier, Mr LEE Cheuk-yan suggested that the benefits could be calculated proportionally. In fact, we could propose different options. But we must make Members understand that we have to work together to resolve this plight. We should consider not just our own problems but also those of the others. Such examples are numerous and we have to think deeply about some issues. In this Chamber, we have to discuss how to solve the problem that affects several hundred thousand workers who have no bargaining power. The Government should consider our proposal to amend the relevant definition in respect of employment. What we propose is something very moderate and not radical at all. We should discuss this issue together and we are open-minded in this respect.

Another question concerns our Civil Service. In this year's Budget, the Financial Secretary indicated that the Government intended to appoint a large number of staff on non-civil service contract terms and contract out services. In view of these changes, how will the interests of these employees be protected by the Employment Ordinance and the Civil Service Regulations? If the Government says it has no intention of amending them, I will raise a strong objection, since it shows that the Government is too rigid.

Third, our existing Employment Ordinance provides minimum protection. But even on this basis, many things are very often withheld, therefore, Miss Margaret NG's idea that employees should be protected by the law could not be realized. In the light of this situation, we often feel very sad since some employers are really like that. I do not wish to use such labels as "with no conscience" or "with conscience" but I very much hope that Members can see that the overall changes in society have caused several hundred thousand or even a million employees to lose their bargaining power. With supply exceeding demand, how can we help these people become self-reliant? They want to earn a living themselves and they do not want to receive CSSA payments. This is also our wish. Moreover, I hope that we can discuss the present state of society rationally in this Chamber. Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): Madam President, at first I had not intended to speak. However, upon listening to the speech made by the Honourable Mrs Sophie LEUNG in a tone of intense agitation, I am a little bit agitated also. Speaking of "employers with no conscience", I believe nobody would wish to describe people as without conscience unless they really deserve the name. On the other hand, just because some employers are being denounced as without conscience, it does not follow that all employers should be considered with no conscience, right? Likewise, although some people denounce politicians as shameless, I do not consider myself shameless. But then again, it is true that some people are indeed shameless. As regards the unscrupulous employers without conscience, they may just as well be rightly called unscrupulous. I can cite many examples to demonstrate the tricks and measures adopted by "employers with no conscience" to strip labourers of their interests. We have seen plenty of such cases on television recently. In some cases, employees were paid $10 per hour and being robbed of their rights to paid leave, as they were not allowed any rest time while their wages would be deductible for any day off taken. It was only after the intervention of the Labour Department that these workers could successfully strive for their due wages. I should like to ask Mrs Sophie LEUNG whether she considers such employers unscrupulous. While these employers are indeed without conscience, that does not necessarily imply Mrs Sophie LEUNG is an employer without conscience. Hence, we should not consider all employers unscrupulous just because some of them are. Even if we are agitated, we still need to bring the crux of the problem into focus. It is just senseless to view Members as hurling abuse and alleging that all employers are without conscience. For my part, I will not say all employers are unscrupulous, albeit I have the tendency of "raising things to the higher plane of principle and two-line struggle". Nevertheless, I am sure that a certain number of employers in Hong Kong are indeed unscrupulous. These are just so very simple logic and rationale.

For those employers in Hong Kong who have a clear conscience, I hope they will not take the condemnation personally when Members of this Council or other unionists condemn certain employers for being unscrupulous. To those scrupulous employers, we would offer them our commendation and best wishes that their employees will continue to help them make more profits. As regards the unscrupulous employers, we will certainly condemn them more strongly, thereby helping employees to strive for their rights.

At the local community level, we are practically receiving tons of complaints every week. In particular, with the various mandatory provident fund schemes coming into operation recently, even more problems have arisen. Regardless of whether they are working in restaurants, fitting-out works or construction sites, employees have seen their employers resorting to all sorts of tricks. In this connection, some employers may take this opportunity to force their monthly-salaried employees to accept their employment on contract terms, and those employees refusing to oblige will be dismissed at any time. Hence, employees are gravely concerned, while those employees who are in their forties and have been working for dozens of years are particularly at a loss as to how to react. On the one hand, they are naturally unwilling to accept the exploitation inflicted on them by their employers; yet on the other hand, they are afraid that they would be dismissed if they should refuse to oblige. The anxiety thus created will cause the employees concerned to suffer from insomnia, nervous breakdown or psychasthenia. In serious cases, medication may even be required. I can tell Honourable Members that things of these kinds often happen. There are just plenty of real life examples in the harsh community of Hong Kong these days.

Indeed, "employers with no conscience" are the source of many problems facing employees. Yet the situation has turned from bad to worse following the out-sourcing of many services originally provided by government departments. What is more, some recent incidents are proof positive that the Government has helped indirectly to create more unscrupulous employers. Given that the contracts for such services are prepared by the Government, in the event of an inappropriately drawn up contract or inadequate monitoring, those unscrupulous employers who have won the contract for providing certain government services will in effect be stripping Hong Kong's labour force of their rights. I therefore hope that the Government can do something to rectify the situation.

Recently, Hong Kong has been announced as one of the freest societies in the world. Yet if we should view it from another angle, compared to other advanced societies, Hong Kong is also one of the places where employers can exploit their employees most freely. Speaking of labour laws, the ones in force in Hong Kong can be described as the most feudal and conservative ones among the many advanced societies in the world, for they strip employees of their interests and offer them the least protection. The Secretary is now shaking her head. I just hope she can cite some examples to show us what places in the various European countries, the United States and Canada, the economic status of which is comparable to that of Hong Kong, are implementing labour laws that

provide even less protection for employees than the ones in force in Hong Kong, particularly in such areas as their rights to collective bargaining, to form trade unions and to receive unemployment benefits. By that I am referring to the rights and benefits of the labour sector as a whole rather than individual cases. I do hope she can enlighten me on that.

I feel that the protection for employees' rights and benefits is particularly worthy of attention these days. This is partly attributable to that fact that many workers have become transient employees in the wake of Hong Kong's economic restructuring. For the hundreds of thousands of workers who used to be engaged in the clothing industry in the past, it is just very difficult to shift to another trade in some eight to 10 years' time. While the need for job switching has posed a threat to and impacted gravely on these workers in terms of their employees' rights and benefits or wage levels, the restructured economy has failed to offer them new employment opportunities. As a result, these workers have in effect become victims of the economic restructuring. It is regrettable that the various labour laws cannot help them secure a job or provide them with any financial assistance. And that is why I hope very much that Members can consider these issues from an objective point of view. In the face of the globalization development of the world economy, as capital is free-flowing, investors can always move to the Mainland if they are not interested in investing in Hong Kong. However, for the many workers who have their roots planted in Hong Kong, especially those who are in their forties, where can they move to? Hence, I hope very much that in taking into account the interests of employers, Members will also take into consideration the rights of the labour sector as well as their daily needs. Most often than not, labourers are living in dire poverty just because they can hardly earn a living. Indeed, we can see that more and more domestic or social tragedies are taking place these days just because labourers have no choice but to resolve their problems in a more radical manner due to the lack of protection for their rights and benefits. I just hope the situation will not deteriorate further.

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

MISS CYD HO (in Cantonese): Madam President, at first I have no intention to speak either. Yet, upon hearing Mrs Sophie LEUNG's agitated speech, I feel very regrettable. Every time when the term "employer with no conscience" was mentioned at this Council, I would look over to that side of the Honourable

Mrs Sophie LEUNG because she was bound to speak, and the contents of her speech were somewhat similar. I just want to point out that "employer with no conscience" is actually a phenomenon rather than a label for letting off steam. The Honourable LEE Cheuk-yan and the Honourable LAU Chin-shek have said just now, the existing Employment Ordinance is indeed incomplete, thus giving rise to "orphan" and "handicapped" labour since they are not adequately protected by the relevant legislation. Therefore, we must face, tackle, or even punish the employers who try to find every possible means to exploit workers with the loopholes existing in the law. In this connection, we call them "employers with no conscience" for short. If you are an "employer with no conscience", please "step in those shoes". If not, I think that we need not be so agitated. No matter how we address these people, I believe that all of us are obliged to study the loopholes existing in our legislation and how to protect our labour.

I fully agree with what Mrs Sophie LEUNG has said, "Pick someone of your own size to have a fight." In the '80s, during the period when the economy and the property price were taking off, the operating costs were high. But what were the proportions of the operating costs and the labour costs? And what was the proportion of the land premium? Why was there not any one to request the property developers and the major landlords to cut rents when we thought that the operating costs were high; instead, cuts on labour was taken as the most convenient? It is because the labour side do not have the rights to collective bargaining, nor does this side have the ability to bargain. Such a situation is definitely not picking someone of your own size to have a fight, it is picking someone smaller than you to have a fight. Later, the small businessmen also knew that collective actions, protests and petitions were useful. Therefore, we saw many small businessmen displaying banners and protesting against the major landlords such as Wharf Holdings Company Limited and so on, demanding a rent cut by several tens of percentages. Given that collective actions, demonstrations and protests were useful, why do we think that the grass-roots labour are "ruining everything" when they take such actions? At that time, the Wharf Holdings Company Limited was very polite as to receive the petition and hold a discussion with the small businesses, without describing them as "having ruined everything". As a result, some of the commercial tenants got the discount they asked for but some did not, yet we could, whatever the outcome, sit down and discuss the issue in a rational manner.

Recently, many people from the commercial sector said that the peg rate is a significant factor attributing to the poor competitiveness of Hong Kong. I

really hope that people from the commercial sector, big enterprises or small, "good employers" or "employers with no conscience", could jointly approach the Hong Kong Monetary Authority for a discussion and from where we could regain our competitiveness, rather than meddling with such trivial matters as "working 18 hours each day consecutively for four weeks", insisting on employing people to do part-time jobs, or even employing the same person by various companies for several part-time jobs so as to evade an employer's liability. Madam President, competitiveness is not something to be borne by grass-roots labour alone. Instead, the burden should be shared equally among all people including the Government, the Council, the consortium, property developers, small and medium enterprises or the public, all of them must share the burden. I do not want this responsibility be borne by the labour side only.

Madam President, I would like to discuss the issue about discrimination. For the same reason, I really do not want to hear the term "ban-mui". They have another name, that is, Philippine domestic helpers.

MR JAMES TIEN (in Cantonese): Madam President, I did not hear the Honourable Mrs Sophie LEUNG's speech, but having heard the responses of the Honourable Albert CHAN and the Honourable Cyd HO, I can guess what Mrs Sophie LEUNG might have said.

In fact, as the Hong Kong economy now stands, large companies do have a choice. Local consortia or overseas consortia having investments in Hong Kong can opt to move away. What I mean is they can set up regional offices in Shenzhen or move to Shanghai. But among all enterprises in Hong Kong, the small and medium enterprises (SMEs) are the worst hit. I believe many owners of SMEs came from the grassroots and they are probably supporters of the Democratic Party and the Frontier. They started out as "wage earners" and worked very hard to become small employers. I do not think that small employers have become "employers with no conscience" just because of the present economic difficulties.

From recent figures, I found that in 1998, for instance, only 893 companies went bankrupt and some 720 companies were forced to liquidate, adding up to a total of 1 616. In 1999, the number of such companies was 3 800 and in 2000, there were as many as some 2 500 such companies. So many companies have gone bankrupt, but big companies like the HSBC were certainly not among them. Rather, they were the SMEs. Despite struggles to

survive, a small company may still have to go broke. Before the company goes broke, the employer may not be able to pay his staff regularly or in full. We are not saying that the employer is right, but we should know that it is very hard for him too. Of course, we should show understanding for the workers, but we should also try to put ourselves in the place of these SME owners. On the one hand, they are not paid any wages and have to pay their staff. On the other hand, their companies may have to face bankruptcy and liquidation. So, they have a very hard time too. Many SME owners will have to revert to "wage earners" again after they go bankrupt.

How should we deal with this problem? Just now, Miss Cyd HO mentioned the linked exchange rate between the Hong Kong dollar and the US dollar. Other Southeast Asian countries may have all kinds of protection and their wages may also be protected. Besides, depreciation of currency is also an option for them for all of their expenditures are calculated in the local currency. Hong Kong cannot do this. Since this is not an option for Hong Kong, we can only let assets depreciate to balance against our currency that is not to be depreciated. As we can see, most rentals have fallen sharply in Hong Kong. I am referring to shop rental that the grassroots are most concerned about, and it may not necessarily be the case for rental for grade A offices in Central. Mr Albert CHAN should know many factory owners in Tsuen Wan and Kwai Chung districts who cannot even afford the maintenance fees. The rental for their factories now is only $2 to $3 per sq ft. At the rate of $3 per sq ft, the rental for a factory of about 10 000 sq ft will cost only $30,000 a month. A factory of 10 000 sq ft can accommodate at least 100 workers. How much do the wages of 100 workers cost? Even if they are only paid the minimum wage of $3,000 to $4,000, the total wages would amount to $300,000 to $400,000. This shows that wages are many times higher than the rent. There are many factories in the Tsuei Wan District. Even if the owners need not pay any rent, they still have to employ so many workers. Even if the monthly salary of each worker is only $3,000 to $4,000, still they may not be able to afford it.

Under these circumstances, many employers are in a dilemma. In my view, the economic recession has now come to a stage that the SME owners are sinking and the grassroots are even sinking further. After listening to the speeches of the two Members, I know that Members have a lot of complaints. But we cannot do anything about it. For instance, the United States is not buying our goods since its economy is in the middle of a recession. What can we do about it? We cannot force them to buy our goods.

This afternoon, I invited a factory owner in the swimsuit business to lunch. He said he had relocated his factory to Phnom Penh in Cambodia. Let us not discuss issues involving a small amount. But he can still get the quota there to ship his products to the United States. He told me that he did not want to set up his factory in Hong Kong because Hong Kong had too many problems. He would not be able to run a factory in Hong Kong. I asked him why he did not relocate his factory to the Mainland. He said the cost was still too high even in Shenzhen and so, he had to move to Phnom Penh. This shows that in the international market, many businesses are faced with operational difficulties. In Hong Kong, it is the SMEs and a majority of employees that cannot move away. What solutions do we have? If we intend to greatly improve the labour legislation, it might cause the owners of SMEs to wind up their business, go bankrupt and join the ranks of the unemployed more quickly. Is this what we wish to see? At the moment, I only hope that those SMEs facing operational difficulties can weather the crisis and that they can make a profit instead of suffering losses.

In my view, only a minority of employers in breach of the laws on a myriad of labour benefits are from large enterprises. Most of those employers in breach of the laws are probably SMEs which have encountered operational difficulties. Are these SMEs capable of doing better but refuse to do so? That is, do they wish to become the so-called "employers with no conscience"? I think they simply do not have the ability to do better. They have probably failed to obtain loans from banks. Their business may slacken and they may have put their entire savings in their business. There are many such small employers, and it depends on whether we can sympathize with these small employers. They probably do not intend to be "employers with no conscience", but have no other choice. In the end, they may even be forced to become "unemployed employers", and may degenerate into "wage earners". I am sure there is a large number of these people, as pointed out by Mr Albert CHAN earlier.

In fact, in the eyes of many employers, a lot of SME owners do not qualify as employers and perhaps, they can be considered as employees only. Very often, when their business is doing badly, they have to take up the work of employees as well. How can we help these people? Of course, the Government has organized many retraining programmes, and I think the Government has worked very hard to this end. But it has failed to achieve the purpose of retraining. While high technology is the order of the day, not

everyone is capable of taking up jobs relating to high technology, not to mention the many hi-tech bubbles. In fact, I can only say that the whole economic environment is very poor.

What worries me more is the Government's forecast that we may not be able to register an economic growth of 4% this year. Judging from the recent messages conveyed by the United States, the situation may be even worse. If the economic recession in the United States worsens, leading to the further depreciation of the Japanese yen and the currencies of Southeast Asian countries, certainly it will be even more difficult for SMEs in Hong Kong. By that time, I believe the majority of employers and employees will be facing even greater problems. In my view, Madam President, this problem is very difficult to solve.

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

(No Member responded)

PRESIDENT (in Cantonese): Mr LEUNG Fu-wah, you may now speak on Mr LEE Cheuk-yan's amendment. You have up to five minutes to speak.

MR LEUNG FU-WAH (in Cantonese): Madam President, I sincerely hope that Members and friends from the business sector will consider my original motion carefully. I will explain the differences between my original motion and Mr LEE Cheuk-yan's amendment later.

The three points stated explicitly in the original motion aim at effectively protecting the statutory rights and benefits of employees. I have also proposed a reasonable amendment that we have to change in accordance with changes in our society. I do not want some colleagues to think that in this Council, whenever we discuss the rights and benefits of employees, we are quarrelsome and we then get ready to fight. It is unnecessary for them to do so and it is also unnecessary for them to "make such a false match with" us. Members who have just spoken have stated explicitly that the law should protect the government employees on non-civil service contract terms. The last point of my motion suggested imposition of punitive measures on employers who deliberately breach the ordinance.

I will elaborate on how they falsely match us with later and will analyse the differences between the original motion and Mr LEE Cheuk-yan's amendment first. As far as I understand, Mr LEE Cheuk-yan has adopted point (c) of my original motion as point (e) of his amendment. Point (c) of the amendment states that measures should be formulated to prevent employers from covering up the actual employment relationship by means of contracts for service in an attempt to shirk their statutory duties towards their employees. This is perfectly all right, and as a Member has pointed out, the person-in-charge of the Construction Industry Union also agrees that the premium of the construction industry collected by the insurance company is actually the total amount of premiums collected on a per head basis. Whenever an accident occurred, compensation has to be made and there will be arguments whether the person concerned is an employee, an employer or a sub-contractor so that compensation could be evaded. The Government, the Hong Kong Federation of Insurers and the relevant companies should look for ways to plug these loopholes.

I think some Members may have misunderstandings about point (d) of Mr LEE Cheuk-yan's amendment but I think he has made his points very clear. Mr LEE Cheuk-yan has made two requests: firstly, he requests for amending Part VIA of the Employment Ordinance in order to grant employees the right against unfair dismissal. I think the Secretary will tell us that employees already have the right when he gives a reply later. The labour sector think that workers have the right to obtain compensation when they finally leave the job and they should receive additional compensation if the dismissal is unreasonable and unlawful. Actually, they have a different point of view and perspective. Secondly, according to my observation, Mr LEE Cheuk-yan has exercised restraint. We can examine his amendment carefully. He has said that the compensation payable to an employee should not be deducted if the dismissal complies with the provision of Part VIA of the Ordinance on unfair dismissal. He has also stated that the requirement that the severance payments or long service payments payable to employees should be reduced by the employers' contributions to the occupational retirement schemes or mandatory provident fund schemes should be abolished. But he has not said that all the compensation before employees leave the job should be deducted and that is an improvement to my original motion. However, I believe there is a beautiful misunderstanding. I have said at a meeting of the Panel on Manpower that according to Part VIA of the Ordinance, if a claim is made according to the provisions for employment protection and the employee concerned has served the employer for four and a half years, even if the court finally accepts the employee's claim, it may not judge according to law

that the he can get four and a half years' long service payment. The existing practice of the court is that if the employee has served the employer for four and a half years, even if his claim is awarded, the court can judge that he can receive one and a half years' or two years' long service payment and the judgment will solely be made by the court. As the present case is not what I intended when we discussed the issue at a meeting of the Labour Advisory Board, I will take this opportunity to urge the Administration to clarify the matter carefully.

It is not particularly meaningful for Mr LEE Cheuk-yan to change my point (c) into his point (e) because the delay in making statutory payments such as the severance payment also includes the delay in making compensation for statutory rest days, statutory holidays and annual leave, therefore the amendment is somewhat superfluous. Nevertheless, I wish Members would support my original motion or Mr LEE Cheuk-yan's amendment. Thank you, Madam President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, a harmonious labour relationship is one of the key elements to enhancing productivity and boosting employees' morale. Hong Kong has been relying on consultation to resolve differences between the labour and management sides. In the event of disputes, the Labour Department (LD) will actively play the role of a mediator in seeking an agreement acceptable to both parties. The Labour Advisory Board (LAB), comprising representatives from both the labour and management sides, will also constantly review the labour legislation in Hong Kong and make gradual improvements to the rights of local employees after balancing the interests of employers and employees. In fact, substantial improvement has been made since 1997 to the entitlements of the labour side. For many years, this labour consultative mechanism has proved to work effectively. Therefore, we must cherish and preserve it. Against this background, I am going to respond to the Honourable LEUNG Fu-wah's motion and the Honourable LEE Cheuk-yan's amendment point by point.

(a) *Should the definition of "continuous contract" in the Employment Ordinance be amended*

I believe no one will object that full-time workers and casual workers should receive different treatment. Full-time workers deserve a better reward because they have greater participation and a stronger sense of belonging to their

companies. For this reason, labour laws worldwide have given different treatment to full-time workers and casual workers. Under the Employment Ordinance in Hong Kong, an employee who is employed under a continuous contract and is able to meet the relevant requirements shall enjoy more comprehensive benefits, including severance payment, long service payment, paid annual leave, maternity leave, maternity leave pay, sickness allowance, and so on.

In the Employment Ordinance, the term "continuous contract" is so defined as to cover employees who has worked for an employer for four weeks or more, and for at least 18 hours a week. If we calculate on the assumption that the normal working hours for a full-time worker is 44 hours a week, a part-time worker who has worked for 40% of the normal working hours will be able to enjoy the same benefits as full-time staff. This definition is obviously less stringent than those in other parts of the world. Moreover, it has covered the vast majority of employees, including many part-time staff. If we are to follow Members' proposal of amending the law so as to enable employees to receive their due benefits on a pro-rata basis, a large number of part-time staff might end up receiving fewer benefits. Therefore, I hope Honourable Members can re-consider the proposal carefully.

Generally speaking, the hourly wage of casual workers is invariably higher than that of full-time staff. Even some part-time workers are unable to meet the requirement of "continuous contract", they can still enjoy the basic protection provided for in the Employment Ordinance, including the protection provided in relation to the payment period of wages, restrictions on deduction of wages, statutory holidays, and such arrangements as protection against anti-union discriminations. If they suffer injury during the period of employment, they may be compensated under the Employees' Compensation Ordinance.

Today, a number of Members cited a number of practices whereby some employers tried to circumvent the requirements of "continuous contract". For instance, under the guise of the name of another person, some employers have hired one employee to perform two part-time jobs though it looks as if they hired two employees to perform the jobs. These employers can in fact be prosecuted as what they have done can be considered a fraudulent act. If this is proved to be true, I hope workers' unions and employees can present concrete evidence to the LD and step forward boldly to bring the unlawful elements to justice.

The Government is of the view that the existing definition of "continuous contract" is reasonable and pragmatic. The proposal of giving employees employed on a short-term basis or employees without entering into a constant labour relationship the same benefits as full-time staff is unfair to full-time staff. Moreover, it will give rise to a number of sequels:

(i) For personal reasons, some employees, such as housewives, can only perform part-time jobs that permit a greater degree of flexibility and freedom. If we are to relax the definition of "continuous contract", employers might employ fewer part-time staff, thus hampering the employment opportunities of part-time staff.

(ii) Many trades and industries need to hire short-term staff in light of the cyclical nature of their businesses. For instance, boutiques need to employ extra staff on Sundays and holidays. During the peak season for holding banquets, restaurants also need to hire casual workers to cope with their sharply increasing workload. Relaxing the definition of "continuous contract" will, on the one hand, raise the employers' administrative and operating costs and, on the other, reduce their operating flexibility.

According to the findings of a survey conducted by the Census and Statistics Department in early 1999, only 30 600 part-time employees, or less than 1% of the total workforce, work less than 18 hours a week. Just now, the Honourable Frederick FUNG stated that the number of part-time workers has reached 116 000. This figure has actually covered the number of those people who work 30 hours or less a week. Therefore, there is some inconsistency with the definition of "continuous contract". In the third quarter of this year, the LD will conduct a comprehensive study on employees employed under a continuous contract to gain an in-depth understanding of their working condition before assessing whether there is a need to amend the existing laws for the purpose of providing part-time workers with greater protection.

(b) *Should the applicability of the Employment Ordinance be extended to government employees on non-civil service contract terms*

Although the existing Employment Ordinance is not applicable to government employees, the Government has all along followed a clear-cut policy

that the conditions of employment for government employees should be commensurate with the Employment Ordinance. In fact, the terms of contracts for government employees on non-civil contract terms are stipulated in accordance with the Employment Ordinance and is binding on the Government. Moreover, all government departments are obliged to comply with the provisions of the contracts. In the event of disputes, head of department/grade will consult the LD and seek legal advice to ensure all conditions of employment and relevant arrangements are in line with the Employment Ordinance.

Through the existing channels, individual government employees may also lodge complaints with respect to their conditions of employment and relevant arrangements, as well as other employment matters. Internally, there is an established procedure and mechanism in place to ensure the relevant complaints are to be dealt with in a just and equitable manner. If a complainant is not satisfied with the complaint-handling procedures or the outcome of a complaint, he may appeal to the Civil Service Bureau, which will discuss with the relevant department as a mediator. All government employees are entitled to make use of legal channels, in addition to the internal redress channels currently available, to pursue lawsuits or claims with respect to conditions of employment or terms of contracts. Unlike private organizations, the Government is, at the same time, subject to public scrutiny and questions raised by Honourable Members. In fact, during the period from December 1999 to November 2000, the Civil Service Bureau has received a total of 31 complaints. So far, 30 complaints have been resolved satisfactorily. Only one case is still being dealt with.

As the existing government policy has guaranteed that remuneration of government employees is commensurate with what is provided for in the Employment Ordinance and it has been proved that the complaint mechanism can effectively handle all complaints, the Administration is of the view that it is not necessary to extend the applicability of the Employment Ordinance to government employees on non-civil service contract terms at this stage. As for a series of problems triggered by the contracting-out of work by government departments, the relevant department is now actively examining ways to make improvements. Actually, the contracting-out arrangement has absolutely no bearing on today's motion.

(c) Should measures be formulated to prevent employers from covering up the actual employment relationship by means of contracts for service

Under the Employment Ordinance, employers are not allowed to alter the terms of employment without the employees' consent. If an employer unilaterally changes the status of his employee to a self-employed person by means of contract for service so that the protection and rights enjoyed by the employee are jeopardized, the employee can make a remedial claim under the Employment Ordinance, including lodging an appeal for reinstatement or payment of terminal payments, with respect to the unreasonable alteration of terms of employment. On the other hand, under the common law, the unilateral move to alter terms of employment may constitute a covert act of dismissal. The relevant employee may seek dismissal compensation from his employer under the employment agreement and the Employment Ordinance.

According to previous verdicts made by the court, the determination of a labour relationship is not based solely on a title. In deciding whether a labour relationship still exists, the court will consider a series of factors, such as who is responsible for the recruitment and dismissal of employees, who is responsible for payment of wages and in what form the payment is made, who is responsible for making decision with respect to the procedure, schedule and modus operandi, who is in possession of production tools, who is responsible for the supply of production material and workplace, who is responsible for reaping profits or bearing the risk of incurring losses, and so on. Therefore, even if an employer nominally changes the status of his employee to a self-employed person, or even if the employee is willing to change his own status to a self-employed person voluntarily, the employer is still obliged to bear the employer responsibilities as provided for in the labour laws, including the Employment Ordinance and the Employees' Compensation Ordinance, if both parties still maintain an actual labour relationship.

In fact, before the implementation of the Mandatory Provident Fund (MPF) scheme in December 2000, the Education and Manpower Bureau and the LD have, on numerous occasions, conducted in-depth discussion with Members from the labour sector and a number of workers' union leaders with respect to the prevention of employers from covering up the actual employment relationship. A series of measures have been taken to remind employers that they are not

allowed to change their employees to self-employed persons unilaterally, and to remind employees of their due protection under the law. At the same time, workers' unions are called on to report suspected unlawful cases so that follow-up investigation can be conducted. So far, however, there is still no adequate evidence showing that any employer has violated the law by altering a labour relationship unilaterally. We very much hope that workers' unions and employees can provide us with concrete cases instead of making vague allegations.

(d) Should the applicability of the occupational safety and industrial accident victims protection system be extended to the self-employed

Under the Occupational Safety and Health Ordinance, all employers must take appropriate measures to ensure the work safety and well being of their employees. It is also stipulated in the Ordinance that employers must compensate their employees for any duty-related injuries. A self-employed person carries double identities in the sense that he is an employer as well as an employee. Apart from having the opportunities of reaping profits, he needs to bear risks arising out of his work.

Although self-employed persons inflicting duty-related injuries because of failure to comply with the requirement of the Occupational Safety and Health Ordinance will not be prosecuted by the law enforcement authority, they will not be eligible for compensation from the Employees' Compensation Assistance Fund for the accidental injuries they sustain. They should therefore make a self-assessment of the risks involved and then decide whether they should take out personal insurance. Mr LEE Cheuk-yan has proposed that self-employed people working in construction sites should be covered by the overall insurance arrangements of the relevant projects. This proposal is made in the light of the circumstances particular to the construction industry. In my opinion, further consultation should be held between the construction and insurance industries. As regards the issue raised by Mr LEUNG Fu-wah in connection with the existence of some gray areas in the insurance sector, the Government is of the view that the labour sector and the insurance industry can, through the co-ordination of the Office of the Commissioner of Insurance, further examine what can be done to plug the loopholes.

(e) Should Part VIA of the Employment Ordinance be amended in order to grant employees the right against unfair dismissal, and to abolish the requirement concerning severance payments and long service payments

At present, Part VIA of the Employment Ordinance, which provides for employment protection, has provided employees subject to unreasonable (or unfair) dismissal with reasonable protection. Under the Ordinance, if an employee has been employed under a continuous contract for not less than 24 months, and is dismissed by his employer for a reason not considered to be a valid one under the Ordinance, he can make a claim against his employer for compensation. If the claim is allowed, the Labour Tribunal may, subject to consent from both parties, order for reinstatement or re-engagement.

Even if reinstatement is not possible, the employee may still receive reasonable terminal payments, including payment in lieu of notice, end of year payment, maternity leave pay, severance payment, long service payment, sickness allowance, statutory holiday pay, annual leave pay, and so on, under the Employment Ordinance and the terms of the employment contract. Even if the employee has not attained the qualifying length of service required for the entitlement (five years for long service payment, and two years for severance payment), he may still receive terminal payment calculated in proportional to the actual length of employment. In other words, terminal payment will be more favourable than the compensation granted for dismissal for ordinary reasons. In this aspect, I think Mr LAU Chin-shek has some misunderstanding about the relevant provision.

Among the various terminal payments, severance payment and long service payment can be deducted from the employers' contributions to the occupational retirement schemes or MPF schemes. This provision is in line with the offsetting provisions of the Employment Ordinance adopted for the purpose of severance payment and long service payment. Therefore, it is not unfair to employees who have been unreasonably dismissed. In fact, this issue has been debated in detail when the Mandatory Provident Fund Bill 1995 was tabled to this Council for scrutiny. With the support from the majority of Members, the offsetting arrangements were eventually endorsed.

(f) Should punitive measures be imposed on employers who deliberately delay making statutory payments, such as the severance payment

The Employment Ordinance has expressly provided for the entitlements and benefits of employees. If an employer delays granting entitlements, such as the severance payment, the affected employee may make a claim to his employer in a summary way by lodging a complaint to the LD, which will invite both parties to a conciliation meeting. If the meeting does not bear fruit, the employee may approach the Labour Tribunal or the Minor Employment Claims Adjudication Board for arbitration.

If the employer fails to comply with the final finding or order made by the Labour Tribunal or the Minor Employment Claims Adjudication Board after the employee's claim has proved to be allowed, the employee may, by virtue of the provisions of the relevant law, register the findings or order with the District Court, and have it enforced as a ruling made by the District Court. Under the District Court Ordinance and the District Court Rules, the District Court may issue a range of orders, including orders for seizure of the property of a debtor, orders for a debtor's bank to make payment from the debtor's deposit to a creditor, orders for the imposition of a charge on the land or land interests of a debtor, orders for imposing restrictions to prevent a debtor from leaving Hong Kong, and so on, for the purpose of executing the order made by the Labour Tribunal or the Minor Employment Claims Adjudication Board effectively. Although the employee is required to pay a registration fee and deposit for the purpose of registering and executing an order, the fee paid and payments in arrears will be recovered by the bailiff through the Court after a sufficient sum is yielded upon the execution of the distraint orders or the completion of the auction of the property. The full sum will then be returned to the relevant employee.

In addition, if an employer is found to have infringed the Employment Ordinance or failed to comply with an order made by the Labour Tribunal or the Minor Employment Claims Adjudication Board, the LD will take initiative to follow up the matter and issue an advice or a warning to the employer. Upon receiving the warning issued by the LD, the employer will usually make the payment in arrears. Otherwise, the LD will, subject to the availability of sufficient evidence, take prosecution action against the employer. But in that case, the employee concerned must be willing to act as a prosecution witness. If the employer is successfully prosecuted, the Court may, in addition to the imposition of fines, order the employer to pay the wages in arrears and other

payments. Nevertheless, I must stress that employees must be willing to co-operate with law enforcement agencies. The Government will definitely not tolerate illegal acts. However, the LD often fails to prosecute unlawful employers because employees are extremely reluctant to give evidence.

In the event that an employer is really incapable of paying the wages in arrears, the employee may apply to the Court to declare the employer bankrupt or cause the relevant company to go into liquidation. Upon the completion of the necessary procedures, the employee may apply to the Protection of Wages on Insolvency Fund for ex-gratia payment. In fact, the Commissioner for Labour may, in cases involving less than 20 people, exercise the discretionary power conferred under the Protection of Wages on Insolvency Ordinance to waive the procedure whereby employees are required to apply for bankruptcy of their employer or liquidation of their company, and handle the relevant application directly. These cases account for approximately one third of the total number of cases handled by the Protection of Wages on Insolvency Fund each year. As for the outstanding cases, the relevant employees may apply for legal assistance to take necessary legal action. In 2000, it took the Protection of Wages on Insolvency Fund five weeks on average to make payment to eligible employees. We believe such arrangements can provide employees whose wages have been withheld because of employer insolvency with reasonable protection.

The mediation services currently provided by the LD and such arbitrary mechanisms as the Labour Tribunal have already provided employees with effective channels for making claims and ensured that they are given their due entitlements. The Government will also take criminal prosecution action against employers who have deliberately violated the law. I understand it very well that the time-consuming judicial procedures may have caused employees inconvenience or discontent. Nevertheless, in order to guarantee judicial justice and to ensure both employers and employees are given proper protection, the relevant judicial procedures are essential and inevitable.

Most employers in Hong Kong are law-abiding and treat their employees well. In handling labour relations, we must adopt a reasonable and fair attitude to deal with the problems faced by both parties. In times of economic hardship, employers and employees must, displaying a good sense of mutual understanding, join hands to tide over difficulties before Hong Kong can move forward steadily and head for economic recovery.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to Mr LEUNG Fu-wah's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan 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:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr LEUNG Fu-wah and Mr IP Kwok-him voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the amendment.

Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing and Mr Ambrose LAU 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, 23 were present, nine were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 20 were in favour of the amendment and four 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 LEUNG Fu-wah, you may now reply and you have four minutes 16 seconds.

MR LEUNG FU-WAH (in Cantonese): Madam President, I have just listened to the Secretary's reply, but I think the reply was prepared a few days ago because it has not replied to any of the remarks made by my colleagues specifically. In particular, the Secretary for the Civil Service has made the second point several times before. Therefore, it is virtually a standard reply and I decline to comment on the Secretary's reply.

I wish to tell Members, especially those from the business sector, that we do not wish in any way that similar motions to be proposed in this Council.

However, there are really many unfair and unreasonable phenomena in our society. Mr James TIEN and Mrs Sophie LEUNG have emphasized the situation of petty employers. Is the Hong Kong Jockey Club a petty employer? Are large catering groups petty employers? Some large catering groups request new employees to sign an undated and blank undertaking of 20 pages, stating that they have enjoyed all the benefits before resignation. Is it only petty employers who would do anything like this? The phrase "with no conscience" has appeared only once in my speech, why do colleagues from the business sector falsely make a match for us on the basis of the phrase "with no conscience"? We do not have any special comment on Members present and we do not think they are without conscience, but there are really employers who are unreasonable and not law-abiding. As stated very clearly in my motion, we should impose punitive measures on "employers with no conscience".

Some Members have said that the hourly wages of casual workers are higher but if casual workers really have higher wages, why do we still have to propose this motion? We have proposed the motion precisely because casual workers do not have higher wages. Casual workers are actually not protected under the labour legislation and they can only earn low wages. As a Member has just said, we should adopt an open attitude and explore the problem. We hope the community will protect the rights and benefits of workers in a practical way and we also hope that the Government will act as a law enforcer before posing as a peacemaker. However, we have a feeling that the Government is now posing as a peacemaker before acting as a law enforcer. The Secretary has just said that workers are welcomed to step forward bravely and give evidence. While the Government acts as a peacemaker and persuade workers and employers to make concessions so as to solve the problem satisfactorily, workers still have to work or look for a job, how can they have the time to give evidence? In the course of the claims, the Secretary has emphasized that the right attitude is to be impartial, objective and neutral. How can workers be impartial and objective? After they have got the compensation they deserve, they have to look for a job without delay. I think the Administration has not earnestly take up its responsibility to enforce the law and it has failed to warn those employers who speak foul language and triad language. It has also failed to tell the employers that they have breached the law. It has only persuaded the employers and employees to make concessions in order to solve the problems. According to my observation, the Administration has done so in numerous cases.

We have proposed this motion after careful consideration and we have seriously discussed the matter with our colleagues from the labour sector. We hope that the proven unscrupulous employers will be punished according to law. We appreciate employers who obey the law and we are sincerely grateful to employers who make investments in Hong Kong, employ local workers and give them wages. We can observe from the facts that employers are very often not so rational and reasonable. Therefore, I hope colleagues will understand that my original motion is highly objective, factual and specific, and it is not a motion that has made exaggerated claims or slapped political labels on people. Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG raised her hand when Mr LEUNG Fu-wah was speaking. Mrs Sophie LEUNG, do you wish to elucidate the part of your speech that may have been misunderstood by Mr LEUNG Fu-wah?

MRS SOPHIE LEUNG (in Cantonese): Madam President, Yes, I would like to clarify.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG, you can only clarify the points that have been misunderstood.

MRS SOPHIE LEUNG (in Cantonese): Madam President, thank you for reminding me. Mr LEUNG Fu-wah said earlier that I want to match myself with an "employer with no conscience", but I do not agree that I am one and I have never tried to match myself with any of them. I was only speaking on behalf of all small and medium enterprises.

PRESIDENT (in Cantonese): Alright, this has been understood. Please sit down.

I now put the question to you and that is: That the motion moved by Mr LEUNG Fu-wah, 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 LEUNG Fu-wah rose to claim a division.

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

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr LEUNG Fu-wah and Mr IP Kwok-him voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG and Mr LAU Ping-cheung voted against the motion.

Mr HUI Cheung-ching abstained

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG,

Dr YEUNG Sum, Mr LAU Chin-sek, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the motion.

Mr NG Leung-sing voted against the motion.

Dr TANG Siu-tong, Mr David CHU and Mr Ambrose LAU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, nine were in favour of the motion, 13 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 20 were in favour of the motion, one against it and three 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 negatived.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 2 May 2001.

Adjourned accordingly at thirteen minutes past Nine o'clock.

Annex I

WRITTEN ANSWER

Written answer by the Secretary for Economic Services to Mr Frederick FUNG's supplementary question to Question 1

During the meeting, the Honourable Member asked whether the Post Office had considered the provision of some basic banking services such as taking cash deposit, remittance, and so on. I replied that the Post Office had no plans to provide banking services for the time being. What I meant was that currently it had no plans to provide banking services in a general way. In practice, the Post Office currently provides postal remittance services to China and the Philippines in co-operation with the China Post and the Philippines Post respectively. However, it has no plans to provide banking services in a general way.

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Economic Services to Dr TANG Siu-tong's supplementary question to Question 1

I have consulted the Postmaster General on the matter. He has advised that service charges for PayThruPost service are agreed upon after a series of negotiations with individual companies. They could vary according to the extent of capital investment required. Such service charges are commercially sensitive information not suitable for public disclosure. Disclosing them publicly will affect future negotiations of the Post Office with other business partners. Besides, the Post Office cannot release such information unilaterally without the prior consent of the business partners concerned.

Annex III

WRITTEN ANSWER

Written answer by the Secretary for Economic Services to Mr LAU Kong-wah's supplementary question to Question 1

As advised by the Director of Accounting Services, the service counters at the Sub-treasuries and District Offices in the New Territories are normally open from 9.00 am to 4.30 pm and 4.00 pm respectively from Monday to Friday; and from 9.00 am to noon and 11.30 am respectively on Saturday. The Postmaster General has advised that after the relevant services have been transferred to the Post Office, the service hours for the acceptance of general government bill payments would be same as that for normal postal business, that is, generally from 9.30 am to 5.00 pm from Monday to Friday; and from 9.30 am to 1.00 pm on Saturday. A few major post offices have longer business hours. In addition, the General Post Office, the Tsim Sha Tsui Post Office and the Airport Post Office are open on Sunday from 9.00 am to 2.00 pm.

Annex IV

WRITTEN ANSWER

Written answer by the Secretary for Commerce and Industry to Mr Henry WU's supplementary question to Question 2

We have gathered from the Hong Kong University of Science and Technology (HKUST) that they did not charge the users any fees when the website was first launched because they considered that they would first need to expand the market and to attract a certain number of users before asking their users to pay. Subsequently, despite the HKUST's many efforts to promote the website to the users, the usage rate remained unsatisfactory. Hence, the HKUST did not consider it appropriate to charge the users.

As such, the low usage rate of the website could not be attributed to its fee level.

Annex V

WRITTEN ANSWER

Written answer by the Secretary for Commerce and Industry to Mr Ambrose LAU's supplementary question to Question 3

The *modus operandi* of the Customs and Excise Department (C&ED) in combating "self-help" method for selling pirated optical discs is to monitor targets closely and make arrests once they collect the money or display optical discs. In addition, the C&ED will also step up its efforts in collecting and analysing intelligence, thereby tracing their sources of supply and hitting out against the wholesaling and manufacturing of pirated optical discs.

The above measures are very effective. In 2000, the C&ED successfully smashed 13 storage/production centres, arrested 25 people and seized 180 000 pirated optical discs. Among the 25 arrests, seven were successfully prosecuted. Other cases are being investigated or prosecuted. In the first four months of 2001, by tracing the sources of supply for these shops, the C&ED cracked down 10 storage/production centres, arrested 28 people and seized 150 000 pirated optical discs. Follow-up actions are being conducted on these cases to prosecute the offenders.

Annex VI

WRITTEN ANSWER

Written answer by the Secretary for Commerce and Industry to Mr CHAN Kwok-keung's supplementary question to Question 3

The relevant figures on the arrests of mobile hawkers selling pirated optical discs by the Customs and Excise Department and other enforcement information are set out in details below:

	1998	*1999*	*2000*	*2001 (January to April)*
Cases	271	293	978	152
Arrests	240	236	637	99
No. of Pirated Optical Disc seized	810 000	580 000	840 000	70 000

Annex VII

WRITTEN ANSWER

Written answer by the Secretary for Commerce and Industry to Miss CHOY So-yuk's supplementary question to Question 3

Pirated optical discs are normally transferred after production to storage and distribution centres for distributing to retail outlets. The wholesaling activities refer to the storage and distribution activities at these centres. Vigorous enforcement measures have been taken by the Customs and Excise Department towards these activities. The relevant enforcement information for the period 1998 to 2001 is set out below:

	1998	*1999*	*2000*	*2001 (January to April)*
Cases	43	68	61	15
Arrests	91	127	133	24
No. of Pirated Optical Disc seized	26.98 million	6.3 million	2.3 million	110 000

During the above period, 107 cases were successfully prosecuted. 75% of these cases involved imprisonment ranging from two to 36 months; 15% involved fines ranging from $2,000 to $20,000. The rest involved community service orders.

Annex VIII

WRITTEN ANSWER

Written answer by the Secretary for Home Affairs to Mr Henry WU's supplementary question to Question 5

In the past 10 years, the four main providers of sport programmes, namely the Hong Kong Sports Development Board, the ex-Provisional Municipal Councils and the Leisure and Cultural Services Department have not received any sponsorship from tobacco companies. However, a few National Sports Associations (NSAs) did solicit tobacco sponsorship for their major sports events such as the Marlboro Tennis Classic and the Viceroy Football Cup Tournaments. Based on the information provided by the relevant NSAs, the amount of tobacco sponsorship for sports activities over the last 10 years is in the region of $11 million of which $600,000 is for the Hong Kong Tennis Association and $10.4 million is for the Hong Kong Football Association.

Annex IX

DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause	Amendment Proposed
16(3)	By deleting "指明" and substituting "示明".
17(1)(b)	By deleting "指明" and substituting "示明".
18	(a) In subclause (4), by deleting "在有需要時使用" and substituting "使用所需的".
	(b) By deleting subclauses (5) and (6) and substituting -

"(5) Where any book, document or other article is removed by the Director or a public officer under -

(a) subsection (1)(d)(i) or (3)(b) and no prosecution is instituted in respect of the suspected offence to which they relate within 6 months after the day of their removal; or

(b) subsection (1)(d)(ii) and no notice is given to the specified operator under section 15(1) within 6 months after the day of their removal,

Clause	Amendment Proposed
	the Director or public officer shall return or arrange for the return of such book, document or article to the specified operator or the person from whom they were so removed (as the case may be).".
24(3)(b)	By deleting "contains a statement to that effect." and substituting - "- (i) contains a statement to that effect; and (ii) states the ground on which the Director's opinion is based.".
30(2)(b)(i)	By deleting "為止" and substituting "之時".
New	By adding immediately after the subheading of "**Consequential Amendments**" - "**Dangerous Drugs Ordinance** **31A. Prohibition against disclosure of records** Section 49D(2) of the Dangerous Drugs Ordinance (Cap. 134) is amended - (a) in paragraph (f), by repealing the full stop and substituting a semicolon; (b) by adding - "(g) to the Director of Social Welfare or any public officer under section 18 of

Clause	Amendment Proposed
	the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (of 2001).".".
Schedule	By deleting "2. Ketamine".